

ADMINISTRATION AND PERSONNEL

DEPARTMENT OF EMPLOYMENT SECURITY

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LOCAL NHES/NH WORKS OFFICES

<u>Location</u>	<u>Address</u>	<u>Location</u>	<u>Address</u>
Berlin:	151 Pleasant St.	Littleton:	646 Union St.
Claremont:	404 Washington St.	Manchester:	300 Hanover St.
Concord:	45 South Fruit St.	Nashua:	6 Townsend West
Conway:	518 White Mtn. Hwy.	Portsmouth:	2000 Lafayette Road.
Keene:	149 Emerald St.	Salem:	29 South. Broadway
Laconia:	426 Union Ave.	Somersworth:	6 Marsh Brook Drive

NH Employment Security

Visit our Website at www.nhes.nh.gov 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
**REVISED STATUTES ANNOTATED,
CHAPTER 282-A, as amended**

TABLE OF CONTENTS

Section

Definitions

282-A:1	Applicability of Definitions
282-A:2	Base Periods
282-A:3	Benefits
282-A:3-a	Supplemental Unemployment Plan
282-A:4	Benefit Year
282-A:5	Calendar Quarter
282-A:6	Contributions
282-A:7	Employing Unit
282-A:8	Employer
282-A:9	Employment
282-A:10	Employment Office
282-A:11	Fund
282-A:12	Most Recent Employer
282-A:13	State
282-A:14	Total and Partial Unemployment
282-A:15	Wages
282-A:16	Annual Earnings
282-A:17	Week
282-A:18	Weekly Benefit Amount
282-A:19	Agricultural Labor
282-A:20	Employment
282-A:21	Institution of Higher Education [Repealed]
282-A:22	Not Wages
282-A:23	De Novo

Benefits

282-A:24	Payment of Benefits
282-A:25	Weekly Benefit Amount for Total Unemployment and Maximum Total Amount of Benefits Payable During Any Benefit Year
282-A:26	Weekly Benefit for Partial Unemployment
282-A:26-a	Return to Work Program Participants; Workers' Compensation Eligibility
282-A:27	Maximum Amount [Repealed]
282-A:28	Retirement Pay
282-A:29	Adjustment of Overpaid Benefit Account by Compromise
282-A:30	State-Federal Extended Benefit Program
282-A:31	Benefit Eligibility Conditions
282-A:31-a	Worksharing Definitions
282-A:31-b	Worksharing Plan
282-A:31-c	Worksharing Eligibility

- 282-A:31-d Worksharing Benefits Payable
- 282-A:31-e Worksharing Conformance with Minimum Standards
- 282-A:31-f Worksharing Suspension or Termination of Program

Subdivision-Self Employment Assistance Program

- 282-A:31-g Definitions in the subsection
- 282-A:31-h Self-Employment Assistance Program

Disqualification for Benefits

- 282-A:32 Disqualifications for Benefits
- 282-A:33 Temporary Self-Employment
- 282-A:34 Intoxication; Drugs
- 282-A:35 Gross Misconduct
- 282-A:36 Labor Dispute
- 282-A:37 Federal Unemployment Compensation
- 282-A:38 Another State
- 282-A:39 Unavailable for Work
- 282-A:40 Disciplinary Layoff
- 282-A:41 Aliens

Claims for Benefits

- 282-A:42 Definitions
- 282-A:43 Filing
- 282-A:44 Determination Procedure
- 282-A:45 Fact Finding; Employer Cooperation
- 282-A:45-a Fact Finding for Mass Layoffs
- 282-A:46 Redetermination
- 282-A:47 Referral to Appeal Tribunal
- 282-A:48 Appealing Determination
- 282-A:49 Determination Final
- 282-A:50 Waiver
- 282-A:51 Opportunity to Appear
- 282-A:52 Paying Benefits

Appeals

- 282-A:53 Appeal Tribunals; Composition and Jurisdiction
- 282-A:54 Tenure
- 282-A:55 Withdrawal of Appeal
- 282-A:56 Procedure
- 282-A:57 Records
- 282-A:58 Decision
- 282-A:59 Appearance and Postponement
- 282-A:60 Reopening of Appeal Tribunal Decision; Procedure
- 282-A:61 Commissioner's Determination
- 282-A:62 Appellate Board

282-A:63	Organization and Support
282-A:64	Jurisdiction
282-A:65	Reversal, Modification or Affirmation
282-A:66	Quorum, Sessions, Exclusivity
282-A:67	Administrative Reconsideration and Judicial Review
282-A:68	Exclusivity

Contributions

282-A:69	Payment of Contributions
282-A:70	Payment of Contributions by State
282-A:71	Payment of Contributions by County, City, Town or Other Political Subdivisions of This State
282-A:72	Proration of Reimbursed Charges
282-A:73	Credit for Other Funds Received
282-A:74	Separate Accounts; Chargeable Account
282-A:75	Fund Chargeable
282-A:76	Overpayments Chargeable to Fund
282-A:77	Monthly Notification
282-A:78	More Than One Employer Simultaneously
282-A:79	Merit Rating
282-A:80	Definitions
282-A:81	Newly Covered Employers
282-A:82	Minimum Rate
282-A:82-a	Inverse Minimum Rate
282-A:83	Business Suspended
282-A:84	Emergency Power [Repealed]
282-A:84-a	Emergency Surcharge [Repealed]
282-A:85	Standard Rate and Qualification for Reduced Merit Rate
282-A:86	Computation Date
282-A:87	Contribution Rates
282-A:88	Election
282-A:89	Recomputation
282-A:90	Ineligible for Rate Reduction
282-A:91	Successorship; Total Acquisition
282-A:91-a	Special Rules Regarding Transfers of Experience and Assignment of Rates
282-A:92	Contribution Rate
282-A:93	Acquisition of Segregable Unit
282-A:94	Employer Liability Determination
282-A:95	Appeal
282-A:96	Formal Hearing
282-A:97	Appeal to Appellate Board
282-A:98	Sole Remedy

Period for Election and Termination of Employer's Coverage

282-A:99	Initial Coverage; Continuation
282-A:100	Termination; Death, Etc
282-A:101	Termination; Failure to Comply
282-A:102	Elective Coverage

Unemployment Compensation Fund

282-A:103	Establishment and Control
282-A:104	Accounts and Deposit
282-A:105	Withdrawals
282-A:106	Management of Funds Upon Discontinuance of Unemployment Trust Fund

Administrative Organization and Administration

282-A:107	Department of Employment Security
282-A:108	Commissioner; Term; Removal; Salary
282-A:109	Deputy Commissioner
282-A:110	Expenses
282-A:111	Bonds
282-A:112	Duties and Powers of Commissioner
282-A:113	Unemployment Compensation Bureau, Employment Service Bureau and Economic and Labor Market Information Bureau
282-A:114	Publication of Rules
282-A:115	Personnel
282-A:116	Segregation of Special Risks
282-A:117	Records and Reports; Record Keeping
282-A:117-a	Employment Reports to Department of Employment Security; State Directory of New Hires
282-A:118	Reports or Statement; Confidentiality
282-A:119	Summary, Duplication, etc.; Admissibility
282-A:120	Destruction of Records
282-A:121	Penalty
282-A:122	No Liability
282-A:123	Records Unavailable for Legal Process
282-A:124	Oaths and Witnesses
282-A:125	Protection Against Self-Incrimination
282-A:126	Subpoenas; Witness's and Sheriff's Fees
282-A:127	State-Federal Cooperation
282-A:128	Advisory Council
282-A:129	Term of Office
282-A:130	Compensation
282-A:131	Unable to Attend
282-A:132	Cooperation
282-A:133	Removal from Records of Amounts Due
282-A:134	Claimant Assistance
282-A:135	Custody of Department of Employment Security Buildings
282-A:136	House Counsel for the Department of Employment Security
282-A:137	Representation in Court

The Unemployment Compensation and Employment Service Administration Fund

282-A:138	Special Fund
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- 282-A:138-a Training Fund [Repealed]
- 282-A:139 Reimbursement of Fund
- 282-A:140 Contingent Fund
- 282-A:140-a Money Credited Under Section 903 of the Social Security Act
- 282-A:140-b Appropriation of Federal Funds; Department of Employment Security

Collection of Contributions

- 282-A:141 Interest on Past-Due Contributions
- 282-A:142 Late-Filing Fee; Filing Extensions
- 282-A:143 Property Lien
- 282-A:144 Injunction
- 282-A:145 Time Limitation
- 282-A:146 Collection, Distraint
- 282-A:147 Priorities Under Legal Dissolution or Distributions
- 282-A:148 Adjustment of Contribution by Compromise
- 282-A:149 Adjustments and Refunds
- 282-A:150 Jeopardy Assessment
- 282-A:151 Failure of Employer to File Report of Contributions Due
- 282-A:152 Collection of State Contributions
- 282-A:152-a Garnishment
- 282-A:153 Secretary of State Their Agent for Receipt of Service
- 282-A:154 Continuance of Action
- 282-A:155 Interstate Collections
- 282-A:156 Delinquent Payments

Protection of Rights and Benefits

- 282-A:157 Waiver of Rights Void
- 282-A:158 Limitation of Fees
- 282-A:159 Assignment or Attachment of Benefits; Child Support Obligations; Overissuance of Food Stamp Coupons; Income Tax Withholding
- 282-A:160 Prohibition Against Discrimination

Penalties

- 282-A:161 Generally
- 282-A:162 Out-of-State or Federal Benefits
- 282-A:163 Disqualification
- 282-A:164 Restitution
- 282-A:165 Overpayments
- 282-A:166 Falsity by Employer
- 282-A:166-a Penalties for Failure or Refusal to Make Contributions or Reports
- 282-A:167 General Penalty
- 282-A:168 Recovery for Another State

Reciprocal Arrangements

- 282-A:169 Reciprocal Arrangements
- 282-A:170 Reimbursement

282-A:171 New Findings
282-A:172 Combining Employment

Miscellaneous

282-A:173 Suspension and Termination
282-A:174 Reservation of Right to Amend or Repeal
282-A:175 Federal Minimum Standards
282-A:176 Rules and Rulemaking
282-A:177 Administration
282-A:178 Agreement Authorized
282-A:179 Exemption
282-A:180 Collateral Estoppel

Job Training Program

282-A:181 Job Training Program
282-A:182 Training Fund
282-A:183 Expenditure for Job Training Program
282-A:184 Report

The State of New Hampshire
DEPARTMENT OF EMPLOYMENT SECURITY

REVISED STATUTES ANNOTATED, CHAPTER 282-A, AS AMENDED

PREAMBLE

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)

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.
- (x) Participation in the New Hampshire return to work program in the department of employment security which provides a structured, supervised training opportunity to individuals through a designated employer/training partner. Individuals participate on a voluntary basis and claimants continue to receive unemployment compensation during the training period as long as they remain otherwise eligible. All participants in the training program shall be at least 18 years old and registered with the department to

receive employment services. The training program duration is a maximum of 6 weeks and a maximum of 24 hours per week.

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.

VIII. "Full-time work" is work in employment of at least 37.5 hours a week.

IX. "Part-time work" is work in employment of at least 20 hours a week but less than 37.5 hour a week.

Last Source: 2011, 82:1, eff. July 1, 2011.

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 non-reimbursing employer prior to the effective date of the initial claim with whom an individual’s work record exceeded 12 consecutive weeks of employment while such individual received no benefits under RSA 282-A provided that the employer provided employment, or from which wages in employment were paid or are payable, between the beginning of the base period, whether primary or alternate, and the benefit year ending of the claim year.

Last Source: 2006, 130:1 eff. Jan. 1, 2007. 2012, 212:1, eff. Oct. 1, 2012.

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 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.

Last Source: 2006, 130:2 eff. Jan. 1, 2007. 2008, 297:4, eff Aug. 26, 2008.

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

Annual Earnings of Not Less Than	Maximum Weekly Benefit Amount	Maximum Benefits
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.]

Last Source: 2006, 308:1 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:26-a Return to Work Program Participants; Workers' Compensation Eligibility

- I. A participant in the department of employment security's return to work program shall be entitled to certain benefits under RSA 281-A. In the event that it is determined that a return to work program participant has been subject to an injury or occupational disease producing a disability arising out of and in the course of participation in the return to work program, the department of employment security shall not provide compensation pursuant to RSA 281-A:28, 281-A: 28-a, 281-A:31, and 281-A:31-a. However, a participant, who has been deemed eligible for unemployment compensation shall receive such benefits while otherwise eligible under RSA 282-A, or compensation equivalent to 90 percent of his or her weekly unemployment compensation benefit amount if the disability causes the participant to become ineligible for benefits under RSA 282-A.
- II. When determining the amount of compensation provided pursuant to RSA 281-A:32 for a scheduled permanent impairment award, the amount of compensation shall be calculated by using the minimum wage at the time of injury multiplied by the average number of hours in training per week.
- III. For a participant in the return to work program, RSA 281-A:8, I and II shall not apply and the following provisions shall apply:
 - (a) A participant in the return to work program shall be conclusively presumed to have accepted the provisions of this chapter and, on behalf of the participant or the participant's personal or legal representatives, to have waived all rights of action whether at common law or by statute or provided under the laws of any other state or otherwise:
 - (1) Against the employer/training partner, or the employer/training partner's insurance carrier, or an association or group providing self-insurance to a number of employers, or the department and the return to work program; and
 - (2) Except for intentional torts, against any officer, director, agent, servant, or employee acting on behalf of the entities named in subparagraph (a)(1).
 - (b) The spouse of a return to work program participant entitled to benefits under this chapter, or any other person who might otherwise be entitled to recover damages on account of the participant's personal injury or death, shall have no direct action, either at common law or by statute or otherwise, to recover for such damages against any person identified in this paragraph.
- IV. The department of employment security may provide this benefit by appropriate means including purchasing and serving as the master policyholder for any insurance, by self-insurance, or by administrative services contract.
- V. Except as otherwise provided in this section, all other provisions of RSA 281-A shall apply.

Last Source: 2011, 82.2, eff. July 1, 2011.

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) The rate of insured unemployment (not seasonally adjusted) under this chapter was:
 - (A) Less than 120 percent of the average such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or
 - (B) Less than 5 percent.
 - (2) 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 was less than:
 - (A) 6 ½ percent; or
 - (B) 110 percent of the average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.
- (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 appeal 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 or her eligibility period only if the commissioner finds that with respect to such week:

(a) The individual is an “exhaustee” as defined in subparagraph I (j);

(b) The individual 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; and

(c) In the base period with respect to which the individual exhausted all rights to regular compensation under this chapter, the individual has earnings covered by this chapter for compensation purposes which exceed 40 times the individual’s most recent weekly benefit amount.

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: 2009, 323:1, 2 eff. Aug. 7, 2009.

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 or she has been classified in accordance with his or her 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 or she has made a claim for benefits in accordance with the provisions of RSA 282-A: 43.

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

(d) He or she is available for and seeking permanent, full-time or part-time work for which he or she is qualified provided that:

- (1) He or she must also be available for and seeking temporary, full-time or part-time work for which he or she is qualified if the commissioner determines that permanent full-time or part-time work for which he or she is qualified is not immediately available within the individual's labor market area; and
- (2) He or she must instead be available for and seeking temporary, full-time or part-time work for which he or she is qualified if the commissioner determines that the individual reasonably expects to be recalled in 4 to 26 weeks to permanent full-time or part-time work from which the individual is temporarily separated and equivalent or better work for which he or she is qualified is not immediately available within the individual's labor market area; and
- (3) The wages, hours, or other conditions of the temporary work are not substantially less favorable to the individual than those prevailing for similar temporary or permanent work in the locality; and
- (4) If availability is limited to part-time work, the claim for unemployment benefits is based on wages earned in part-time work; and
- (5) If the individual furnishes evidence satisfactory to the commissioner that such individual has a definite date for returning to work which is within 11 weeks of the last day of work, such person shall be exempt from the work search requirements in subparagraph (d).

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

(f) He or she has participated in reemployment services when so directed by the commissioner unless he or she 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.

(h) For benefit years commencing on or after January 3, 2010, the individual has served a waiting period of one week of total or partial unemployment as defined in RSA 282-A:14. No week

may be counted as a week of total or partial unemployment for the purpose of this subparagraph:

- (1) If benefits have been paid with respect to that week;
- (2) Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits; and
- (3) Unless the individual was eligible for benefits with respect to that week, as provided in this section and RSA 282-A:32, except for the requirements of this subparagraph.

(i) There shall be no corresponding reduction in the individual's maximum benefit amount under RSA 282-A:25, I as a result of subparagraph (h).

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. Subparagraphs 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. V. [Repealed.]

Last Source: 2019, 227:1, eff. July 12, 2019; 346:393, eff. July 12, 2019 at 12:01 a.m.

282-A:31-a Worksharing Definitions
(Effective May 11, 2010)

I. “Affected unit” means a specified plant, department, shift, or other definable unit consisting of no fewer than 2 employees to which an approved worksharing plan applies.

II. “Employee” means any individual employed full-time or on a permanent part-time basis by any employer subject to this chapter and in employment subject thereto.

III. “Fringe benefits” include, but are not limited to, health insurance, retirement benefits, paid vacation and holidays, sick leave, and similar advantages which are incidents of employment.

IV. “Normal weekly hours of work” mean the normal number of hours of work each week for an employee in an affected unit when that unit is operating on a full-time basis, not to exceed 40 hours and not including overtime.

V. “Unemployment benefits” or “regular benefits” mean the benefits payable under RSA 282-A:3 other than worksharing benefits and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

VI. “Worksharing benefits” mean the benefits payable to employees in an affected unit under an approved worksharing plan.

VII. “Worksharing employer” means an employer with an approved worksharing plan in effect.

VIII. “Worksharing plan” means a plan of an employer under which there is a reduction in the number of hours worked by the employees in an affected unit, and the affected employees share the work remaining after the normal weekly hours of work are reduced.

Last Source: 2010, 28:1, eff. May 11, 2010.

282-A:31-b Worksharing Plan

I. An employer wishing to participate in a worksharing program shall submit a written and signed worksharing plan to the commissioner for approval. The commissioner may approve a worksharing plan if the following criteria, and any other criteria the commissioner deems relevant, are met:

- (a) The plan identifies the affected unit or units to which it applies.
- (b) The employees in the affected unit are identified by name, social security number, the normal weekly hours of work, and proposed weekly wage and hour reduction.
- (c) The normal weekly hours of work by employees in the affected unit are reduced by not less than 10 percent and not more than 50 percent and the reduction in hours in each affected unit is spread equally among employees in the affected unit.
- (d) The plan provides that health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j) of the Internal Revenue Code) or contributions under a defined contribution plan (as defined in section 414(i) of the Internal Revenue Code) shall continue to be provided to the employees in the affected units under the same terms and conditions as though their normal weekly hours of work had not been reduced, or to the same extent as other employees not participating in the worksharing program, and specifies the effect, if any, the reduction in the normal weekly hours of work will have on other fringe benefits provided by the employer.
- (e) The plan certifies that the reduction in the normal weekly hours of work is instead of layoffs and states the reason for and expected duration of the work reduction. The plan shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment.
- (f) The plan describes the manner in which the requirements of this section will be implemented (including a plan for giving notice, where feasible, to an employee whose work week is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in the worksharing program. If advance notice of the implementation of the worksharing plan is not feasible, the plan shall explain why it is not feasible.
- (g) The written approval by the collective bargaining representative for each affected unit is included in the plan.
- (h) The plan specifies a beginning and ending date. The ending date shall be not more than 26 weeks from the beginning date.
- (i) The plan contains an agreement by the employer to furnish all reports and information necessary for the administration of the plan and to permit access by the commissioner to all records necessary to verify and evaluate the plan.
- (j) No employee's participation in the plan shall be precluded or limited by any particular definition of attachment to the employer, such as length of employment.

- (k) The plan applies to only full-time or permanent part-time employees. No seasonal employees may participate in a worksharing plan.
- (l) The plan certifies that the employer has paid all contributions, payments in lieu of contributions, interest, or penalty charges due under this chapter.
- (m) The plan certifies that its terms and their implementation are consistent with employer obligations under applicable federal and state laws.

II. The commissioner shall approve or reject a worksharing plan in writing no later than 15 business days after its receipt. The commissioner's rejection of the worksharing plan shall be final and shall not be appealable, but rejection shall not prevent an employer from submitting another plan for approval.

III. An approved worksharing plan may be modified only with the approval of the commissioner. The worksharing employer shall notify the commissioner in writing of any proposed changes in the conditions of an approved plan. If the proposed changes meet the requirements for approval of a plan, the commissioner may approve the modifications. If the modifications do not meet the requirements for approval, the commissioner may revoke the plan.

IV. The commissioner may revoke approval of a worksharing plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include, but is not limited to, failure to comply with the assurances given in the plan, unreasonable revision of the productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based. Such action may be initiated at any time by the commissioner on his or her own motion, or at the request of any of the affected unit's employees, or at the request of the appropriate collective bargaining agent. The revocation order shall be final and shall not be appealed.

V. At the end of the worksharing period provided in subparagraph I(g), the worksharing employer may submit a new worksharing plan to the commissioner for approval.

VI. The provisions of RSA 282-A:161, RSA 282-A:163, RSA 282-A:164, RSA 282-A:165, RSA 282-A:166, RSA 282-A:166-a shall apply to any information submitted in connection with an application for approval or modification of a worksharing plan, the implementation of an approved worksharing plan, or the payment of worksharing benefits. An employer shall also be liable for the repayment to the commissioner of any worksharing benefits improperly paid by the commissioner as a result of information the employer submitted to the commissioner in connection with the approval, modification, or implementation of a worksharing plan which is substantially misleading or contains a material misrepresentation of fact. In addition, a claimant shall be liable for the repayment to the commissioner of any worksharing benefits which were improperly paid due to the fault of the claimant. The commissioner may utilize any remedies provided by this chapter to recover worksharing benefits.

Last Source: 2013, 210:4, eff. September 8, 2013.

282-A:31-c Eligibility

I. An individual shall be eligible to receive worksharing benefits, subsequent to serving a waiting period as prescribed by the commissioner, with respect to any week only if, in addition to meeting

the other conditions of eligibility for regular benefits under this chapter which are not inconsistent with this section, the commissioner finds that:

- (a) The individual is employed as a member of an affected unit under an approved worksharing plan that is in effect; and
- (b) The individual is able to work and is available for the normal weekly hours of work with the worksharing employer.

II. No otherwise eligible affected individual shall be denied worksharing benefits for any week by reason of the application of provisions relating to availability for work, active search for work, or applying for or accepting suitable work with other than the worksharing employer.

III. An individual shall be eligible to receive worksharing benefits in any week for which remuneration is payable to him or her as an employee in an affected unit for less than the employee's normal weekly hours of work as specified under the approved worksharing plan in effect for that week.

IV. An individual who is not eligible to receive unemployment benefits by reason of the application of RSA 282-A:28, I shall not be eligible to receive worksharing benefits.

V. Eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Innovation and Opportunity Act of 2014) to enhance job skills if such program has been approved by the commissioner.

Last Source: 2016, 249:1, eff. June 10, 2016.

282-A:31-d Benefits Payable

I. The weekly worksharing benefit amount payable to an affected individual shall be the product of the regular weekly benefit amount, as defined in RSA 282-A:25 multiplied by the percentage reduction in the individual's normal weekly hours of work, rounded to the next lower full dollar amount. The weekly worksharing benefit amount shall not be reduced by reason of application of the provisions of RSA 282-A:26 to remuneration received from the worksharing employer. If in any week an individual performs services for a worksharing employer and an employer other than the worksharing employer, the weekly worksharing benefit amount shall be reduced by the amount by which the remuneration received from the non-worksharing employer exceeds 30 percent of the maximum benefit rate in effect.

II. The total worksharing benefit amount payable to an affected individual during any benefit year shall not exceed the amount of total benefits calculated under RSA 282-A:25 minus the amount of regular and worksharing benefits paid to said individual under this chapter.

III. An individual who has received all the worksharing benefits or the combined regular benefits and worksharing benefits available in a benefit year shall be considered an exhaustee for purposes of extended benefits under RSA 282-A:30 and for any special federal extended benefits program, and, if otherwise eligible, shall be permitted to receive extended benefits and special federal extended benefits.

IV. An individual who performs no services during a week for the worksharing employer and is otherwise eligible shall be paid benefits in accordance with the other provisions of this chapter.

V. Claims for worksharing benefits shall be filed by the worksharing employer or as otherwise prescribed by the commissioner.

VI. Notwithstanding any other provision of this chapter relating to charges, all worksharing benefits shall be charged to the account of the worksharing employer. Benefits paid under this section shall be charged to the employer's account in the same manner as regular benefits are charged, except that, if the employer pays contributions in accordance with RSA 282-A:87, Schedules II and III, the employer shall be charged and billed as if it had elected to make payments in lieu of contributions under RSA 282-A:70.

VII. Except where inconsistent with the provisions of this section, the provisions of this chapter, including the rules and regulations adopted under this chapter, shall apply to benefits under this section.

Last Source: 2010, 28:1, eff. May 11, 2010.

282-A:31-e Conformance with Minimum Standards

- I. In the event that the Congress of the United States should pass any legislation, or the Secretary of Labor of the United States shall issue any regulation, establishing certain minimum standards for eligibility for 100 percent reimbursement, the commissioner of the department of employment security, or the commissioner's duly authorized representative, is hereby authorized to make such revision as may be necessary to cause this section 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 section and the application of this section to other persons or circumstances shall not be affected thereby.
- II. In the event that any provision in this section fails to be approved by the Secretary of Labor of the United States under section 3306 (v)(10), FUTA, such provision shall be severed here from, and the validity of the remainder of this section shall not be affected thereby.

Last Source: 2013, 210:4, eff. September 8, 2013.

282-A:31-f Suspension or Termination of Program

The commissioner, with the consent of the advisory council on unemployment compensation, may suspend or terminate the operation of the worksharing program if, at any time, he or she determines that such action would be in the best interests of the state of New Hampshire.

Last Source: 2010, 28:1, eff. May 11, 2010.

282-A:31-g Definitions in the subsection

- I. "Commissioner" means the commissioner of the department of employment security.
- II. "Department" means the department of employment security.

III. “Self-employment assistance activities” means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed. “Self-employment assistance activities” shall include entrepreneurial training, business counseling and technical assistance.

IV. “Self-employment assistance allowance” means an allowance payable, in lieu of regular benefits, from the unemployment compensation trust fund to an individual who meets the requirements of this subdivision.

V. “Self-employment assistance program” means a program under which an individual who meets the requirements of RSA 282-A:31-h, II is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

VI. “Regular benefits” means benefits payable to an individual under this chapter, including benefits payable to federal civilian employees and to former members of the United States Armed Forces pursuant to the United States Code, Chapter 85, other than additional benefits, extended benefits, and extended benefits for dislocated workers.

Last Source: 2013, 218:2, eff. July1, 2013.

282-A:31-h Self-Employment Assistance Program.

I. There shall be in the department of employment security, a self-employment assistance program. Participants in the self-employment assistance program shall receive an allowance in lieu of regular benefits so long as participants meet the conditions established by this subdivision.

II. An individual may receive a self-employment assistance allowance if that individual:

- (a) Is eligible to receive regular benefits or would be eligible to receive regular benefits except as provided in paragraph V;
- (b) Is identified by a worker profiling system as an individual likely to exhaust regular benefits;
- (c) Has filed an application for participation in a self-employment assistance program within 60 days of filing an initial application for regular benefits and has provided such information as the commissioner may prescribe;
- (d) Has, at the time the application is filed, a balance of regular benefits equal to at least 18 times the individual’s weekly benefit amount and at least 18 weeks remaining in the individual’s benefit year;
- (e) Has been accepted into a program approved by the commissioner that will provide self-employment assistance activities;
- (f) Is participating in self-employment assistance activities;

- (g) Is actively engaged on a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and
- (h) Has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes.

III. The weekly amount of a self-employment assistance allowance payable to an individual under this section shall be equal to the weekly benefit amount for regular benefits otherwise payable under RSA 282-A:25.

IV. The sum of the self-employment assistance allowance paid under this section, and regular benefits paid under this chapter may not exceed the maximum amount of benefits established under RSA 282-A:25 of this chapter with respect to any benefit year.

V. Unemployment assistance shall be payable to participants in the self-employment assistance program at the same interval, on the same terms, and subject to the same conditions as regular benefits except that:

- (a) The requirements of this chapter relating to availability for work and active search for work shall not be applicable to the participant.
- (b) The requirements of this chapter relating to refusal to accept work shall not be applicable to the participant.
- (c) The requirements of this chapter relating to disqualifying income shall not be applicable to income earned from self-employment by the participant.
- (d) A participant who meets the requirements of this section shall be considered unemployed for the purposes of this chapter.
- (e) A participant who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, which may include training related to establishing a business and becoming self-employed, shall be denied benefits for the week the failure occurs.

VI. The aggregate number of individuals participating in the self-employment assistance program at any time may not exceed 2.5 percent of the number of individuals receiving regular benefits at that time.

VII. Self-employment assistance allowance shall be charged to the unemployment trust fund established in RSA 282-A:103.

VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) Procedures for application to the self-employment assistance program.
- (b) The definition of self-employment activities and self-employment assistance activities.
- (c) Procedures for filing weekly claims for assistance while participating in the self-employment assistance program.

(d) Any other matters that may require rules under the provisions of this subdivision.

IX. The commissioner may terminate a participant's self-employment assistance allowance when the commissioner deems it appropriate.

Last Source: 2013, 218:2, eff. July1, 2013.

Disqualification for Benefits

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 and no waiting period may be served:

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 12 consecutive weeks of employment with or without good cause;

(2) An individual terminates employment in good faith to accept better employment, which is to begin within a reasonable period;

(3) The individual reasonably believes that separation from employment is necessary to protect himself or herself or any member of his or her immediate family from domestic abuse, as defined in RSA 173-B:1. The existence of domestic abuse shall be verified by the department, through reasonable documentation, and the department shall keep such information confidential;

(4) The individual is separated from employment because he or she has become unable to perform some or all of his or her job duties due to pregnancy or to an illness or injury that is not work-related, provided that a physician has attested to the individual's inability to perform work duties in a written notice. Nothing in this section shall relieve an employer of the duty to provide reasonable accommodation as that term is defined by state or federal law;

(5) The leaving of employment was necessary to allow the individual to accompany his or her spouse to a place from which it is impractical for the individual to commute due to a change in location of the spouse's employment; or

(6) The leaving of employment was due to the illness or disability of a member of the individual's immediate family as those terms are defined by the Secretary of the United States Department of Labor.

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

(c) [Repealed.]

(d) The individual 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 her, or to return to his or her customary self-employment (if any) when so directed by the commissioner.

(1) If the commissioner determines that work in the individual's customary occupation, at the individual's customary rate of pay, is immediately available within the individual's labor market area, the commissioner, to find that any work is suitable for an individual, shall determine each of the following:

(A) That the degree of risk involved to the individual's health, safety and morals in performing such work is reasonable; and

(B) That the individual's physical fitness reasonably allows the individual to perform the essential functions of the work; and

(C) That the individual's prior training and experience reasonably allow the individual to successfully perform or to acquire those skills necessary to perform the work; and

(D) That the distance of the available work from the individual's residence is reasonable; but such distance shall not be considered reasonable if it is both 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 substantially greater than the distance to where the individual acquired his or her currently available annual earnings; and

(E) That the rate of pay for the work is reasonable in light of the individual's prior earnings and length of unemployment, but in determining whether the rate of pay is reasonable his or her prior earnings shall be given more weight than his or her length of unemployment.

(2) If the commissioner determines that work in the individual's customary occupation and at the individual's customary rate of pay is not immediately available within the individual's labor maker area, the commissioner, to find that any work is suitable for an individual, shall determine each of the following:

(A) That the degree of risk involved to the individual's health, safety and morals in performing such work is reasonable; and

(B) That the individual's physical fitness reasonably allows the individual to perform

the essential functions of the work; and

(C) That the individual's prior training and experience reasonably allow the individual to successfully perform, or to acquire those skills necessary to perform, the work; and

(D) That the distance of the available work from the individual's residence is reasonable; but such distance shall not be considered reasonable if it is both 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 substantially greater than the distance to where the individual acquired the individual's currently available annual earnings; and

(E) That the work, part-time or full-time, pays minimum wage or an hourly rate which when multiplied times 40 is equal to or greater than 150 percent of the individual's weekly benefit, whichever is greater; and

(F) That the wages, hours, or other conditions of the temporary work are not substantially less favorable to the individual than those prevailing for similar temporary or permanent work in the locality.

(3) 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 full-time or part-time 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 full-time or part-time work during the hours of a particular shift because he or she is the only adult available for the care of an ill, infirm, or physically or mentally disabled family member whom a licensed physician has certified is in need of care for the activities of daily living;

(E) If the individual is unable to apply for or accept full-time or part-time 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 or part-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.

(4) Notwithstanding any other provision of this chapter, benefits shall not be denied under

this chapter to any otherwise eligible individual for refusing to accept new suitable, temporary, full-time, or part-time work, offered to the individual without the expectation of such work becoming permanent, for any week which follows the earlier of:

- (A) The last week which includes one or more days within the maximum expected duration of the temporary work; or
- (B) The fifth week of the 5 weeks in which the individual, subsequent to the date the individual refused such temporary work, meets the earnings requalification requirements of RSA 282-A:32, I.

(5) 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.

Last Source: 2009, 321:8, eff. January 1, 2010. 2012, 212:3-5, eff. Oct. 1, 2012

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; Theft

I. 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.

II. An unemployed individual who has been discharged for a single theft or multiple thefts in the aggregate of an amount greater than \$100 but less than \$250, where such conduct is connected with his or her 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: 2011, 254:2, eff. Sept. 11, 2011.

282-A:35 Gross Misconduct

An unemployed individual who has been discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or a single theft or multiple thefts in the aggregate of an amount equal to or greater than \$250, where such conduct is connected with his or her work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.

Last Source: 2011, 254:1, eff. Sept. 11, 2011.

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.

IV. 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, or first class mail, whichever the commissioner determines to be the most appropriate, of his or her 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: 2013, 39:3, eff. August 3, 2013.

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 or her determination within a reasonable period after all the facts or arguments are made available to him or her. The determination of the commissioner shall be sent by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be the most appropriate, 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: 2013, 39:3, eff. August 3, 2013.

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 the employer 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 \$14,000 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: 2009, 321:3 eff. Jan. 1, 2012.

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.

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 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.

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

282-A:72 Proration of Reimbursing Charges

If the base period wages of an individual include wages from one or more reimbursing employers and one or more additional employers, reimbursing employer 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.

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 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.

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 RSA 282-A:44-52;

II. Benefits are paid to a claimant as provided in RSA 282-A:165, II;

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

IV. Benefits are paid to an individual by reason of RSA 282-A:32, I(a)(2), (3), (4), (5), or (6).

Last Source: 2010, 45:1, eff. May 18, 2010. 2012, 212:6, eff. Oct. 1, 2012.

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. "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).

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. There shall be subtracted in any calendar quarter from every employer's contribution rate .5 percent whenever the unemployment compensation fund equals or exceeds \$250,000,000 throughout the next preceding calendar quarter.

II. There shall be subtracted in any calendar quarter from every employer's contribution rate one percent whenever the unemployment compensation fund equals or exceeds \$350,000,000 throughout the next preceding calendar quarter.

III. There shall be subtracted in any calendar quarter from every employer's contribution rate 1.5 percent whenever the unemployment compensation fund equals or exceeds \$400,000,000 throughout the next preceding calendar quarter.

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

Last Source: 2021, 91:131, eff. July 1, 2021.

282-A:82-a Inverse Minimum Rate

For each employer assigned a rate under RSA282-A:87, II or II-a:

I. There shall be added in any calendar quarter to every such employer's contribution rate 1.5 percent whenever the unemployment compensation fund fails to equal or exceed \$250,000,000 throughout the next preceding calendar quarter.

II. There shall be added in any calendar quarter to every such employer's contribution rate one percent whenever the unemployment compensation fund fails to equal or exceed \$350,000,000 throughout the next preceding calendar quarter.

III. There shall be added in any calendar quarter to every such employer's contribution rate .5 percent whenever the unemployment compensation fund fails to equal or exceed \$400,000,000 throughout the next preceding calendar quarter.

Last Source: 2021, 91:132, eff. July 1, 2021.

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

[Repealed 2021, 91:133, eff. July 1, 2021.]

282-A:84-a Emergency Surcharge

[Repealed 2021, 91:133, eff. July 1, 2021.]

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 or II-a 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: 2009, 321:11, eff. Jan. 1, 2010.

282-A:86 Computation Date

I. 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.

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.

III. Commencing with the computation date of January 31, 2010, if benefits so charged exceed contributions so credited, and benefits so charged have exceeded contributions so credited for 3 or fewer consecutive computation dates including the computation date of January 31, 2010, 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.

IV. Commencing with the computation date of January 31, 2010, if benefits so charged exceed contributions so credited, and benefits so charged have exceeded contributions so credited for 4 or more consecutive computation dates including the computation date of January 31, 2010, 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-a. .

Last Source: 2009, 321:9, eff. Jan. 1, 2010.

282-A:87 Contribution Rates

I. An 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

II. An 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 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

II-a. An 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 III.
Percent of Average Annual

Contribution

Pay Roll Equals or Exceeds	Rate
1%	3.3%
2	3.4
3	3.5
Pay Roll Equals or Exceeds	Rate
4	3.6
5	3.7
6	3.8
7	3.9
8	4.0
9	4.1
10	4.2
11	4.3
12	4.4
15	4.5
18	4.6
21	4.7
23	4.8
26	5.0
29	5.1
31	5.2
33	5.3
35	5.5
36	5.7
37	5.8
38	5.9
40	6.0
46	6.1
50	6.2
60	6.3
70	6.4
80	6.5
100	7.0

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 2/5 of one percent beginning in the fourth quarter of 2019. An administrative contribution equal to the amount of this reduction shall be paid by all such employers.

(2) Commencing January 1, 2020, after deduction of all costs incurred in the collection of the administrative contribution, 1/3 of the quarterly administrative contribution collected, not to exceed \$6,000,000 annually, shall be deposited each quarter in the fund established by RSA 282-A:182 and shall be expended only as provided by and for the purposes provided in that section and shall lapse to the unemployment trust fund account established in RSA 282-A:104, I(b) if unspent or

unencumbered at the end of the relevant program year. The remaining quarterly administrative contribution collected shall be divided so that the proportional share of the quarterly administrative contribution resulting from the increase over 2/10 of one percent shall be deposited in the unemployment compensation fund established in RSA 282-A:103 and the remaining amount 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.

(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: 2019, 346:185, eff. Sept. 26, 2019.

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 or II-a, shall be entitled to any such rate reductions occasioned by fund balances as are provided in RSA 282-A:79-89.

Last Source: 2009, 321:12, eff. Jan. 1, 2010.

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 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 appointment. 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: 2007, 156:8, eff. Aug. 17, 2007.

282-A:109 Deputy Commissioner

I. The commissioner of employment security shall nominate for appointment by the governor, with the consent of council, a deputy commissioner of the department of employment security, who shall serve for a term of 4 years and shall be qualified to hold that position by reason of education and experience. The deputy commissioner 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.

II. The salary of the deputy commissioner shall be specified in RSA 94:1-a, I.

Last Source: 2013, 180, eff. July 1, 2013.

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.

VII. The department of employment security shall comply with the provisions of RSA 541-A:29 for the timely processing of completed applications, petitions, and other administrative requests made of the agency. However, the provisions of RSA 541-A:29-a shall not apply to any federally funded program administered by the department to the extent that such default approval conflicts with federal law.

Last Source: 2018, 279:24, eff. Jan. 1, 2019.

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 has not previously been employed by the employing unit, and who earns wages or any other form of compensation in this state;
- (b) The rehiring of an individual who previously performed services as an employee for an employing unit; 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, social security number, and first day of work.
- (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.

XV. Subparagraph I(b) of this section shall apply to the rehiring of an individual who:

- (a) Was previously employed by the employing unit but has been separated from prior employment for at least 60 consecutive calendar days.
- (b) Was required to complete a W-4 form due to a previous work separation.

XVI. Subparagraph I(c) of this section shall apply to the contracting for other than casual labor with an individual when:

- (a) The remuneration for services is anticipated to exceed \$2,500.
- (b) The remuneration for services although not anticipated to exceed \$2,500 does exceed \$2,500 in a calendar year.
- (c) There was a break in services for at least 60 consecutive calendar days and the anticipated or actual remuneration for services following the break in services exceeds \$2,500 unless:
 - (1) The contact is in writing.
 - (2) The break in service is during the term of the contract.
 - (3) The break in service is in accordance with the provisions of the contract.

Last Source: 2013, 47.4, eff. Aug. 3, 2013.

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 of the department of employment security may provide information to the Wage Record Interchange System, the Wage Record Interchange System 2, the Federal Employment Data Exchange System, or any other similar system or combination thereof in effect on or before July 1, 2020 developed by the U.S. Department of Labor as administered by the U.S. Department of Labor, or its designee, 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 Innovation and Opportunity Act of 2014 or the Wagner-Peyser Act. The department may only provide aggregate statistical reports to entities participating in federal or state supported workforce training programs and only for purposes of assessment and evaluation of those programs. The department shall require any such qualifying entity to enter into an agreement with the department which sets forth terms and conditions that are consistent with federal and state law prior to being provided any aggregate statistical reports. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place;

VI. That for the purpose of the Social Security Administration and the department of employment security establishing and verifying eligibility and payment amounts; and preventing and detecting waste, abuse, fraud and identity theft, the commissioner of the department of employment security may enter into a reciprocal electronic data-exchange agreement with the Social Security Administration. The Social Security Administration's use of the information provided shall be limited to use in accordance with federal laws and regulations pertaining to prevention and detection of fraud, waste, and abuse in the Social Security Administration's programs, and the entitlement, eligibility, and benefit payment amounts of individuals under Title II or Title XVI of the Social Security Act. Authorized federal employees granted access as provided in this paragraph shall be granted access on a case by case basis as provided in paragraph III. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place; and

VII. That for the purpose of participating in a joint local employment dynamics program with the United States Census Bureau in order to produce quarterly workforce indicators, the commissioner of the department of employment security may provide quarterly employment and wage information to the United States Census Bureau. The United States Census Bureau's use of the information provided shall be limited to the purposes of its Longitudinal Employer-Household Dynamics Program. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place.

VIII. That for the purpose of preventing and detecting fraud in the unemployment compensation system as well as efficiently coordinating and streamlining integrity improvement efforts, the commissioner of the department of employment security may enter into an agreement with the National Association of State Workforce Agencies' Center for Employment Security Education and Research, Inc. (CESER) as agent for the United States Department of Labor (USDOL) for participation in the Integrity Data Hub (IDH). The department's participation in IDH and any

resulting use of confidential data by USDOL and CESER shall be in accordance with all state laws, federal laws as well as state and federal regulations pertaining to prevention and detection of fraud, waste, and abuse in the unemployment compensation system. The information thus provided by the department to the IDH shall be used solely for administration of state and federal unemployment compensation laws. 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: 2021, 91:296, eff. July 1, 2021.

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. However, upon the filing of any claim against the department in any circuit court district division as a result of such proceedings, the department

shall move for immediate removal of the entire proceeding to the superior court. The superior court shall have exclusive jurisdiction to hear such claims. 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: 2013, 206:4, eff. July 10, 2013.

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 depository 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

[Repealed 2019, 346:190, II, eff. Sept. 26, 2019.]

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.

VI. Notwithstanding paragraph I, moneys credited with respect to the 2009 special transfer made under sections 903(g) of the Social Security Act shall be used by the commissioner, with the consent and acceptance of governor and council, and are not subject to appropriation by the legislature. Such moneys shall be used effective February 17, 2009 solely for:

- (a) Implementing and administering the statutory provisions in RSA 282-A which qualified New Hampshire for the receipt of incentive payments for unemployment compensation modernization pursuant to Section 2003 of Public Law 111-5;
- (b) Improved outreach to individuals who might be eligible by virtue of such statutory provisions;
- (c) The improvement of unemployment compensation benefit and tax operations, including responding to increased demand for unemployment compensation; and
- (d) Staff assisted reemployment services for unemployment compensation claimants.

Last Source: 2009, 323:3, eff. Aug. 7, 2009.

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:152-a Garnishment

I. Definitions. In this section:

- (a) "Commissioner" means commissioner of the department of employment security.
- (b) “Date that the determination creating the overpayment becomes final” means the date a person has no appeal or appeal period pending under RSA 282-A:164, RSA 282-A:165, and RSA 282-A:42-68.
- (c) "Department" means the department of employment security.

- (d) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld or required by the employer to be withheld as a condition of employment.
 - (e) "Earnings" means any form of payment to a person for his or her labor including, but not limited to, salary, wages, commission, or other compensation.
 - (f) "Employer" means any person, business, organization, employing unit, firm, corporation, or association, or any political subdivision or department of the state or federal government, which employs a person or pays income or any other compensation to a person for his or her labor.
 - (g) "Individual debtor" means a person determined to have been overpaid under RSA 282-A:164, provided the department provided to such person notice of the determination that he or she was overpaid, provided an opportunity for appeal, and opportunities for appeal have been exhausted.
 - (h) "Notice of garnishment" means a notice requiring an employer to garnish an individual debtor's earnings without a court order.
 - (i) "Notice of court-ordered garnishment" means a notice requiring an employer to garnish an individual debtor's earnings based on a court order for payments.
- II. Upon the failure of any individual debtor to pay any overpayment due to the state under RSA 282-A:164 within 90 days of the date that the determination creating the fraud overpayment becomes final, the department may serve duplicate notices of garnishment upon any employer that owes, or may owe in the future, earnings to such individual debtor. Any notice of garnishment served upon any employer shall be simultaneously served upon the individual debtor by first-class mail to his or her last known address. The department shall send the individual debtor by first-class mail to his or her last known address a notice of intent to garnish earnings 14 days before serving any notice of garnishment. No individual debtor shall be deemed under this section to have failed to pay any fraud overpayment due to the state within 90 days of the date that the determination creating the overpayment becomes final, if the debtor:
- (a) Has agreed to a payment plan approved by the department; and
 - (b) Is in substantial compliance with such payment plan.
- III. The notice of garnishment shall advise the individual debtor and individual debtor's employer:
- (a) Of the employer's obligation to provide one of the duplicate copies of the notice of garnishment to the individual debtor upon receipt;
 - (b) Of the amount which may be garnished for any week;
 - (c) Of the total amount subject to garnishment;

- (d) That the garnishment applies to any current or subsequent earnings paid 21 or more days after the date of mailing of the notice of garnishment;
- (e) Of the individual debtor's right to file, at any time, for suspension of the notice of garnishment;
- (f) That any amounts which the employer is obligated to withhold pursuant to RSA 458-B have priority over amounts subject to garnishment under this section;
- (g) That, including any fee added and retained under paragraph VII, the amount garnished pursuant to this section when added to the amount withheld pursuant to RSA 458-B may not exceed 25 percent of the individual debtor's weekly disposable earnings, or the amount by which the individual debtor's weekly disposable earnings exceed 50 times the minimum hourly wage as established by the Fair Labor Standards Act, whichever is less;
- (h) That the employer must implement garnishment no later than the first earnings that are paid 21 days after the notice was mailed;
- (i) That the garnishment is binding upon the employer until payment in full is made of the total amount subject to garnishment;
- (j) That the employer must send the garnished amount to the commissioner at the same time the individual debtor is paid;
- (k) Of the provisions, liabilities, and penalties in paragraphs IV-IX; and
- (l) Of the employer's right to add and retain a fee of \$1.00 for each garnishment for the administrative cost incurred as a result of the garnishment procedures.

IV. With respect to the individual debtor's right to file for suspension of the notice of garnishment, the notice of garnishment shall state as follows, in at least 12-point type: This notice of garnishment requires your employer to garnish (take) some of your earnings for work and send them to the department of employment security to repay overpaid unemployment insurance benefits. Once earnings for a week have been garnished, you will not be able to get them back.

You have the right, at any time, to file for suspension (stopping) of this garnishment. If you file for suspension of garnishment, the department of employment security has the right to take you to court to ask a judge to decide how much, if any, of your earnings should be garnished. Instead of going to court, you and the department may be able to agree to a different amount of garnishment. If you want to file for suspension or make an agreement with the department, you must call the department of employment security at _____.

V. The amount which may be garnished for each week shall be determined by the department based on the individual debtor's financial circumstances known to the department, including but not limited to the individual debtor's financial affidavit, if available.

- VI. Garnishment under this section shall have priority over any other legal process under state law against the same earnings except withholding under RSA 458-B.
- VII. In addition to the amount garnished under this section, the employer may add and retain a fee of \$1.00 for each garnishment for the administrative cost incurred as a result of the garnishment procedures.
- VIII. An employer shall:
- (a) Provide one of the duplicate copies of the notice of garnishment to the individual debtor upon receipt;
 - (b) Apply the garnishment to any current or subsequent earnings paid 21 or more days after the date of issuance of the notice of garnishment;
 - (c) Not garnish for any week more than the amount allowed;
 - (d) Suspend garnishment of earnings paid not later than 8 days following receipt of notice from the department of the requirement to do so;
 - (e) Give priority to any amounts that the employer is obligated to withhold pursuant to RSA 458-B over amounts subject to garnishment under this section;
 - (f) Not allow the amount garnished pursuant to this section, including any fee added and retained under paragraph VII, when added to the amount withheld pursuant to RSA 458-B to exceed 25 percent of the individual debtor's weekly disposable earnings, or the amount by which the individual debtor's weekly disposable earnings exceed 50 times the minimum hourly wage as established by the Fair Labor Standards Act, whichever is less;
 - (g) Implement garnishment no later than the first payment of earnings that occurs 21 or more days after the notice was mailed;
 - (h) Treat the garnishment as binding upon the employer until payment in full is made of the total amount subject to garnishment;
 - (i) Send the garnished amount to the commissioner at the same time the individual debtor is paid;
 - (j) Notify the commissioner within 20 days of the individual debtor's termination of employment, and shall provide the individual debtor's last known address and the name and address of the present employer, if known.
 - (k) Be liable for the accumulated amount it should have garnished if it fails to garnish in accordance with the provisions of the notice.
- IX. The employer shall be liable for an administrative fine of \$100 per pay period for each individual debtor with respect to whom the employer has willfully failed to comply with the provisions of subparagraphs VIII(g) and VIII(j). For other willful violations of this section an administrative fine of not less than \$100 or more than \$500 may be imposed. Prior to

assessing such fine against the employer, the commissioner shall notify the employer of its intent to assess the fine, the amount of the fine, the date by which the fine is payable, and shall provide the employer with the opportunity to appeal the imposition of the fine.

- X. An employer shall be guilty of a misdemeanor and subject to a fine of up to \$1,000:
 - (a) For discharging, refusing to employ, or taking any disciplinary action against an individual debtor because of the garnishment procedures.
 - (b) For failure to comply with the provisions of paragraph VIII.
- XI. Notwithstanding the 90 day limitation in paragraph II an individual debtor may, subject to the approval of the department, agree to voluntary garnishment at any time.
- XII. An individual debtor may file for suspension of the notice of garnishment at any time. If the individual debtor files for suspension of the notice of garnishment, the department may file a motion for periodic payments in the Merrimack county sixth Circuit court seeking establishment of an order for payments.
- XIII. If an individual debtor files for suspension of the notice of garnishment, the department shall suspend the notice of garnishment and advise any employer upon which the notice of garnishment was served to suspend garnishment of earnings paid not later than 8 days following receipt of notice to suspend.
- XIV. If an individual debtor who filed for suspension of the notice of garnishment and the department reach an agreement as to the amount which may be garnished for any week, the department may issue a new notice of garnishment consistent with such agreement.
- XV. Following the expiration of 90 days after the date a determination which finds an individual debtor overpaid under RSA 282-A:164 becomes final, such determination with interest under RSA 282-A:141, shall be for purposes of RSA 524:6-a the judgment of any circuit court-district division in which the department files a motion for periodic payments.
- XVI. Following the issuance of an order for payments by any circuit court-district division on any overpayment due to the state under RSA 282-A:164 for more than 90 days, the department may serve a notice of court-ordered garnishment upon any employer that owes, or may owe in the future, earnings to such individual debtor. Any notice of court-ordered garnishment served upon any employer shall be simultaneously served upon the individual debtor by certified mail to his or her last known address. The amount which may be garnished for any week shall not exceed that amount, applied weekly, deemed appropriate by the circuit court-district division in its order for payments.
- XVII. The notice of court-ordered garnishment shall advise the individual debtor and individual debtor's employer:
 - (a) Of the information required by III(a)-(d) and (f)-(l) of this section; and
 - (b) Of the individual debtor's right to file a motion with the Merrimack county sixth circuit court seeking a change in the amount of the payments based on a change in financial circumstances;

XVIII. With respect to the individual debtor's right to file a motion with the Merrimack county sixth circuit court, the notice of court-ordered garnishment shall state as follows, in at least 12-point type:

This notice of court-ordered garnishment requires your employer to garnish (take) some of your earnings for work and send them to the department of employment security to repay overpaid unemployment insurance benefits. The amount of the garnishment is based on an order of the Merrimack county sixth circuit court. Once earnings for a week have been garnished, you will not be able to get them back.

You have the right, at any time, to file a motion with the Merrimack county sixth circuit court asking for the amount of the garnishment to be changed based on a change in your financial circumstances. If you want to file a motion, you should contact the Merrimack county sixth circuit court. Nothing in this paragraph prevents you and the department of employment security from agreeing to a greater or lesser amount of garnishment and filing the agreement with the Merrimack county sixth circuit court. If the department of employment security does not agree, you still have the right to file a motion.

XIX. The department may agree to a greater or lesser periodic amount than that amount deemed appropriate by the Merrimack county sixth circuit court in its order for payments, whether or not the individual debtor has requested a hearing before the court to obtain a change in the court's order, and any such agreement shall be filed with the Merrimack county sixth circuit court.

XX. Within 7 days of receiving written notice that the individual debtor has filed a motion to request a change in the court's order, the department shall suspend or modify its notice of court-ordered garnishment consistent with the individual's request to the court.

Source. 2012, 176:1, eff. Aug. 10, 2012.

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 necessities 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 willfully 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, Restitution, and Penalty

I. 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.

II. 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 the court in all such cases shall order restitution in an amount equal to such overpayment, plus a penalty equal to 20 percent of such amount.

III. Payments of the 20 percent penalty on convictions made under this section on or before October 20, 2013 shall be deposited into the fund established in RSA 282-A:140.

IV. Payments of the 20 percent penalty on convictions made under this section on or after October 21, 2013 shall be divided with $\frac{1}{4}$ of such payments being deposited into the fund established in RSA 282-A:140 and $\frac{3}{4}$ of such payments being deposited into the unemployment compensation fund established in RSA 282-A:103.

Last Source: 206:4, eff. Jul. 10, 2013.

282-A:164 Restitution

Any individual who willfully 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 such individual, or for any other person, may, in the discretion of the commissioner or his or her 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 plus a penalty equal to 20 percent of the overpaid benefits shall be ordered by the commissioner or his or her authorized representative. In addition to such disqualification, such individual 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 or her 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 the individual during the benefit year in which such week falls; but no change shall be made in his or her weekly benefit amount because of this deduction. Payments of the 20 percent penalty on determinations made under this section on or before October 20, 2013 shall be deposited into the fund established by RSA 282-A: 140. Payments of the 20 percent penalty on determinations made under this section on or after October 21, 2013 shall be divided with $\frac{1}{4}$ of such payments

being deposited into the fund established by RSA 282-A:140 and $\frac{3}{4}$ of such payments being deposited into the unemployment compensation fund established in RSA 282-A: 103. 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. 2012, 176:2, eff. Aug. 10, 2012.

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 the person was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments.

II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner.

III. No such overpayment shall exist unless a determination has been made by the commissioner or an authorized representative 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 and shall include notice of the compromise process under RSA 282-A:29.

IV. 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: 2009, 249:1, eff. Jan. 1, 2010.

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 necessities; 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; or
- j) Who fails or refuses to furnish a report which includes every individual who performed services in employment for the time period applicable to such report shall be guilty of an offense as provided in paragraph II.

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: 206:4 eff. July 10, 2013.

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.

282-A:181 Job Training Program

The department of employment security shall administer the job training program in this subdivision. The commissioner of the department of employment security shall adopt rules under RSA 541-A, relative to the grant award process and general administration of this subdivision.

I. Training programs may include, but shall not be limited to:

- (a) Structured, on-site laboratory or classroom training.
- (b) Basic skills.
- (c) Technical skills.
- (d) Quality improvement.
- (e) Safety.
- (f) Management and supervision.
- (g) English as a second language.

II. No more than \$500,000 annually, from sources other than the WorkReadyNH program, shall be provided to support programs offered as of January 1, 2019, and, in addition to programs offered as of January 1, 2019, funding shall be provided for:

- (a) Training individuals not otherwise eligible for state or federal training funds available as of January 1, 2019, including the cost of certificate programs, apprenticeship programs as defined under 29 C.F.R. Part 29, and occupational skills training in order to fill current, in-demand employment in New Hampshire with employers having immediate employment needs, with a priority for jobs identified through the state's sector partnership initiative and for employers who pay individuals during training periods.
- (b) Enhanced support services, including child care and transportation assistance, which would not otherwise be available through any other state, federal, or other programs, with such assistance limited to income eligible individuals with an identified career path and who are determined to be in need of such support services to successfully compete for employment opportunities;

- (c) The WorkReadyNH program established by the community college system of New Hampshire in an amount not to exceed \$500,000 annually.
- (d) Certificate programs, apprenticeship programs as defined under 29 C.F.R. Part 29, and occupational skills training opportunities for New Hampshire high school students upon graduation in order to fill current, in-demand employment in New Hampshire.
- (e) Marketing of New Hampshire's workforce development initiatives to employers and business community representatives in New Hampshire.
- (f) Recruitment and coordination of services provided in this section to populations with higher than average unemployment in New Hampshire, including persons in need of training to change careers, persons with substance use disorders who are in recovery programs, persons with disabilities, inmates transitioning to the general population, persons who are homeless, senior citizens, legal immigrants and speakers of languages other than English, including documented outreach to and priority given to persons with substance use disorders who are in recovery programs.

Last Source: 2019, 346:186, eff. Sept. 26, 2019.

282-A:182 Training Fund

I. There is hereby created in the state treasury a special fund to be known as the training fund. Commencing January 1, 2020, the moneys in this fund shall be used solely as determined by the commissioner of the department of employment security in accordance with rules and guidelines adopted by the department for funding training under the job training program established in this subdivision. The commissioner of the department of employment security shall make rules relative to administration of the grant award process under this subdivision.

II. The commissioner 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 remain in the fund and shall be expended as provided in paragraph I.

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 be continually appropriated and shall not lapse.

Last Source: 2019, 346:186, eff. Sept. 26, 2019.

282-A:183 Expenditure for Job Training Program

The department of employment security shall use no more than 10 percent, or \$600,000, of any moneys received from the training fund established in RSA 282-A:182, whichever is less, to administer the job training program in this subdivision, including support for the sector partnership initiative.

Last Source: 2019, 346:186, eff. Sept. 26, 2019.

282-A:184 Report

The commissioner shall annually submit a report to the governor's state workforce innovation board, the speaker of the house of representatives, the president of senate, the chairperson of the senate committee with jurisdiction over commerce issues, and the chairperson of the house committee with jurisdiction over labor issues concerning the effectiveness of the job training program established in this subdivision.

Last Source: 2019, 346:186, eff. Sept. 26, 2019.

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.

APPENDIX BY STATUTE

STATUTE	RULE
Definitions	
RSA 282-A:2	Emp 303.12
RSA 282-A:4	Emp 303.12 Emp 403.06
RSA 282-A:8	Emp 303.01, 303.01(b)(15) Emp 403.01 Emp 403.03
RSA 282-A:9	Emp 303.01(b)(8) Emp 303.01(b)(18) Emp 303.05(b) Emp 303.14 Emp 403.01 Emp 403.03 Emp 501.11 Emp 501.15(b), (f), (g), (h), (I)
RSA 282-A:9,IV	Emp 303.01 (b)(8)
RSA 282-A:9,VIII	Emp 303.14 Emp 501.15(b) Emp 501.15(f) Emp 501.15(g) Emp 501.15(h) Emp 501.15(i)
RSA 282-A:9,IX	Emp 303.14 Emp 501.15(b) Emp 501.15(f) Emp 501.15(g) Emp 501.15(h) Emp 501.15(i)
RSA 282-A:12	Emp 101.09 Emp 304.10
RSA 282-A:14	Emp 302.01 Emp 302.02 Emp 302.03 Emp 303.05, 303.05(a), 303.05(a)(2) Emp 303.08 Emp 303.10 Emp 303.13 Emp 303.14 Emp 303.13 Emp 304.01 (h) Emp 304.02(a)(4) Emp 304.04(b) Emp 304.04(b)(3)b Emp 405.01 Emp 405.02 Emp 501.10 Emp 501.13(a) Emp 501.15(b) Emp 501.15(f) Emp 502.06 Emp 502.07

RSA 282-A:15	Emp 302.01 Emp 302.02 Emp 302.03 Emp 303.05 Emp 410
RSA 282-A:16	Emp 103 Emp 205.01 Emp 205.02 Emp 205.03 Emp 205.04 Emp 302.01 Emp 302.02 Emp 302.03 Emp 303.05, 303.05(a), 303.05(a)(2) Emp 403.01 Emp 403.03 Emp 501.13(d) Emp 502.04
Benefits	
RSA 282-A:24	Emp 502.01 Emp 502.02
RSA 282-A:25	Emp 302.12
RSA 282-A:29	Emp 212
RSA 282-A:30	Emp 407 Emp 501.11
RSA 282-A:31	Emp 101.06 Emp 101.10 Emp 101.11 Emp 101.13 Emp 101.14 Emp 303.03 Emp 303.05, 303.05(a), 303.05(c) Emp 303.14 Emp 405.01 Emp 405.02 Emp 501.01 Emp 501.02 Emp 501.03 Emp 501.08 Emp 501.10 Emp 501.11 Emp 501.12 Emp 501.13(d) Emp 501.14 Emp 501.15(b) Emp 501.15(f) Emp 501.15(g) Emp 502.08 Emp 503.05 Emp 504.01
Disqualification for Benefits	
RSA 282-A:32	Emp 101.08 Emp 101.10

	Emp 101.11 Emp 101.13 Emp 101.14 Emp 303.08 Emp 303.10 Emp 304.01 (h) Emp 405.01 Emp 405.02 Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06 Emp 501.10 Emp 501.11 Emp 501.13(d) Emp 501.15(a) Emp 501.15(c) Emp 501.15(d) Emp 501.15(e), Emp 501.15(h), Emp 501.15(i) Emp 501.12 Emp 502.08 Emp 503.01 Emp 503.02 Emp 503.03 Emp 503.06 Emp 503.08 Emp 503.09 Emp 503.10 Emp 504.01
RSA 282-A:39	Emp 501.12
Claims for Benefits	
RSA 282-A:41	Emp 410
RSA 282-A:42	Emp 207.03 Emp 501.03 Emab 202.11
RSA 282-A:43	Emp 405.01 Emp 405.02 Emp 406 Emp 501.03 Emp 501.04 Emp 501.06 Emp 501.07 (Repealed) Emp 501.03 Emp 501.13
RSA 282-A:44	Emp 303.08 Emp 303.09 Emp 303.10 Emp 304.01 (h) Emp 304.02(a)(5), 304.02(b)(4), 304.02(e) Emp 405 Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06

RSA 282-A:45	Emp 303.01(b)(20) Emp 303.04 Emp 303.08 Emp 303.10 Emp 304.01 (h) Emp 304.02(b)(1) Emp 405 Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06
RSA 282-A:45-a	Emp 303.14 Emp 304.02(b)(1)
RSA 282-A:46	Emp 501.13(d) Emp 504.01
Appeals	
RSA 282-A:51	Emp 211.01
RSA 282-A:53	Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06 Emp 504.01 Emab 202.03
RSA 282-A:55	Emp 303.09 Emp 504.01
RSA 282-A:56	Emp 202.01 Emp 207 Emp 207.08, Emp 207.09 Emp 504.01
RSA 282-A:58	Emp 303.09 Emp 504.01
RSA 282-A:60	Emp 207.33 Emp 207.34 Emp 504.01
RSA 282-A:61	Emp 303.09 Emp 504.01
RSA 282-A:62	Emab 102.01 Emab 202.01 Emab 202.03 Emab 202.13 Emab 202.14
RSA 282-A:63	Emab 102.01
RSA 282-A:64	Emab 202.04 Emab 202.05 Emab 202.07 Emab 202.08 Emab 202.13-202.14 Emab 202.17
RSA 282-A:65	Emab 202.04 Emab 202.06 Emab 202.09
RSA 282-A:66	Emab 202.03 Emab 202.09 Emab 202.16

RSA 282-A:67	Emp 207.33 Emp 207.34 Emp 303.09 Emp 504.01 Emab 202.09 Emab 202.10 Emab 202.11 Emab 202.12
RSA 282-A:68	Emp 504.01
Contributions	
RSA 282-A:69	Emp 303.01(b)(8) Emp 303.02, Emp 303.02(f)(10) Emp 303.09 Emp 303.10 Emp 303.11 Emp 304.01 (h) Emp 304.02, Emp 304.02(b), Emp 304.02(b)(1) Emp 307.01, Emp 307.03, Emp 307.04, Emp 307.05 Emp 402.01 Emp 402.03 Emp 410
RSA 282-A:70	Emp 303.02 Emp 303.10 Emp 304.01 (h) Emp 304.02 Emp 304.02(b), Emp 304.02(b)(1) Emp 402.01 Emp 402.03 Emp 410
RSA 282-A:71	Emp 303.02(b), Emp 303.02(b)(1) Emp 303.10 Emp 304.01 (h) Emp 304.02, Emp 304.02(a)(1), Emp 304.02(a)(2) Emp 304.02(b), Emp 304.02(b)(1) Emp 402.01 Emp 402.03 Emp 410
RSA 282-A:72	Emp 101.09 Emp 304.02, Emp 304.02(b)(1) Emp 304.02(a)(3), Emp 304.02(b), Emp 304.02(c)
RSA 282-A:73	Emp 304.02(b)(3)
RSA 282-A:74	Emp 101.09 Emp 304.02(a)(2) Emp 304.02(b)(3) Emp 304.03 Emp 304.04(a) Emp 304.04(b) Emp 304.04(b)(3)b
RSA 282-A:75	Emp 101.09 Emp 304.02(a)(2), Emp 304.02(b)(3) Emp 303.04(a) Emp 403.01 Emp 403.03

	Emp 404.04(b) Emp 404.04(b)(3)b Emp 504.01
RSA 282-A:76	Emp 101.09 Emp 303.04(a) Emp 304.04(b) Emp 3040.04 (b)(3)b
RSA 282-A:77	Emp 303.04(a) Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06
RSA 282-A:78	Emp 304.02(a)(6), 304.02(b)(5) Emp 304.04 Emp 304.04(a) Emp 304.04(b) Emp 304.04(b)(3)b
RSA 282-A:86	Emp 303.02(f)(10) Emp 304.05
RSA 282-A:87	Emp 304.05 Emp 404.10
RSA 282-A:91	Emp 303.01, Emp 303.01(b)(13) Emp 304.05
RSA 282-A:91-a	Emp 303.01 Emp 303.01(b)(13) Emp 303.15, Emp 303.15(c)(5) Emp 304.11 Emp 304.11(b), (c), (d), (e), (f), (g)
RSA 282-A:92	Emp 303.05
RSA 282-A:94	Emp 303.09 Emp 303.10 Emp 304.01 (h)
RSA 282-A:96	Emp 201 Emp 207 Emp 207.08 Emp 207.09 Emp 303.01 Emp 303.09 Emp 303.10 Emp 304.01 (h)
Period of Election & Termination of Employer's Coverage	
RSA 282-A:102	Emp 303.01(d)
Admin. Organization & Administration	
RSA 282-A:107	Emp 101.01-101.04 Emab 202.03
RSA 282-A:108	Emp 101.01-101.04 Emp 102.01 Emab 202.03
RSA 282-A:109	Emp 101.01-101.04 Emp 102.02
RSA 282-A:112, I	Emp 101.07-101.09 Emp 102.02

RSA 282-A:-113	Emp 102.04 Emp 102.06
RSA 282-A:114	Emp 502.07(e)
RSA 282-A:117	Emp 207.25 Emp 303.01, Emp 303.01(b)(20) Emp 303.02, Emp 303.02(f)(19) Emp 303.03 Emp 303.05, Emp 303.05(a), Emp 303.05(a)(2) Emp 303.10 Emp 303.13 Emp 304.01 (h) Emab 202.06 Emab 202.15
RSA 282-A:117-a	Emp 207.25 Emp 301.01-301.06 Emp 303.01, Emp 303.01(b)(20) Emp 303.02, Emp 303.02(f)(19) Emp 303.05(a), Emp 303.05(a)(2) Emp 303.10 Emp 304.01 (h) Emp 308.01 Emp 308.02(a), (b), (c), (d), (e), (f), (g), (h), (I) Emp 308.03(a), (b), (c), (d) Emp 308.04
RSA 282-A:118	Emp 207.25 Emp 303.01, Emp 303.01(b)(20) Emp 303.02, Emp 303.03(f)(19) Emp 303.03 Emp 303.04 Emp 303.05 and Emp 303.05(a), Emp 303.05(a)(2) Emp 303.08 Emp 303.10 Emp 303.11 Emp 303.13 Emp 304.01 (h) Emp 405 Emab 202.06 Emab 202.15
RSA 282-A:119	Emp 206 Emp 207.25 Emab 202.06 Emab 202.15
RSA 282-A:120	Emp 206 Emp 207.25 Emp 304.01(d) Emab 202.06 Emab 202.15
RSA 282-A:121	Emp 207.25 Emab 202.06 Emab 202.15
RSA 282-A:122	Emp 207.25 Emab 202.06 Emab 202.15
RSA 282-A:123	Emp 207.25

	Emab 202.06 Emab 202.15
RSA 282-A:136	Emp 101.01-101.04 Emp 102.03

Collection of Contributions	
RSA 282-A:141	Emp 213.05, 06, and 08 Emp 402.02
RSA 282-A:144	Emp 303.09 Emp 213.05, 06, and 08
RSA 282-A:145	Emp 213.05, 06, and 08 Emp 303.05(d)
RSA 282-A:153	Emp 213.05, 06, and 08 Emp 303.09
RSA 282-A:154	Emp 213.05, 06, and 08
RSA 282-A:155	Emp 213.05, 06, and 08
RSA 282-A:156	Emp 213.05, 06, and 08
Protection of Rights and Benefits	
RSA 282-A:157	Emp 305.01
RSA 282-A:158	Emp 204
RSA 282-A:159	Emp 502.05
Penalties	
RSA 282-A:158	Emp 213.05, 06, and 08
RSA 282-A:159	Emp 213.05, 06, and 08
RSA 282-A:163	Emp 213.05, 06, and 08
RSA 282-A:164	Emp 213.05, 06, and 08
RSA 282-A:165	Emp 211.01 (f) Emp 402.02 Emp 502.03
RSA 282-A:166	Emp 305.01
Reciprocal Arrangements	
RSA 282-A:169	Emp 306.01
RSA 282-A:170	Emp 306.01
RSA 282-A:171	Emp 306.01
Miscellaneous	
RSA 282-A:175	Emp 403.01 Emp 403.03 Emp 403.06
RSA 282-A:178	Emp 502.07(e)
RSA 282-A:181 and RSA 282-A:182	Emp 404
Human Service	
RSA 161-B:11	Emp 303.05, Emp 303.05(a)
Administrative Procedure Act	
RSA 541-A:4	Emp 205.01
RSA 541-A:6,I	Emp 205.03
RSA 541-A:11	Emab 205.01-205.02 Emab 205.03-205.04
RSA 541-A:11,II	Emab 205.05
RSA 541-A:11,I,II and IV	Emab 205.06
RSA 541-A:11, VII	Emab 206
RSA 541-A:16	Emp 205.01 Emp 205.02

RSA 541-A: 16, I(a) RSA 541-A: 16, I (c)	Emp 205.03 Emp 205.04 Emp 207.08 Emp 207.09 Emab 201.01 Emab 204
RSA 541-A:22, IV	Emab 202.01
RSA 541-A:30-a	Emp 207.05 – Emp 207.11 Emp 207.17 – Emp 207.18 Emp 207.22 – Emp 207.24 Emp 207.26 Emp 207.30 – Emp 207.32
RSA 541-A:31	Emp 207.14 Emp 207.16 Emp 207.25
RSA 541-A:32	Emp 207.19
RSA 541-A:33	Emp 207.27 Emp 207.28
RSA 541-A:35	Emp 207.29
RSA 541-A:36	Emab 202.18

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.

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.

III. A person convicted of a class B felony offense under this section shall not be subject to the provisions of RSA 651:2, II-g.

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, or threatens the delivery or use of a biological or chemical substance, 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; or
- (f) The person delivers, threatens to deliver, or causes the delivery of any substance the actor knows could be perceived as a biological or chemical substance, to another person with the purpose of causing fear or terror, or in reckless disregard of causing such fear or terror.

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. (a) 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.

(b) As used in this section, "terrorize" means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.

632-A:2 Aggravated Felonious Sexual Assault. –

I. A person is guilty of the felony of aggravated felonious sexual assault if such person 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 direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or
- (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth 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.

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

632-A:3 Felonious Sexual Assault. – A person is guilty of a class B felony if such person:

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 where the age difference between the actor and the other person is 4 years or more; 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 direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph IV shall not be considered a defense.

632-A:4 Sexual Assault. –

I. A person is guilty of a class A misdemeanor under any of the following circumstances:

(a) When the actor 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.

(b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

II. A person found guilty under subparagraph I(c) of this section shall not be required to register as a sexual offender under RSA 651-B.

III. A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person when the actor is in a position of authority over the person under any of the following circumstances:

(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph III shall not be considered a defense.

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.

I-a. A person is guilty of kidnapping if the person knowingly takes, entices away, detains, or conceals any child under the age of 18 and unrelated to the person by consanguinity, or causes such child to be taken, enticed away, detained, or concealed, with the intent to detain or conceal such child from a parent, guardian, or other person having lawful physical custody of such child. This paragraph shall not apply to law enforcement personnel or department of health and human services personnel engaged in the conduct of their lawful duties.

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. A person commits the offense of stalking if such person:

- (a) Purposely, knowingly, or recklessly engages in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear;
- (b) Purposely or knowingly engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; or
- (c) 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 pursuant to RSA 597:2 that prohibits contact with a specific individual, purposely, knowingly, or recklessly engages in a single act of conduct that both violates the provisions of the order and is listed in paragraph II(a).

II. As used in this section:

(a) "Course of conduct" means 2 or more acts over a period of time, however short, which evidences a continuity of purpose. A course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct may include, but not be limited to, any of the following acts or a combination thereof:

- (1) Threatening the safety of the targeted person or an immediate family member.
- (2) Following, approaching, or confronting that person, or a member of that person's immediate family.
- (3) Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of that person's immediate family.
- (4) Causing damage to the person's residence or property or that of a member of the person's immediate family.
- (5) Placing an object on the person's property, either directly or through a third person, or that of an immediate family member.
- (6) Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family.
- (7) Any act of communication, as defined in RSA 644:4, II.

(b) "Immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

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 civil 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.

III-b. The minority of a plaintiff or defendant shall not preclude the court from issuing protective orders under this section.

III-c. Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant, for one year after the expiration of the first order and thereafter each extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the court. The court shall review the order, and each renewal thereof and shall grant such relief as may be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension. The court shall state in writing, at the respondent's request, its reason or reasons for granting the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

III-d. (a) A protective order issued pursuant to this section, RSA 173-B:4, or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

(b) A no-contact provision in a protective order issued pursuant to this section shall not be construed to:

- (1) Prevent contact between counsel for represented parties; or
- (2) Prevent a party from appearing at a scheduled court or administrative hearing; or
- (3) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any legal pleadings filed in court relating to the domestic violence petition or related civil or criminal matters.

(c) A violation of this paragraph may result in a finding of contempt of court.

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 12 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 12 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; or
- (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 or she has vandalized, defaced, or destroyed any part of the "'Old Man of the Mountain" or any natural geological formation, site, or rock surface located on public property that has been designated by the state or any of its political subdivisions or the federal government as a natural area or landmark shall be guilty of a class A misdemeanor and shall also make restitution to the state for any damage he or she 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.

VIII. Any person who is found guilty of criminal mischief under this section because the person has purposely or recklessly damaged an emergency vehicle, emergency apparatus, or private vehicle containing emergency equipment, shall be liable for full restitution to the injured party.

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of

such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor.

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 for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

III. 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.

IV. All other criminal trespass is a violation.

V. 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.

VI. In this section, "property," "property of another," and "value" shall be as defined in RSA 637:2, I, IV, and V, respectively.

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 no legitimate communicative purpose or without disclosing his or her identity and with a purpose to annoy, abuse, threaten, 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.

IV. A person shall be guilty of a class B felony if the person violates RSA 644:4, I(a) under circumstances involving making telephone calls to a telephone number that he or she knows is being used, at the time of the calls, to facilitate the transportation of voters to polling places or otherwise to support voting or registering to vote.

INDEX

This index is provided for the convenience of the user. It is not a part of RSA 282-A. Please remember to also check the separate index for the Rules.

A

RSA 282-A SECTION

accident disability -----	§ 15
acquisition -----	§§ 8, 91, 93, 112
adjudication-----	§ 147
adjustment -----	§ 148, 149
administrative contribution-----	§ 87
advisory council -----	§§ 87, 128, 129, 130, 131, 140
affidavit -----	§ 153
alien -----	§§ 15, 41
American employer-----	§ 20
annual earnings -----	§§ 16, 25, 30, 32, 44, 46
appeal tribunal -----	§§ 46, 47, 48, 53, 56, 59, 60, 61, 64, 65, 66, 67, 118, 121, 124, 125, 126, 134, 140
appellate -----	52, 66, 67
appellate board-----	§§ 62, 63, 64, 65, 66, 67, 97
arson-----	§ 35
attorney -----	§§ 62, 178
attorney fees -----	§ 178
attorney general -----	§ 137
authorized representative -----	§§ 40, 75, 94, 117, 118, 124-126, 134, 144, 150, 152, 164, 165, 166, 175
average annual payroll -----	§§ 80, 86
availability -----	§§ 31, 32

B

RSA 282-A SECTION

back pay award-----	§ 14
bankruptcy -----	§§ 7, 147
base period-----	§§ 2, 4, 16, 28, 30, 44, 70, 71, 72

benefit account	§§ 29, 104, 105,
benefit amount	§§ 14, 18, 25, 26, 28, 30, 31, 32, 44, 46, 164, 178
benefit payment	§§ 30, 105, 118, 180
benefit year	§§ 2, 4, 24, 25, 30, 41, 44, 164, 178
benefits payable	§§ 25, 30, 52, 165, 170
Business Suspended	§ 83
bonus	§ 3, 15

C

RSA 282-A SECTION

calendar quarter	§§ 2, 5, 8, 9, 25, 30, 82, 82-a, 87, 128, 142
calendar year	§§ 8, 9, 30, 69, 79, 80, 81, 82, 88, 99, 101, 102, 112, 117, 138
casual labor	§§ 9, 117
certified mail	§§ 55, 58, 61, 67, 94, 96
certifying officer	§§ 42, 44, 45, 46, 47, 48, 49, 50, 53, 55, 61, 134, 165
chargeable	§§ 28, 74, 75, 76, 81, 91, 140
chargeable employer	§§ 28, 74
child support	§§ 31, 117-a, 159
churches	§ 9
civil action	§§ 52, 91-a, 151, 152, 155, 165, 168
classification	§§ 115, 116
Collateral Estoppel	§ 180
collection of contributions	§§ 52, 91-a, 142, 144, 150, 155, 165
commissions	§ 15
compromise	§§ 148
computation date	§§ 81, 86, 88, 92
confidentiality	§ 118
contingent fund	§§ 139, 140, 141, 142, 149, 178
contributions due	§§ 69, 142, 151, 169
contribution rate	§§ 69, 79, 82, 82-a, 84, 84-a, 85, 86, 87, 88, 89, 91-a, 92
court-ordered garnishment	§§ 152-a
credits	§§ 35, 89
criminal	§§ 35, 122, 137

D

RSA 282-A SECTION

date of mailing	§§ 64, 67, 96
de novo	§§ 23, 56, 59, 61
department	§ 152-a
department records	§ 64
destruction	§ 120
director	§ 9
disability	§§ 14, 15, 32
disabled	§ 32
discharge	§§ 14, 32, 34, 35, 113, 124
disciplinary layoff	§ 40
discontinuance	§ 106
discovery	§ 89
discrimination	§§ 115, 160
dishonesty	§ 35
disposable earnings	§, 152-a
disqualification	§§ 30, 32, 34, 37, 163, 164
distrain	§§ 146, 152
domestic abuse	§ 32
domestic service	§ 9
due date	§ 152

E

RSA 282-A SECTION

earnings	§§ 4, 14, 16, 25, 30, 32, 44, 46, 78, 103, 106
economic and labor market information	§ 113
effective date	§§ 12, 25, 69

elected official	§ 9
election	§§ 8, 9, 69, 88, 102, 169
elective	§ 102
eligibility	§§ 24, 30, 31, 117, 118, 164
employer	§ 8
employing unit	§ 7
employment	§ 9
employment office	§§ 10, 24, 30, 32, 112, 113, 140-a
employment services	§§ 30, 31, 140-a
excluded	§§ 8, 9, 14
exclusivity	§§ 66, 68
exhausted	§§ 60, 67
extended benefits	§§ 30, 69, 70
extension	§§ 142, 147

F

RSA 282-A SECTION

Federal Benefits	§ 162
Federal Unemployment	§§ 8, 9, 30, 68, 69, 84, 85, 127, 159, 169, 172, 174
federal unemployment tax	§ 8
fees	§§ 29, 91-a, 126, 140, 143, 148, 152, 158, 166, 178
felony	§§ 35, 157, 161, 166
findings of fact	§§ 96, 180
food stamp overissuances	§ 159
fraud	§§ 60, 65, 118, 178

G

RSA 282-A SECTION

garnishment	§ 152-a
garnishment suspension (stopping)	§ 152-a
general counsel	§§ 136, 137
good cause	§§ 31, 32, 40, 46, 49, 64, 151

H

RSA 282-A SECTION

hearing	§§ 19, 23, 56, 57, 59, 61, 62, 64, 67, 96
holiday	§§ 31, 45-a
hours	§§ 9, 14, 31, 32, 112

I

RSA 282-A SECTION

illness	§ 32
in person	§§ 51, 67, 150
Indian	§§ 8, 9, 31, 69
individual debtor	§ 152
ineligible	§§ 30, 33, 90, 164
initial claim	§§ 4, 12, 42, 44, 45
injunction	§ 144
interested party	§§ 42, 48, 53, 58, 59, 60, 61, 67
Interstate	§§ 9, 30, 140, 155
intoxication	§ 34

J

RSA 282-A SECTION

Jeopardy Assessment	§ 150
judicial review	§§ 67, 68
jurisdiction	§§ 53, 64, 126

L

RSA 282-A SECTION

labor dispute	§§ 32, 36
lay off	§ 45-a
leasing	§ 91-a
leaving	§§ 32, 42, 45, 153, 178
legal process	§ 123

limitation of Fees -----	§ 158
limited liability company -----	§§ 143, 166
location -----	§§ 32, 93, 117
lockout -----	§§ 32, 36

M

RSA 282-A SECTION

maximum benefit amount -----	§ § 31, 46
maximum benefits -----	§§ 25, 44, 164, 170
merit rate -----	§§ 84, 85
method -----	§§ 45, 68, 112, 127
military -----	§ 14
minister -----	§ 9
misconduct -----	§§ 32, 35
misdemeanor -----	§§ 121, 126, 157, 158, 161, 166, 167
most recent employer -----	§§ 12, 32, 72, 74, 75, 76
motion -----	§§ 67, 102

N

RSA 282-A SECTION

National Guard -----	§§ 9, 15
new hires -----	§ 117-a
nonresident employing unit -----	§ 153
notice of appeal -----	§ 67
notice of garnishment -----	§ 152
notice of court order -----	§ 152
notification -----	§ 77

O

RSA 282-A SECTION

other state -----	§§ 9, 20, 30, 38, 106, 138, 155, 162, 164, 169, 170, 172
overpaid benefits -----	§ 137
overpayment -----	§§ 52, 76, 164, 165

P

RSA 282-A SECTION

partial benefits -----	§ 44
partial unemployment -----	§§ 14, 26, 31, 36, 44
payment in kind -----	§ 15
perform services -----	§§ 31, 54, 62, 134
personnel -----	§§ 63, 113, 115, 169
postmarked -----	§§ 48, 60, 64, 95
postponement -----	§ 59
property lien -----	§ 143
prosecution -----	§§ 58, 125

Q

RSA 282-A SECTION

quarterly reports -----	§ 2
-------------------------	-----

R

RSA 282-A SECTION

railroad -----	§§ 9, 28, 30, 112, 113, 127
rate reduction -----	§ 90
reasonable assurance -----	§§ 16, 31
reasonable value -----	§ 15
reciprocal arrangements -----	§§ 157, 169, 170
recomputation -----	§§ 86, 89
recording -----	§§ 64, 143
recover -----	§§ 52, 138
recovery -----	§§ 137, 168, 178
redetermination -----	§ 46
reduction -----	§§ 31, 87, 90, 140
Reed Act -----	§ 140-a
reemployment services -----	§§ 31, 140-a

reimbursement	§§ 73, 117-a, 139, 169, 170
reimbursing employer	§ 72
reimbursing employer task force	§ 12-a
relieved of charges	§ 76
remand	§§ 46, 56, 64, 65, 67
remedy	§§ 98, 159
Reopening of Appeal	§ 60
required reports	§ 144
repeal	§ 174
request for reopening	§§ 60, 64, 134
residence	§§ 9, 15, 32, 41, 169
restitution	§§ 14, 163, 164
retirement	§§ 14, 15, 28, 112, 113, 127, 134
right to amend	§ 174
right to appeal	§ 50

S

RSA 282-A SECTION

sabotage	§ 35
seeking work	§§ 30, 31
self-employment	§§ 14, 32, 31-h, 33
self-incrimination	§ 125
separate account	§§ 69, 74, 77, 81, 85, 86, 87, 91, 93, 100, 101, 104, 118
separation pay	§ 3-a
settlement	§§ 14, 29, 148
sheriff	§§ 126, 152
shutdown	§ 46-a
standard rate	§ 85
state law	§§ 9, 30, 118, 172
statute	§§ 16, 91-a, 115, 152, 167
stipulation	§§ 22, 29, 67, 148
stoppage of work	§ 36
strike	§ 32
subcontractor	§ 7
subpoena	§§ 124, 125, 126
successive	§§ 16, 31
successor	§§ 7, 62, 129, 139, 153
successorship	§§ 91, 94
suitable work	§§ 30, 32
Supreme Court	§§ 67, 173

T

RSA 282-A SECTION

tape recording	§ 64
tax	§§ 8, 9, 69, 85, 93, 137, 140-a, 146, 147, 152, 159, 173
temporary	§§ 9, 14, 33, 45-a, 144
terminated	§§ 30, 99, 117-a
termination	§§ 36, 69, 100, 101, 102, 173
time limits	§ 49
total unemployment	§§ 14, 18, 25, 30
Trade Act	§§ 30, 178
training fund	§ 138-a
tribunal	§§ 46, 47, 48, 53, 56, 58-61, 64-68, 118, 121, 124, 125, 126, 134, 140
Trust Fund	§§ 84-a, 87, 104, 105, 106, 140-a, 173, 177

U

RSA 282-A SECTION

unavailable	§§ 39, 123
union	§§ 3-a, 32

V

RSA 282-A SECTION

vacation pay	§ 14
--------------	------

W

RSA 282-A SECTION

waiver -----	§§ 45, 45-a, 50, 51, 93, 157, 159
weekly benefit amount -----	§§ 14, 18, 25, 26, 28, 30, 32, 44, 46, 164
willfully -----	§ 161
withdrawal -----	§§ 15, 55, 105, 106
withholding -----	§ 159
witness /witnesses -----	§§ 124, 126, 160
work experience -----	§ 9
writ -----	§ 68

TABLE OF CONTENTS

CHAPTER Emp 100 ORGANIZATIONAL RULES

PART Emp 101 DEFINITIONS

- Section Emp 101.01 Bureau
- Section Emp 101.02 Commissioner
- Section Emp 101.03 Department
- Section Emp 101.04 Deputy Commissioner
- Section Emp 101.05 Employing Unit
- Section Emp 101.06 Equivalent or Better Work
- Section Emp 101.07 House Counsel
- Section Emp 101.08 Immediately Available
- Section Emp 101.09 Most Recent Employer - REPEALED
- Section Emp 101.10 Not Immediately Available
- Section Emp 101.11 Permanent Work
- Section Emp 101.12 Services
- Section Emp 101.13 Substantially Less Favorable
- Section Emp 101.14 Temporary Work
- Section Emp 101.15 Week

PART Emp 102 DESCRIPTION OF THE DEPARTMENT

- Section Emp 102.01 Commissioner; Commissioner's Office
- Section Emp 102.02 Deputy Commissioner
- Section Emp 102.03 House Counsel
- Section Emp 102.04 Employment Service Bureau
- Section Emp 102.05 Unemployment Compensation Bureau
- Section Emp 102.06 Economic and Labor Market Information Bureau

PART Emp 102 PUBLIC REQUESTS FOR INFORMATION

- Section Emp 103.01 Obtaining Records

CHAPTER Emp 200 COMPLAINTS AND HEARING PROCEDURES

PART Emp 201 APPEAL FROM DETERMINATION OF EMPLOYER LIABILITY

- Section Emp 201.01 Form and Content
- Section Emp 201.02 Notice of Hearing
- Section Emp 201.03 Evidence, Testimony and Records
- Section Emp 201.04 Examination of Department Records
- Section Emp 201.05 Examination of Parties and Witnesses
- Section Emp 201.06 Scope of Hearing
- Section Emp 201.07 Adjournment, Postponement and Continuance
- Section Emp 201.08 Failure to Request Continuance or Postponement, or to Appear
- Section Emp 201.09 Decision

PART Emp 202 APPEAL TRIBUNAL

- Section Emp 202.01 Appeal to and Hearing by Appeal Tribunal

PART Emp 203 APPELLATE DIVISION - EXPIRED - RESERVED

PART Emp 204 APPROVAL OF FEES

- Section Emp 204.01 Scope of Rules
- Section Emp 204.02 Written Petitions
- Section Emp 204.03 Approval of Fees
- Section Emp 204.04 Reconsideration
- Section Emp 204.05 Hearings
- Section Emp 204.06 Decision
- Section Emp 204.07 Waiver of Rules

PART Emp 205 DECLARATORY RULINGS

- Section Emp 205.01 Petition for Declaratory Ruling
- Section Emp 205.02 Disposition of Petitions for Declaratory Rulings
- Section Emp 205.03 Effect of Declaratory Ruling
- Section Emp 205.04 Filing and Publication of Declaratory Rulings

PART Emp 206 RECORDS

- Section Emp 206.01 Destruction of Records

PART Emp 207 PRACTICE AND PROCEDURE

- Section Emp 207.01 Purpose
- Section Emp 207.02 Application
- Section Emp 207.03 Party
- Section Emp 207.04 Presiding Officer; Appointment; Authority
- Section Emp 207.05 Withdrawal of Presiding Officer or Department Official
- Section Emp 207.06 Waiver or Suspension of Rules by Presiding Officer
- Section Emp 207.07 Date of Issuance or Filing
- Section Emp 207.08 Format of Document
- Section Emp 207.09 Delivery of Documents
- Section Emp 207.10 Computation of Time
- Section Emp 207.11 Motions; Objections
- Section Emp 207.12 Commencement of Hearing
- Section Emp 207.13 Docket Numbers
- Section Emp 207.14 Notice of Hearing
- Section Emp 207.15 Appearances and Representation
- Section Emp 207.16 Prehearing Conference
- Section Emp 207.17 Role of Department Staff in Enforcement or Disciplinary Hearings
- Section Emp 207.18 Role of Complainants in Enforcement or Disciplinary Hearings
- Section Emp 207.19 Intervention
- Section Emp 207.20 Postponements and Continuances
- Section Emp 207.21 Failure to Attend Hearing
- Section Emp 207.22 Voluntary Production of Information
- Section Emp 207.23 Motions to Compel Production of Information
- Section Emp 207.24 Pre-Hearing Disclosure of Witnesses and Exhibits
- Section Emp 207.25 Record of the Hearing
- Section Emp 207.26 Standard and Burden of Proof
- Section Emp 207.27 Testimony; Order of Proceeding
- Section Emp 207.28 Evidence
- Section Emp 207.29 Proposed Findings of Fact and Conclusions of Law

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Emp 207.30 Closing the Record
- Section Emp 207.31 Reopening the Record
- Section Emp 207.32 Decisions
- Section Emp 207.33 Filing and Content of Motion for Rehearing
- Section Emp 207.34 Standard for Granting Motion for Rehearing

PART Emp 208 RULEMAKING PETITIONS

- Section Emp 208.01 Petition for Adoption, Amendment or Repeal of Rules

PART Emp 209 RULEMAKING PUBLIC COMMENT HEARINGS

- Section Emp 209.01 Purpose
- Section Emp 209.02 Scope
- Section Emp 209.03 Notice
- Section Emp 209.04 Media Access
- Section Emp 209.05 Moderator
- Section Emp 209.06 Public Participation

PART Emp 210 EXPLANATION OF ADOPTED RULES

- Section Emp 210.01 Requests for Explanation of Adopted Rules
- Section Emp 210.02 Contents of Explanation

PART Emp 211 APPEAL FROM DENIAL OF CONTINUED ELIGIBILITY FOR BENEFITS

- Section Emp 211.01 Required Department Actions

CHAPTER Emp 300 EMPLOYER REQUIREMENTS

PART Emp 301 DEFINITIONS

- Section Emp 301.01 Break in Service
- Section Emp 301.02 Casual Labor
- Section Emp 301.03 Compact Disk
- Section Emp 301.04 Contract for Services
- Section Emp 301.05 Date of Hire
- Section Emp 301.06 Diskette
- Section Emp 301.07 Magnetic Media
- Section Emp 301.08 Multistate Employing Unit
- Section Emp 301.09 Work State

PART Emp 302 PAYMENTS IN KIND

- Section Emp 302.01 Reasonable Value for Payments in Kind
- Section Emp 302.02 Payments in Kind for the Convenience of the Employer
- Section Emp 302.03 Tips and Gratuities

PART Emp 303 RECORDS AND REPORTS

- Section Emp 303.01 Notice of Employment
- Section Emp 303.02 Quarterly Reports
- Section Emp 303.021 Filing Quarterly Reports Online
- Section Emp 303.022 Filing Quarterly Reports via Magnetic Media

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Emp 303.023 Making Corrections to Tax and Wage Information Previously Reported
- Section Emp 303.03 Information Regarding Reported Earnings or Hours
- Section Emp 303.04 Authority and Identity Required
- Section Emp 303.05 Records to be Kept by Each Employing Unit and Each Employer
- Section Emp 303.06 Penalty - EXPIRED
- Section Emp 303.07 Force and Effect of Instructions on Forms - EXPIRED
- Section Emp 303.08 Notice of Claim and Verification Request Form
- Section Emp 303.09 Mailing Address
- Section Emp 303.10 Authorized Agents
- Section Emp 303.11 Filing Requirements
- Section Emp 303.12 Request for Wage Information
- Section Emp 303.13 Mass Layoffs
- Section Emp 303.14 Part-Time Work Information- EXPIRED
- Section Emp 303.15 Trade, Business, and Workforce Transfer Report

PART Emp 304 CONTRIBUTIONS AND DEBTS

- Section Emp 304.01 Contributions Due and Payable
- Section Emp 304.02 Reimbursing Employers
- Section Emp 304.03 Group Accounts
- Section Emp 304.04 Charging of Benefits in Cases of Two or More Concurrent Employers
- Section Emp 304.05 Computation Date and Tax Rate in Event of Successorship
- Section Emp 304.06 Chargeable Employer if No Most Recent Employer - EXPIRED
- Section Emp 304.07 Temporary Unemployment Compensation Crisis Assessment - EXPIRED
- Section Emp 304.08 Reestablishment of Rights to a Reduced Merit Rate - EXPIRED
- Section Emp 304.09 Adverse Rating Cost - EXPIRED
- Section Emp 304.10 Most Recent Employer- EXPIRED
- Section Emp 304.11 Transfers of Experience and Assignment of Rates

PART Emp 305 NOTICES

- Section Emp 305.01 Posting Notices

PART Emp 306 EMPLOYER ELECTIONS

- Section Emp 306.01 Employer Elections to Cover Multi-State Workers

PART Emp 307 EMPLOYEE LEASING

- Section Emp 307.01 Scope of Rule
- Section Emp 307.02 Definitions
- Section Emp 307.03 Common Paymaster Arrangements
- Section Emp 307.04 Notification
- Section Emp 307.05 Reporting and Payment Requirements

PART Emp 308 NEW HIRE

- Section Emp 308.01 Purpose of the Rule
- Section Emp 308.02 Reporting Required
- Section Emp 308.03 Multistate Employing Units
- Section Emp 308.04 Timely Reporting

CHAPTER Emp 400 ADMINISTRATION

PART Emp 401 RESERVED

PART Emp 402 PAYMENTS

- Section Emp 402.01 Form, Dishonored and Application
- Section Emp 402.02 Interest on Overpayments
- Section Emp 402.03 Contributions Due and Payable

PART Emp 403 SETTLEMENT OF CONFORMITY ISSUES

- Section Emp 403.01 Coverage of Government Units and "Non-Profit" Organizations
- Section Emp 403.02 RESERVED
- Section Emp 403.03 Restricting the Effect of RSA 282-A:16 to Professional Athletes
- Section Emp 403.04 Defining the "Between Times" Denial of Compensation - REPEALED
- Section Emp 403.05 Exemption Not to Apply - REPEALED
- Section Emp 403.06 Successive Benefit Year Earnings Requirement

PART Emp 404 JOB TRAINING PROGRAM

- Section Emp 404.01 Purpose
- Section Emp 404.02 Scope
- Section Emp 404.03 Definitions
- Section Emp 404.04 Eligibility Requirements
- Section Emp 404.05 Non-Eligible
- Section Emp 404.06 Entity Match Requirement
- Section Emp 404.07 Non-Acceptable Use of Grant Funds
- Section Emp 404.08 Acceptable Use of Grant Funds
- Section Emp 404.09 Starting and Completion Dates
- Section Emp 404.10 Incomplete Applications
- Section Emp 404.11 WorkInvestNH Grant Application Confidentiality
- Section Emp 404.12 WorkInvestNH Grant Limitations
- Section Emp 404.13 WorkInvestNH Training Evaluation Report
- Section Emp 404.14 WorkInvestNH Grant Application
- Section Emp 404.15 Submittal
- Section Emp 404.16 Acknowledgment of Application and Application Review
- Section Emp 404.17 Notification
- Section Emp 404.18 Training Fund contract
- Section Emp 404.19 Reimbursement of Funds
- Section Emp 404.20 Time Limit for Reimbursement
- Section Emp 404.21 Grant Funds Used or Not Used
- Section Emp 404.22 Failure to Comply
- Section Emp 404.23 Training Evaluation Report
- Section Emp 404.24 Program Information
- Section Emp 404.25 Participant Eligibility
- Section Emp 404.26 Initial Assessment
- Section Emp 404.27 Employment Support Services
- Section Emp 404.28 On-the-job Training
- Section Emp 404.29 Termination from WorkNowNH

PART Emp 405 ELECTRONIC COMMUNICATION

- Section Emp 405.01 Claimant Correspondence

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Emp 405.02 Claimant Access to Electronic Correspondence
- Section Emp 405.03 Employer Benefit Correspondence - REPEALED
- Section Emp 405.04 Employer Access to Electronic Correspondence
- Section Emp 405.05 Representative Benefit Correspondence - REPEALED
- Section Emp 405.06 Representative Access to Electronic Correspondence - REPEALED

**PART Emp 406 COORDINATION OF EMERGENCY UNEMPLOYMENT
COMPENSATION WITH REGULAR COMPENSATION**

- Section Emp 406.01 Purpose- EXPIRED
- Section Emp 406.02 Eligible Claimant- EXPIRED
- Section Emp 406.03 Claim For Benefits - EXPIRED

**PART Emp 407 COORDINATION OF EMERGENCY UNEMPLOYMENT
COMPENSATION AND THE STATE-FEDERAL EXTENDED
BENEFITS PROGRAM**

- Section Emp 407.01 Purpose -EXPIRED
- Section Emp 407.02 Benefits Available - EXPIRED

PART Emp 408 ADJUSTMENT OF OVERPAID BENEFIT ACCOUNTS BY COMPROMISE

- Section Emp 408.01 Compromise
- Section Emp 408.02 Recommendation of Compromise
- Section Emp 408.03 Notice of Acknowledgment and Mode of Hearing
- Section Emp 408.04 Rebuttable Presumption
- Section Emp 408.05 Totality of the Circumstances
- Section Emp 408.06 Factors to be Considered
- Section Emp 408.07 Injured Spouse Allocation
- Section Emp 408.08 Notice of Commissioner's Decision on Request to Compromise
- Section Emp 408.09 Request for Reconsideration
- Section Emp 408.10 The Collection Process and Request for Compromise

PART Emp 409 OFFSET OF FEDERAL TAX REFUND PAYMENTS

- Section Emp 409.01 Purpose
- Section Emp 409.02 Definitions
- Section Emp 409.03 Advance Notification and Opportunity to Present Evidence
- Section Emp 409.04 Certification
- Section Emp 409.05 Forbearance
- Section Emp 409.06 Contents of Request For Forbearance
- Section Emp 409.07 Injured Spouse Allocation
- Section Emp 409.08 Extreme Financial Hardship
- Section Emp 409.09 The Offset of Federal Tax Refund Payments and Request for Forbearance

PART Emp 410 ALIENS

- Section Emp 410.01 Purpose
- Section Emp 410.02 Wages
- Section Emp 410.03 Benefits

PART Emp 411 SELF-EMPLOYMENT ASSISTANCE PROGRAM

- Section Emp 411.01 Purpose
- Section Emp 411.02 Definitions

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Emp 411.03 Claimant Requirements for Consideration for the PTW Program
- Section Emp 411.04 Application Review Process
- Section Emp 411.05 Continued Weekly Filing Requirements
- Section Emp 411.06 Eligibility for the Self-Employment Assistance Allowance
- Section Emp 411.07 Program Participation Requirements and Monitoring
- Section Emp 411.08 Exhaustion of Self-Employment Assistance Allowance
- Section Emp 411.09 Termination from the PTW Program
- Section Emp 411.10 Appeal Procedure
- Section Emp 411.11 Enrollment Limitation

CHAPTER Emp 500 CLAIMANT REQUIREMENTS

PART Emp 501 REGISTRATION FOR WORK AND FILING OF CLAIMS

- Section Emp 501.01 Work Registration
- Section Emp 501.02 Registration for Work - RESERVED
- Section Emp 501.03 Initial Claims
- Section Emp 501.04 Filing Continued, Reopened, and Additional Claims
- Section Emp 501.05 Filing a Claim After Starting Work
- Section Emp 501.06 Effective Date of Claim
- Section Emp 501.07 Bi-Weekly Filing - REPEALED
- Section Emp 501.08 Profiling and Reemployment Services
- Section Emp 501.09 Wage Voucher
- Section Emp 501.10 Wages During Week Claimed
- Section Emp 501.11 Employment Services
- Section Emp 501.12 Work Search
- Section Emp 501.13 Claims Over the Internet – REPEALED and RESERVED
- Section Emp 501.14 Failure to Report for Employment Services
- Section Emp 501.15 Part-Time Availability and Shift Availability- EXPIRED

PART Emp 502 UNEMPLOYMENT COMPENSATION PAYMENTS

- Section Emp 502.01 Where and How Payments Made
- Section Emp 502.02 Benefits Due Deceased Claimants
- Section Emp 502.03 Overpayment Without Fault
- Section Emp 502.04 Basis for Computation of Annual Earnings
- Section Emp 502.05 Deduction and Withholding From Benefits
- Section Emp 502.06 Earnings from Self-Employment
- Section Emp 502.07 Application of Wages
- Section Emp 502.08 Waiting Week
- Section Emp 502.09 Penalty Weeks under RSA 282-A:164

PART Emp 503 TERMINATION OF EMPLOYMENT

- Section Emp 503.01 Voluntary Quit Without Good Cause
- Section Emp 503.02 Voluntary Leaving of Incidental Employment
- Section Emp 503.03 Leaving of Self-Employment or Closing Business
- Section Emp 503.04 Self-Employment - EXPIRED
- Section Emp 503.05 End of School Year
- Section Emp 503.06 Leaving Employment Necessary Due to Domestic Abuse
- Section Emp 503.07 Leaving Employment for Better Available Work -EXPIRED
- Section Emp 503.08 Leaving Employment Due to Pregnancy Or To An Illness

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Or Injury That Is Not Work Related
- Section Emp 503.09 Leaving Employment To Accompany Spouse
- Section Emp 503.10 Leaving Employment Due To The Illness or Disability
Of A Member Of The Individual's Immediate Family

PART Emp 504 SELECTION AND TRAINING PROCEDURES

- Section Emp 504.01 Approved Training

PART Emp 505 ADDITIONAL BENEFITS - EXPIRED

CHAPTER Emab 100 ORGANIZATIONAL RULES

PART Emab 101 DEFINITIONS

- Section Emab 101.01 "presiding member"

PART Emab 102 DESCRIPTION OF APPELLATE BOARD

- Section Emab 102.01 Organization

**PART Emab 103 PUBLIC REQUESTS FOR INFORMATION AND OTHER MAILINGS
AND CORRESPONDENCE TO THE BOARD**

- Section Emab 103.01 Requests and Correspondence

CHAPTER Emab 200 APPELLATE BOARD RULES OF PRACTICE AND PROCEDURE

PART Emab 201 ADJUDICATIVE PROCEEDINGS

- Section Emab 201.01 Rules for Adjudicative Proceedings

PART Emab 202 RULES GOVERNING APPEALS TO THE APPELLATE BOARD

- Section Emab 202.01 Scope of Rules
- Section Emab 202.02 Waiver or Suspension of Rules
- Section Emab 202.03 Definitions
- Section Emab 202.04 Appeals from the Commissioner's Decision or the Appeal Tribunal's
Decision After Remand; Appeal to the Board; General Provisions
- Section Emab 202.05 The Record on Appeal
- Section Emab 202.06 Hearings; General Provisions
- Section Emab 202.07 Motions and Objections
- Section Emab 202.08 Consolidation of Cases
- Section Emab 202.09 Entry of Decision
- Section Emab 202.10 Requests for Reconsideration of Decision; Procedures for Filing Request;
Form
- Section Emab 202.11 Action on Request for Reconsideration; Rehearing; Exhaustion of
Administrative Remedies
- Section Emab 202.12 Transfer of Records
- Section Emab 202.13 Withdrawal of Appeal
- Section Emab 202.14 Recusal of Board Member
- Section Emab 202.15 Confidentiality of Hearings
- Section Emab 202.16 Conduct

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Section Emab 202.17 Written Transcript of Appeal Tribunal Hearing
Section Emab 202.18 Ex Parte Communication

PART Emab 203 DECLARATORY RULINGS

Section Emab 203.01 Petition for Declaratory Ruling

PART Emab 204 RULEMAKING PETITIONS

Section Emab 204.01 Petition for Adoption, Amendment or Repeal of Rules

PART Emab 205 RULEMAKING PUBLIC COMMENT HEARINGS

Section Emab 205.01 Purpose
Section Emab 205.02 Scope
Section Emab 205.03 Notice
Section Emab 205.04 Media Access
Section Emab 205.05 Moderator
Section Emab 205.06 Public Participation

PART Emab 206 EXPLANATION OF ADOPTED RULES

Section Emab 206.01 Requests for Explanation of Adopted Rules
Section Emab 206.02 Contents of Explanation
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CHAPTER Emp 100 ORGANIZATIONAL RULES

REVISION NOTE (Important): Additional renumbering revisions were mad in October 2012. Check source notes under each definition for clarification.

Document # 10080, effective 01-30-12, adopted new definitions, and readopted and renumbered some of the existing definitions, in Part Emp 101. Document # 10080 also adopted new Part Emp 102 on description of the Department and part Emp 103 on public requests for information. Part Emp 102 had originally contained Emp 102.01 on adoption, amendment, and repeal of rules, filed under Document #5135, effective 05-06-91, and Emp 102.02 through Emp 102.05 on petitions for declaratory rulings, filed under Document # 5136, effective 05-06-91. Document # 6565-B, effective 09-02-97, had subsequently readopted with amendments and renumbered Part Emp 102 as Part Emp 205.

Document #10081, effective 01-30-12, readopted and renumbered the remaining definitions in Part Emp 101 as definitions in Part 301. Document #10081 also renumbered, but did not readopt, the existing rules in Emp 301 through Emp 307 as Emp 302 through Emp 308. The source notes for rules in Emp 302 through Emp 308 contain the document numbers and effective dates for rules under the former rule number, as noted in the source notes.

The definitions adopted by Document # 10080 include the following terms:

Emp 101.01 "Department"
Emp 101.02 "Commissioner"
Emp 101.03 "Deputy Commissioner"
Emp 101.04 "House Counsel"

Emp 101.05 “Bureau”

The definitions readopted and renumbered by Document # 10080 include the following terms. The former Emp 101.06 had been a reserved number:

<u>New Number</u>	<u>Former Number</u>
Emp 101.05 “Employing unit”	Emp 101.06
Emp 101.12 “Services”	Emp 101.07
Emp 101.15 “Week”	Emp 101.08

The definitions readopted and renumbered by Document # 10081 include the following terms:

<u>New Number</u>	<u>Former Number</u>
Emp 301.01 “Break in service”	Emp 101.01
Emp 301.02 “Casual labor”	Emp 101.02
Emp 301.03 “Contract for services”	Emp 101.03
Emp 301.04 “Date of hire”	Emp 101.04
Emp 301.05 “Multistate employing unit”	Emp 101.07
Emp 301.06 “Work state”	Emp 101.10

Document #10080 and Document #10081 supersede all prior filings for the definitions in the former Part Emp 101. The filings affecting the definitions in the former Part Emp 101 include the following documents:

#2234, eff 01-01-83	#4350, eff 12-28-97
#2465, EMERGENCY, eff 08-16-83	#5134, eff 05-06-91
#2466, EMERGENCY, eff 08-17-83	#5139, eff 05-06-91
#2555, eff 12-23-83	#6504, INTERIM, eff 05-05-97
#2930, eff 12-21-84	#6565-A, eff 09-02-97
#3085, EMERGENCY, eff 08-05-85	#6659, eff 12-23-97
#3154, eff 12-20-85	#7245, eff 04-30-00

PART Emp 101 **DEFINITIONS**

Emp 101.01 “Bureau” means a principal unit within the department.

Source. (See Revision Note at chapter heading for Emp 100) #10080, eff 01-30-12; renumbering by #10193, INTERIM (from Emp 101.05) DO NOT EXPIRE

Emp 101.02 “Commissioner” means the commissioner of the department.

Source. (See Revision Note at chapter heading for Emp 100) #10080, eff 01-30-12; renumbering by #10193, INTERIM (from Emp 101.02) DO NOT EXPIRE

Emp 101.03 “Department” means the New Hampshire department of employment security.

Source. (See Revision Note at chapter heading for Emp 100) #10080, eff 01-30-12; renumbering by #10193, INTERIM (from Emp 101.01) DO NOT EXPIRE

Emp 101.04 “Deputy commissioner” means the deputy commissioner of the department.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. (See Revision Note at chapter heading for Emp 100) #10080, *eff 01-30-12*; renumbering by #10193, INTERIM (from Emp 101.03) DO NOT EXPIRE

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. (See Revision Note at chapter heading for Emp 100) #10080, *eff 01-30-12*; renumbering by #10193, INTERIM (from Emp 101.06) DO NOT EXPIRE

Emp 101.06 “Equivalent or better work” means work which based on each of the criteria at 282-A:32, I(d) (1)(A) through (E), is not less suitable

Source. #10193, INTERIM, *eff 10-01-12*, EXPIRES: 4-1-13; ss by #10329-A, *eff 05-07-13* DO NOT EXPIRE

Emp 101.07 “House counsel” means the department’s general counsel and counsel.

Source. (See Revision Note at chapter heading for Emp 100) #10080, *eff 01-30-12*; renumbered by #10193, INTERIM (from Emp 101.04) DO NOT EXPIRE

Emp 101.08 “Immediately available” means based on the current labor market the claimant is likely to successfully obtain such work in 27 or fewer calendar days.

Source. #10193, INTERIM, *eff 10-01-12*, EXPIRES: 4-1-13; ss by #10329-A, *eff 05-07-13* DO NOT EXPIRE

Emp 101.09 "Most recent employer" - REPEALED

Source. #10193, INTERIM, *eff 10-1-12*, EXPIRED: 4-1-13; New. #10329-A, *eff 5-7-13*; rpld by #12391, *eff 9-28-17*

Emp 101.10 “Not immediately available” means based on the current labor market the claimant is not likely to successfully obtain such work in 27 or fewer calendar days.

Source. #10193, INTERIM, *eff 10-01-12*, EXPIRES: 4-1-13; ss by #10329-A, *eff 05-07-13* DO NOT EXPIRE

Emp 101.11 “Permanent work” means either work with no definite end date that is expected to last more than 26 weeks from the beginning date of such work, or work with a definite end date that is more than 26 weeks from the beginning date of such work.

Source. #10193, INTERIM, *eff 10-01-12*, EXPIRES: 4-1-13; ss by #10329-A, *eff 05-07-13* DO NOT EXPIRE

Emp 101.12 “Services” means the performance of labor for the benefit of another.

Source. (See Revision Note at chapter heading for Emp 100) #10080, *eff 01-30-12*; renumbering by #10193, INTERIM (from Emp 101.07) DO NOT EXPIRE

Emp 101.13 “Substantially less favorable” means in the case of wages, total remuneration at a rate of less than 80 percent of the prevailing rate, including benefits, and in the case of non-remuneration conditions, materially reduced below the standard under which the majority of individuals customarily work.

Source. #10193, INTERIM, eff 10-01-12, EXPIRES: 4-1-13; ss by #10329-A, eff 05-07-13 DO NOT EXPIRE

Emp 101.14 “Temporary work” means work with no definite end date that is expected to last 26 or fewer weeks from the beginning date of such work, or work with a definite end date that is 26 or fewer weeks from the beginning date of such work.

Source. #10193, INTERIM, eff 10-01-12, EXPIRES: 4-1-13; ss by #10329-A, eff 05-07-13 DO NOT EXPIRE

Emp 101.15 “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. (See Revision Note at chapter heading for Emp 100) #10080, eff 01-30-12; renumbering by #10193, INTERIM (from Emp 101.08) DO NOT EXPIRE

PART Emp 102 **DESCRIPTION OF THE DEPARTMENT**

Emp 102.01 Commissioner; Commissioner’s Office. The department is under the direction of the commissioner.

(a) The commissioner, senior administrator for the department, implements the policies and programs of the department, submits the budget and has a grant of authority pursuant to RSA 282-A:112.

(b) The commissioner’s office is responsible for the general oversight and operational needs of the department and the supervision of the department’s various bureaus which are herein described.

Source. (See Revision Note at chapter heading for Emp 100) #10080, eff 01-30-12 DO NOT EXPIRE

Emp 102.02 Deputy Commissioner. The deputy commissioner is responsible for all:

(a) Duties assigned to him or her by the commissioner; and

(b) Powers and duties of the commissioner in the event that the commissioner is, for any reason, unable to carry them out.

Source. (See Revision Note at chapter heading for Emp 100) #10080, eff 01-30-12 DO NOT EXPIRE

Emp 102.03 House Counsel.

(a) The position of house counsel is established by RSA 282-A: 136.

(b) The house counsel includes the department’s general counsel and counsel.

(c) The general counsel and counsel are appointed by the commissioner.

- (d) The general counsel and counsel are responsible for all duties assigned by the commissioner

Source. (See Revision Note at chapter heading for Emp 100)
#10080, eff 01-30-12 DO NOT EXPIRE

Emp 102.04 Employment Service Bureau.

- (a) The function of the employment service bureau is to operate the department's free public employment service.
- (b) The employment service bureau helps people find work through work search programs, employment information and economic and labor market information.
- (c) The employment service bureau helps employers with job openings, provides economic and labor market information which benefits the employer in making informed decisions about their business, relative to the economy

Source. (See Revision Note at chapter heading for Emp 100)
#10080, eff 01-30-12 DO NOT EXPIRE

Emp 102.05 Unemployment Compensation Bureau.

- (a) The unemployment compensation bureau is responsible for:
- (1) Paying benefits to eligible claimants temporarily unemployed or underemployed through no fault of own; and
 - (2) Collecting taxes from employers to fund the benefit payments.
- (b) The advisory council on unemployment compensation is a component of the unemployment compensation bureau and is responsible for:
- (1) Aiding the commissioner in formulating polices and discussing problems related to the administration of RSA 282-A; and
 - (2) Assuring impartiality and freedom from political influence in the solution of such problems.

Source. (See Revision Note at chapter heading for Emp 100)
#10080, eff 01-30-12 DO NOT EXPIRE

Emp 102.06 Economic and Labor Market Information Bureau.

- (a) The function of the economic and labor market information bureau is to develop and disseminate labor market information and measure labor market outcomes. These activities assist public officials, private employers, educators and trainers, and the public in making decisions that promote economic opportunity and the efficient use of state labor resources.
- (b) The economic and labor market information bureau is the resource for employment statistics, demographics, and economic and labor market information in New Hampshire, including the unemployment rate.

Source. (See Revision Note at chapter heading for Emp 100)
#10080, eff 01-30-12 DO NOT EXPIRE

PART Emp 103 **PUBLIC REQUESTS FOR INFORMATION**

Emp 103.01 Obtaining Records.

- (a) To the extent allowed by law, the department shall permit interested persons and/or entities to examine and copy department records.
- (b) Requests for information may be made by writing to the department, at 45 South Fruit Street, Concord, New Hampshire 03301 or by calling 224-3311.
- (c) The person or entity that requests copies of department records shall pay the actual costs of copying.

Source. (See Revision Note at chapter heading for Emp 100)
#10080, eff 01-30-12 DO NOT EXPIRE

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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 45 South Fruit 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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 DO NOT EXPIRE

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 e-mail notice pursuant to Emp 405.01, Emp 405.03, or Emp 405.05, or by first class mail to the other interested parties and third party administrators or other representatives, and an appeal tribunal chairman shall by e-mail notice pursuant to Emp 405.01, Emp 405.3 or Emp 405.5, or by first class mail send notice of the time and place of hearing to all interested parties and third party administrators or other representatives. 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 e-mail notice pursuant to Emp 405.01, Emp 405.03, or Emp 405.05, or by first class mail to the interested parties, third party administrators, or other representatives unless the commissioner finds:

- (1) The interested parties, or their third party administrators, or other representatives 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, notice of denial of access shall be given orally by the chairman, but where the action taken affects more than one appeal such notice shall be in writing and sent by e-mail notice pursuant to Emp 405.01, e-mail notice pursuant to Emp 405.03, or 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) Subjects to be considered at a prehearing conference may be:

- (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 be in person, or by video conference that shall allow parties to view and hear witnesses as testimony is being presented and to cross-examine, subject to (x) and (y) below.

(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; ss by #9526, *eff 8-17-09* DO NOT EXPIRE

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; ss by #10673, eff 9-22-14

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 the commissioner's 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 the commissioner's 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 ss by #10673, eff 9-22-14

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 the commissioner's 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;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (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 the commissioner's designee from scheduling a hearing upon the petition should the commissioner or the commissioner's designee 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 ss by #10673, eff 9-22-14

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 the commissioner's 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 ss by #10673, eff 9-22-14

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 the commissioner's 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 ss by #10673, eff 9-22-14

Emp 204.06 Decision. If there is an objection to a petition or a petition is not otherwise approved, the commissioner or the commissioner's 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 the commissioner's 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 ss by #10673, eff 9-22-14

Emp 204.07 Waiver of Rules.

- (a) The commissioner or his designee shall waive 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 waiver 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 ss by #10673, eff 9-22-14

PART Emp 205 **DECLARATORY RULINGS**

Emp 205.01 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; renumbering by #10055 (formerly Emp 205.02) DO NOT EXPIRE

Emp 205.02 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 205.01(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; renumbering by #10055 (formerly Emp 205.03) DO NOT EXPIRE

Emp 205.03 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; renumbering by #10055 (formerly Emp 205.04) DO NOT EXPIRE

Emp 205.04 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; renumbering by #10055 (formerly Emp 205.05) DO NOT EXPIRE

PART Emp 206 **RECORDS**

Emp 206.01 Destruction of Records. Except when not allowed under Emp 207.32 (b) 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 ss by #10673, eff 9-22-14

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

Emp 207.03 “Party” means “Interested Party” as defined at RSA 282-A:42, III.

Source. #7246, eff 4-30-00; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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 legible; and
- (3) Indicate

a. Who is filing the document and

b. If the document is being filed by a representative, the party for whom the document is being filed.

(b) A party or representative's filing of a document with the department shall constitute certification that:

- (1) The filer has read the document;
- (2) The filer is authorized to file it;
- (3) To the best of the filer'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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08; ss by #9526, eff 8-17-09 DO NOT EXPIRE

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, by e-mail notice pursuant to Emp 405.01, e-mail notice pursuant to Emp 405.03, 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 or by e-mail notice pursuant to Emp 405.5, shall constitute delivery to the party.

Source. #7246, eff 4-30-00; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08; ss by #9296, eff 10-17-08; ss by #9526, *eff 8-17-09* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

Emp 207.19 Intervention. A non-party shall not intervene in a matter pending before the department.

Source. #7246, eff 4-30-00; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

Emp 207.21 Failure to Attend Hearing.

(a) If any party to whom notice has been given in accordance with Emp 207.14 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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, *ss by #9296, eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08* DO NOT EXPIRE

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.

(f) Evidence concerning a claimant's separation from employment shall only be considered relevant if the evidence concerns an issue or fact which any party states may have been a factor in the separation from employment.

(g) Evidence concerning a claimant's separation from employment which is discovered after the separation shall only be considered relevant if the evidence concerns either:

- (1) Wrongdoing that would have led to the claimant's termination had the employer known of it prior to the separation; or
- (2) The credibility of a party or witness.

Source. #7246, eff 4-30-00; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08 DO NOT EXPIRE*

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08 DO NOT EXPIRE*

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08 DO NOT EXPIRE*

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, *eff 10-17-08 DO NOT EXPIRE*

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

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; ss by #9126, INTERIM, eff 4-20-08, EXPIRES: 10-17-08, ss by #9296, eff 10-17-08 DO NOT EXPIRE

PART Emp 208 **RULEMAKING PETITIONS**

Emp 208.01 Petition for Adoption, Amendment or Repeal or Rules.

(a) Under the provisions of RSA 541:4, 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; and
- (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 changes 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 ; ss by #10055, eff 12-20-11
(formerly Emp 205.01) DO NOT EXPIRE

PART Emp 209 **RULEMAKING PUBLIC COMMENT HEARINGS**

Emp 209.01 Purpose. The purpose of this part is to provide a uniform procedure for the conduct of public hearings at which comment from the general public will be solicited for evaluation and consideration by the department relative to rulemaking.

Source. #10056, eff 12-20-11 DO NOT EXPIRE

Emp 209.02 Scope.

- (a) These rules shall apply to all hearings required by state law to be conducted by the department at which public comment shall be solicited, except that they shall not apply to adjudicative hearings.
- (b) If any requirement set by these rules conflicts with an applicable statute such other authority shall control.

Source. #10056, eff 12-20-11 DO NOT EXPIRE

Emp 209.03 Notice.

- (a) A public comment hearing concerning rulemaking shall be commenced by placing notice of the hearing in the "Rulemaking Register" so that it shall appear at least 20 days prior to the hearing date.
- (b) Notice for rulemaking public comment hearings shall comply with RSA 541-A:6, I.

- (c) Nothing in these rules shall prohibit the department from giving greater notice than the minimums set out in this part.

Source. #10056, eff 12-20-11 DO NOT EXPIRE

Emp 209.04 Media Access.

- (a) Public comment hearings shall be open to the print and electronic media.
- (b) The commissioner or designee shall place limits on the activities of the media to avoid disruption in the following ways:
 - (1) Limiting the placement of television cameras to certain locations in the hearing room; and
 - (2) Prohibiting interviews from being conducted within the hearing room during the hearing.

Source. #10056, eff 12-20-11 DO NOT EXPIRE

Emp 209.05 Moderator.

- (a) The hearing shall be presided over by a moderator who shall be the commissioner or a designee.
- (b) The moderator shall:
 - (1) Call the hearing to order;
 - (2) Cause a recording of the hearing to be made;
 - (3) Place limits on the media to avoid disruption as set out in Emp 209.04(b);
 - (4) Recognize those who wish to be heard and establish the order thereof;
 - (5) Limit the time for each speaker, as set out in Emp 209.06(b);
 - (6) Remove or have removed any person who disrupts the hearing;
 - (7) Adjourn the hearing; and
 - (8) Provide opportunity for the submission of written comments.

Source. #10056, eff 12-20-11 DO NOT EXPIRE

Emp 209.06 Public Participation.

(a) Any person who wishes to speak on the issue or issues which are the subject of the hearing shall place his or her name and address on a speakers' list before the last speaker on the list has finished speaking. All whose names appear on the speakers' list, as provided, shall be afforded reasonable time to speak at the hearing. Reasonable time shall be determined considering the number of people who wish to be heard, the time and the availability of the facility.

- (b) The board, through the moderator, shall:
 - (1) Refuse to recognize a person who refuses to give his or her full name and address;

- (2) When a group or organization wishes to comment, limit the group to no more than 3 spokespersons, provided that the members who are present shall be allowed to enter their names and addresses into the record as supporting the position by the group or organization;
 - (3) Revoke recognition of a speaker who speaks or acts in an abusive or disruptive manner; or
 - (4) Revoke recognition of a speaker who refuses to keep his or her comments relevant to the issue or issues which are the subject of the hearing.
- (c) Written comments may be submitted any time from the time notice has been published until the record has been closed by the moderator, which shall not be less than 10 calendar days after the hearing.
- (d) In the event that the number of speakers who wish to give oral testimony relevant to the issue or issues involved exceed that number which can be heard within a reasonable period of time subject to facility availability and length of the hearing, the hearing shall be reconvened pursuant to RSA 541-A:11, III to afford such persons the opportunity to be heard. Speakers may elect to submit written testimony in lieu of additional oral hearing.

Source. #10056, eff 12-20-11 DO NOT EXPIRE

PART Emp 210 **EXPLANATION OF ADOPTED RULES**

Emp 210.01 Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the department including:

- (a) The name and address of the person making the request; or
- (b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.

Source. #10057, eff 12-20-11 DO NOT EXPIRE

Emp 210.02 Contents of Explanation. The department shall, within 90 days of receiving a request in accordance with Emp 210.01, provide a written response which:

- (a) Concisely states the meaning of the rule adopted;
- (b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and
- (c) States, if the department did so, why the department overruled any arguments and considerations presented against the rule.

Source. #10057, eff 12-20-11 DO NOT EXPIRE

PART Emp 211 **APPEAL FROM DENIAL OF CONTINUED ELIGIBILITY FOR BENEFITS**

Emp 211.01 Required Department Actions.

- (a) When the department becomes aware of information that creates an issue concerning a claimant's eligibility to continue receiving unemployment compensation benefits, the department shall

inform the claimant of the possibility that the claimant might receive a determination denying benefits.

- (b) After such notification in (a), the department shall:
- (1) Conduct fact-finding by asking the claimant and/or other parties questions about the issue; and
 - (2) Assess the information received.
- (c) If the information received has an effect on past, present or future eligibility, the department shall issue a determination of eligibility to the interested parties in accordance with RSA 282-A. The determination shall include the right to appeal and the opportunity for a hearing regarding the issue denying the claimant's continued eligibility to receive unemployment compensation benefits.
- (d) If the claimant appeals the determination the department shall notify the claimant of the option to either:
- (1) Continue receiving benefit payments for any week denied by the determination until the appeal tribunal rules on the appeal in accordance with Emp 207; or
 - (2) Allow benefit payments to be suspended until the appeal tribunal makes a decision on his or her claim.
- (e) If the appeal tribunal finds the claimant eligible, the claimant shall receive all benefits pending during the weeks suspended and those going forward from the date of the appeal tribunal decision, if the claimant is otherwise eligible.
- (f) If the claimant elects the option in Emp 211.01 (d) (1) and after a final decision on appeal, he or she is found ineligible for those weeks, the department shall determine whether the individual is with fault in causing the overpayment in accordance with Emp 502.03

Source. #10192, eff 9-27-12

CHAPTER Emp 300 EMPLOYER REQUIREMENTS

PART Emp 301 DEFINITIONS

Emp 301.01 "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. (See Revision Note at chapter heading for Emp 100) #10081, eff 01-30-12, EXPIRED: 01-30-22

New. #13344, eff 2-17-22

Emp 301.02 "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.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. (See Revision Note at chapter heading for Emp 100) #10081, eff 01-30-12, EXPIRED: 01-30-22

New. #13344, eff 2-17-22

Emp 301.03 “Compact disk” means a circular disc that is designed to store computer data in the form of text.

Source. #10349, eff 05-22-13

Emp 301.04 “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. (See Revision Note at chapter heading for Emp 100) #10081, eff 01-30-12; renumbering by #10349 (from Emp 301.03), EXPIRED: 01-30-22

New. #13344, eff 2-17-22

Emp 301.05 “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. (See Revision Note at chapter heading for Emp 100) #10081, eff 01-30-12; renumbering by #10349 (from Emp 301.04), EXPIRED: 01-30-22

New. #13344, eff 2-17-22

Emp 301.06 “Diskette” means 3.5” high density, 3.5” double density floppy disk, or both;

Source. #10349, eff 05-22-13

Emp 301.07 “Magnetic media” means compact disk or diskette;

Source. #10349, eff 05-22-13

Emp 301.08 “Multistate employing unit” means an employing unit which has employees, or individuals who contract for services, or both, in 2 or more states.

Source. (See Revision Note at chapter heading for Emp 100) #10081, eff 01-30-12; renumbered by #10349 (from Emp 301.05), EXPIRED: 01-30-22

New. #13344, eff 2-17-22

Emp 301.09 “Work state” means that state in which an individual is expected to perform a plurality of the individual’s services.

Source. (See Revision Note at chapter heading for Emp 100) #10081, eff 01-30-12; renumbered by #10349 (from Emp 301.06), EXPIRED: 01-30-22

New. #13344, eff 2-17-22

PART Emp 302 **PAYMENTS IN KIND**

Emp 302.01 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 302.01(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 302.01(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 \$112.98;
- (2) Full board and room per day \$16.14;
- (3) Meals per week \$74.55;
- (4) Meals per meal \$3.55;
- (5) Lodging per week \$38.43; and
- (6) Lodging per day \$5.49.

(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 302.01(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; renumbered by #10081 (formerly Emp 301.01) ss by #10673, eff 9-22-14

Emp 302.02 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

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- c. Are not furnished for the purpose of additional compensation; and
- (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; renumbered by #10081 (formerly
Emp 301.02) ss by #10673, eff 9-22-14

Emp 302.03 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; renumbered by #10081 (formerly Emp 301.03) ss by #10673, eff 9-22-14

PART Emp 303 **RECORDS AND REPORTS**

Emp 303.01 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";
- (4) Within 30 days of the employing unit transferring all, or a portion of, the employer's trade, business, or workforce to another employing unit; and
- (5) As often as required by the department for the purpose of clarifying inconsistent or out-of-date information.

(b) Employing units shall supply on the "Employer Status Report" the following information:

- (1) Full business name and telephone number;
- (2) Federal identification number;
- (3) Address of principal place of business and other employing unit locations, if more than one, within New Hampshire. If there is no NH location indicate other state;
- (4) Mailing address if different than subparagraph (3) above;
- (5) For each establishment or operation maintained in New Hampshire the:
 - a. Principal activity; and
 - b. Principal product, processes or services;
- (6) Type of business entity;
- (7) If a corporation or LLC, the:
 - a. Full corporate or LLC name;
 - b. Date of registration; and
 - c. State of registration;
- (8) If the business is a non-profit organization, a copy of its letter of exemption;
- (9) The date on which employment was first furnished in New Hampshire;
- (10) The date on which wages were first paid in New Hampshire;
- (11) The date on which it ceased to furnish employment in New Hampshire, if any, and the reason for cessation;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (12) If it will be subject to the Federal Unemployment Tax Act in the current year;
- (13) 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;
- (14) If it acquired any of the organization, trade, business, workforce or 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;
 - 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; and
 - f. The type of change occurring such as:
 - 1. Reorganization;
 - 2. Transfer of trade or business;
 - 3. Change of entity;
 - 4. Transfer of workforce and if so complete the "Trade, Business and Workforce Transfer Report";
 - 5. Purchase assets of business;
 - 6. Merger; and
 - 7. Lease of business;
- (15) Its gross payroll for each quarter of the current and two prior calendar years;
- (16) If it expects to have a gross payroll of at least \$1,500 in a calendar quarter and:
 - a. If answering yes, indicate the earliest quarter and year this occurred (or will occur);
 - b. If answering no, indicate whether it has or expects to employ at least one worker in 20 different weeks in a calendar year, and if so, when did or will this occur;
- (17) By week, the number of workers to whom it furnished employment in New Hampshire in the current and all preceding calendar years;
- (18) If it also engaged any self-employed individuals, subcontractors or consultants and if so, for each, their:
 - a. Name;
 - b. Trade; and
 - c. Address;
- (19) 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;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(20) 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 regarding information in the report and any attachments made under penalty of law (RSA 282-A:166); and

(21) A list of the owner, all partners, authorized corporate officers and authorized members of limited liability companies including the:

- a. Affirmation of accuracy regarding information in the report and any attachments made under penalty of law (RSA 282-A:166);
- b. Typed or printed name of each individual;
- c. Social security number of each individual;
- d. Resident address of each individual;
- e. Title of each individual; and
- f. 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, EXPIRED: 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; ss by #8946, eff 7-21-07; renumbered by #10081 (formerly Emp 302.01); ss by #10973, eff 11-12-15

Emp 303.02 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 and every authorized agent, which reports wages on behalf of one or more subject employers, shall file the quarterly "Employer Quarterly Tax and Wage Report" via paper report, online, or magnetic media depending on the number of employees as follows:

(1) If reporting wages on a total of 1-50 employees, the employer or agent shall file in the following manner:

- a. Parts 1 and 2 which comprise the complete "Employer Quarterly Tax and Wage Report" via paper report; or
- b. Parts 1 and 2 which comprise the complete "Employer Quarterly Tax and Wage Report" online at www2.nhes.nh.gov/webtax; or
- c. Part 1 via paper report and Part 2 via magnetic media;

(2) If reporting wages on a total of 51-500 employees, the employer or agent shall file in the following manner:

- a. Parts 1 and 2 which comprise the complete "Employer Quarterly Tax and Wage Report" online at www2.nhes.nh.gov/webtax; or
- b. Part 1 via paper report and Part 2 via magnetic media; or

(3) If reporting wages on a total of 501 or more employees, the employer or agent shall file Part 1 via paper report and Part 2 via magnetic media.

(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) An employer or agent who files the "Employer Quarterly Tax and Wage Report" via paper report shall supply the following typewritten or printed in black ink in all capital letters:

- (1) State employer account number;
- (2) The "Name Control";
- (3) Federal employer identification number;
- (4) The calendar quarter for which the report is being filed;
- (5) The due date of the report;
- (6) The employer's name and business location address;
- (7) Whether there have been any business changes;
- (8) The specific nature of any business changes including:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- 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;

(9) The signature and information required by Emp 303.04 of the person providing the information concerning the specific nature of any business change;

(10) The number of workers in the pay period including the 12th of the month for each of the 3 months in the calendar quarter;

(11) The total gross wages pursuant to RSA 282-A:15 and Emp 302, paid in the quarter;

(12) The wages paid during the quarter per worker during the calendar year in excess of the amount subject to taxation;

(13) The net taxable wages;

(14) The employer's tax rate for the calendar quarter;

(15) The tax due for the calendar quarter;

(16) The amount of interest at 1% per month on the total tax due if payment is delinquent;

(17) The amount of the late-filing fee of 10% of the tax due, or a minimum of \$25.00 if the report is delinquent;

(18) The net amount to be paid as follows:

- a. By indicating zero if the total due is less than \$1.00;

- b. By including any previous balance if such previous balance has been provided on the form by the department;

(19) The information and signatures required by Emp 303.04;

(20) For each employee during the calendar quarter the employee's:

- a. Name;

- b. Social security number; and

- c. Gross wages; and

(21) The total gross wages for each page providing the information required at subparagraph 20 above.

(g) If the department is unable to process the paper report because of the employer or agent's failure to either complete Part 1 or Part 2 of the paper report when filing the entire "Employer Quarterly Tax and

Wage Report” via paper report, or, to complete Part 1 as required by Emp 303.02(f) (1)-(19) when filing Part 1 via paper report, the following shall occur:

- (1) The department shall require by letter that the employer or agent correct and resubmit or resubmit the applicable Part (s) of the paper report;
- (2) The employer or agent shall resubmit the applicable Part (s) of the paper report to the department within 14 days of the date of the department’s letter; and
- (3) If the employer or agent fails to make corrections and resubmit or resubmit the paper report within the deadline date, the “Employer Quarterly Tax and Wage Report” shall be considered untimely and late filing fees shall be assessed in accordance with RSA 282-A:142

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; and 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; renumbered by #10081 (formerly Emp 302.02; amd by #10349, eff 05-22-13

Emp 303.021 Filing Quarterly Reports Online.

(a) In order to file the “Employer Quarterly Tax and Wage Report” for the first time online as specified in Emp 303.02 (d) (1) and (2), the employer or agent shall register with the New Hampshire Unemployment Insurance System (NHUIS) to obtain a password by going to the NH employment security homepage at www.nhes.nh.gov and logging on to the Employer Webtax system at <https://www2.nhes.nh.gov/webtax>, revised on 4/1/2013, and complying with the online procedures.

(b) If a permanent password has been obtained, the employer or agent shall complete and file the “Employer Quarterly Tax and Wage Report” online, by going to the “NHES Web Tax System” page via the NH employment security homepage as described in (a) or going directly to the “NHES Web Tax System” page at <https://www2.nhes.nh.gov/webtax>, revised on 4/1/2013, and complying with the online procedures.

(c) If payment for employer contributions is returned due to insufficient funds or because of the employer or agent’s failure to indicate the correct bank routing and bank account numbers online, the employer’s account shall be assessed a fee of a minimum of \$25 or 5% of the face amount of payment in accordance with RSA 6:11-a.

(d) If the bank discovers that the employer or employer’s agent transposed either the bank routing or bank account number provided during the electronic funds payment online, but was able to process the check correctly, and subsequently charges an administrative cost to the department, the department shall pass that cost to the employer or employer’s agent.

Source. # 10349, eff 5-22-13

Emp 303.022 Filing Quarterly Reports via Magnetic Media.

An employer or agent who files Part 2 of the “Employer Quarterly Tax and Wage Report” via magnetic media, as specified in Emp 303.02 (d) (1), (2) and (3), shall comply with the following:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) Prior to submitting Part 2 of the “Employer Quarterly Tax and Wage Report” the employer or agent shall prepare and submit a test compact disk or diskette as follows:

(1) The employer or agent shall:

a. Submit a test compact disk or diskette as a compact disk or compact disk read-write or diskette on which Part 2 of the “Employer Quarterly Tax and Wage Report” containing the information specified in Emp 303.02 (f) (11), (20) and (21), shall be written and saved as a straight American Standard Code for Information Interchange file, with individual records delimited by carriage return/line feed Hex OD OA, and not in word processor format or in spreadsheet format and

b. Include an external label on each compact disk or diskette, and, if there is inadequate room on the label to provide all information, add a supplemental list which contains the following information:

1. Employer or agent’s New Hampshire employer Account Number;
2. Calendar quarter covered by the report; and
3. Whether the record layout is in the state or federal format;

c. Secure the external label to the front face of the magnetic media without covering the working components.

d. Explain whether there have been any changes in file format in an official letter submitted on paper specifying the changes;

e. Include an electronic signature identifying the individual responsible for the accuracy of the report; and

f. Timely deliver the magnetic media, pursuant to Emp 304.01, with the “Employer Quarterly Tax and Wage Report”, either:

1. By mailing to:

NH Employment Security
Attention: Cashier
P.O. Box 2058
Concord, New Hampshire 03302-2058; or

2. By delivery to the department, at:

NH Employment Security
45 South Fruit Street
Concord, New Hampshire 03301; and

(2) The employer or agent shall only submit a test file prior to submitting the first magnetic media report. The employer or agent shall not be required to submit future test files unless changes have been made in format.

(b) Upon being advised by the department that the department is able to process the test compact disk or diskette, the employer or agent who elects to file Part 2 of the “Employer Quarterly Tax and Wage Report” by magnetic media in Emp 303.02 (d) (1) and (2) or are required to do so in Emp 303.02 (d)(3) shall prepare and submit the magnetic media in accordance with the requirements in this section. The

requirements which had related to the preparation and submission of the test compact disk or diskette as set forth in Emp 303.022 (a) (1) shall also apply;

(c) An employer or agent may submit via paper report a portion of the “Employer Quarterly Tax and Wage Report” consisting of the confidential payroll as a supplement to the information on the magnetic media as follows:

- (1) The paper report shall be included as an enclosure with the compact disk or diskette. The paper report shall not be a duplicate of the information on the compact disk or diskette; and
- (2) The confidential payroll accompanying the compact disk or diskette shall be marked as confidential;

(d) The employer or agent shall enclose remittance of any amount due when submitting their magnetic media in accordance with Emp 303.02 (d) (1), (2) and (3).

(e) If the department is unable to process magnetic media because of formatting errors, coding errors or when magnetic media is received in a physically damaged condition, the following shall occur:

- (1) The department shall request by letter that the employer or agent correct and resubmit or resubmit the magnetic media; and
- (2) The employer or agent shall resubmit the magnetic media to the department within 14 days of the date of the department’s letter. If the employer or agent fails to make corrections and resubmit or resubmit the magnetic media within the deadline date, the “Employer Quarterly Tax and Wage Report” shall be considered untimely and late filing fees shall be assessed in accordance with RSA 282-A:142;

(f) An employer or agent who wishes to make corrections to wage information previously reported shall comply with Emp 303.023;

(g) The employer or agent shall immediately notify the department if circumstances such as computer processing problems delay the production of the “Employer Quarterly Tax and Wage Report”;

(h) The department shall direct all technical matters such as formatting and coding to the agent. The department shall direct other matters such as incorrect or incomplete reports, and late filing to the employer;

(i) The data file submitted by the employer or agent for test, original or corrected magnetic media submissions shall conform to either the New Hampshire Employment Security format or the federally prescribed magnetic media reporting and electronic filing format as described in (j)-(k) respectively;

(j) The New Hampshire employment security format shall meet the following criteria:

- (1) All data records shall be a fixed length of 47 bytes; and
- (2) Each record shall contain the following data elements:
 - a. The employee social security number recorded as a 9 byte numeric filed with no hyphenations as follows:
 1. The number shall consist of 9 digits;
 2. One of the first 3 digits shall include a positive digit;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

3. The first three digits shall be less than 800; and
4. If the social security number is not available, the field shall be zero filled;

b. The name of the employee shall be limited to and recorded as a 20 byte alphanumeric field as follows:

1. The name shall be left justified;
2. All unused positions shall be filled with blanks;
3. No punctuation such as commas, periods, or hyphens shall be used;
4. Leading titles shall be omitted from the name field;
5. Any leading letters, such as O, D, and so forth, shall not be separated from the rest of the surname by a blank, but, if the employer or agent chooses to separate the rest of the surname from the leading letter, it shall be separated by an apostrophe;
6. The name shall be formatted with surname first;
7. The name shall not be in lower case letters; and
8. "Sr.," "Jr.," and numeric designation shall follow the first name;

c. The gross wages paid to an employee during the calendar quarter covered by the "Employer Quarterly Tax and Wage Report" in a 9 byte numeric field as follows:

1. The wages shall be in numeric and shall not include a dollar sign;
2. The wages shall include dollars and cents and shall not include a decimal point;
3. There shall be no punctuation including commas;
4. The wages shall be a positive, unsigned figure. No negative amount shall appear in the record
5. The wages shall be right justified;
6. The leading spaces shall be zero filled;
7. There shall be no packed fields;
8. If the gross wages of an employee exceed the 9 positions allocated, the balance shall be reported in a second record for that employee; and
9. The amount of wages reported in the second record shall not be equal to the amount in the first record; and

d. The State employer account number recorded as a 9 byte numeric field as follows:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

1. The account number shall not contain hyphens;
2. The account number shall be right justified; and
3. The leading spaces shall be zero filled.

(k) If an employer or agent is currently using the federal magnetic media reporting and electronic filing format in accordance with specifications set out in the Social Security Administration Publication No. 42-007, EFW2 Tax Year 2010, available at <http://www.socialsecurity.gov/employer/efw/10efw2.pdf> as cited in Appendix B, in order to report wages to the federal government, the employer or agent may use the same format for its “Employer Quarterly Tax and Wage Report”; and

(l) An employer or agent who elects to use the federal magnetic media reporting and electronic filing format shall:

(1) Notify the department when submitting the test magnetic media prior to filling their quarterly reports in that format; and

(2) Use the following record types:

a. Code RA, Submitter Record in order to:

1. Identify the organization submitting the file;
2. Describe the file;
3. Identify the organization to be contacted by the Social Security Administration; and
4. Identify the means of contact;

b. Code RE, Employer Record in order to identify the employer whose employee wage and tax information is being reported;

c. Code RS, State Wage Record in order to report the gross quarterly wages and quarterly unemployment compensation data for State filing; and

d. Code RF, Final Record in order to indicate the end of the file.

Source. #10349, eff 05-22-13

Emp 303.023 Making Corrections to Tax and Wage Information Previously Reported.

(a) In order to make corrections in information on 1-50 employees, previously reported on the “Employer Quarterly Tax and Wage Report”, the employer or agent shall complete and file a paper report on a form entitled “Tax and Wage Report Adjustment Form” pursuant to (c) and (d) below.

(b) In order to make corrections to information on 51 or more employees, previously reported on the “Employer Quarterly Tax and Wage Report”, the employer or agent shall:

- (1) Complete and file a paper report on a form entitled “Tax and Wage Report Adjustment Form” pursuant to (c) and (d) below, excluding (d) (13); and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) Resubmit Part 2 of the “Employer Quarterly Tax and Wage Report”, via magnetic media pursuant to Emp 303.022.

(c) The employer or agent shall obtain the “ Tax and Wage Report Adjustment Form” by going online to www.nhes.nh.gov/forms/documents/twadjust.pdf.

(d) The employer or agent shall complete the form as follows:

(1) Identify the employer name and account number;

(2) Identify the last month of the quarter in which corrections are being made;

(3) Make corrections to Part 1 by completing lines 7 through 13;

(4) On line 7, for each month, report the number of covered workers who worked during or received pay for any part of the payroll period which includes the 12th of the month and, if there are none to report, enter zero;

(5) On line 8, identify the amount previously reported relative to total wages, the correct amount and the difference between the 2 amounts;

(6) On line 9, identify the amount previously reported relative to excess wages, the correct amount and the difference between the 2 amounts;

(7) On line 10, identify the amount previously reported relative to taxable wages, the correct amount and the difference between the 2 amounts;

(8) On line 11, identify the amount previously reported relative to the unemployment insurance tax rate, the correct amount and the difference between the 2 amounts;

(9) On line 12, identify the amount previously reported relative to administrative contribution rate, the correct amount and the difference between the 2 amounts;

(10) On line 13, identify the amount previously reported relative to total tax due, the correct amount and the difference between the 2 amounts;

(11) Calculate and show the interest at 1% per month on the total tax due if payment is delinquent;

(12) Calculate and show the total balance or credit due;

(13) Make corrections to Part 2, by completing the rows under columns entitled social security number, employee name, amount previously reported and correct amount;

(14) Print the form;

(15) Sign the form and indicate the title of the individual completing the form, the date the form was completed, and phone number where the individual may be contacted; and

(16) Mail the form to:

NH Employment Security
Attention Cashier

PO Box 2058
Concord, New Hampshire 03302-2058

Source. #10349, eff 05-22-13

Emp 303.03 Information Regarding Reported Earnings or Hours.

(a) Third party administrator (“TPA”) means a third party acting as a registered agent for an employer pursuant to Emp 303.10.

(b) If the department determines that it is necessary to verify the accuracy of a claimant’s reported earnings or hours worked during a week for which he or she has submitted a claim for benefits, the department shall determine the claimant’s earnings or hours worked for such week from information contained in department records; or

(c) If such information cannot be obtained from department records, the department shall require the claimant’s employer or TPA to provide such information by:

(1) Posting a notification on the employer’s or TPA’s online homepage requiring the employer or TPA to respond to such request; and

(2) Sending an equivalent notification to the employer or TPA by email or United States mail, depending on the employer’s or TPA’s preference as established during initial registration.

(d) Upon receiving such notification, the employer or TPA shall provide the requested information online by choosing the prompt “Response to Work and Earning Request” at the employer’s or TPA’s homepage and shall complete and submit the “Response to Work and Earning Request” form (rev-07-18).

(e) If the employer is unregistered, the department shall send a notification to the employer by United States mail requiring the employer to report the claimant’s earnings or hours worked in accordance with this section. The department shall provide a temporary password with the notification which the employer may use to access the department’s website and respond online.

(f) Unregistered employers who receive a notice pursuant to paragraph (e) above may respond by:

(1) Using the temporary password provided with the department’s notification to respond online;

(2) Registering to conduct business with the department online in accordance with Emp 405.04; or

(3) Requesting that the department provide a paper form as provided in paragraph (g) below.

(g) For employers who request to respond using a paper form, the department shall provide a “Payment Voucher-Report of Payment & Hours Worked” form (rev-7/18) by United States mail.

(h) The employer or TPA shall supply all information requested in this section within 7 days of:

(1) The date on which the notice of request for information is posted on the employer’s or TPA’s homepage; or

(2) The mailing date of the “Payment Voucher-Report of Payment & Hours Worked” form (rev-7/18) as indicated on the form.

(i) Failure by an employer or TPA to respond to a request for information pursuant to this section within the time limits established by paragraph (h) above may, upon review, be deemed by the department to be a waiver of the exemption from charging the employer’s account for benefits paid to a claimant during a period of continued concurrent employment under Emp 304.04.

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; ss by #9527, eff 8-17-09; renumbered by #10081 (formerly Emp 302.03); ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12587, eff 7-23-18

Emp 303.04 Authority and Identity Required.

(a) All reports and all information verification and waiver forms required by RSA 282-A:45 and Emp 303.08 submitted by or on behalf of an employer or employing unit shall:

(1) Be submitted 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 303.10;

(2) State the name and title of the individual submitting the report or form; and

(3) State the date of submission.

(b) If the report, information verification, or waiver form is prepared by an individual other than the individual submitting such material pursuant to (a)(1) above the preparer shall:

(1) Identify 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 #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; ss by #9527, eff 8-17-09; renumbered by #10081 (formerly Emp 302.04); ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12587, eff 7-23-18

Emp 303.05 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:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- 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 303.05(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; renumbered by #10081 (formerly Emp
302.05) ss by #10673, eff 9-22-14

Emp 303.06 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; renumbered by
#10081 (formerly Emp 302.06)

Emp 303.07 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; renumbered by #10081 (formerly Emp
302.07)

Emp 303.08 Notice of Claim and Verification Request Form.

(a) Whenever required by RSA 282-A:45, a “Notice of Claim and Verification Request” form, formerly known as “Request To Employer For Separation Information”, shall be sent either by e-mail notice pursuant to Emp 405.03 or by mail by the certifying officer to the employer or employing unit for whom the claimant last performed services.

(b) The certifying officer shall provide the following information on the “Notice of Claim and Verification Request” form:

- (1) The name and social security account number of the claimant;
- (2) The claimant’s benefit year beginning and ending dates;
- (3) The issue date;
- (4) The claimant’s reported dates of employment and reason for separation with the employer or employing unit;
- (5) 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 pay;
- f. Personal time off;
- g. Pension/retirement payout;
- h. Pension/retirement on-going payments; or
- f. Other; and

(6) The date by which the employer or employing unit must respond pursuant to Emp 303.08(d).

(c) The employer or employing unit shall notify the department, electronically if the employer has registered pursuant to Emp 405.04 and wishes to use this method, otherwise by hand-delivery, 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 incorrect information regarding the receipt or expected receipt of any of the separation payments listed in Emp 303.08 (b)(3).

(d) The employer or employing unit notifying the department pursuant to (c) above shall assure receipt by the department of the information within 7 calendar days from the date of mailing, which is noted on the form as the issue date, by the department of the “Notice of Claim and Verification Request” form.

(e) If the employer or employing unit’s response in the “Notice of Claim and Verification Request” form states a cause of claimant’s unemployment that would potentially disqualify the claimant, the department shall contact the employer or employing unit to obtain information regarding the separation from employment as follows:

- (1) The department shall contact the employer or employing unit, either by e-mail notice pursuant to Emp 405.03, telephone, fax, to obtain information regarding the separation from employment unless the claimant has certified the earning of sufficient wage credits to remove any disqualification pursuant to RSA 282-A:32,I; and
- (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 on-line self-service, mail-delivery, telephone, fax, or e-mail.

(f) Failure of the employer or employing unit to provide the information required by the department in Emp 303.08 (c) or (e) (2) within the periods of time set forth in Emp 303.08 (d) and (e)(2) 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.

(g) The department shall comply with the requirements of RSA 282-A:45, I (c) in the “Notice of Claim and Verification Request” form.

(h) The employer or employing unit shall indicate whether they wish to waive and release all rights to appeal prior to the determination on this claim under RSA 282-A:42-67 except for the right to request a re-determination under RSA 282-A: 46.

(i) The employer shall certify that the information furnished on the form is true and correct.

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; ss by #9527, eff 8-17-
09; renumbered by #10081 (formerly Emp 302.08); amd by
#10446, INTERIM, eff 10-21-13, EXPIRES: 4-21-14

New. #10588, eff 5-13-14

Emp 303.09 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”, pursuant to Emp 303.01, unless the employer or employing unit designates:

- (1) An alternate address or requests e-mail notification for the mailing of forms, decisions, and other materials which relate to entitlement to unemployment compensation benefits;
- (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; or
- (3) A properly authorized agent to receive materials designated in (a)(1) or (a)(2).

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; ss by #9527, eff 8-17-09; renumbered
by #10081 (formerly Emp 302.09); ss by #12480, INTERIM,
eff 2-16-18, EXPIRES: 8-15-18; ss by #12587, eff 7-23-18

Emp 303.10 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, an officer of a public or private corporation, a member or manager of a limited liability company, 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 50 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 that represents 50 or more employers may enter into a memorandum of understanding with the commissioner which allows that agent to file the complete "Employer Quarterly Tax and Wage Report" required at Emp 303.02 on magnetic media.

(f) An authorized agent responsible for receiving and responding to inquiries from the department on behalf of one or more employers shall:

(1) Respond within the deadline by which the employer it is representing was required to respond; and

(2) Respond electronically if the authorized agent has registered pursuant to Emp 405.06 and wishes to use this method, otherwise by mail, fax or telephone at the address, fax or telephone numbers provided by the department.

(g) 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.

(h) 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; ss by #9527, eff 08-17-09; renumbered by #10081 (formerly Emp 302.10); amd by #10349, eff 05-22-13

Emp 303.11 Filing Requirements. Any report required to be filed shall be considered properly filed if it:

(a) Is timely filed as required under Emp 304.01;

(b) Contains all information required under Emp 303.02 (f), Emp 303.021, Emp 303.022 or all 3 sections; and

(c) Is filed as required by Emp 303.02 (d) and Emp 303.10 (d) and (e).

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; ss by #9527, eff 08-17-09;
renumbered by #10081 (formerly Emp 302.11): ss by #10349
eff 05-22-13

Emp 303.12 Request for Wage Information.

(a) If the department determines that it requires wage information from a claimant's current or former employer because the claimant's reported earnings appear to be incorrect or missing, it shall request that information from the employer or TPA.

(b) The department shall notify the employer or TPA by:

(1) Posting a notification on the employer's or TPA's online homepage requiring the employer or TPA to respond to such request; and

(2) Sending an equivalent notification to the employer or TPA by email or United States mail, depending on the employer's or TPA's preference as established during initial registration.

(c) Upon receiving such notification, the employer or TPA shall provide the requested information online by choosing the prompt "Response to Wage Information Request" at the employer or TPA's homepage and shall complete and submit the "Request for Wage Information" form (rev-7-18).

(d) If the employer is unregistered, the department shall send notification to the employer by United States mail requiring the employer to report the claimant's earnings in accordance with this section. The department shall provide a temporary password with the notification which the employer may use to access the department's website and respond online.

(e) Unregistered employers who receive a notice pursuant to paragraph (d) above may respond by:

(1) Using the temporary password provided with the department's notification to respond online;

(2) Registering to conduct business with the department online in accordance with Emp 405.04;
or

(3) Requesting that the department provide a paper form as provided in paragraph (g) below.

(g) For employers who request to respond using a paper form, the department shall provide a "Request for Wage Information" form (rev-7/18) by United States mail.

(h) The employer or TPA shall supply all information requested within 7 days of:

(1) The date on which the notice of request for information is posted on the employer's or TPA's homepage; or

(2) The mailing date of the "Request for Wage Information" form (rev-7-18) as indicated on the form.

(i) Failure by an employer or TPA to respond to a request for information pursuant to this section within the time limits established by paragraph (h) above may, upon review, be deemed by the department to be a waiver of the exemption from charging the employer's account for benefits paid to a claimant during a period of continued concurrent employment under Emp 304.04.

Source. #7469, INTERIM, eff 4-1-01, EXPIRED: 9-28-01

New. #7619, eff 12-30-01; ss by #9527, eff 8-17-09; renumbered by #10081 (formerly Emp 302.12); ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12587, eff 7-23-18

Emp 303.13 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; and

(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 (b)(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 303.13(b).

(e) The employing unit or employer shall report either on:

- (1) A "Mass Layoff Notice" form as described at Emp 303.13(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 303.13(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 303.13(g) 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 303.13(h) which does anticipate having a reportable mass layoff shall file a "Mass Layoff Notice" form or other format allowed under Emp 303.13(e) containing the information required at Emp 303.13 (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 303.10;

(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 303.13(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 303.13(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 303.13 shall not be required to report such individual under RSA 282-A:45 and Emp 303.08.

(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; renumbered by #10081 (formerly Emp 302.13) ss by #10673, eff 9-22-14

Emp 303.14 Part-time Work Information

(a) The department shall send a “Part-time Work Information” form to an employer whenever it determines that the information is necessary for the commissioner to determine whether the individual’s claim for unemployment benefits is based on wages earned in part-time work pursuant to RSA 282-A:31, I (d) and Emp 501.15 (b)

(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 weeks for which hours worked information is needed;
- (3) The weeks for which wages earned information is needed;
- (4) The proper fax number, telephone number and mailing address for response; and.
- (5) 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 gross wages earned by the individual during each calendar week for which the information is needed;
- (3) 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
- (4) 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 303.14(f) shall mail or deliver the form timely.

(h) A “Part-time Work Information” form filed pursuant to Emp 303.14(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 303.14(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 303.14(h)(1) if postmarked.

Source. #8558, INTERIM, eff 1-31-06, EXPIRES: 7-30-06; ss by #8675, eff 7-8-06 ss by #9273, INTERIM, eff 9-20-08, EXPIRES: 3-19-09; ss by #9388, eff 2-13-09; renumbered by #10081 (formerly Emp 302.14); EXPIRED: 2-13-17

Emp 303.15 Trade, Business, and Workforce Transfer Report.

(a) The department shall send a "Trade, Business, and Workforce Transfer Report" form to a person, employing unit or employer whenever it determines that additional information is needed to ascertain whether:

- (1) An employer has transferred all, or a portion of, its trade, business, or workforce to:
 - a. a person who was not an employer under RSA 282-A at the time of the transfer;
 - b. an employing unit; or
 - c. another employer;
- (2) An employer has transferred all, or a portion of, its trade, business, or workforce to an employing unit or to another employer which at the time of transfer shares any common ownership, management, or control with the transferring employer;
- (3) A substantial purpose of the transfer of the trade, business, or workforce was to obtain a reduced liability for contributions; or
- (4) A person who was not an employer under RSA 282-A at the time the person engaged in such acquisition acquired all, or a portion of, an employer's trade, business, or workforce solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) Every person, employing unit, or employer shall file with the department of employment security a fully and properly executed "Trade, Business, and Workforce Transfer Report":

- (1) Within 30 days of transferring all, or a portion of, its trade, business, or workforce to:
 - a. a person who was not an employer under RSA 282-A at the time of the transfer;
 - b. an employing unit; or
 - c. another employer;
- (2) Within 30 days of transferring all, or a portion of, its trade, business, or workforce to an employing unit or to another employer which shares any common ownership, management, or control with the transferring employer;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) Within 30 days of any and all changes in its status or any other information required to be furnished in said “Trade, Business, and Workforce Transfer Report”; and

(4) As often as required by the department for the purpose of clarifying inconsistent or out-of-date information.

(c) Every person, employing unit, or employer required to file with the department of employment security a fully and properly executed “Trade, Business, and Workforce Transfer Report” shall supply on the “Trade, Business, and Workforce Transfer Report” the following information and execution:

(1) If completing the “Sale of Business or Entity Change Sections” portion of the form, indicate:

a. Whether the entity has changed to sole proprietorship, partnership, corporation, LLC;

b. The date of change;

c. Whether or not the business has been sold or leased. An affirmative answer to this question shall require additional information including:

1. The name, DBA, and address of the entity to which the business assets have been sold or leased; and

2. The percentage of assets sold or leased.

d. Whether or not the business still furnishes employment in NH under the account number on the form and:

1. If answering yes, provide an explanation;

2. If answering no, specify the last date of employment in NH;

(2) If completing the “Transfer of Workforce” section, indicate:

a. The name, DBA, and address of the employer or employing unit to which the business was sold or to which the workforce was transferred;

b. The date of the sale or transfer;

c. The number of transferred New Hampshire employees;

d. The number of retained New Hampshire employees;

e. A list of the transferred employees' names, social security numbers and gross wages of those transferred employees for the last 4 completed quarters prior to the transfer;

f. Whether there is any common ownership, management or control between transferor and transferee;

g. A list of the owners, all partners, authorized corporate officers and authorized members of limited liability companies;

h. The signature of an authorized owner, partner, or officer; and

(3) Affirmation of accuracy regarding information in the report and any attachments made under penalty of law (RSA 282-A:166).

Source. #8946, eff 7-21-07; renumbered by #10081 (formerly Emp 302.15); ss by #10973, eff 11-12-15

PART Emp 304 **CONTRIBUTIONS AND DEBTS**

Emp 304.01 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. Such payment shall include contributions for all wages paid for employment in all quarters in a calendar year commencing with the calendar quarter in which the employer first provided employment subject to RSA 282-A.

(e) 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 period ending within the calendar quarter in which the subject date falls.

(f) 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.

(g) 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.

(h) 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.

(i) If the employer files its report or makes payment over the internet pursuant to Emp 303.021, such report or payment shall be made timely if sent electronically pursuant to Emp 303.021(b) no later than 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; renumbered by #10081 (formerly Emp 303.01); amd by #10330, eff 05-7-13 ss by #10673, eff 9-22-14

Emp 304.02 Reimbursing Employers.

(a) This rule shall govern the liability of reimbursing employers pursuant to RSA 282-A:69-RSA 282-A:73.

(b) Benefits which are paid by the Department and not chargeable to the Unemployment Compensation Trust Fund, US Department of Labor or Worksharing employer shall either be reimbursed to the Fund by reimbursing employers or charged to a taxpaying employer's separate account.

(c) Pursuant to RSA 282-A:2, I, the base period shall consist of the first 4 out of the last 5 completed calendar quarters immediately preceding the individual's benefit year unless an alternate base period is used. Pursuant to RSA 282-A:2, II, the alternate base period shall consist of the last four completed calendar quarters immediately preceding the individual's benefit year.

(d) Whenever benefits are paid to a claimant as a result of annual earnings from a reimbursing employer, such reimbursing employer shall reimburse the trust fund for benefits paid to such claimant in the same proportion as the annual earnings from such reimbursing employer bear to the total amount of annual earnings in the claimant's applicable base period. The amount of benefits, if any, the claimant is entitled to receive on the basis of wages paid to such claimant by a taxpaying employer shall be determined and charged to such employer's separate account in accordance with RSA 282-A:74-75.

(e) A reimbursing employer that elects to become a taxpaying employer and to pay contributions shall continue to be liable for reimbursement of all benefits paid to a claimant which are based on annual earnings from such employer in such claimant's base period prior to the effective date of the employer's election to pay contributions. The percentage of benefits reimbursed by such employer shall be equivalent to the percentage of annual earnings from such employer as a reimbursing employer during such claimant's base period.

(f) Reimbursing employers shall make payments of reimbursement in lieu of contributions by the last day of the month following the month in which demand for payment is mailed.

(g) A reimbursing employer that appeals a determination of the department and prevails or otherwise succeeds on appeal shall be liable for reimbursement of all benefits paid notwithstanding any overpayment created except for that portion of the overpayment which has been recovered from the claimant.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(h) A reimbursing employer shall be credited with sums otherwise collected for benefits paid pursuant to RSA 282-A:73 unless such reimbursing employer failed to comply with RSA 282-A:45, III, Emp 303.08 (c)-(f), RSA 282-A:45-a, III, Emp 303.13(b)(c)(e)(f)(h)(i), or Emp 303.13(m).

(i) Pursuant to RSA 282-A:44, determinations shall clearly set forth the calculation of benefit charges and the dollar amount to be billed to any reimbursing employer or charged to any employer's separate account.

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, EXPIRED: 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; ss by #8797, INTERIM, eff 1-12-07, EXPIRED: 7-11-07

New. #8947, eff 7-21-07; renumbered by #10081 (formerly Emp 303.02); ss by #10973, eff 11-12-15

Emp 304.03 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; renumbered by #10081 (formerly Emp 303.03) ss by #10673, eff 9-22-14

Emp 304.04 Charging for Benefits in Cases of Two or More Concurrent Employers.

(a) A claimant shall be deemed to have worked concurrently if, concerning the same week, the claimant, for more than one employer:

- (1) Performed services;
- (2) Received, or expects to receive, wages; or

(3) Had wages, other than temporary partial disability payments under the workers' compensation law of any state or a similar law of the United States, which were found to apply to such week pursuant to RSA 282-A:14, III(a).

(b) Charging of benefits in cases of 2 or more concurrent employers shall be as follows:

(1) Where a claimant works concurrently either full-time or part-time for 2 or more tax paying employers, and the claimant becomes unemployed within the same week from all such tax paying employers, all benefits paid but not chargeable to a reimbursing employer shall be charged as prescribed in RSA 282-A:74 through RSA 282-A:76 except that the charges for such benefits shall be divided equally among such tax paying employers;

(2) Where a claimant works concurrently for 2 or more employers, whether such employers are reimbursing or tax paying, and becomes unemployed from one or within the same week from more than one, but one or more of the tax paying concurrent employers continues to furnish the claimant substantially the same amount of work, all benefits paid but not chargeable to a reimbursing employer shall be charged as prescribed in RSA 282-A:74 through RSA 282-A:76 except that:

a. The charges for such benefits paid but not chargeable to a reimbursing employer shall be divided equally among the former tax paying concurrent employers, if any, whose separate accounts are not exempt from charging pursuant to RSA 282-A:75; and

b. The account of that tax paying employer or those tax paying 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; and

(3) Where a tax paying employer which has not been chargeable for one or more weeks pursuant to Emp 304.04(b)(2)b terminates the employment of the claimant for a reason other than misconduct or the claimant leaves such employment for good cause attributable to the employer, such tax paying employer shall become chargeable as described in Emp 304.04(b)(1) commencing in the week such termination or leaving occurs.

(c) When necessary to determine if a concurrent taxable employer appears likely to continue to furnish the claimant substantially the same amount of employment, the department shall send a "Payment Voucher" form, as described in Emp 303.03, to such employer and require the employer to provide information for the first week of potential benefit eligibility and the previous 5 weeks.

(d) The employer shall have 7 calendar days, from the date the department issued the Payment Voucher, to return the information to the department address designated on the form with the date calculated as follows;

(1) For forms submitted by U.S. mail, the postmark date shall be the date the information is returned; and

(2) For forms submitted by any other method, the date received by the department shall be the date the information is returned;

(e) Failure of an employer to return a "Payment Voucher" form within 7 calendar days pursuant to Emp 304.04 (d) shall result in the employer not being relieved from charging as set forth in Emp 304.04(b)(2) b. If the payment voucher form is received after the 7 calendar day period the department shall consider the information received and shall adjust the charges going forward based on the information provided in the payment voucher form.

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, EXPIRED: 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; ss by #8798, INTERIM, eff 1-12-07, EXPIRED: 7-11-07

New. #8947, eff 7-21-07; renumbered by #10081 (formerly Emp 303.04); amd by #10180, eff 8-31-12; ss by #10973, eff 11-12-15

Emp 304.05 Computation Date and Tax Rate in Event of Successorship.

(a) The computation date, as authorized by RSA 282-A:92 where successorship occurs pursuant to RSA 282-A:91, for a succeeding employing unit shall be the date of acquisition. The tax rate shall include benefits charged and contributions paid as of the last computation date, and the resultant rate shall take effect as of the date of acquisition.

(b) A succeeding employing unit shall, from the date of acquisition, not be denied a reduced merit rate based on a predecessor employing unit's failure to file reports and/or pay contributions due if all delinquent reports and/or contributions as defined in RSA 282-A:152, I, are received within 14 days of the date of mailing of the employer liability determination finding successorship. An appeal shall not stay the time for filing and/or payment.

(c) Paragraph (b) shall not apply to succeeding employing units where such:

- (1) Represent a change of legal business form of a predecessor employing unit;
- (2) Represent no change in ownership of a predecessor employing unit;
- (3) Represent no change in control or management of predecessor employing unit; or
- (4) Have failed to properly notify the department as required by RSA 282-A:91 and Emp 303.01.

(d) The tax rate for a succeeding employing unit, that on the date of acquisition was an employer, shall take effect as of the date of the acquisition.

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: 4-22-00

New. #8946, eff 7-21-07; renumbered by #10081 (formerly Emp 303.05); ss by #10973, eff 11-12-15

Emp 304.06 Chargeable Employer if No Most Recent Employer.

Source. #3154, eff 12-2-85; ss by #4350, eff 12-28-87, EXPIRED: 12-28-93; renumbered by #10081 (formerly Emp 303.06)

Emp 304.07 Temporary Unemployment Compensation Crisis Assessment.

Source. #4161, eff 11-5-86, EXPIRED: 11-5-92;
renumbered by #10081 (formerly Emp 303.07)

Emp 304.08 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: 4-22-00; renumbered
by #10081 (formerly Emp 303.08)

Emp 304.09 Adverse Rating Cost.

Source. #4520, eff 10-31-88, EXPIRED: 10-31-94;
renumbered by #10081 (formerly Emp 303.09)

Emp 304.10 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 ss by #9128, INTERIM, eff 4-20-08, EXPIRES: 10-17-08; ss by #9294, eff 10-11-08;
renumbered by #10081 (formerly Emp 303.10); EXPIRED:
10-11-16

Emp 304.11 Transfers of Experience and Assignment of Rates.

(a) These rules shall govern transfers of experience and assignment of rates pursuant to RSA 282-A:91-a.

(b) The percentage of transfer of an employer’s trade, business, or workforce shall be calculated as the percentage that the gross wages attributable to the transferred portion for the 4 completed calendar quarters immediately preceding the quarter in which the transfer occurred bears to the total gross wages of the transferor for the same period.

(c) The department shall calculate rates for purposes of RSA 282-A:91-a,I(a)(1) as follows:

- (1) The percentage of transfer shall be applied to the experience rating balances and payroll of the transferor effective upon the date of transfer of the portion of the business;
- (2) The amounts resulting from the applications in Emp 304.11(c)(1) shall be subtracted from the experience rating balances and payroll of the transferor;
- (3) The department shall recalculate the transferor’s contribution rate based on the transferor’s remaining experience rating balances and payroll;
- (4) If the transferee was not subject to RSA 282-A prior to the transfer then the department shall calculate the transferee’s contribution rate based on the balances subtracted from the transferor’s experience rating balances and payroll; and
- (5) If the transferee was subject to RSA 282-A prior to the transfer then the department shall calculate the transferee’s contribution rate by adding the transferee’s experience rating balances and payroll effective on the date of the transfer to the balances subtracted from the transferor’s experience rating balances and payroll.

(d) If the department determines pursuant to RSA 282-A:91-a,I(a)(2) and (d) that a substantial purpose of the transfer of trade, business, or workforce was to obtain a reduced liability for contributions the department shall calculate both the transferor's and transferee's contribution rates by combining the transferor's and transferee's experience rating balances effective on the date of transfer and assigning the combined rate to each employer.

(e) The rates calculated by the department pursuant to Emp 304.11(c) and Emp 304.11(d) shall be effective upon the date of the transfer.

(f) Transferee employers shall be entitled to use the wages paid by transferor employers for purposes of calculating taxable wages only to the extent the department has transferred experience under Emp 304.11(c).

(g) The department shall consider a management company which contracts with any employer to report the wages of managed employees to:

- (1) Have common management and control with:
 - a. Such employer; and
 - b. Any other management company with which such employer contracts for the same purposes in the future; and
- (2) Be subject to calculation of its contribution rate under Emp 304.11(c) and Emp 304.11(d).

Source. #8946, eff 7-21-07; renumbered by #10081 (formerly Emp 303.11); ss by 10973, eff 11-12-15

PART Emp 305 **NOTICES**

Emp 305.01 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; renumbered by #10081 (formerly Emp 304.01) ss by #10673, eff 9-22-14

PART Emp 306 **EMPLOYER ELECTIONS**

Emp 306.01 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:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (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;
 - (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; and
 - (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 10 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; renumbered by #10018 (formerly
Emp 305.01) ss by #10673, eff 9-22-14

PART Emp 307 **EMPLOYEE LEASING**

Emp 307.01 Scope of the Rule.

(a) Nothing in Emp 307 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 307, 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 307.05 with respect to leased employees only.

(c) Nothing in Emp 307 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 307 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 307 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;
renumbered by #10081 (formerly Emp 306.01), EXPIRED:
5-27-12

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14;
ss by #10630, eff 6-30-14

Emp 307.02 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; renumbered by #10081 (formerly Emp 306.02), EXPIRED: 5-27-12

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14; ss by #10630, eff 6-30-14

Emp 307.03 Common Paymaster Arrangements.

(a) For the purposes of Emp 307, 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 to it.

(c) Client companies shall not be considered unrelated to leasing companies 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; renumbered by #10081 (formerly Emp 306.03), EXPIRED: 5-27-12

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14; ss by #10630, eff 6-30-14

Emp 307.04 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; renumbered by #10081 (formerly Emp 306.04), EXPIRED: 5-27-12

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14;
ss by #10630, eff 6-30-14

Emp 307.05 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 and new wage base at the time of engagement.

(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 303.08, 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 303, 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 requirements of Emp 304 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 304.01.

(g) Upon termination of an employee leasing arrangement, the client company shall return to its previous rate and account balance, if allowable under applicable law, and shall also assume a new wage base.

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; renumbered by #10081 (formerly Emp 306.05), EXPIRED: 5-27-12

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14;
ss by #10630, eff 6-30-14

PART Emp 308 NEW HIRE

Emp 308.01 Purpose of the Rule. The purpose of Emp 308 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, EXPIRED: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-06

New. #8676, eff 7-8-06, EXPIRED: 7-8-15; renumbered by #10081 (formerly Emp 307.01)

New. #11034, eff 2-10-16

Emp 308.02 Reporting Required.

(a) Every employing unit shall report:

- (1) The hiring of an individual who has not previously been employed by the employing unit, and who earns wages or any other form of compensation in New Hampshire;
- (2) The rehiring of an individual who previously performed services as an employee for an employing unit, and who:
 - a. Has been separated from such prior employment for at least 60 consecutive calendar days; or
 - b. Was required to complete an Employee's Withholding Allowance Certificate, (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 services for at least 60 consecutive calendar days, 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 308.02(a)(3) above, a contract may be reported only at the start of the contract even if there is a break in services of at least 60 consecutive calendar days if:

- (1) The contract is in writing;
- (2) The break in services is during the term of the contract; and
- (3) The break in services is in accordance with the provisions of the contract.

(c) The report shall contain:

- (1) For a hired or rehired individual, pursuant to Emp 308.02 (a) (1) and (2), the individual's complete name, home address, social security number, and first day of work;
- (2) For an individual with whom the employing unit has contracted, pursuant to Emp 308.02 (a) (3), the individual's complete name, home or business address, social security number, and first day of work; 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:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- 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 308.02(a)(3) b.; or
- (2) In the case of a multistate employer reporting pursuant to Emp 308.03(c) or an employer transmitting reports magnetically or electronically: by 2 monthly transmissions not less than 12 days nor more than 16 days apart.
- (e) The employing unit shall provide the report either on:
- (1) A W-4 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" (12/1/15) prepared by the department; 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 308.02(c), the employing unit may also report:
- (1) The individual's date of birth;
 - (2) The individual's work state; and
 - (3) 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 308.02(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.

Source. #6585, INTERIM, eff 10-1-97, EXPIRED: 1-29-98; ss and moved by #6660, eff 12-23-97 (from Emp 307.03), EXPIRED: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-06

New. #8676, eff 7-8-06, EXPIRED: 7-8-15; renumbered by #10081 (formerly Emp 307.02)

New. #11034, eff 2-10-16

Emp 308.03 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 a state 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 shall file reports magnetically or electronically unless the commissioner determines that good cause exists to allow another method of filing.

(d) For purposes of Emp 308.03(c), 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, EXPIRED: 1-29-98; ss and moved by #6660, eff 12-23-97 (from Emp 307.04), EXPIRED: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-05

New. #8676, eff 7-8-06, EXPIRED: 7-8-15; renumbered by #10081 (formerly Emp 307.03)

New. #11034, eff 2-10-16

Emp 308.04 Timely Reporting.

(a) Reports shall be considered timely filed if:

- (1) Transmitted electronically not later than midnight of the business day immediately following the due date;
- (2) Postmarked first class mail not later than midnight of the business day immediately following the due date;
- (3) Received within 4 business days immediately 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 immediately following the due date if delivered by the employing unit.

Source. #6585, INTERIM, eff 10-1-97, EXPIRED: 1-29-98; ss and moved by #6660, eff 12-23-97 (formerly Emp 307.05), EXPIRED: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-06

New. #8676, eff 7-8-06, EXPIRED: 7-8-15; renumbered by #10081 (formerly Emp 307.04)

New. #11034, eff 2-10-16

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 uncollectible, 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) Remain due on an account on which the principal balance has been paid and collection would not be cost effective; or
- (3) Should be waived for other reasons where collection of fees and charges would be inequitable or inefficient.

(d) All payments received on an outstanding debt for "contribution" as defined in RSA 282-A:152, 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.

(e) All payments received on an outstanding benefit overpayment and related fees, fines, and court costs shall be applied in the following order:

- (1) Reimbursable employers not previously credited, in order of earliest collection expiration date, until all reimbursable employers are satisfied;
- (2) The unemployment compensation fund established by RSA 282-A:103, in order of earliest collection expiration date, until all such amounts are satisfied;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Federal benefit fund overpayments, in order of earliest collection expiration date, until all such amounts are satisfied;
- (4) Interest owing on the overpayment pursuant to RSA 282-A:141 and RSA 282-A:165,II; and
- (5) Any fees, fines, and court costs.

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, EXPIRED: 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; ss by #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12588, eff 7-23-18

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.
- (b) No interest shall be due on overpayments which are paid in full within 60 days from the date of mailing of the final decision creating the overpayment.
- (c) On new overpayments, accrued interest shall be due beginning 61 days from the date of mailing of the final decision creating the overpayment, retroactive to such mailing date.
- (d) Interest shall accrue on the first Friday of each month.
- (e) Unless otherwise previously ordered pursuant to RSA 282-A:29, waived under federal or state law, or contrary to bankruptcy law or court order, interest shall accrue on overpaid unemployment compensation benefits until such overpaid benefits are fully repaid.
- (f) Following full repayment of overpaid unemployment compensation benefits, if the accrued interest is \$50 or less the department shall determine whether all or part of the accrued interest should be compromised pursuant to RSA 282-A:29,II depending on whether the debtor substantially complied with the department's collection efforts.
- (g) In determining whether the debtor substantially complied with the department's collection efforts the department shall consider whether the debtor:
 - (1) Paid the overpayment as promptly as the debtor was financially able;
 - (2) Agreed to a payment schedule and amount consistent with the debtor's ability to pay;
 - (3) Made payments substantially in compliance with any payment schedule or court order;
 - (4) Contacted the department if any payments were going to be late or less than the agreed amount;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (5) Provided any financial affidavit or other financial information which was needed by the department to determine the debtor's ability to pay;
- (6) Kept the department informed of the debtor's telephone numbers, sources of income, physical addresses and mailing addresses;
- (7) Promptly responded to communications from the department;
- (8) Assured that checks were not returned due to insufficient funds;
- (9) Cooperated so that it was not necessary to take legal action; and
- (10) Acted in any other way which positively demonstrated the debtor's willingness to substantially comply with the department's collection efforts.

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; ss by #9528, eff 08-17-09; ss by #10409, eff 9-11-13

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; ss by #10409, eff 9-11-13; ss by #10673, eff 9-22-14

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, any governmental instrumentality, or in the employ of an Indian tribe 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 (x) 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 (21). To the extent that the enumerated exclusions of RSA 282-A:9, IV are inconsistent with the enumerated exceptions of 26 U.S.C. 3306 and 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. 5-06-06, ss by #10673, eff 9-22-14

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; ss by #10673, eff 9-22-14

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. 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:

(a) An individual has earned at least \$700 of wages during or subsequent to the established benefit year; and

(b) The wages were earned:

(1) In employment as defined in RSA 282-A:9;

(2) 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

(3) For services as described at RSA 282-A:9, IV(f) even though otherwise excluded from employment in RSA 282-A: 9.

Source. #7664, INTERIM, eff 3-31-02, EXPIRES: 9-27-02; ss by #7764, eff 9-27-02, ss by #9785, INTERIM, eff 9-18-10, EXPIRED: 3-17-11

New. #10499, INTERIM, eff 12-31-13, EXPIRES: 6-30-14; ss by #10587, eff 5-13-14

PART Emp 404 **JOB TRAINING PROGRAM**

Emp 404.01 Purpose. The job training program (JTP) is established to enhance public-private partnerships to recruit, train, and re-employ workers in order to meet New Hampshire's skills gap and worker shortage, by efficiently and timely assisting New Hampshire businesses and residents looking for work, including those in recovery.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08; ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.02 Scope. These rules shall apply to any entity for which assistance from the JTP is requested under WorkInvestNH and to any individual for which assistance from the JTP is requested under WorkNowNH.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08; ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.03 Definitions.

(a) "Beneficiary" means an individual determined eligible and currently receiving:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Medicaid;
- (2) Temporary assistance to needy families (TANF); and
- (3) Supplemental nutrition assistance (SNAP).

(b) “Department” means the New Hampshire department of employment security.

(c) “Entity” means for - profit businesses which pay contributions per RSA 282-A:69, I or governmental and non-profit organizations, who are described in section 501(c)(3) and exempt under section 501(a) of the internal revenue code, who have elected to pay contributions pursuant to RSA 282-A:69, II.

(d) “Granite advantage health care program (granite advantage)” means the granite advantage health care program established under RSA 126-AA or any successor law.

(e) “Grant recipient under WorkInvestNH” means the entity that receives funds from the department to reimburse it for training provided under Emp 404.

(f) “Grant recipient under WorkNowNH” means a participant who is eligible to receive funds from the department for technical education, training, and related supports.

(g) “Individualized employment plan” means the long term career plan created by the department and the participant in WorkNowNH.

(h) “NH Medicaid Program” means the Title XIX and Title XXI programs administered by the department, under RSA 167:3-i, RSA 167:4, RSA 167:5, RSA 167:6, I, RSA 167:6, IV, RSA 167:6, VI, RSA 167:6, IX, and RSA 167:68 or any successor law.

(i) “On-the-job training (OJT)” means a hands-on method of teaching the skills, knowledge, and competencies needed for employees to perform a specific job within the workplace. Employees learn in an environment where they will need to practice the knowledge and skills obtained during their training.

(j) “Participant” means a beneficiary enrolled in granite advantage, traditional Medicaid, TANF or SNAP and receiving WorkNowNH services under this part.

(k) “Program year” means the 12 month period of time that a WorkNowNH participant is enrolled in the program starting from their enrollment date.

(l) “Supplemental nutrition assistance program (SNAP)” means the supplemental nutrition assistance program as described in RSA 161 and RSA 167.

(m) “Temporary assistance to needy families (TANF)” means the temporary assistance to needy families programs as described in RSA 161 and RSA 167.

(n) “WorkInvestNH” means the public-private partnership whereby NH provides grants to eligible entities in order to train their workers.

(o) “WorkNowNH” means a program whereby NH provides enhanced support services including child care, transportation, and tuition assistance to eligible participants who are determined in need of those services to successfully compete for employment opportunities.

(p) “WorkNowNH representative” means the department or an employee of the department.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08; ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20: ss by #13348, eff 3-3-22

Emp 404.04 Eligibility Requirements.

(a) Entities that may receive funds from WorkInvestNH shall be:

(1) Physically located or intending to be physically located in New Hampshire and whose employees are residents of New Hampshire or work at a business located or intending to be located in New Hampshire; and

(2) In compliance with state laws and rules.

(b) Intent by an entity to locate within the state shall be established by evidence of the following:

(1) Proof of substantial investment or a binding contractual obligation consistent with such intent; and

(2) The lease or purchase of real estate or equipment within the state necessary for the planned move.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.05); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.05 Non-Eligible. No grant from WorkInvestNH shall be awarded to:

(a) The state, including the state university system;

(b) Any county, city, town, or other political subdivision which has not currently elected to pay contributions pursuant to RSA 282-A:71, II; or

(c) Any organization or group of organizations described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code, which has not currently elected to pay contributions pursuant to RSA 282-A:69, II.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.06); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.06 Entity Match Requirement. The entity submitting an application for WorkInvestNH grant awards shall show that a minimum of 50% matching funds shall be paid by the entity towards the training.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.07); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.07 Non-Acceptable Use of Grant Funds. WorkInvestNH grant funds shall not be used for:

- (a) Salaries, wages, bonuses, and/or benefits of employees in training;
- (b) Administrative or entertainment expenses;
- (c) Costs resulting from violation of or failure to comply with federal, state, or local laws and regulations; and
- (d) Costs or portions of costs resulting from training programs completed or started prior to the date of grant approval.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.08); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.08 Acceptable Use of Grant Funds. WorkInvestNH grant funds shall be used for training programs including:

- (a) Structured, on-site laboratory or classroom training;
- (b) Basic skills;
- (c) Technical skills;
- (d) Quality improvement;
- (e) Safety;
- (f) Management and supervision;
- (g) English as a second language; and
- (h) Other training programs that enhance the state's workforce development.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.09); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.09 Starting and Completion Dates.

- (a) WorkInvestNH training shall begin within 3 months of the date of grant approval;
- (b) The WorkInvestNH training starting date as specified on the application shall not be prior to the date of approval by the commissioner and approval of the contract.

(c) The WorkInvestNH training completion date shall be no more than 12 months from the date of grant approval.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.10); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.10 Incomplete Applications.

(a) Applications submitted shall be reviewed by the department for completeness.

(b) If the department determines that the application is incomplete in any respect, the department shall notify the entity of the specific deficiencies and allow the entity to amend the application.

(c) Only complete applications shall be reviewed by the commissioner or designee.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08 (from Emp 404.11); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.11 WorkInvestNH Grant Application Confidentiality. All information submitted in connection with a grant application that is accepted shall be subject to disclosure except that business financial information and proprietary information such as trade secrets, business and financial models, and forecasts and proprietary formulas may be exempt from public disclosure to the extent authorized by RSA 91-A:5, IV. Any grant applicant seeking to maintain the confidentiality of information shall mark information “confidential” and be responsible for seeking its protection.

Source. #7765, eff 9-27-02; ss by #8989, eff 9-22-07, EXPIRES: 3-20-08); ss by #9092, eff 2-23-08, EXPIRED: 2-23-16

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.12 WorkInvestNH Grant Limitations.

(a) The minimum grant amount shall be \$750 per application.

(b) Any single grant or multiple grants to any single employer in any grant year exceeding \$70,000 shall first be approved by governor and council.

(c) An entity may apply for more than one grant each fiscal year.

(d) No new application shall be approved until previous grants have been completed.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.13 WorkInvestNH Training Evaluation Report. No application for any WorkInvestNH grant shall be considered from any entity that has not submitted a training evaluation report as required by Emp 404.23 for any previously funded training grant.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.14 WorkInvestNH Grant Application. The entity applying for WorkInvestNH grant funds shall complete and submit the WorkInvestNH grant application form (NHES 0354 R-11/21).

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20; ss by #13348, eff 3-3-22

Emp 404.15 Submittal. Applications shall be submitted by:

- (a) E-mail at jobtrainingfund@nhes.nh.gov;
- (b) Fax at 603-223-2047; or
- (c) Regular mail or hand delivery to:

NH Employment Security
45 South Fruit Street
Concord, NH 03301-4857
Attn: Operations/JTF

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.16 Acknowledgment of Application and Application Review.

(a) Following receipt of a WorkInvestNH grant application, the department shall provide written notice of acknowledgment to the entity who has submitted the application.

(b) The commissioner or designee shall review the application in accordance with the purpose of the program established in RSA 282-A:181.

(c) An application shall be considered for funding upon satisfaction of the following:

- (1) The entity has met the requirements necessary for eligibility pursuant to Emp 404.04;
- (2) It is consistent with the purpose of the program as provided by RSA 282-A:181;
- (3) The entity is in compliance with applicable federal and state laws, rules, and regulations including, but not limited to, laws and rules of the department, the NH department of labor, the NH department of revenue administration, and the NH secretary of state; and

- (4) Sufficient funding is available.
- (d) The commissioner shall make a determination regarding grant funding based on the following criteria:
 - (1) Whether the training program will train employees to implement new skills and/or technologies that will benefit them, the entity, and the state;
 - (2) Whether the training will contribute to the economic development of New Hampshire;
 - (3) The nature of certifications, credentials, or credit to be earned by the employees;
 - (4) Whether the training will create opportunities for advancement for the employees involved; and
 - (5) The cost of training per employee and whether it is reasonably related to the level of benefit to the employee, the entity, and the state.
- (e) Each criterion shall be evaluated based on the following scale:
 - (1) Where no information is provided a score of 0 points shall be awarded;
 - (2) Where information is partially responsive to the application questions a score of 1 point shall be awarded;
 - (3) Answers which minimally meet priorities in light of the purpose of RSA 282-A:181 and the Job Training Program shall receive a score of 2 points;
 - (4) Answers which meet priorities in light of the purpose of RSA 282-A:181 and the Job Training Program shall receive a score of 3 points;
 - (5) Answers which exceed priorities in light of the purpose of RSA 282-A:181 and the Job Training Program shall receive a score of 4 points;
 - (6) Answers which exceed priorities in light of the purpose of RSA 282-A:181 and the Job Training Program and which contain innovative or other features which add value to the Job Training Program shall receive a score of 5 points;
- (f) An application shall receive a minimum score of 15 points to be approved.
- (g) Failure of an application to receive a minimum score of 15 points shall result in denial of an application.
- (h) If further clarification is necessary after the entity has submitted all required documentation, the department shall request that the entity make a presentation of their application.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.17 Notification.

- (a) If the commissioner approves an application, the department shall notify the applicant within 7 business days of the application having been approved.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) If the commissioner does not approve an application, the department shall notify the applicant in writing of the specific reason(s) for the commissioner's denial.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.18 Training Fund Contract. In order to obtain the benefit of the grant, applicants shall enter into a fully executed contract with the department.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.19 Reimbursement of Funds.

(a) Grant recipients under WorkInvestNH shall request reimbursement of training funds by completing and submitting the “WorkInvestNH TRAINING REIMBURSEMENT REQUEST” (NHES 0703 R-11/21) form.

(b) The WorkInvestNH grant recipient shall submit the “WorkInvestNH TRAINING REIMBURSEMENT REQUEST” (NHES 0703 R-11/21) form and all attachments by:

- (1) E-mail at jobtrainingfund@nhes.nh.gov;
- (2) Fax at 603-223-2047; or
- (3) Regular mail or hand delivery to:

NH Employment Security
45 South Fruit Street
Concord, NH 03301-4857
Attn: Operations/JTF

(c) Expenses incurred to secure training prior to the effective date of the grant approval shall be eligible for reimbursement.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20; ss by #13348, eff 3-3-22

Emp 404.20 Time Limit for Reimbursement. All requests for reimbursement shall be submitted within 30 business days of the completion date of the training.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.21 Grant Funds Used or Not Used. A WorkInvestNH grant recipient shall report to the department promptly upon determining that any portions of the dollars allocated for their grant will not be used.

New. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.22 Failure to Comply. Failure to comply with the rules governing reimbursement of funds shall result in non-reimbursement until compliance is achieved.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.23 Training Evaluation Report.

(a) WorkInvestNH grant recipients shall evaluate training programs funded by the JTP by completing a training evaluation report survey as follows:

- (1) Providing the job training contract number;
- (2) Providing the entity's name, location and type of industry;
- (3) Providing the name of the person completing the evaluation;
- (4) Providing the amount of the job training grant;
- (5) Providing the name of the training provider (s);
- (6) Providing the name of the training course (s);
- (7) Providing the amount of the entity's original share spent by the conclusion of the training;
- (8) Providing the number of unique individuals trained during the grant period;
- (9) Providing the number of workers from each level of the entity including executive, managerial or laborer;
- (10) Describing the impact of the training on the workers' skills;
- (11) Providing the cost of training per worker trained;
- (12) Providing the number of trainees retained in employment as a direct result of the training;
- (13) Providing the number of jobs created as a direct result of the training;
- (14) Rating the overall quality of the training and providing positive or negative feedback;
- (15) Answering whether the training met the entity's needs and expectations;
- (16) Answering whether the training was customized or revised to meet the entity's needs; and
- (17) Describing the nature of certifications, credentials or credit which the workers earned as a result of the training.

(b) The training evaluation report survey shall be submitted at <https://www.surveymonkey.com/r/NHES-JTF>; and

(c) Along with submission of the final invoice, the WorkInvestNH grant recipient shall ensure that the training grant evaluation report is completed and properly reported to the department. Payment of the final invoice shall be conditioned upon receipt of the evaluation report.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.24 Program Information. The public may obtain information regarding WorkInvestNH by contacting the department.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.25 Participant Eligibility.

(a) To be eligible to receive WorkNowNH services, a beneficiary shall be:

- (1) Enrolled in the granite advantage health care program established under RSA 126-AA or any successor law;
- (2) Enrolled in the NH Medicaid Program;
- (3) Enrolled in the TANF program; or
- (4) Enrolled in the SNAP program.

(b) Eligibility to receive WorkNowNH services based upon the beneficiary being enrolled in either the TANF program or the SNAP program shall terminate twelve (12) months after the 2022 effective date of the rule.

(c) The minimum age requirement to participate in WorkNowNH shall be 18 years old or over.

(d) A participant whose earned income increases and causes the household income to exceed the eligibility limits contained in programs described above in Emp 404.25(a) shall continue to receive WorkNowNH for a period of 12 months.

(e) Participants in OJT employment shall continue to be eligible for unused tuition assistance under Emp 404.27(a)(1) and unused financial support under Emp 404.28(b)(2) during their program year.

(f) Participants in OJT employment shall be terminated from receiving WorkNowNH services 6 months following the end of the OJT.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20; ss by #13348, eff 3-3-22

Emp 404.26 Initial Assessment.

(a) A participant shall undergo an initial interview when the participant volunteers in WorkNowNH. The interview shall include an assessment of job skills, experience, and vocational interests using the occupational information network (O*NET) interest profiler or another assessment tool that measures vocational interests, job skills, experience, aptitude, and educational needs.

(b) The department shall use job skills related assessment information compiled under (a) above to create the participant's individualized employment plan.

(c) The department shall also perform barrier to employment assessments regarding the participant and shall make referrals to community agencies to provide services to mitigate such barriers to employment.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.27 Employment Support Services. The department shall offer the following activities and services to participants:

(a) Case management, vocational assessment, career planning, and job readiness services including referral for employment support services and direct job placement consistent with a participant's individualized employment plan, as follows:

(1) Tuition assistance shall be provided for allowable education and training activities as follows:

a. Payment shall be made to the education provider, training provider, or equipment vendor, if applicable, up to \$6500 per participant in a program year. The lifetime maximum payment per participant for training shall be \$13,000;

b. Payment shall be approved only upon submission of the following information by the participant:

1. Name of the institution or business providing the training;
2. Verification of the courses the participant is taking;
3. Verification of the cost of any necessary tuition or equipment; and
4. Invoice from the education provider, training provider and or equipment provider;

c. The department shall review the submitted invoice(s) as required in (a)(1)b., above to confirm that they are consistent with the participant's individualized employment plan and the assessment results; and

d. Once an invoice is submitted for payment the participant shall not change or drop classes unless he or she submits a letter to the department explaining why he or she needs to change or drop classes;

(2) Financial support shall be provided for books, fees, and supplies, subject to the following limitations:

a. No more than \$500 per participant in a program year with a lifetime maximum payment of \$1000 per participant;

b. Payment shall be approved to the education or training provider only upon submission of the following information:

1. Name of the education or training provider;
2. Verification of the courses the participant is taking;
3. Verification of the cost of any necessary books, fees, and supplies; and
4. Invoice from the education or training provider;

c. If a participant purchases their own books, fees, and supplies then reimbursement shall be approved only upon submission of the following information:

1. Name of the education or training provider;
2. Verification of the courses the participant is taking;
3. Verification of the cost of any necessary books, fees, and supplies; and
4. Presentation of itemized receipts; and

d. The department shall review the submitted invoices and receipts to confirm that they are consistent with the participant's individualized employment plan and the assessment results;

(3) Direct payment or reimbursement for child care registration fees shall be paid subject to the following limitations:

a. No more than \$100 per child in a program year. The lifetime maximum payment per participant for child care registration shall be \$200 per child;

b. Only be made for registration fees and shall not include other fees associated with the pre-payment of child care services or the holding or securing of child care slots;

c. Participants shall:

1. Provide verification or an invoice from the child care provider indicating the child's name and the required child care registration fees due; or
2. Provide receipt (s) indicating the child's name and the amount paid to the child care provider for the child care registration fee (s); and

d. The department shall review the submitted invoice(s), receipts, or both, to confirm that they are consistent with the participant's individualized employment plan and the assessment results;

(4) Transportation assistance for eligible participants shall be provided for transportation to and from approved activities subject to the following:

a. Transportation assistance shall not exceed \$160 per month with a lifetime maximum payment amount per participant of \$1,280;

b. Participants shall not receive transportation assistance for more than 3 months during a program year unless:

1. The participant is in approved training under WorkNowNH in which case they shall receive transportation for one additional month during the applicable program year; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

2. The participant is enrolled in approved WorkNowNH training during a second consecutive year in which case they shall receive 4 additional months of transportation assistance;
 - c. Participants shall provide the following information to the department for transportation assistance:
 1. Mileage to and from the approved WorkNowNH activity; or
 2. Verification of the actual cost of transportation to and from the approved WorkNowNH activity and
 - d. Transportation assistance shall be paid as follows:
 1. Participants who are identified as having a transportation barrier shall be provided with a one-time bus pass by the department to the extent such transportation service is available;
 2. Participants shall be reimbursed for the actual cost of transportation to and from the approved WorkNowNH activity for the number of miles traveled multiplied by \$0.30; and
 3. Participants shall be reimbursed for rides verified by receipt and purchased from a registered common carrier such as:
 - (i) A registered transportation network company, taxi, or bus; or
 - (ii) A public for hire transportation agency under contract with the New Hampshire department of transportation or the United States Department of Transportation; and
- (5) The department shall refer WorkNowNH participants to education and training providers including:
- a. The New Hampshire community college system for training and apprenticeship opportunities;
 - b. The department of business and economic affairs for available training funds and support services;
 - c. The department of education for education and employment programs for youth;
 - d. The department of education for adult basic education, high school equivalency diploma program and English as a second language;
 - e. Driver's education providers; and
 - f. Other available post-secondary educational programs, training programs, and apprenticeship programs.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20; ss by #13348, eff 3-3-22

Emp 404.28 On-the-job Training.

- (a) The department shall make referrals to participants for OJT opportunities with employers who are deemed to be in high need areas.
- (b) The department shall reimburse employers for training provided to participants in an OJT as follows:
 - (1) Employers who hire and retain participants shall receive an OJT payment for the specified training period, not to exceed 6 months;
 - (2) Each OJT payment shall equal 50 percent of the documented and confirmed gross wage paid by the employer to the participant for the training period up to a maximum of \$5,000;
 - (3) Employers shall invoice the department monthly with the final invoice received within 30 days after completion of the OJT;
 - (4) The department shall pay the OJT payment within 30 days of receipt of the correct invoice and a completed evaluation. No payment shall be processed until the completed evaluation is received; and
 - (5) The department shall review the submitted invoice(s) and evaluations to confirm that they are consistent with the participant's individualized employment plan and the assessment results.

Source. #12960, INTERIM, eff 12-26-19, EXPIRED: 6-23-20

New. #13074, eff 7-22-20

Emp 404.29 Termination from WorkNowNH. In the event of a determination of fraud committed by a party in the program, funding and services shall be terminated and such party shall be ineligible for future participation and subject to either prosecution pursuant to RSA 282-A:161 or required to make restitution pursuant to RSA 282-A:164.

Source. #13074, eff 7-22-20 (formerly Emp 404.28)

PART Emp 405 **ELECTRONIC COMMUNICATION**

Emp 405.01 Claimant Correspondence.

- (a) Claimants may elect to receive correspondence concerning their claims either by:
 - (1) United States mail; or
 - (2) By an e-mail advising that correspondence is available for viewing on the department's secure web site.
- (b) A claimant who wishes to elect to receive an e-mail advising him or her when correspondence has been posted on the department's secure web site shall make such election on his or her online homepage by choosing the prompt "Personal Information" and indicating his or her:
 - (1) Preference to receive e-mail notice of posted correspondence; and
 - (2) The e-mail address to which they wish the e-mails sent.
- (c) A claimant who has not elected to receive an e-mail advising him or her when correspondence has been posted concerning his or her claim shall receive such correspondence by mail.

(d) The department shall also send notice by mail to a claimant who has elected to receive notice by e-mail if the commissioner finds such additional notice is necessary to assure receipt.

(e) A claimant with a login name and password may access his or her correspondence by choosing the prompt “View Correspondence In-Box” on his or her homepage without having elected e-mail notice of correspondence pursuant to this section.

Source. #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12588, eff 7-23-18

Emp 405.02 Claimant Access to Electronic Correspondence.

(a) An individual claiming benefits for the first time online shall register with the New Hampshire Unemployment Insurance System (NHUIS) by going to the New Hampshire employment security homepage at www.nhes.nh.gov and choosing the prompt “File a Claim for Benefits” in order to access the login page at <https://nhuis.nh.gov/claimant/login>.

(b) At the login page, the claimant shall:

- (1) Select a filing location from a drop down menu at the prompt “Location”; and
- (2) Choose the prompt, “Register to Create a New Account” to access the registration screen at <https://nhuis.nh.gov/claimant/loginRegPersonalInfo>;
- (3) Complete and submit the “Claimant Registration” form (CRF-07-18); and
- (4) Create a login name and password as indicated.

(c) Upon creating a login name and password, a claimant may manage his or her online account, including correspondence, by accessing <https://nhuis.nh.gov/claimant/login> either directly or through the New Hampshire employment security homepage and logging in to his or her account by entering the login name and password where indicated.

(d) A claimant with a login name and password may access his or her correspondence by choosing the prompt “View Correspondence In-Box” on his or her homepage without having elected e-mail notice of correspondence pursuant to Emp 405.01.

Source. #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12588, eff 7-23-18

Emp 405.03 Employer Benefit Correspondence.

Source. #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; rpld by #12588, eff 7-23-18

Emp 405.04 Employer Access to Electronic Correspondence.

(a) An employer or TPA who wishes to access employer or TPA account information for the first time online shall register with the New Hampshire Unemployment Insurance System (NHUIS) by going to the New Hampshire employment security homepage at www.nhes.nh.gov and choosing the prompt “Register as a New Employer,” in order to access the employer registration page.

(b) At the employer registration page, an employer or TPA shall proceed as follows:

- (1) Employers shall choose the prompt “Register to create an employer account”;

- (2) TPA's shall choose the prompt "Register to create a TPA account."
- (c) The employer or TPA shall then review all information under the heading "Welcome to New Hampshire's Unemployment Insurance (UI) New Employment Registration."
- (d) The employer or TPA shall then indicate agreement with the following statements:
- "Internet Filing Agreement:
- Under RSA 294-E, BY clicking 'I Agree' below, you affirm the following:
- A.) I Agree to conduct transactions by electronic means with the State of New Hampshire.
- B.) I Agree that the laws of the State of New Hampshire apply to all electronic transactions and that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- C.) I Declare under the penalty of perjury that all information I have provided on this form is true correct and complete. I acknowledge that false statements on this form are punishable pursuant to RSA 282-A:166,
- I Agree."
- (e) The employer or TPA shall complete and submit the "Employer Registration" form (ERF-07-18) and create a user name and password as indicated.
- (f) Upon creating a user name and password, an employer or TPA may manage employer online accounts and correspondence, by accessing the employer's or TPA's homepage either directly or through the New Hampshire employment security homepage and logging into the employer's or TPA's account by entering the password as indicated and then choosing appropriate prompts to conduct business with the department.

Source. #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12588, eff 7-23-18

Emp 405.05 Representative Benefit Correspondence.

Source. #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; rpld by #12588, eff 7-23-18

Emp 405.06 Representative Access to Electronic Correspondence.

Source. #9528, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; rpld by #12588, eff 7-23-18

PART Emp 406 **COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION**

Emp 406.01 Purpose. The purpose of this part is to clarify the requirements for compliance with section 3 of the Unemployment Compensation Extension Act of 2010, H.R. 4213 effective July 22, 2010.

Source. #9761, EMERGENCY RULE, eff 07-26-10, EXPIRED: 1-24-11

Emp 406.02 Eligible Claimant. For purpose of this part, "eligible claimant" means an individual for which all of the following criteria are met.

- (a) The individual has been determined to be entitled to emergency unemployment compensation with respect to a benefit year;
- (b) That benefit year has expired on July 24, 2010 or thereafter.
- (c) The individual has remaining entitlement to emergency unemployment compensation with respect to that benefit year, and
- (d) The individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either \$100 less or 25 percent less than the individual's weekly benefit amount in the benefit year referred to in paragraph (a).

Source. #9761, EMERGENCY RULE, eff 07-26-10,
EXPIRED: 1-24-11

Emp 406.03 Claim For Benefits. A claim for a week of benefits by an "eligible claimant" shall be deemed to be a claim for emergency unemployment compensation, not regular compensation, until the exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in Emp 406.02(a).

Source. #9761, EMERGENCY RULE, eff 07-26-10,
EXPIRED: 1-24-11

PART Emp 407 **COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION AND THE STATE-FEDERAL EXTENDED BENEFITS PROGRAM**

Emp 407.01 Purpose. The purpose of this part is to allow eligible claimants to receive the maximum amount of unemployment compensation benefits to which they are entitled under the Unemployment Compensation Extension Act of 2010, H.R. 4213 effective July 22, 2010, and RSA 282-A:30, I.(d)(3)(C).

Source. #9764, EMERGENCY RULE, eff 07-30-10,
EXPIRED: 1-26-11

Emp 407.02 Benefits Available. RSA 282-A, I.(d) (3)(C)'s prohibition of the application of New Hampshire's "on" indicator for the state-federal extended benefit program when benefits are available under any federal unemployment program need not be applied at any time for which 100% federal funding is available to reimburse benefits paid under the state-federal extended benefit program.

Source. #9764, EMERGENCY RULE, eff 07-30-10,
EXPIRED: 1-26-11

PART Emp 408 **ADJUSTMENT OF OVERPAID BENEFIT ACCOUNTS BY COMPROMISE**

Emp 408.01 Compromise. Compromise of an overpaid benefit account, which may not be fully waived under RSA 282-A: 29,II, shall be considered under RSA 282-A: 29, I.

Source. #10423, eff 9-27-13

Emp 408.02 Recommendation of Compromise. In response to a request to compromise an overpaid benefit account pursuant to RSA 282-A: 29, I, the department shall recommend the total or partial compromise of any overpaid benefit account to the attorney general where such is determined to be in "the best interests of the state."

Source. #10423, eff 9-27-13

Emp 408.03 Notice of Acknowledgment and Mode of Hearing.

(a) Following receipt of a request for compromise, the department shall provide written notice of acknowledgment to the debtor.

(b) In the notice of acknowledgment, the debtor shall be provided with a copy of Emp 408 and given the opportunity to elect whether to have the request for compromise considered:

- (1) On the record, including any written evidence or argument the debtor may submit;
- (2) At an in-person hearing; or
- (3) By telephone hearing.

(c) Upon a failure to make the election in (b) above within 14 days of the date of the department's notice, the department shall make a determination on the record.

(d) If a debtor requests an in-person or telephone hearing and fails to appear, the department shall deny the request for compromise.

(e) In-person hearings shall be governed by the procedures in Emp 207 except to the extent that such procedures are waived pursuant to Emp 207.06.

(f) Telephonic hearings shall be governed by the procedures in Emp 207 and Emp 202.01 (v)-(y), except to the extent that such procedures are waived pursuant to Emp 207.06.

Source. #10423, eff 9-27-13

Emp 408.04 Rebuttable Presumption.

(a) There shall be a rebuttable presumption that it is in the "best interests of the state" to compromise a non-fraud overpaid benefit account of state unemployment benefits in total if the debtor's household income is derived solely from the following sources:

- (1) Old Age Assistance;
- (2) Aid to the Permanently and Totally Disabled;
- (3) Supplemental Security Income;
- (4) Aid to the Needy Blind;
- (5) Temporary Assistance For Needy Families;
- (6) Social Security Disability Insurance;
- (1) Social Security Retirement Benefits; or
- (2) Veteran's Benefits.

(b) The presumption in (a) above shall be rebutted by evidence of one or more of the following:

(1) The claimant's economic circumstances are likely to change substantially with two years;

(2) The claimant owns and/or holds an interest in real property which is not inchoate or de minimis;

(3) The claimant owns and/or holds an interest, which is not inchoate or de minimis, in goods, property, money, rights, and credits that is capable of being liquidated in the relatively near future without substantial loss in value, excepting such interests that are exempted from attachment and execution; or

(4) The overpayment was the result of fraud.

(c) There shall be a rebuttable presumption that it is in the "best interests of the state" to compromise any non-fraud portion of an overpaid benefit account of state unemployment insurance benefits that resulted from base period wages from a reimbursing employer, provided that the claimant provides documentation satisfactory to the department that the reimbursing employer does not object.

(d) The presumption in (c) above shall be rebutted if the department finds that there is some other reason to conclude that failing to recover the overpayment would, or could affect:

(1) Any interested party, as defined in RSA 282-A: 42, III, other than a non-objecting reimbursing employer under (c) above; or

(2) An agency or department of any state or of the federal government.

(e) If the presumption in (a) or (c) above is rebutted, the determination of whether a total or partial compromise is recommended shall be based on weighing the factors in Emp 408.05.

Source. #10423, eff 9-27-13

Emp 408.05 Totality of the Circumstances. To the extent that an overpayment is not compromised pursuant to Emp 408.04 above, the commissioner shall consider the factors in Emp 408.06 on a totality of the circumstances basis, and the presence or absence of one or more of the factors shall not be controlling.

Source. #10423, eff 9-27-13

Emp 408.06 Factors to be Considered. Factors to be considered in determining whether the total or partial compromise of an overpaid benefit account is in "the best interest of the state" for purposes of RSA 282-A:29, shall include whether:

(a) The debtor has made an offer of partial payment that is reasonable relative to the amount of the debt and the debtor's ability to make total or partial payment over the course of a reasonable period of time;

(b) The debtor made payments on the overpayment as promptly as the debtor was financially able;

(c) The debtor agreed to a payment schedule and amount consistent with the debtor's ability to pay;

(d) The debtor made payments substantially in compliance with any payment schedule or court order;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) The debtor contacted the department if any payments were going to be late or less than the agreed amount;

(f) The debtor provided any financial affidavit or other financial information that was needed by the department to determine the debtor's ability to pay;

(g) The debtor kept the department informed of the debtor's telephone numbers, sources of income, physical addresses and mailing addresses;

(h) The debtor promptly responded to communications from the department;

(i) The debtor assured that checks were not returned due to insufficient funds;

(j) The debtor cooperated so that it was not necessary for the department to take legal action to collect the overpayment;

(k) The debtor was not found overpaid as a result of fraud;

(l) The debtor was not found to have been with fault in the creation of the overpayment pursuant to RSA 282-A:165, II and Emp 502.03;

(m) The debtor was found to have been with fault in (k), but the nature of the debtor's fault was mere negligence, rather than omissions or commissions which were unreasonable, grossly negligent, reckless, knowing, or willful;

(n) The debtor, if currently unable to make payments, is not likely to have a substantial improvement in ability to pay within 12 months.

(o) The debtor has income or assets which, after considering total household income, are in excess of those required for the necessities for the debtor and the debtor's immediate family residing in the same household;

(p) The debtor has income or assets which are not exempt from garnishment, levy, or execution under federal or state law;

(q) The debtor has an ability to pay that is substantially limited when compared to the amount of the debt;

(r) The debtor has a partial or entire overpayment benefit account that resulted from payments from a reimbursing employer, and the reimbursing employer does not object to compromise;

(s) The debtor has demonstrated that the debtor currently intends to either refinance the debtor's mortgage or obtain a reverse mortgage, and a lien by the department against the debtor's primary residence would prevent the debtor from doing so;

(t) The debtor has any other financial limitations, has acted in any other way that positively demonstrated the debtor's willingness to substantially comply with the department's collection efforts and benefit eligibility determination requirements or has demonstrated other actual harm would result from collection efforts or the failure to grant a partial or total compromise; and

(u) The department finds that the total or partial compromise of the overpaid benefit account would, or could affect:

- (1) Any interested party, as defined in RSA 282-A: 42, III, other than a non-objecting reimbursing employer under Emp 408.04 (c), or
- (2) An agency or department of any state or federal government.

Source. #10423, eff 9-27-13

Emp 408.07 Injured Spouse Allocation.

(a) If the overpayment, which is the subject of the request for compromise, qualifies as an “overpayment debt” as defined in Emp 409.02 (i), the department shall not consider a request for compromise until the individual has demonstrated through documentation the individual’s tax filing status for the tax year in question for which a tax refund offset may be, or has been, certified by the department to satisfy a debt owed by the individual.

(b) If the individual’s tax filing status is such that another individual would be entitled to file a request for injured spouse allocation with the IRS in order to claim a portion of the tax refund, the department shall require, prior to considering the request for compromise, the injured spouse allocation process first be exhausted with the IRS.

(c) If following exhaustion of the injured spouse allocation process, the individual demonstrates through documentation that the injured spouse allocation request has been rejected by the IRS, the department shall then consider a request for compromise.

Source. #10423, eff 9-27-13

Emp 408.08 Notice of Commissioner’s Decision on Request to Compromise. The department shall provide the debtor with written notice of the department’s decision on the request for compromise including the reasons for the decision. The notice shall inform the debtor of his or her right to request reconsideration by the Commissioner, and his or her right to request compromise again in the future. A new request for compromise shall be considered upon demonstration by the debtor that there has been a substantial change in circumstances.

Source. #10423, eff 9-27-13

Emp 408.09 Request for Reconsideration.

(a) If the department makes a recommendation to deny the request for compromise in whole or in part, the debtor may submit a request for reconsideration by the Commissioner within 14 days of the date of the notice of the department’s decision. The Commissioner’s review shall be on the record.

(b) Requests for reconsideration submitted later than 14 days of the date of the notice of the Commissioner’s recommendation shall not be considered.

(c) If reconsideration is requested, the Commissioner shall designate a person to participate in the Commissioner’s review of a debtor’s request who shall be different than any person who was designated to make the initial recommendation on a request for compromise.

Source. #10423, eff 9-27-13

Emp 408.10 The Collection Process and Requests for Compromise. An individual’s request for compromise shall not stay the collection process including, without limitation, the offset of Federal tax refund payments under Emp 409.

Source. #10423, eff 9-27-13

PART Emp 409 **OFF SET OF FEDERAL TAX REFUND PAYMENTS**

Emp 409.01 Purpose. The purpose of this part is to address the requirements for offset of tax refund payments against unpaid benefit overpayments pursuant to 31 C.F.R. 285.8 and proper criteria for forbearance.

Source. #10424, eff 9-27-13

Emp 409.02 Definitions. For purposes of this part:

- (a) “Debt” means past-due, legally enforceable overpayment of unemployment compensation benefits plus penalties and interest;
- (b) “Department” means the department of employment security;
- (c) “Individual” means a person who owes a debt;
- (d) Financial Management Service (FMS) means a bureau of that name in the Department of the Treasury;
- (e) “Immediate family” means spouse, parent, and minor child under the age of 18 whether the relationship is a biological, adoption, step-, half-, or in-law relationship;
- (f) Internal Revenue Service (IRS) means a bureau of that name in the Department of the Treasury;
- (g) “Tax refund offset” means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s) pursuant to 26 U.S.C. 6402(a);
- (h) “Tax refund payment” means any overpayment of federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any federal tax on the part of the person who made the overpayment; and
- (i) “Overpayment debt” means “covered unemployment compensation debt” as defined in 26 U.S.C. 6402(f)(4). The term includes:
 - (1) A past-due debt for erroneous payment of unemployment compensation benefits due to fraud or the person’s failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to 26 U.S.C. 3304 and which remains uncollected; and
 - (2) Any penalties and interest assessed on such debt.

Source. #10424, eff 9-27-13

Emp 409.03 Advance Notification and Opportunity to Present Evidence.

(a) The department shall provide a written notification to the individual by U.S. mail, to his or her last known address, informing the individual that the department intends to refer the debt for collection by federal tax refund offset and advising the individual of the individual’s rights and limitations under Emp

409.03 (b), (d), (f), (i) and (j). Such written notification shall inform the individual that he or she has the right to request forbearance.

(b) The individual shall have 60 days to present documentation that all or part of the overpayment debt is not past due, not legally enforceable, or is not due to fraud or the individual's failure to report earnings.

(c) The department shall consider any documentation presented by an individual in response to the notice described in Emp 409.03(a) and determine whether an amount of such overpayment debt is not past due, not legally enforceable, or is not due to fraud or the individual's failure to report earnings.

(d) The individual shall not have new or further right to appeal, or otherwise have reviewed on the merits, any final determination which determined the individual's overpayment debt and which the individual already had rights of appeal under RSA 282-A: 42-68.

(e) The department shall advise the individual of its determination under Emp 409.03(c) in writing and shall notify the individual of his or her right to submit a request for reconsideration.

(f) If the individual disagrees with the department's determination under Emp 409.03(c), the individual may submit a written request for reconsideration to the Commissioner within 14 days of the date of the notice of the department's determination. Request for reconsideration postmarked or received later than 14 days after the date of the notice of the department's determination shall not be considered unless the commissioner or the commissioner's designee finds sufficient grounds to justify or excuse the individual from filing a timely request for reconsideration.

(g) For purposes of this section, sufficient grounds shall include any unforeseeable circumstance beyond the individual's control that prevented the individual from making a timely request for reconsideration.

(h) The commissioner's review shall be on the record. If reconsideration is requested, the commissioner shall designate a person to participate in the commissioner's review who shall be different than any person who was designated to make the initial determination in accordance with Emp 409.03 (c).

(i) The department shall advise the individual of the commissioner's determination under Emp 409.03 (h) in writing. The department shall also notify the individual(s) that if they believe that the department incorrectly certified that their overpayment debt is either past due, legally enforceable, or the debt is due to fraud or the individual's failure to report earnings, the individual may file a complaint with FMS. The department shall provide the individual with the address and telephone number for FMS.

(j) The individual may contact the department to request that the department grant forbearance in whole or in part if the tax refund offset would cause extreme financial hardship pursuant to Emp 409.08.

Source. #10424, eff 9-27-13

Emp 409.04 Certification. Upon satisfying the requirements of Emp 409.03, the department shall certify overpayment debts for tax refund offset with FMS in accordance with the procedures set forth in 31 C.F.R. 285.8, unless the department determines that forbearance is appropriate pursuant to Emp 409.05- Emp 409.07.

Source. #10424, eff 9-27-13

Emp 409.05 Forbearance.

(a) For any overpayment debt which is certified, or would otherwise be certified, pursuant to Emp 409.04, the department shall, to the extent it determines that offset of all or part of the federal tax refund will cause extreme financial hardship to the individual or a member of the individual's immediate family:

- (1) Not certify such overpayment debt;
- (2) Reduce the amount of such certification; or
- (3) Return, in whole or in part, tax refund offset moneys to the individual.

(b) Forbearance which is granted in whole or in part shall only apply to the tax year at issue in the debtor's request for forbearance.

Source. #10424, eff 9-27-13

Emp 409.06 Contents of Request For Forbearance.

(a) A request for forbearance by an individual shall be in writing and shall include:

- (1) The individual's name and address;
- (2) An explanation of the reasons why the individual believes that the amount of the offset or proposed offset will cause extreme financial hardship to the individual or a member of the individual's immediate family, and copies of any documents that the individual wishes to have considered in support of his or her claim of extreme financial hardship;
- (3) An alternative offset proposal, if any;
- (4) The following information:
 - a. Current marital status;
 - b. Tax filing status for the tax year in question;
 - c. Income from all sources;
 - d. Assets;
 - e. Liabilities;
 - f. Names and ages of dependents;
 - g. Expenses for food, housing, heat, electricity, water, clothing, and transportation;
 - h. Medical expenses; and
 - i. Exceptional expenses; if any.
- (5) Documents as requested by the department in connection with the request for forbearance;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(6) Copies of all documents that the individual wishes to have considered to support the objections raised by the individual regarding the claim of extreme financial hardship;

(7) Certification that all statements and attachments are true to the best of the individual's knowledge and belief; and

(8) The individual's signature.

(b) The individual may submit the information required in (a) on a form provided by the department. The department shall make such form available to the individual upon request, or if the request for forbearance is incomplete.

(c) The individual shall provide the department with the documentation and information described in Emp 409.06 (a) within 20 days of the department's request for such documentation and information, unless sufficient grounds for extension of the 20 days is shown.

(d) For purposes of this section, sufficient grounds shall include any unforeseeable circumstance beyond the individual's control that prevented the individual from making a timely request for reconsideration.

Source. #10424, eff 9-27-13

Emp 409.07 Injured Spouse Allocation.

(a) The department shall not consider a request for forbearance until the individual has demonstrated through documentation the individual's tax filing status for the tax year in question for which a tax refund offset may be, or has been, certified by the department to satisfy a debt owed by the individual.

(b) If the individual's tax filing status is such that another individual would be entitled to file a request for injured spouse allocation with the IRS in order to claim a portion of the tax refund, the department shall not consider a request for forbearance until the injured spouse allocation process with the IRS has been exhausted.

(c) If following exhaustion of the injured spouse allocation process, the individual demonstrates through documentation that the injured spouse allocation request has been rejected by the IRS, the department shall then consider a request for forbearance.

Source. #10424, eff 9-27-13

Emp 409.08 Extreme Financial Hardship.

(a) In determining whether an individual has established that offset of all or part of the federal tax refund will cause extreme financial hardship to the individual or a member of the individual's immediate family, the department shall determine whether the credible, relevant documentation submitted demonstrates that the offset or proposed offset would prevent the individual from meeting the costs necessarily incurred for essential subsistence expenses of the individual and his or her spouse and dependents.

(b) For purposes of this determination, essential subsistence expenses shall include costs incurred only for food, housing, utilities, clothing, essential transportation and medical care.

(c) In making the determination, the department shall consider:

(1) The income from all sources of the individual, and his or her spouse and dependents;

(2) The extent to which the assets of the individual and his or her spouse and dependents are available to meet the offset and the essential subsistence expenses;

(3) Whether these essential subsistence expenses are reasonable under all the circumstances; and

(4) The extent to which the individual and his or her spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses are reasonable under all the circumstances.

(d) The department shall advise the individual of its determination in writing. Such determination shall not be appealable. Such determination shall advise the individual of his or her right to request an adjustment of his or her account by compromise in accordance with Emp 408.

Source. #10424, eff 9-27-13

Emp 409.09 The Offset of Federal Tax Refund Payments and Requests for Forbearance. An individual's request for forbearance shall not:

(a) Stay the offset or Federal tax refund payments;

(b) Stay any other collection process; or

(c) Act as a request for compromise under Emp 408, unless the individual's communication to the department can reasonably be construed as a request for compromise under Emp 408, in which case the department shall treat the request as a request for compromise under Emp 408.

Source. #10424, eff 9-27-13

PART Emp 410 ALIENS

Emp 410.01 Purpose. The purpose of this part is to establish criteria concerning RSA 282-A: 15, II(a) and RSA 282-A:41.

Source. #10531, eff 2-28-14

Emp 410.02 Wages. Commencing with the quarterly report for the calendar quarter ending March 31, 2014, an employer shall neither, consider an alien who falls into one of the classes of nonimmigrant aliens listed in section 101(a)(15)(F), (J), (M), or (Q) of the Immigration and Nationality Act 8 USC 1101(15)(F), (J), (M), or (Q), and who performs services for remuneration, to be "lawfully present for purposes of performing such services" under RSA 282-A:15, II(a), nor report wages for such an alien unless:

(a) The alien becomes a resident alien as to the time period when such services were performed; or

(b) The alien otherwise becomes subject to treatment as a resident alien of the United States for purposes of the Federal Unemployment Tax Act (26 U.S.C. Ch. 23), as to the time period when such services were performed.

Source. #10531, eff 2-28-14

Emp 410.03 Benefits. For any individual benefit year, the first day of which is on or after the first Sunday following the effective date of this section, an alien who falls into one of the classes of nonimmigrant aliens listed in section 101(a)(15)(F), (J), (M), or (Q) of the Immigration and Nationality Act 8 USC 1101(15)(F), (J), (M), or (Q), and who performs services for remuneration, shall not be considered “lawfully present for purposes of performing such services” under RSA 282-A:41, I(a) unless:

- (a) The alien becomes a resident alien as to the time period when such services were performed; or
- (b) The alien otherwise becomes subject to treatment as a resident alien of the United States for purposes of the Federal Unemployment Tax Act (26 U.S.C. Ch. 23), as to the time period when such services were performed.

Source. #10531, eff 2-28-14

PART Emp 411 **SELF-EMPLOYMENT ASSISTANCE PROGRAM**

Emp 411.01 Purpose. The purpose of this part is to establish the procedures to implement the “self-employment assistance program” relative to RSA 282-A:31-g and RSA 282-A:31-h, and known as the “Pathway to Work” (PTW) program.

Source. #11045, eff 2-24-16

Emp 411.02 Definitions.

- (a) "Allowable business activity" means a business activity that meets the requirements of Emp 411.03 (g).
- (b) "Business Advisor" means a counselor approved by the NH Small Business Development Center to provide one-on-one business assistance services to participants in the PTW Program.
- (c) “Commissioner” means the commissioner of the department.
- (d) “Department” means the New Hampshire department of employment security.
- (e) “Establishing a business” means organizing the production, marketing, and sale of products or services. This term includes enterprises organized as legal not-for-profit ventures.
- (f) "Employment Service Representative” means the designated staff member at each department of employment security local office responsible for coordinating orientation and applications for PTW Program applicants.
- (g) “Extended Benefits” means benefits paid under the state-federal extended benefit program.
- (h) "Full-time basis" means that the individual is devoting such amount of time as is customary to establish a business that will serve as a full-time occupation for that individual, but in no case less than the hours required for full-time work as provided at RSA 282-A:9, VIII.
- (i) “Pathway to Work (PTW) Program” means New Hampshire’s self-employment assistance program, as defined in RSA 282-A:31-g, V.
- (j) “N.H. Small Business Development Center (SBDC)” means the outreach program of the Peter T. Paul College of Business and Economics at the University of New Hampshire which is a cooperative venture with the U.S. Small Business Administration and the N.H. Department of Resources and Economic Development.

(k) "Regular benefits" means benefits payable to an individual under this chapter, including benefits payable to federal civilian employees and to former members of the United States Armed Forces pursuant to the United States Code, Chapter 85. Regular benefits do not include the self-employment assistance allowance and extended benefits or benefits through other programs that provide additional benefits or benefit extensions.

(l) "Self-employment assistance activities" means activities related to establishing a business and becoming self-employed as required and monitored by SBDC and the Department in accordance with Emp 411.07.

(m) "Self-employment assistance allowance" means an allowance, equal to and payable in lieu of regular benefits, from the unemployment compensation trust fund to an individual who meets the requirements of and is participating in the PTW Program.

(n) "Self-employed individual" means an individual who is in business for him or herself and carries on the business as:

- (1) A sole proprietor;
- (2) A partner;
- (3) A limited liability company (LLC); or
- (4) A corporation.

(o) "Unsuitable business" means a business in which:

- (1) Services are performed by an individual as an insurance agent or insurance solicitor for commissions as set forth in RSA 282-A:9, IV(k);
- (2) Services are performed by an individual as a licensed real estate broker or a licensed real estate salesperson for commissions as set forth in RSA 282-A:9, IV(q);
- (3) Services are performed as a direct seller as set forth in RSA 282-A:9, IV(s); or
- (4) Gambling activities are included.

(p) "Worker profiling system" means a system established by the department that utilizes a statistical profile, as described in Emp 501.08(b), to predict the likelihood that an individual will exhaust his or her unemployment benefits.

Source. #11045, eff 2-24-16

Emp 411.03 Claimant Requirements for Consideration for the PTW Program. To be considered for participation in the PTW Program, an applicant shall meet the following standards and requirements:

- (a) Be found eligible to receive regular benefits pursuant to RSA 282-A:31-g,VI and Emp 411.02 (k);
- (b) Be identified as likely to exhaust regular benefits by obtaining a statistical score of .50 or greater through the worker profiling system;
- (c) Have a balance of regular benefits equal to at least 18 times the individual's weekly benefit amount and have at least 18 weeks remaining in the individual's benefit year at the time of application;
- (d) Attend a self-employment orientation presented by the department followed by a one on-one interview with a department staff member;
- (e) Submit a completed "Pathway to Work Application" (N-7/13) to a department local office within 60 days of filing an initial application for regular benefits on which the applicant shall:

- (1) Certify such application by placing initials beside the statement: "I certify the above information is true and accurate to the best of my knowledge. I understand that I may run out of unemployment insurance and that extensions may not be available."
 - (2) Authorize information in the application to be shared by placing initials beside the statement: "I authorize the NH Employment Security, WIOA Title 1-B providers and local SBDC to share information necessary for the facilitation and administration of the PTW program."
 - (3) Acknowledge understanding relative to eligibility by placing initials beside the statement: "Eligibility for PTW is not retroactive for weeks of self-employment prior to the date of approval. Eligibility for regular Unemployment Insurance for any week prior to approval requires that an individual be able to work, available for work, and actively seeking work for the week."
- (f) Be willing and able to work on a full-time basis at self-employment assistance activities; and
- (g) Propose to enter a type of business which is an allowable business activity as follows:
- (1) The principal place of the proposed business shall be in New Hampshire;
 - (2) The proposed business, when established, shall meet all legal requirements including, but not limited to, holding necessary licenses, payment of taxes, and abiding by zoning laws;
 - (3) The form of the proposed business shall adhere to the definition of self-employed individual in Emp 411.02; and
 - (4) The nature of the proposed business shall be suitable for inclusion in the PTW Program. Suitable businesses shall include franchises or pre-existing businesses provided that the applicant has both financial investment responsibility and decision-making authority in the business.

Source. #11045, eff 2-24-16

Emp 411.04 Application Review Process.

- (a) Written applications shall be reviewed by the department's employment services bureau (ESB) to assess compliance with the requirements for program consideration set forth at Emp 411.03.
- (b) The ELMI shall review any application that meets the requirements set forth at Emp 411.03 and provide the ESB with a recommendation as to whether the applicant's plan falls within a growing industry or occupation, or will support a growing industry and is a viable prospect. The recommendation shall be based on data such as:
- (1) Projected industry growth;
 - (2) Occupational outlook;
 - (3) Projected occupational growth rate; and
 - (4) Projected number of job openings.
- (c) Concurrent with the ELMI review of the application, the SBDC shall perform an assessment of the feasibility of the applicant's plan for self-employment. The SBDC shall assess whether the self-employment plan has a reasonable likelihood of success. Based on its review, the SBDC shall make a written recommendation to the department.
- (d) The department, through the ESB, shall consider the recommendations of the SBDC and the ELMI in making its determination with respect to any application.

(e) After determining that the claimant meets the initial requirements for program consideration under Emp 411.03 and considering the recommendations from the ELMI and SBDC, the Department shall issue a written determination advising the claimant that his or her application is:

- (1) Approved and he or she is accepted into the PTW Program;
- (2) Pending because acceptance into the PTW Program will cause enrollment in the program to exceed 2.5% of the claimants receiving regular benefits; or
- (3) Denied and he or she is not accepted into the PTW Program.

Source. #11045, eff 2-24-16

Emp 411.05 Continued Weekly Filing Requirements.

(a) After filing an application, but prior to receiving notification of acceptance or non-acceptance into the PTW Program, applicants shall continue to file for and meet the eligibility requirements for regular benefits.

(b) An applicant shall not submit a claim for a self-employment assistance allowance until he or she receives written notification of acceptance from the department.

(c) The effective date of participation in the PTW Program shall be the Sunday following the date of the notification of acceptance.

(d) PTW Program participants shall begin filing a “Pathway to Work Continued Claim Form” (N-7/13) during the week following notification of acceptance into the PTW Program and certify in such form: “I understand the answers I give to the above questions may affect my rights to benefit payments. I certify that these statements are true and correct, and I am not claiming any benefits from any other unemployment program for the above week. I understand the law provides penalties for false statements.”

(e) The department shall notify applicants of acceptance or non-acceptance into the PTW Program within 10 business days of the date of submission of the application, and:

- (1) If accepted, the written determination shall include the effective date of the applicant’s participation in the PTW Program, which shall be the Sunday following the date the determination is issued; and
- (2) If not accepted, a written non-acceptance determination shall be issued identifying the specific reason for non-acceptance.

Source. #11045, eff 2-24-16

Emp 411.06 Eligibility for the Self-Employment Assistance Allowance.

(a) In order to receive a self-employment assistance allowance, PTW Program participants shall, on an ongoing basis:

- (1) Complete and file weekly a “Pathway to Work Continued Claim Form” (N-7/13) and certify in such form: “I understand the answers I give to the above questions may affect my rights to benefit payments. I certify that these statements are true and correct, and I am not claiming any benefits from any other unemployment program for the above week. I understand the law provides penalties for false statements.”
- (2) Be actively engaged on a full-time basis in self-employment assistance activities; and
- (3) Report to the local office for a one-on-one meeting with a department representative every 3 weeks.

(b) After acceptance into the PTW Program, an individual shall be excused from the requirements under RSA 282-A relating to availability for work, active search for work, and refusal to accept suitable work.

(c) The requirements of RSA 282-A relating to disqualifying income shall not apply to income earned from self-employment by the individual.

(d) An individual who meets the eligibility requirements of this section shall be totally unemployed under RSA 282-A.

Source. #11045, eff 2-24-16

Emp 411.07 Program Participation Requirements and Monitoring.

(a) Participants shall:

(1) Accept the commissioner's referral to the SBDC for services that include all or part of the following:

- a. Coordination and management;
- b. Outreach and orientation to self-employment activities;
- c. Individual business advising; and
- d. Educational workshops and seminars;

(2) Take at least 3 courses in the SBDC's online e-Learning program;

(3) Meet on a regular basis with a qualified SBDC business advisor during the course of participation in PTW to work on a business plan as agreed upon by the participant and advisor. The initial meeting shall take place within 6 weeks of acceptance into the program as follows:

a. At the initial meeting the SBDC business advisor shall:

1. Assist PTW participants in setting out a "plan of action" for their self-employment assistance activities; and
2. Guide the participants in developing a written business plan appropriate to the type of business and its stage of development; and

b. If the participant is unable to meet with a qualified business advisor within 6 weeks of acceptance, after having made a good faith effort to do so, and such failure to meet was due to factors beyond the participant's control, such failure shall not subject the participant to automatic termination from the PTW Program.

(b) The SBDC shall prepare a written agreement for each participant outlining the plan for self-employment assistance activities. The plan agreement shall be reviewed with and co-signed by each participant. The SBDC shall provide a copy of the plan agreement to the department.

(c) The department shall conduct periodic reviews of PTW Program participants' progress towards establishing a business and their compliance with program requirements. Reviews shall be based in part on information supplied on the weekly continued claim form, but may include other information provided by the participant.

(d) The department shall follow up every 6 months for two 2 years following the conclusion of an individual's participation in the PTW Program to track the progress of the business. Progress shall be measured based on the following benchmarks:

- (1) Establishment of a business bank account;
- (2) Development of a record-keeping system;
- (3) Acquisition of necessary equipment, supplies or inventory;
- (4) Development of promotional materials;
- (5) Development of a written business plan including financial projections, cash flow, break even analysis, and profit, loss, and balance sheet statements;
- (6) Establishment of a pricing structure; and
- (7) Possession of adequate insurance coverage.

(e) The business established by the participant shall meet all legal requirements including, but not limited to, holding necessary licenses, payment of taxes, and abiding by zoning laws.

Source. #11045, eff 2-24-16

Emp 411.08 Exhaustion of Self-Employment Assistance Allowance.

(a) Individuals may receive up to 26 weeks of self-employment assistance allowance in lieu of regular benefits in any benefit year.

(b) The sum of the self-employment assistance allowance paid and regular benefits paid shall not exceed the maximum amount of benefits established under RSA 282-A:25 with respect to any benefit year.

(c) The self-employment assistance allowance shall terminate with the week in which the individual exhausts his or her balance of regular benefits for any benefit year.

Source. #11045, eff 2-24-16

Emp 411.09 Termination from the PTW Program.

(a) PTW Program participation shall be voluntary and may be terminated at the request of the participant at any time.

(b) To withdraw from the program, an individual shall indicate his or her desire to withdraw on the weekly self-employment assistance allowance claim form.

(c) Voluntary termination shall be effective on the Sunday of the week following the claim week in which voluntary termination is elected.

(d) Voluntary termination of participation in the PTW Program shall not disqualify an otherwise eligible individual from receiving any remaining regular benefits to which he or she may be entitled.

(e) A PTW Program participant shall be removed from the PTW Program if found to be non-compliant with the program participation requirements contained in this Part and in RSA 282-A:31-h, or as provided in RSA 282-A:31-h, IX.

(f) The following shall result in termination from the NH Pathway to Work program:

- (1) Failure to meet program participation requirements contained in Emp 411.07, above; and
- (2) Failure to pursue self-employment assistance activities as defined in RSA 282-A:31-g and Emp 411.02 (l).

(g) Notification of termination shall be made in writing and shall be effective as of the week following the week in which such notification is mailed to the participant.

(h) The eligibility for benefits for an individual who either withdraws voluntarily from the PTW Program or who is terminated by the commissioner shall be determined in accordance with the provisions of RSA 282-A. The requirements of this chapter relating to availability for work, active search for work, acceptance of suitable work, and disqualifying income shall be applicable to such individual beginning with the week following the claim week in which voluntary termination is elected or notification of termination from the program is mailed.

Source. #11045, eff 2-24-16

Emp 411.10 Appeal Procedure.

(a) All determinations under this section shall be made in writing.

(b) An individual who receives a determination of nonacceptance into the PTW Program or who is terminated after acceptance into the program may file an appeal of that determination to the appeal tribunal in accordance with RSA 282-A:48 and Emp 202. Appeal hearings shall be governed by the procedures in Emp 207, except to the extent that such procedures are waived pursuant to Emp 207.06.

Source. #11045, eff 2-24-16

Emp 411.11 Enrollment Limitation.

(a) The department shall monitor enrollment in the PTW Program on a weekly basis to ensure that the number of individuals enrolled at any given time does not exceed 2.5% of all individuals receiving regular benefits at that time.

(b) If the department determines that acceptance of additional participants will cause enrollment to exceed 2.5% of the claimants receiving regular benefits, the department shall defer acceptance of any additional individuals into the PTW Program.

(c) Applicants who meet the eligibility requirements shall be given written notification that acceptance into the PTW Program has been deferred until such acceptance would no longer cause the percentage to exceed 2.5%.

(d) Each individual whose acceptance has been deferred shall be placed on a waiting list in the order in which he or she applied. The applicant who applied first and who is still on the waiting list shall be given the first opening for acceptance into the PTW Program.

(e) Individuals who are on a waiting list because their acceptance has been deferred shall be issued written notification that their status has changed from deferred to not accepted when any one of the following occurs:

- (1) The individual has been on the waiting list for 5 weeks following the week in which they submitted their PTW Program application;
- (2) The individual's remaining regular benefits available for the benefit year is less than 18 times the applicant's weekly benefit amount; or
- (3) Fewer than 18 weeks remain in his or her benefit year.

Source. #11045, eff 2-24-16

CHAPTER Emp 500 CLAIMANT REQUIREMENTS

PART Emp 501 REGISTRATION FOR WORK AND FILING OF CLAIMS

Emp 501.01 Work Registration.

(a) No benefits shall be payable for any week to an individual who is required to register for employment services and seek suitable work unless such individual has an active work registration on file in that week.

(b) For the first 2 weeks of continued unemployment beginning with the effective date of an initial claim, such initial claim shall be a sufficient work registration.

(c) Beginning with the third week of continued unemployment from the initial claim effective date, an individual shall be considered to have an active work registration if the individual:

- (1) Resides in New Hampshire or resides outside of New Hampshire but within 25 miles of a New Hampshire employment security office and is registered on the New Hampshire department of employment security job match system; or
- (2) Resides both outside of New Hampshire and outside of 25 miles of a New Hampshire employment security office and is registered for work at an office designated for the purpose of work registration, with the approval of the state where the individual resides.

(d) Individuals required to register with New Hampshire department of security shall so register for work:

- (1) In person at a New Hampshire department of employment security office; or
- (2) By use of the internet at www.nhes.nh.gov/.

(e) Each individual required to register on the New Hampshire department of employment security job match system shall supply the individual's:

- (1) User name;
- (2) Password;
- (3) Security question;
- (4) First name;
- (5) Last name;
- (6) Address;
- (7) Zip code;
- (8) County;
- (9) Country;
- (10) Phone number;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (11) Birth date;
- (12) Gender;
- (13) Highest level of education achieved;
- (14) Social Security number;
- (15) Updated information relative to current enrollment in school;
- (16) Citizenship status;
- (17) Current employment status;
- (18) Type of business worked in;
- (19) Updated information relative to current work search activity;
- (20) Updated information relative to whether the individual is receiving unemployment insurance benefits;
- (21) Work history;
- (22) Job skills;
- (23) Type of work being sought;
- (24) Preferred minimum and maximum number of hours to work a week; and
- (25) Updated virtual recruiter and updated resume.

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,
EXPIRED: 9-2-97; ss by #6566, eff 9-2-97; ss by #7250, eff
4-30-00; ss by #7993, eff 11-26-03; ss by #9529, eff 8-17-09;
ss by #10627, eff 6-30-14

Emp 501.02 RESERVED

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, EXPIRED: 11-26-11

New. #10500, INTERIM, eff 12-31-13, EXPIRED: 6-30-14

Emp 501.03 Initial Claims.

- (a) A claimant shall file an initial claim as provided in this rule.
- (b) An initial claim shall be filed online at <https://nhuis.nh.gov/claimant/login>, or as follows:

- (1) If a claimant is unable to file an initial claim online from outside of the department, he or she may file online by visiting any local or itinerant office of the department;
- (2) If a claimant is unable to file an initial claim online either outside of the department or at a local or itinerant office of the department, he or she may file by providing the necessary information over the telephone to a department staff member who shall assist in filing an online application; or
- (3) If a claimant is unable to file an initial claim online from outside of the department or as listed in (1) or (2) above, he or she may, if instructed or permitted by the department, file by United States mail, using form “New Hampshire Employment Security Unemployment Insurance Application,” (NHES 0178 R-2/18).

(c) Department staff shall be available during regular business hours to assist the claimant to input any information into the online application or to input information on behalf of the claimant if the claimant is filing in a manner permitted pursuant to Emp 501.03(b)(2).

(d) If filing online, the claimant shall access the claimant login page at <https://nhuis.nh.gov/claimant/login> directly or by going to the New Hampshire employment security homepage at www.nhes.nh.gov and selecting the prompt “File a Claim for Benefits.”

(e) If the claimant has not yet registered to conduct business online with the department, the claimant shall follow the procedures set out at Emp 405.02.

(f) At the login page indicated in (d) above, the claimant shall:

- (1) Select a filing location from a drop down menu at the prompt “Location”;
- (2) Enter his or her login name and password to access his or her homepage; and
- (3) Select the prompt “login” to access the claimant’s homepage.

(g) At the claimant’s homepage, the claimant shall select the prompt “Apply for Unemployment Insurance Benefits” and then complete the following steps:

- (1) The claimant will be presented with a pop-up screen and shall affirm by selecting the prompt “Yes” to the following statement:

“Alert!

Please read the following carefully before you proceed to apply for unemployment insurance benefits.

Please be aware that you will not be allowed to complete and certify your Application for Unemployment Insurance Benefits unless your employment history for the past 18 months includes at least one of the following:

- a. Employment in New Hampshire.
- b. Active military duty-if you were on active military duty at any time during the past 18 months, you may complete and certify your application as long as you are physically standing in New Hampshire while this application is being filed and certified.
- c. Non-military Federal Government employment outside of the United States, as long as you are a resident of New Hampshire.

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If you wish to proceed with your application for unemployment insurance benefits, please click on the YES button below. If not please click on the NO button.”;

(2) The claimant shall then complete and submit the “Initial Claim” form (ICF-07-18); and

(3) While completing the “Initial Claim” form (ICF-07-18), the claimant shall indicate the following payment preferences:

a. By choosing yes or no to the question “Would you like to have 10% of any benefit payments to which you may become entitled withheld for federal income taxes?”;

b. By choosing whether to receive benefit payments by direct deposit or paper check; and

c. If the claimant chooses direct deposit, the claimant shall provide the following information where indicated:

1. Bank name;

2. Bank address including city, state, and zip code;

3. Bank account number;

4. Account type; and

5. Bank routing number;

d. A claimant who has been permitted to file an initial claim by United States mail pursuant to Emp 501.03(b)(3), and who wishes to receive payments by direct deposit may provide this information to the department directly or in writing.

(4) After completing the “Initial Claim” form (ICF-07-18), the claimant shall, by clicking on the check box provided, agree to the following certification:

“I have reviewed all of the information that I have provided by clicking on the + sign for each of the above sections and I certify that the information provided is complete and correct. I further certify that I am partially or totally unemployed. I hereby make this application for determination of my eligibility to collect unemployment benefits and register for work, unless specifically exempt. I understand that RSA 282-A:161-165 provides civil and criminal penalties for false statements made to obtain benefits. I agree to all of the above and want my claim submitted for processing.”; and

(5) The claimant shall then submit his or her claim by choosing the prompt “Certify Claim.”

(h) A claimant who has been permitted to file an initial claim by United States mail pursuant to Emp 501.03(b)(3), and who wishes to receive payments by direct deposit may provide the information indicated in Emp 501.03(g)(3)c. to the department directly or in writing.

(i) For claimants who file an initial application pursuant to Emp 501.03(b)(3) above, the “New Hampshire Employment Security Unemployment Insurance Application” (NHES 0178 R-2/18) shall be signed and dated by the claimant subject to the following certification:

“Certification: I certify that I am partially or totally unemployed. I hereby make this application for determination of my eligibility to collect unemployment benefits and register for work, unless specifically exempt. I understand that RSA 282-A:161-165 provides civil and criminal penalties for false statements made to obtain benefits. I agree to all of the above and want my claim submitted for processing.”

(j) An initial claim shall be allowed for the week during which it is filed if:

- (1) It is filed by the last day of the week for which the claimant is applying for benefits; or
- (2) If the claimant files in an agent state, it is filed by such time as the filing requirements of the agent state require; or
- (3) For a claimant filing by United States mail pursuant to subsection (b)(3), above if the claim is postmarked or received at any office of the department within 3 days of receiving instruction or permission to file on paper.

(k) When a claimant files an initial claim, that filing shall not by itself, establish a claimant's entitlement to benefits for the week in which it is filed. A claimant may apply for benefits for that week by filing a subsequent continued claim for benefits, pursuant to Emp 501.04.

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; ss by #9129, INTERIM, eff 4-20-08, EXPIRED: 10-17-08

New. #9307, eff 10-25-08; ss by #12218, eff 6-23-17; ss by #12589, eff 7-23-18

Emp 501.04 Filing Continued, Reopened, and Additional Claims.

(a) The following definitions shall apply to this section:

(1) A "continued claim" is an application for either total or partial unemployment compensation for:

- a. A week beginning on the effective date of the initial, reopened, or additional claim; and
- b. Any consecutive week thereafter.

(2) A "reopened claim" is an application for either total or partial unemployment compensation for a week occurring during the benefit year established by an initial claim, 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 benefits.

(3) An "additional claim" is a reopened claim which the claimant files when he or she has had employment since the filing of an initial claim.

(b) A claimant shall file a continued, reopened, or additional claim as provided in this rule.

(c) A continued, reopened, or additional claim shall be filed online at <https://nhuis.nh.gov/claimant/login> or as follows:

(1) If a claimant is unable to file a continued, reopened, or additional claim online from outside of the department, he or she may file online by visiting any local or itinerant office of the department;

(2) If a claimant is unable to file a continued, reopened, or additional claim online either from outside of the department or at a local or itinerant office of the department, he or she may file by providing the necessary information over the telephone to a department staff member who shall assist in filing an online continued, reopened, or additional claim; or

(3) If a claimant is unable to file a continued claim online from outside of the department or as listed in (1) and (2) above, he or she may, if instructed or permitted by the Department, file by United States mail, using the “New Hampshire Employment Security Continued Claim Form” (NHES 0180 R-2/18).

(4) If a claimant is unable to file a reopened or additional claim online from outside of the department or as listed in (1) and (2) above, he or she may, if instructed or permitted by the Department, file by United States mail, using the “New Hampshire Employment Security Unemployment Insurance Application,” (NHES 0178 R-2/18).

(d) Department staff shall be available during regular business hours to assist the claimant to input any information into the online application or to input information on behalf of the claimant if the claimant is filing in a manner permitted pursuant to Emp 501.04(c)(2).

(e) If filing online, the claimant shall access the claimant login page at <https://nhuis.nh.gov/claimant/login> directly or by going to the New Hampshire employment security homepage at www.nhes.nh.gov and selecting the prompt “File a Claim for Benefits.”

(f) If the claimant has not yet registered to conduct business online with the department, the claimant shall follow the procedures set out at Emp 405.02.

(g) At the login page, indicated in (e) the claimant shall:

- (1) Select a filing location from a drop down menu at the prompt “Location”;
- (2) Enter his or her login name and password to access his or her homepage; and
- (3) Select the prompt “login” to access the claimant’s homepage.

(h) At the claimant’s homepage, the claimant shall be presented with and shall choose a prompt appropriate to his or her filing status, as follows:

- (1) For claimants filing a continued claim, choose “File for weekly benefits for week ending[_]”;
- (2) For claimants filing a reopened or additional claim, choose “Reopen your claim for Unemployment Insurance Benefits.”

(i) To file a continued claim, the claimant shall complete and submit the “Continued Claim” form (CCF-07-18).

(j) The claimant shall provide all requested information and shall agree to the following certification by clicking on the check box provided:

“I understand that the answers I give to the above questions may affect my rights to benefit payments. I certify that these statements are true and correct. I certify that I am not claiming or receiving benefits from any other unemployment program for the above week. I certify that I have not previously provided false information or failed to disclose information about employment history, employment status, earnings, availability for work, or other matters concerning my eligibility for benefits. I understand that RSA 282-A:161-165 provides civil and criminal penalties for false statements made to obtain benefits. I agree to all of the above and want my claim submitted for processing.”

(k) The claimant shall submit his or her claim by choosing the prompt “Certify Claim.”

(l) For claimants who file continued claims pursuant to Emp 501.04(c)(3) above, the “New Hampshire Employment Security Continued Claim Form” (NHES 0180 R-2/18) shall be signed and dated by the claimant subject to the following certification:

“Certification: I understand that the answers I give to the above questions may affect my rights to benefit payments. I certify that these statements are true and correct. I certify that I am not claiming or receiving benefits from any other unemployment program for the above week. I certify that I have not previously provided false information or failed to disclose information about employment history, employment status, earnings, availability for work, or other matters concerning my eligibility for benefits. I understand that RSA 282-A:161-165 provides civil and criminal penalties for false statements made to obtain benefits. I agree to all of the above and want my claim submitted for processing.”

(m) A claimant filing a reopened claim, upon choosing the prompt “Reopen your claim for Unemployment Insurance Benefits” at his or her homepage, shall be presented with and shall complete and submit the “Initial Claim” form (ICF-07-18).

(n) The claimant shall provide all requested information and shall agree to the following certification by clicking on the check box provided:

“I have reviewed all of the information that I have provided by clicking on the + sign for each of the above sections and I certify that the information provided is complete and correct. I further certify that I am partially or totally unemployed. I hereby make this application for determination of my eligibility to collect unemployment benefits and register for work, unless specifically exempt. I understand that RSA 282-A:161-165 provides civil and criminal penalties for false statements made to obtain benefits. I agree to all of the above and want my claim submitted for processing.”; and

(o) The claimant shall then submit his or her claim by choosing the prompt “Certify Claim.”

(p) If the department is aware, based on departmental records, that a claimant filing a reopened claim has had employment since his or her last filed initial or continued claim, the department shall process the reopened claim as an additional claim and shall direct the claimant to the “Initial Claim” form (ICF-07-18).

(q) To file an additional claim, the claimant shall complete and submit the “Initial Claim” form (ICF-07-18).

(1) For claimants filing an additional claim, the department shall provide an updated list of employers and employment on the “Initial Claim” form (ICF-07-18).

(2) By completing and certifying to the “Initial Claim” form (ICF-07-18), a claimant filing an additional claim shall acknowledge that the updated list of employers or employment is accurate.

(r) The claimant shall provide all requested information and shall agree to the following certification by clicking on the check box provided:

“I have reviewed all of the information that I have provided by clicking on the + sign for each of the above sections and I certify that the information provided is complete and correct. I further certify that I am partially or totally unemployed. I hereby make this application for determination of my eligibility to collect unemployment benefits and register for work, unless specifically exempt. I understand that RSA 282-A:161-165 provides civil and criminal penalties for false statements made to obtain benefits. I agree to all of the above and want my claim submitted for processing.”; and

(s) The claimant shall then submit his or her claim by choosing the prompt “Certify Claim.”

(t) A continued claim shall be allowed for the week during which it is filed if:

(1) It is timely filed in accordance with this section; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) For a claimant filing a paper continued claim pursuant to subsection (b)(3) above, he or she has been instructed or permitted by the department to file by paper because he or she is unable to file in accordance with (b)(1) or (2).
- (u) A continued claim filed on-line shall be timely if:
- (1) The application on which it is filed is active; and
 - (2) The continued claim is filed:
 - a. After 12:00 midnight on Saturday of the week claimed; and
 - b. Within 7 calendar days of the date of the last day of the week claimed.
- (v) A continued claim filed by telephone shall be timely if:
- (1) The application on which it is filed is active; and
 - (2) The continued claim is filed:
 - a. After 12:00 midnight on Saturday of the week claimed; and
 - b. Within 7 calendar days of the date of the last day of the week claimed.
- (w) A continued claim filed by mail shall be timely if:
- (1) The application on which it is filed is active; and
 - (2) The continued claim is postmarked:
 - a. After 12:00 midnight on Saturday of the week claimed; and
 - b. Within 7 calendar days of the date of the last day of the week claimed.
- (x) A continued claim filed in person shall be timely if it is filed on the date and time assigned by the department.
- (y) A continued claim shall be considered timely if adjusted as follows:
- (1) If the claimant needs the assigned filing date adjusted ahead or back one business day because filing on the assigned date is prevented due to the necessity of attending a job interview scheduled by a prospective employer and the claimant requests such adjustment to the assigned filing date before the originally assigned filing date has passed, then the filing will be timely if the claimant files on or before the new adjusted date.
 - (2) If a claimant is prevented from filing a continued claim within the applicable time period at Emp 501.04 (u), (v), (w) or (x) due to the claimant's own illness or injury, but files on the next business day after the end of the illness or injury the claim shall be timely except that, if the illness or injury 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 or injury;
 - (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 (u), (v), (w) or (x) 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. "Act of God" for purposes this subsection means lightning, earthquake, floods and similar events; and
 - (4) If a claimant is prevented from filing within the applicable time period at Emp 501.04 (u), (v), (w) or (x) due to the death of a spouse or the claimant's or the claimant's spouse's father, mother,

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great grandmother, great grandfather, great grandson, great granddaughter, aunt, niece, nephew, great uncle, great aunt, 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. If the fifth day falls on a day that the department is not open for business, filing on the department's next business day shall be timely.

- (z) A reopened or additional claim shall be allowed as provided for initial claims by Emp 501.03(j) and (k).

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, EXPIRED: 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; ss by #9359, EMERGENCY RULE, eff 1-9-09, EXPIRED: 7-8-09

New. #9529, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12589, eff 7-23-18

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, EXPIRED: 4-30-08

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; ss by #10673, eff 9-22-14

Emp 501.07 Bi-Weekly Filing - REPEALED

Source. #3154, eff 12-2-85, EXPIRED: 12-2-91

New. #5816, eff 4-22-94, EXPIRED: 4-22-00

New. #8158, eff 9-4-04; repld by #9529, eff 8-17-09

Emp 501.08 Profiling and Reemployment Services.

(a) The commissioner shall utilize a statistical profile to determine whether a claimant is likely to be unemployed long-term.

(b) The statistical profile shall be based on the:

- (1) Claimant's month of filing the initial claim;
- (2) Industry exhaustion rate of claimant's industry at time of the claimant's separation from employment;
- (3) Claimant's education level;
- (4) Claimant's high quarter wage rate;
- (5) Claimant's wage replacement rate;
- (6) Delay between claimant's time of separation from employment and filing a claim for unemployment benefits; and
- (7) Similar factors which have been shown to statistically correlate to the length of time a claimant is likely to be unemployed.

(c) 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.

(d) Failure to report or participate as directed for reemployment services shall result in disqualification for benefits for the week in which such failure occurs unless the commissioner determines, based on available information that the claimant had good cause for failing to report.

(e) For purposes of (d) 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; ss by #9529, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12589, eff 7-23-18

Emp 501.09 Wage Voucher.- REPEALED

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) If the department determines that information provided by a claimant pursuant to (a) or (b) above might be inaccurate, incomplete, or otherwise require clarification, the department shall request such information from the claimant or from any employer as necessary to complete, clarify or confirm the information provided by the claimant pursuant to (a) or (b) above.

Source. #7620, eff 12-30-01; ss by #9626, INTERIM, eff 12-30-09, EXPIRES: 6-28-10; ss by #9740, eff 6-26-10; ss by #12613, eff 8-23-18

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:

- (1) To verify the individual's efforts to obtain employment;
- (2) To determine if the individual is likely to be unemployed long term;
- (3) To provide the individual with services which may assist the individual in becoming employed; or
- (4) For other similar purposes that will aid the commissioner in providing appropriate services to the individual.

(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 the 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 or part-time who has obtained reasonable assurance from his or her employer that the claimant's layoff will be fewer than 4 weeks shall not be scheduled for employment services unless such employer shall fail to provide full-time or part-time employment to the claimant in fewer than 4 weeks.

(d) A claimant exempt from reporting for employment services pursuant to Emp 501.11(c) shall not be required to actively seek work and provide the commissioner with documentation of efforts to obtain employment for any week during such exemption.

(e) A claimant exempt from reporting for employment services pursuant to Emp 501.11(c) shall, notwithstanding such exemption, attend a benefits orientation session.

(f) For purposes of (c) above, "fewer than 4 weeks" means 27 or fewer calendar days and is calculated from the last day worked to the return to work date.

(g) For purposes of (c) above, "reasonable assurance" means that it is more likely than not that employment shall commence within the required time frame.

(h) 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 nature of the offered employment;
- (7) The employer's financial strength; and
- (8) The employer's past performance in providing offered employment.

(i) A claimant previously employed full-time or part-time who has obtained a definite return to work date from the claimant's employer, which occurs within the time period specified in RSA 282-A:31, I(d)(5) calculated from the last day of work, shall not be scheduled for employment services unless such employer fails to provide full-time or part-time employment to the claimant within said time period.

(j) A claimant exempt from reporting for employment services pursuant to Emp 501.11(i) shall not be required to actively seek work and provide the commissioner with documentation of efforts to obtain employment for any week during such exemption.

(k) A claimant exempt from reporting for employment services pursuant to Emp 501.11(i) shall, notwithstanding such exemption, attend a benefits orientation session.

(l) For purposes of (i) above, "within the time period specified in RSA 282-A:31, I(d)(5)" means that the number of weeks exempted in accordance with RSA 282-A:31, I(d)(5) are multiplied by 7 to arrive at the number of days of such exemption.

(m) If the return to work date calculated from the last day of work results in the same or fewer calendar days than the multiplied number, as specified in (l) above, then the work search waiver requirements under (i) above shall be satisfied.

(n) For purposes of (i) above, “definite return to work” means that the claimant has been given a guarantee of employment which is to begin as a regular and continuous work schedule within the time period specified in RSA 282-A:31, I(d)(5) calculated from the last day of work and which is not contingent on the occurrence of any foreseeable intervening event.

(o) A “regular and continuous work schedule” means the return to activities and a schedule comparable to that performed prior to being laid off. It does not include any day of work during such time period specified in RSA 282-A:31, I(d)(5) unless it falls immediately prior to the start of the claimant’s regular and continuous work schedule.

(p) Factors to be considered by the commissioner in determining whether there is a guarantee of employment 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 nature of the offered employment;
- (7) The employer’s financial strength; and
- (8) The employer’s past performance in providing offered employment.

(q) If a claimant is exempted from the requirements in Emp 501.12, he or she shall also be exempted under Emp 501.11.

Source. #7620, eff 12-30-01; ss by #9627, INTERIM, eff 12-30-09, EXPIRES: 6-28-10; ss by #9741, eff 6-26-10; ss by #10193, INTERIM, eff 10-1-12, EXPIRED: 4-1-13

New. #10329-B, eff 5-7-13; ss by #12856, INTERIM, eff 8-22-19, EXPIRES: 2-18-20; ss by #12978, eff 1-22-20

Emp 501.12 Work Search.

(a) Unless exempted under RSA 282-A:31, III, or Emp 501.11 or both, 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 (2) and the limitations listed at RSA 282-A:32, I(d)(3).

(c) The commissioner shall waive the requirement that a claimant is actively seeking work if the commissioner finds that:

- (1) The claimant is involved in a temporary layoff and has a reasonable assurance of returning to work in fewer than 4 weeks;

- (2) The claimant is involved in a strike, lockout, or other labor dispute;
- (3) The claimant is likely to find work through a union hiring hall;
- (4) The claimant has accepted a confirmable offer of permanent full-time new employment with reasonable assurance of it commencing in fewer than 15 calendar days;
- (5) For those claimants only required to search for part-time work, the claimant has accepted a confirmable offer of permanent part-time new employment of 20 hours or more with reasonable assurance of it commencing in fewer than 15 calendar days; or
- (6) A claimant previously employed full-time or part-time has obtained a definite return to work date from the claimant's employer, which occurs within the time period specified in RSA 282-A:31, I(d)(5) calculated from the last day of work, unless such employer fails to provide full-time or part-time employment to the claimant within said time period.

(d) For purposes of (c)(1), (4), and (5) above, "reasonable assurance" means that it is more likely than not that employment shall commence within the required time frame.

(e) For purposes of (c)(1) above, "fewer than 4 weeks" means 27 or fewer calendar days and is calculated from the last day worked to the return to work date.

(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 nature of the offered employment;
- (7) The employer's financial strength; and
- (8) The employer's past performance in providing offered employment.

(g) For purposes of (c)(6) above, "within the time period specified in RSA 282-A:31, I(d)(5)" means that the number of weeks exempted in accordance with RSA 282-A:31, I(d)(5) are multiplied by 7 to arrive at the number of days of such exemption.

(h) If the return to work date calculated from the last day of work results in the same or fewer calendar days than the multiplied number, as specified in (g) above, then the work search waiver requirements under (c)(6) above shall be satisfied.

(i) For purposes of (c)(6) above, "definite return to work" means that the claimant has been given a guarantee of employment which is to begin as a regular and continuous work schedule within the time period specified in RSA 282-A:31, I(d)(5) calculated from the last day of work and which is not contingent on the occurrence of any foreseeable intervening event.

(j) A "regular and continuous work schedule" means the return to activities and a schedule comparable to that performed prior to being laid off. It does not include any day of work during such time period specified

in RSA 282-A:31, I(d)(5) unless it falls immediately prior to the start of the claimant's regular and continuous work schedule.

(k) Factors to be considered by the commissioner in determining whether there is a guarantee of employment 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 nature of the offered employment;
- (7) The employer's financial strength; and
- (8) The employer's past performance in providing offered employment.

(l) A claimant exempt from searching for work under this section shall notwithstanding such exemption be required to attend a benefits orientation session.

Source. #7620, eff 12-30-01; ss by #9627, INTERIM, eff 12-30-09, EXPIRES: 6-28-10; ss by #9741, eff 6-26-10; ss by #10193, INTERIM, eff 10-1-12, EXPIRED: 4-1-13

New. #10329-B, eff 5-7-13; ss by #12856, INTERIM, eff 8-22-19, EXPIRES: 2-18-20; ss by #12978, eff 1-22-20

Emp 501.13 Claims Filed Over the Internet.

Source. #7993, eff 11-26-03; ss by #9359, EMERGENCY RULE, eff 1-9-09, EXPIRED: 7-8-09

New. #9529, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; rpld by #12589, eff 7-23-18

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 7 days of the date on 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;
- (3) Acceptance, at the time such failure occurred, of a confirmable offer of permanent full time new employment with reasonable assurance of it commencing in fewer than 15 calendar days; and
- (4) For those claimants only required to search for part time work, acceptance, at the time such failure occurred, of a confirmable offer of permanent part time new employment of 20 hours or more with reasonable assurance of it commencing in fewer than 15 calendar days.

Source. #7993, eff 11-26-03; ss by #9529, eff 8-17-09; ss by #10193, INTERIM, eff 10-1-12, EXPIRES: 4-1-13

New. #10329-B, eff 05-07-13

Emp 501.15 Part-time Availability and Shift Availability.

- (a) For purposes of RSA 282-A:32,I(d)(3)(D) and (E), "adult" means those persons who have attained the age of 18 years.
- (b) For purposes of RSA 282-A:31,I(d) "based on wages earned in part-time work" means during the individual's "base period" as defined at RSA 282-A:2, some portion of the individual's "annual earnings" as defined at RSA 282-A:16 were for employment of less than 37.5 hours a week.
- (c) For purposes of RSA 282-A:32,I(d)(3)(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.
- (d) An individual who wishes to be exempt from applying for or accepting full-time or part-time work during the hours of a particular shift pursuant to RSA 282-A:32,I(d)(3)(E) 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.
- (e) An individual who wishes to be exempt from applying for or accepting full-time or part-time work during the hours of a particular shift pursuant to RSA 282-A:32,I(d)(3)(D) or (E) shall:
 - (1) Advise the department of the reasons why the individual is unable to apply for or accept work during the hours of a particular shift;
 - (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.
- (f) 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.
- (g) An individual who is not available for full-time work shall inform the department whether, during the individual's "base period" as defined at RSA 282-A:2, some portion of the individual's "annual earnings" as defined at RSA 282-A:16 were for employment of less than 37.5 hours a week.
- (h) An adult other than the individual claiming benefits shall be considered "available" for purposes of RSA 282-A:32, I(d)(3)(D) and (E) if the commissioner determines the adult is a suitable person to provide care.

(i) The commissioner shall consider the other adult to be a suitable person if, based on the information available to the commissioner:

- (1) It appears likely the person will provide care in a responsible manner;
- (2) The person is capable of providing the specific care required;
- (3) The person has no physical or mental limitation that would prevent the provision of adequate care; and
- (4) There are no other factors which negatively impact the likelihood the person will provide the care required.

Source. #8550, INTERIM, eff 1-26-06, EXPIRES: 7-25-06; ss by #8677, eff 7-8-06 ss by #9241, INTERIM, eff 8-26-08, EXPIRES: 2-22-09; ss by #9389, eff 2-13-09, EXPIRED; 2-13-17

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) Unless a claimant has elected to receive payment by direct deposit to the claimant's bank account, 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, EXPIRED: 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; ss by #9529, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12589, eff 7-23-18

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 necessities 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, ss by #10673, eff 9-22-14

Emp 502.03 Overpayment Without Fault.

(a) For the purposes of RSA 282-A:165, II of the New Hampshire unemployment compensation law an individual who has received benefits later found to be overpaid shall be without fault in causing the overpayment where:

- (1) Such individual is paid benefits which should not have been paid because the authorized representative of the commissioner either had and failed to use, or did not attempt to obtain, information which the authorized representative had reason to know existed and which was necessary to make a correct decision;
- (2) Such 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;
- (3) Such individual is paid benefits after the individual has exhausted the maximum benefits available to the individual;
- (4) Such individual is paid benefits with respect to any week for which the individual has been previously determined to be disqualified or ineligible;
- (5) Such 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; or
- (6) Such individual was without fault under Emp 502.03(b).

(b) For the purposes of RSA 282-A:165, II of the New Hampshire unemployment compensation law an individual who has received benefits later found to be overpaid shall be with fault in causing the overpayment where the overpayment resulted totally or partially from:

- (1) The individual making a material statement or representation which the individual knew or should have known was inaccurate;
- (2) The individual failing or causing another to fail to disclose a material fact which the individual knew or should have known was material; or
- (3) The individual failing to return checks which the individual knew or should have known were not due.

(c) In determining whether the individual knew or should have known under (b) above, the commissioner shall consider the totality of the circumstances, taking into account any physical, mental, educational or linguistic limitations, including any lack of facility with the English language the person has, in applying the following factors to the individual:

- (1) The individual's understanding of the reporting requirements;
- (2) The requirements communicated to the individual to report events affecting payments;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Knowledge of the occurrence of events that should have been reported;
- (4) Efforts to comply with the reporting requirements;
- (5) Opportunities to comply with the reporting requirements;
- (6) Understanding of the obligation to return checks which were not due; and
- (7) The extent to which the individual was unable to comply with reporting requirements due to age, comprehension, memory, physical, mental, educational, linguistic, English language proficiency, or similar limitations.

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, EXPIRED: 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; ss by #9628, INTERIM, eff 1-1-10, EXPIRED: 6-30-10

New. #9745, eff 7-1-10; ss by #12613, eff 8-23-18

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 ss by #10673, eff 9-22-14

Emp 502.05 Deduction and Withholding From Benefits.

(a) A claimant, when filing an initial claim 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.

- (1) 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.
- (2) An individual may change his or her election regarding the withholding of income tax from benefit payments at any time by:
 - a. Written notice to the department; or
 - b. By changing his or her election when completing "Initial Claim" form (ICF-07-18), while filing a reopened or additional claim.

(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 owed to the State of New Hampshire;
- (2) Deductions for child support obligations;
- (3) Withholding for any overpayments of unemployment compensation owed to any state other than the State of New Hampshire; and
- (4) 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, EXPIRED: 4-30-06

New. #8627, eff 6-6-06; ss by #9529, eff 8-17-09; ss by #12480, INTERIM, eff 2-16-18, EXPIRES: 8-15-18; ss by #12589, eff 7-23-18

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, EXPIRED; 11-26-11

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14;
ss by #10628, eff 6-30-14

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, attendance 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 was 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 health insurance premium tax credits authorized under the Patient Protection and Affordable care Act (ACA, P.L. 111-148, as amended) 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 such tax credits.

Source. #7993, eff 11-26-03, amd in Emp 502.07(e) by #8629, EMERGENCY, eff 5-10-06; paragraph (e) EXPIRED: 11-6-06; ss by #8948, eff 7-21-07; ss by #10973, eff 11-12-15

Emp 502.08 Waiting Week.

(a) An individual shall have served the waiting period of one week required under RSA 282-A:31, I(h) after a week is treated by the department as meeting all of the requirements of that subparagraph.

(b) After a week is treated by the department as meeting all of the requirements of RSA 282-A:31, I(h), the subsequent discovery that all such requirements were not met shall not affect the treatment of the individual as having served the waiting period of one week.

Source. #9628, INTERIM, eff 1-1-10, EXPIRED: 6-30-10

New. #9745, eff 7-1-10; ss by #12613, eff 8-23-18

Emp 502.09 Penalty Week under RSA 282-A: 164.

(a) "Count" means:

(1) An act or omission, or combination of actions or omissions, which constitutes willfully making a false statement or representation or knowingly failing to disclose a material fact under RSA 282-A:164; and

(2) Failure to report to the department upon filing for a week of benefits a prior count under (a)(1) above which, if revealed to the department, would have disqualified the claimant from receiving benefits for the week for which the individual was filing, if such individual certified in the filing for such week that the individual has not previously provided false information or failed to disclose information about the individual's employment history, employment status, earnings, availability for work, or anything else affecting the individual's eligibility for benefits.

(b) The department shall have the burden to prove a count by clear and convincing evidence.

(c) "Penalty week" means one of the 4 to 52 weeks of ineligibility imposed on an individual determined to have committed an act or omission under RSA 282-A:164.

(d) Individuals who within 6 years of an initial determination issued under RSA 282-A:164 have neither, previously been convicted under RSA 282-A:161, nor previously been finally determined to have committed an act under RSA 282-A:164, shall be assessed 4 penalty weeks for each count meeting the definition in (a)(1) above concerning:

- (1) Refusal of suitable work;
- (2) Inability to work;
- (3) Unavailability to work;
- (4) Work search; or
- (5) Any other count not included under paragraph (e) or (f)

(e) Individuals who within 6 years of an initial determination issue under RSA 282-A:164 have neither, previously been convicted under RSA 282-A:161, nor previously been finally determined to have committed an act under RSA 282-A:164, shall be assessed 6 penalty weeks for each count meeting the definition in (a)(1) above concerning:

- (1) Unreported work;
- (2) Unreported, or under reported, receipt of earnings;
- (3) Unreported, or under reported, receipt of vacation pay, holiday pay, severance pay, bonus pay, or similar pay;
- (4) Voluntary quit of suitable work; or
- (5) Misconduct discharge.

(f) Individuals who within 6 years of an initial determination issued under RSA 282-A:164 have neither, previously been convicted under RSA 282-A:161, nor previously been finally determined to have committed an act under RSA 282-A:164, shall be assessed 8 penalty weeks for each count meeting the definition in (a)(1) above concerning:

- (1) Unreported work and earnings, including self-employment; or
- (2) Incarceration.

(g) Individuals who within 6 years of an initial determination issued under RSA 282-A:164 have neither, previously been convicted under RSA 282-A:161, nor previously been finally determined to have committed an act under RSA 282-A:164, shall be assessed 2 penalty weeks for each count meeting the definition in (a)(2) above.

(h) Individuals who within 6 years of an initial determination under RSA 282-A:164 have either previously been convicted under RSA 282-A:161, or previously been finally determined to have committed an act under RSA 282-A:164 shall be assessed 52 penalty weeks for any count meeting the definition in (a)(1) above.

(i) In a decision under RSA 282-A:164, the total number of penalty weeks imposed pursuant to paragraphs (d) through (h) above shall not exceed the statutory maximum of 52 weeks.

(j) A decision under RSA 282-A:164, which is appealable to the appeal tribunal, shall comply with Emp 211.

Source. #10708, eff 10-27-14

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:

(1) 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; or

(2) The individual is separated from employment because the individual is unable to perform essential job functions due to the individual's own voluntary negligent or deliberate actions which caused the individual to not possess a necessary license, certification, or similar requirement.

(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 a work-related illness or injury which was not the individual's fault under RSA 281-A:14, and the employer is unable to return the individual to the individual's job or to comparable work; or

b. During which the individual was out of work on a leave of absence, and the employer is unable to return the individual to the individual's job or to comparable work due solely to:

1. A reduction in force involving such work; or
2. Other economic conditions; and

(2) 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.

(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; ss by #9629, INTERIM, eff 12-30-09, EXPIRED: 6-28-10

New. #9746, eff 7-1-10; ss by #12613, eff 8-23-18

Emp 503.02 Voluntary Leaving of Incidental Employment.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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) and (d) (2); 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;

(2) The leaving, if from suitable work as defined in RSA 282-A:32, I(d)(1) and (d) (2); 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 (d) (2); 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; EXPIRED 9-5-12

New. #10500, INTERIM, eff 12-31-13, EXPIRES: 6-30-14;
ss by #10629, eff 6-30-14

Emp 503.03 Leaving of Self-Employment or Closing Business.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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 reasonable 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:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- 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" shall 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 non-extension 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.
- (f) For purposes of RSA 282-A:32, I(e), the leaving of self-employment or closing of a business need not be permanent and shall include seasonal and other temporary leavings and closings.

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; ss by #9742, eff 6-26-10; ss by #12613, eff 8-23-18

Emp 503.04 Self-Employment. - EXPIRED

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 in which the obligation to perform services 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 ss by #10673, eff 9-22-14

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, 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, X.
- (d) “Immediate family” means spouse, parent, and minor child under the age of 18 whether the relationship is a biological, adoption, step-, half-, or in-law relationship.
- (e) “Intimate partner” means “intimate partner” as defined in RSA 173-B:1, XV.
- (f) The fact of domestic abuse shall be established by a preponderance of the evidence.
- (g) The department shall verify the existence of domestic abuse through reasonable documentation.
- (h) If the claimant has sought assistance in addressing domestic abuse from a counselor, shelter worker, attorney, member of the clergy, health worker, or other professional, reasonable documentation shall include documentation from such professional.
- (i) In addition to reasonable documentation under Emp 503.06(h), the department shall accept any other evidence that reasonably tends to prove domestic abuse.

(j) The department shall accept as evidence of domestic abuse, but shall not require:

- (1) An active or recently issued protective or other order documenting domestic abuse; or
- (2) A police record documenting relevant domestic violence.

(k) 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.

(l) Upon an affirmative finding of the fact of domestic abuse, the separation from employment shall not be disqualifying if the commissioner determines that:

- (1) The claimant reasonably believed the separation from employment was necessary to protect the claimant or any member of the claimant's immediate family from domestic abuse; or
- (2) The claimant moved to a location from which it would be impractical for him or her to commute to the claimant's former employment in order, and based on a reasonable belief that moving to the location was necessary, to protect the claimant or any member of the claimant's immediate family from domestic abuse.

(m) The factors in (n) shall be considered by the commissioner in making the determination under paragraph (l) on a totality of the circumstances basis, and the presence or absence of one or more of the factors shall not be controlling.

(n) Factors to be considered shall include but not be limited to whether:

- (1) The abuse, or the effects of the abuse, interfered with the claimant's ability to work, travel, or prepare for work;
- (2) The claimant or any member of the claimant's immediate family needed to hide from the abuser at a shelter or elsewhere in order to be safe;
- (3) The abuse occurred as a consequence of the claimant going to work; and
- (4) The failure of the claimant to separate from employment would make it more likely that the claimant or any member of the claimant's immediate family would be the victim of domestic abuse.

(o) There shall be a presumption under Emp 503.06(1)(2) that it would be impractical for the claimant to commute to the claimant's former employment if:

- (1) The distance of the commute from the location to which the claimant moved to the claimant's employment would have exceeded 50 miles; or
- (2) The time necessary to commute utilizing the means of transportation reasonably available to the claimant from the location to which the claimant moved to the claimant's employment would have exceeded 50 minutes.

(p) The presumption at Emp 503.06(o) shall be overcome if the commissioner finds after consideration of the means of transportation reasonably available to the claimant at the location to which the claimant moved:

- (1) The commute from the location to which the claimant moved to the claimant's employment would have been consistent with the commuting patterns of the locality of such new location; or
- (2) The time and distance of the commute from the location to which the claimant moved to the claimant's employment would not have been greater than the time and distance of the claimant's former commute to the claimant's employment.

(q) Factors to be considered by the commissioner in determining the commuting patterns of the location to which the claimant moved shall include but not be limited to information which is available concerning:

- (1) The geographical area of such location;
- (2) The average commuting distance of other individuals in the same location;
- (3) The means of transportation available to individuals in the same location;
- (4) The geographical area which encompasses employers which provide jobs of the type which the claimant is seeking; and
- (5) Any other factor which helps in ascertaining the distance, time, cost, and means of transportation commonly experienced by others living in the locality who offer similar or related skills or services.

Source. #6833, INTERIM, eff 8-25-98, EXPIRED: 12-23-98;
ss by #6868, eff 10-17-98, EXPIRED: 10-17-06

New. #8949, eff 7-21-07; ss by #9629, INTERIM, eff
12-30-09, EXPIRED: 6-28-10

New. #9746, eff 7-1-10; ss by #12613, eff 8-23-18

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:32I(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, EXPIRED: 11-26-11

Emp 503.08 Leaving Employment Due to Pregnancy Or To An Illness Or Injury That Is Not Work Related.

(a) The purpose of Emp 503.08 is to implement RSA 282-A:32, I(a)(4).

(b) “Work related” means arising out of and in the course of employment.

(c) An individual who is separated from employment because the individual has become unable to perform some or all of the individual’s job duties shall not be disqualified for benefits due to such separation from employment where:

(1) The reason the individual is unable to perform such duties is due to pregnancy or to an illness or injury that is not work related;

(2) A physician has attested in writing to the individual’s inability to perform some or all of the individual’s work duties;

(3) The individual reasonably communicated such inability to the employer; and

(4) The employer did not provide the individual with work within the scope of the individual’s limitations.

(d) Nothing in this rule shall:

(1) Relieve an employer of the duty to provide reasonable accommodation as that term is defined in state or federal law; or

(2) Create a duty to provide reasonable accommodation.

Source. #9629, INTERIM, eff 12-30-09, EXPIRED: 6-28-10

New. #9746, eff 7-1-10; ss by #12613, eff 8-23-18

Emp 503.09 Leaving Employment to Accompany Spouse.

(a) The purpose of Emp 503.09 is to implement RSA 282-A:32, I(a)(5).

(b) An individual who leaves the individual’s employment to accompany his or her spouse shall not be disqualified for benefits due to such leaving of employment where:

(1) The location of the spouse’s employment changed; and

(2) It would have been impractical for the individual to commute from the individual’s and spouse’s new residence to the individual’s employment.

(c) There shall be a presumption that it would have been impractical for the individual to commute from the individual’s and spouse’s new residence to the individual’s employment if:

(1) The distance of the commute from the individual’s and spouse’s new residence to the individual’s employment would have exceeded 50 miles; or

(2) The time necessary to commute utilizing the means of transportation reasonably available to the individual, from the individual's and spouse's new residence to the individual's employment, would have exceeded 50 minutes.

(d) The presumption at Emp 503.09(c) shall be overcome if the commissioner finds after consideration of the means of transportation reasonably available to the individual at both the individual's prior residence and the individual's new residence that:

(1) The commute from the individual's and spouse's new residence to the individual's employment would have been consistent with the commuting patterns of the locality of such new residence; or

(2) The time and distance of the commute from the individual's and spouse's new residence to the individual's employment would not have been greater than the time and distance of the commute from the individual's former residence to the individual's employment.

(e) Factors to be considered by the commissioner in determining the commuting patterns of the locality of the individual's and spouse's new residence shall include but not be limited to information which is available concerning:

(1) The geographical area of such residence;

(2) The average commuting distance of other individuals in the same locality;

(3) The means of transportation available to individuals in the same locality;

(4) The geographical area which encompasses employers which provide jobs of the type which the individual is seeking; and

(5) Any other factor which helps in ascertaining the distance, time, cost, and means of transportation commonly experienced by others living in the locality who offer similar or related skills or services.

Source. #9629, INTERIM, eff 12-30-09, EXPIRED: 6-28-10

New. #9746, eff 7-1-10; ss by #12613, eff 8-23-18

Emp 503.10 Leaving Employment Due to the Illness or Disability of a Member of the Individual's Immediate Family.

(a) The purpose of Emp 503.10 is to implement RSA 282-A:32, I(a)(6).

(b) "Immediate family" means spouse, parent, and minor child under the age of 18 whether the relationship is a biological, adoption, step-, half-, or in-law relationship.

(c) "Illness" means verified disease, poor health, or sickness which necessitates the care of the ill person by another person for a period of time longer than the employer was willing to grant leave.

(d) "Disability" means verified disability which necessitates the care of the ill person by another person for a period of time longer than the employer was willing to grant leave.

(e) "Disability" shall encompass all types of disability, including:

(1) Mental and physical disability;

(2) Permanent and temporary disability; and

(3) Partial and total disability.

(f) An individual who leaves employment due to the illness or disability of the individual's immediate family shall not be disqualified for benefits due to such leaving of employment.

Source. #9629, INTERIM, eff 12-30-09, EXPIRED: 6-28-10

New. #9746, eff 7-1-10; ss by #12613, eff 8-23-18

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 communicated to the commissioner at any office of the New Hampshire department of employment security.

(c) Approval shall be granted only if the commissioner finds either:

(1) That the claimant is an eligible dislocated worker as defined at 29 U.S.C. 2801(9) who is participating in training, other than on-the-job training, under the Workforce Innovation and Opportunity Act of 2014, P. L. 113-128, as amended;

(2) That the Claimant is a participant in WorkNowNH; or

(3) That:

a. 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;

b. 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;

c. 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

d. 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 304.02. 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; ss by #9630, INTERIM, eff 12-30-09, EXPIRES: 6-28-10; ss by #9743, eff 6-26-10; ss by #12613, eff 8-23-18; ss by #13348, eff 3-3-22.

PART Emp 505 ADDITIONAL BENEFITS - EXPIRED

Source. #7948, INTERIM, eff 9-06-03, EXPIRED: 3-4-04

CHAPTER Emab 100 ORGANIZATIONAL RULES

PART Emab 101 **DEFINITIONS**

Emab 101.01 “Presiding member” means the chair, or in the absence of the chair, the vice-chair of the unemployment compensation appellate board.

Source. #10621, eff 6-10-14

PART PART Emab 102 **DESCRIPTION OF APPELLATE BOARD**

Emab 102.01 Organization

(a) The appellate board is part of the department of employment security for organizational purposes, in accordance with RSA 282-A:63.

(b) The appellate board shall accept appeals in accordance with Emab 202.

(c) The appellate board is comprised of the chair and vice chair, who are attorneys, 2 members representing business management, 2 members representing labor, and 2 members representing the public.

Source. #10621, eff 6-10-14

PART Emab 103 PUBLIC REQUESTS FOR INFORMATION AND OTHER MAILINGS AND CORRESPONDENCE TO THE BOARD

Emab 103.01 Requests and Correspondence

(a) Request for information may be made by writing to the appellate board at the following address:

NH Department of Employment Security
Attention: Appellate Board
45 South Fruit Street
Concord, New Hampshire 03301

(b) Mailings and correspondence to the appellate board in accordance with this chapter and Emab 200 shall be made to the address above.

Source. #10621, eff 6-10-14

CHAPTER Emab 200 APPELLATE BOARD RULES OF PRACTICE AND PROCEDURE

PART Emab 201 ADJUDICATIVE PROCEEDINGS

Emab 201.01 Rules for Adjudicative Proceedings.

The appellate board's review is confined to the record. The appellate board does not receive or consider evidence and therefore rules relative to adjudicative hearings are inapplicable. The proceedings before the appellate board are not those intended to be included under RSA 541-A:30-a.

Source. #10394, eff 8-9-13

PART Emab 202 RULES GOVERNING APPEALS TO THE APPELLATE BOARD

Emab 202.01 Scope of Rules. These rules shall govern procedure in appeals to the unemployment compensation appellate board.

Source. #10394, eff 8-9-13

Emab 202.02 Waiver or Suspension of Rules. The unemployment compensation appellate board, upon its own initiative or upon the motion of any party, shall waive any requirement or limitation imposed by Emab 202 upon reasonable notice to affected persons when the proposed waiver would be more likely to promote the fair, accurate and efficient resolution of issues pending before the appellate board than would adherence to a particular rule or procedure.

Source. #10394, eff 8-9-13

Emab 202.03 Definitions.

(a) "Appeal tribunal" means the appeal tribunal of the department of employment security constituted under RSA 282-A:53.

(k) "Board" means the unemployment compensation appellate board as provided by RSA 282-A:62.

(c) “Chair” means the chair of the unemployment compensation appellate board as provided in RSA 282-A:62

(d) “Close personal or family relationship” means a relationship by blood, marriage or other significant long-term relationship.

(e) “Commissioner” means the commissioner of the department of employment security as provided by RSA 282-A:108.

(f) “Department” means the department of employment security as provided by RSA 282-A:107.

(g) “Hearing” means the formal and official proceeding of the board in which the board receives legal argument from the parties based on the record below and applies the criteria at RSA 282-A:65.

(h) “Members” means the members of the unemployment compensation appellate board as provided in RSA 282-A:62.

(i) “Offer of proof” means an oral or written description of potential evidence.

(j) “Parties” means all interested parties as defined in RSA 282-A:42, III, as well as the commissioner as provided in RSA 282-A:66, I.

(k) “Vice-chair” means the vice-chair of the unemployment compensation appellate board as provided in RSA 282-A:62.

Source. #10394, *eff 8-9-13*

Emab 202.04 Appeals from the Commissioner’s Decision or the Appeal Tribunal’s Decision After Remand; Appeal to the Board; General Provisions.

(a) An appeal to the board shall be pursuant to the provisions of RSA 282-A:64, I.

(b) An appeal shall be in writing and be directed to the board. The basis for such appeal shall be any one or a combination of the established grounds, as provided in RSA 282-A:65, I-V.

(c) All appeals shall be physically received or, if filed by mail, postmarked within 14 days of the date of mailing of either the commissioner’s decision on a request for reopening, the final decision of the commissioner under RSA 282-A:95, or the appeal tribunal’s decision on an appeal that has already been remanded by the board.

(d) Failure to file a timely appeal within the 14 calendar day period shall result in a dismissal of the appeal unless good cause is shown.

(e) For purposes of this section good cause means that:

(1) Meeting the prescribed time limit would unduly burden the party or;

(2) An extension is otherwise necessary to conduct a more effective hearing.

(f) The board shall issue notification of the appeal to all parties.

(g) The board shall provide a copy of any correspondence or motions received from a party in a particular matter to all other parties in the matter. If said filing is deemed to be a motion, the board shall issue a deadline for objection(s) to the motion.

Source. #10394, eff 8-9-13

Emab 202.05 The Record on Appeal. Pursuant to RSA 282-A:64, III, the commissioner shall provide the appellate board with a copy of all records related to the claim. If technologically and administratively feasible, records shall be transmitted in electronic format upon request.

Source. #10394, eff 8-9-13

Emab 202.06 Hearings; General Provisions.

(a) The board shall decline to review any appeal if it finds the appeal presents no substantial question within the board's jurisdiction as set forth in RSA 282-A:65. In such case the board shall issue an order of summary disposition.

(b) Unless summarily disposed of under Emab 202.06(a), a hearing shall be held after the receipt by the parties of the notice, the record on appeal including the recording of the hearing, and if required, the transcript of the proceedings.

(c) A continuance or postponement requested by any party or by another individual appearing pursuant to Emab 202.06(e), shall be made in writing not less than 10 calendar days prior to the scheduled hearing date, except for good cause shown.

(a) For purposes of this section, good cause means that:

(1) Meeting the prescribed time limit would unduly burden the party or;

(2) A continuance or postponement is otherwise necessary to conduct a more effective hearing.

(e) A party may appear personally, through legal counsel, or by a duly authorized agent acting on a party's behalf. Pursuant to RSA 282-A:117-123, hearings shall be confidential in nature and attendance shall be limited to the parties and their authorized representatives, except upon agreement of the parties.

(f) Parties may submit argument in person or in writing, or both. Any written argument or memorandum of law submitted 3 calendar days prior to the hearing shall be considered timely.

(g) Late submissions shall not be accepted, except upon a determination by the chair or vice chair that:

(1) Meeting the prescribed time limit would unduly burden the party or;

(2) A late submission is otherwise necessary to conduct a more effective hearing.

(h) If the appealing party fails to either attend a hearing or to advise the board that the party wishes to be heard solely by written submission, the board shall either:

(1) Dismiss the case; or

(2) Hear the case if it determines that there may have been error or the rights of any party would be violated by failure to proceed.

(i) If a party other than the appealing party chooses not to be present, the board shall proceed with the hearing.

(j) Oral argument shall be limited to 10 minutes on behalf of each party including questions from the board unless the board determines that failure to grant additional time would violate the rights of any party. Unless otherwise directed by the presiding member, the appealing party shall be heard first. The chair or vice chair shall allow a party to offer brief rebuttal argument if he or she determines that it will further clarify the issues.

(k) No evidence shall be received by the board in any hearing. Any alleged newly discovered evidence shall be introduced by an offer of proof by the moving party to the board and the other parties.

Source. #10394, eff 8-9-13

Emab 202.07 Motions and Objections. Any request for action by the board shall be by motion. All motions and objections thereto, other than those made during a hearing, shall be made in writing. They shall state with particularity the grounds upon which they are made and shall set forth the relief or order sought.

Source. #10394, eff 8-9-13

Emab 202.08 Consolidation of Cases. The board shall make an order for consolidation as justice and convenience requires when the parties agree and the cases:

- (a) Have common issues of fact arising out of the same transaction or event; or
- (b) Involve common issues of law.

Source. #10394, eff 8-9-13

Emab 202.09 Entry of Decision.

(a) Copies of all decisions and orders shall be provided to all parties. The board shall retain a record of its decisions.

(b) All written decisions of the board shall include a notice of appeal rights which shall state that a party may file a motion for reconsideration or motion for a new hearing with the board within 20 calendar days of the date of mailing of the decision.

Source. #10394, eff 8-9-13

Emab 202.10 Requests for Reconsideration of Decision; Procedures for Filing Request; Form.

(a) Any party may submit a written request for reconsideration or a motion for a new hearing within 20 calendar days after the date of mailing of any decision by the board.

(b) A request for reconsideration or a motion for a new hearing shall:

- (1) Identify each alleged error of fact, error of reasoning, or error of law which the moving party seeks to have reconsidered;
- (2) Describe how each error causes the board'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) Concisely state the 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. #10394, *eff 8-9-13*

Emab 202.11 Action on Request for Reconsideration; Rehearing; Exhaustion of Administrative Remedies.

(a) The board shall, within 30 calendar days rule on a motion for reconsideration or order a new hearing. Reconsideration shall be granted only in those instances where the board believes it may have erred in its application of the criteria in RSA 282-A:65 to the record. Rehearing shall be granted only in those instances where the board believes that further clarification of the law or further argument from one or more of the parties is needed to make a correct ruling.

(b) If the board does not deny or grant a motion for reconsideration or order a new hearing within 30 calendar days then, the board's original decision shall be considered adopted and the request for reconsideration or motion for a new hearing shall be deemed denied. The board shall provide all parties with written notice that the board's original decision has been considered adopted and the request for reconsideration or motion for a new hearing is deemed denied.

(c) In the event an interested party or the commissioner files an appeal with the New Hampshire Supreme Court, the department shall send a copy of the appeal to the board.

Source. #10394, *eff 8-9-13*

Emab 202.12 Transfer of Records. After 60 days has elapsed from the date of the mailing of the final decision by the board, the records, transcript, and all other papers, except for the decision in the case, shall be transferred to the department.

Source. #10394, *eff 8-9-13*

Emab 202.13 Withdrawal of Appeal. A party may withdraw its appeal at any time upon written request to the board.

Source. #10394, *eff 8-9-13*

Emab 202.14 Recusal of Board Member.

(a) Upon his or her own initiative, or upon the motion of any party, a board member shall for good cause recuse himself or herself from participation in any hearing.

(b) "Good cause" shall exist if a board member:

- (1) Has a direct interest in the outcome of a proceeding including situations where the appeal involves something in which the board member has a financial interest, or someone with whom the board member has a close personal or family relationship;
- (2) Personally believes that he or she cannot fairly judge the facts of a case; or
- (3) Would create the appearance of impropriety if the board member participates.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for recusal.

(d) In the event of a dispute as to whether good cause exists to require a recusal, the question shall be decided by 2 board members not subject to the recusal action.

Source. #10394, eff 8-9-13

Emab 202.15 Confidentiality of Hearings. At the hearing, the presiding member shall deny access to any person not a party nor a proper representative to the specific proceeding before the board, except upon agreement of the parties.

Source. #10394, eff 8-9-13

Emab 202.16 Conduct. Persons who are determined to be disorderly or are disruptive to the proceedings at any hearing shall be removed.

Source. #10394, eff 8-9-13

Emab 202.17 Written Transcript of Appeal Tribunal or Administrative Hearing Committee Hearing.

(a) The board, after making a determination that a written transcript of the appeal tribunal or administrative hearing committee hearing is needed, shall order the production of such transcript, in whole or in part, upon request of any party to an appeal or the board's own initiative.

(b) In determining whether to order production of such transcript, the board shall consider the following factors, on a totality of circumstances basis:

- (1) The party requesting the transcript has a hearing impairment;
- (2) The recording is difficult to hear in parts;
- (3) The case is particularly lengthy or involves complex issues; and
- (4) Any other good cause shown.

(c) A request for a written transcript shall include the reason(s) for the necessity of the transcript and whether the transcript should be in whole or in part.

(d) The board shall allow the use of a transcript prepared by an interested party, or agent of an interested party, from the department's official recording of an appeal tribunal or an administrative hearing committee hearing if it finds the transcript to be accurate.

Source. #10394, eff 8-9-13

Emab 202.18 Ex Parte Communication.

(a) The purposes of this section, "ex parte communication" shall mean any communication prohibited by RSA 541-A:36.

(b) Parties shall be prohibited from all forms of ex parte communication with members of the board while an appeal is pending, including, but not limited to, written, telephonic, voice-mail, facsimile, e-mail, and face-to-face communications.

Source. #10394, *eff* 8-9-13

PART Emab 203 DECLARATORY RULINGS

Emab 203.01 Petition for Declaratory Ruling. Since the appellate board does not have jurisdiction to issue declaratory rulings, petitions requesting declaratory rulings shall not be accepted by the board.

Source. #10622, *eff* 6-10-14

PART PART Emab 204 RULEMAKING PETITIONS

Emab 204.01 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 appellate board, 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; and
- (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 litigation; or
 - b. The subject of a decision which has become final.

(b) The appellate board shall, within 30 days after receipt of a petition under this rule, either deny the petition in writing, stating therein the 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 or existing rule;
- (2) 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
- (3) The adoption, amendment or repeal of the rule is deemed inappropriate for similar reasons.

Source. #10622, *eff* 6-10-14

PART PART Emab 205 **RULEMAKING PUBLIC COMMENT HEARINGS**

Emab 205.01 Purpose. The purpose of this part is to provide a uniform procedure for the conduct of public hearings at which comment from the general public will be solicited for evaluation and consideration by the appellate board relative to rulemaking.

Source. #10622, eff 6-10-14

Emab 205.02 Scope. These rules shall apply to all hearings required by state law to be conducted by the appellate board at which public comment shall be solicited, except that they shall not apply to appellate board hearings pursuant to Emab 202.

Source. #10622, eff 6-10-14

Emab 205.03 Notice.

- (a) A public comment hearing concerning rulemaking shall be commenced by placing notice of the hearing in the "Rulemaking Register" so that it shall appear at least 20 days prior to the hearing date.
- (b) Notice for rulemaking public comment hearings shall comply with RSA 541-A:6,I.
- (c) Nothing in these rules shall prohibit the appellate board from giving greater notice than the minimum set out in this part.

Source. #10622, eff 6-10-14

Emab 205.04 Media Access.

- (a) Public comment hearing shall be open to the print and electronic media.
- (b) The presiding member shall place limits on the activities of the media to avoid disruption in the following ways:
 - (1) Limiting the placement of television cameras to certain locations in the hearing room; and
 - (2) Prohibiting interviews from being conducted within the hearing room during the hearing.

Source. #10622, eff 6-10-14

Emab 205.05 Moderator.

- (a) The hearing shall be presided over by a moderator, who shall be the chair or vice chair.
- (b) The moderator shall:
 - (1) Call the hearing to order;
 - (2) Cause a recording of the hearing to be made;
 - (3) Place limits on the media to avoid disruption as set out in Emab 2045.04(b);
 - (4) Recognize those who wish to be heard and establish the order thereof;

- (5) Limit the time for each speaker, as set out in *Emab 205.06(b)*;
- (6) Remove or have removed any person who disrupts the hearing;
- (7) Adjourn the hearing; and
- (8) Provide opportunity for the submission of written comments.

Source. #10622, *eff 6-10-14*

Emab 205.06 Public Participation.

- (a) Any person who wishes to speak on the issue or issues that are the subject of the hearing shall place his or her name and address on a speakers' list before the last speaker on the list has finished speaking. All whose names appear on the speakers' list, as provided, shall be afforded reasonable time to speak at the hearing. Reasonable time shall be determined considering the number of people who wish to be heard, and the time and the availability of the facility.
- (b) The appellate board, through the moderator, shall:
 - (1) Refuse to recognize a person who refuses to give him or her full name and address;
 - (2) When a group or organization wishes to comment, limit the group to no more than 3 spokespersons, provided that the members who are present shall be allowed to enter their names and addresses into the record as supporting the position by the group or organization;
 - (3) Revoke recognition of a speaker who speaks or acts in an abusive or disruptive manner; and
 - (4) Revoke recognition of a speaker who refused to keep his or her comments relevant to the issue or issues which are the subject or the hearing.
- (c) Written comments may be submitted any time from the time notice has been published until the record has been closed by the moderator, which shall not be less than 5 business days after the hearing.
- (d) In the event that the number of speakers who wish to give oral testimony relevant to the issue or issues involved exceeds that number which can be heard within a reasonable period of time subject to facility availability and length of the hearing, the hearing shall be reconvened pursuant to RSA 541-A:11, III to afford such persons the opportunity to be heard. Speakers may elect to submit written testimony in lieu of additional oral hearing.

Source. #10622, *eff 6-10-14*

PART Emab 206 EXPLANATION OF ADOPTED RULES

Emab 206.01 Request for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the appellate board including:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (a) The name and address of the person making the request; or
- (b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.

Source. #10622, eff 6-10-14

Emab 206.02 Content of Explanation. The appellate board shall, within 90 days of receiving a request in accordance with Emp 206.01, provide a written response which:

- (a) Concisely states the meaning of the rule adopted;
- (b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and
- (c) States, if applicable, why the appellate board overruled any arguments and considerations presented against the rule.

Source. #10622, eff 6-10-14

APPENDIX BY RULES

RULE	STATUTE
Organizational Rules	
Emp 100	RSA 541-A:16, I, a
Emp 101.01-101.04	RSA 282-A:107; 108; 109; 136
Emp 101.06	RSA 282-A: 31, I(d)
Emp 101.07	RSA 282-A: 112, I
Emp 101.08	RSA 282-A: 32, I(d)
Emp 101.09 (repealed)	RSA 282-A:12, 72, 74, 75, 76
Emp 101.10	RSA 282-A: 31, I(d); 32, I(d)
Emp 101.11	RSA 282-A: 31, I(d); 32, I(d); 31-a, II; 31-b, I(j)
Emp 101.12	RSA 282-A: 31, I(c)
Emp 101.13	RSA 282-A: 31, I(d); 32, I(d)
Emp 101.14	RSA 282-A: 31, I(d); 32, I(d); 31-b, I(e)
Emp 101.15	RSA 282-A:112
Emp 102.01	RSA 282-A: 108; 112
Emp 102.02	RSA 282-A: 109
Emp 102.03	RSA 282-A: 136
Emp 102.04-Emp 102.06	RSA 282-A: 113
Emp 103	RSA 541-A: 16, I(a)
Appeal Tribunal	
Emp 201	RSA 282-A:96
Emp 202.01	RSA 541-A:16, I(b)(2); 30-a; 56
Emp 204	RSA 282-A:158
Emp 205.01-205.03	RSA 541-A:16, I(d)
Emp 205.04	RSA 541-A:16, II
Emp 206	RSA 282-A:119, 120
Emp 207 Provisions implementing specific statutes or regulations are listed below.	RSA 541-A:16, I; 30-a; RSA 282-A:56;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	RSA 541-A:30-a, III(a)
Emp 207.08, 207.09	RSA 541-A:16, I; 30-a; 30-a, III(a); RSA 282-A:56; 96
Emp 207.10	RSA 541-A:30-a, III(f)
Emp 207.11	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	RSA 541-A:30-a, III(g)
Emp 207.18	RSA 541-A:30-a, III(g)
Emp 207.19	RSA 541-A:32
Emp 207.22	RSA 541-A:30-a, III(e)
Emp 207.23	RSA 541-A:30-a, III(e)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Emp 207.24	RSA 541-A:30-a, III(e)
Emp 207.25	RSA 541-A:31,VII; RSA 282-A:64, III; 117-123;
Emp 207.26	RSA 541-A:30-a, III(d), (e)
Emp 207.27	RSA 541-A:33
Emp 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	RSA 282-A:60, 67
Emp 207.34	RSA 282-A:60, 67
Rulemaking Petitions	
Emp 208	RSA 541-A:16, I(c)
Rulemaking Public Comment Hearings	
Emp 209.01–209.02	RSA 541-A:11
Emp 209.03	RSA 541-A:6, I; 11
Emp 209.04	RSA 541-A:11
Emp 209.05	RSA 541-A:11, II
Emp 209.06	RSA 541-A:11, I, II, IV
Explanation of Adopted Rules	
Emp 210	RSA 541-A:11, VII
Appeal From Denial of Continued Eligibility for Benefits	
Emp 211	RSA 282-A:51
Definitions	
Emp 301.01, Emp 301.02, Emp 301.04, Emp 301.05, Emp 301.08, and Emp 301.09	RSA 282-A:117-a
Payments in Kind	
Emp 302.01–302.03	RSA 282-A: 14; 15, I; 16
Records and Reports	
Emp 303.01 Provisions implementing specific statutes or regulations are listed below.	RSA 282-A:8; 9, III; 9, IV; 91; 91-a; 117; 118
Emp 303.01(b)(8)	RSA 282-A:69, II
Emp 303.01(b)(15)	RSA 282-A:8, I
Emp 303.01(b)(20)	RSA 282-A:45; 42 USC 503(f); 1320b-7(a)(1), (a)(2), (a)(3), (b)(3); 20 CFR 603.2; 603.20
Emp 303.02 Provisions implementing specific statutes or regulations are listed below.	RSA 282-A:69, 70; 71; 94; 96; 117; 117-a; 118
Emp 303.02(f)(10)	RSA 282-A:69; 86
Emp 303.02(f)(19)	RSA 282-A:117; 117-a, III; 118; 42 USC 503(f); 1320b-7(a)(a),(a)(s),(a)(3); (b)(3); 20 CFR 603.2; 603.20
Emp 303.021	RSA 282-A:69; 70; 71; 117; 117-a, III; 118
Emp 303.021 (b)	RSA 282-A:142
Emp 303.022	RSA 282-A:69; 70; 71; 117; 117-a, III; 118
Emp 303.022 (a) (8)	RSA 282-A:142

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Emp 303.022 (a) (11)	42 USC 503 (f); 1320b-7(a)(1),(2),(3); (b)(3); 20 CFR 603.2; 603.20
Emp 303.022 (k)	RSA 282-A:118; Social Security Administration Publication No. 42-007, EFTW2 Tax Year 2010 (available at http://www.socialsecurity.gov/employer/efw/10efw2.pdf)
Emp 303.03	RSA 541-A:1, XV(a), (b); RSA 282-A:9; 14; 15; 31, I (c), (d); 117; 118; 26 U.S.C. 3304; 42 U.S.C. 503(f); 1320-7(a), (b)(3)
Emp 303.04	RSA 541-A:1, XV; RSA 282-A:45, II; 45-a, I; 117; 118; 26 U.S.C. 3304; 42 U.S.C. 503(f); 1320-7(a), (b)(3)
Emp 303.05 Provisions implementing specific statutes or regulations are listed below.	RSA 161-B:11; RSA 282-A:14; 15, I; 16; 117; 117-a, III; 118
Emp 303.05(a)	RSA 161-B:11; 14; 16; 117; 117-a, III; 118; 42 U.S.C. 503(f); 1320b-7(a)(1), (a)(2), (a)(3), (b)(3); 20 C.F.R. 603.2; 603.20
Emp 303.05(a)(2)	RSA 282-A:14; 16; 117; 117-a, III; 118; 42 U.S.C. 503(f); 1320b-7(a)(1),(2),(3); (b)(3); 20 C.F.R. 603.2; 603.20
Emp 303.05(b)	RSA 282-A:9, III, IV, V
Emp 303.05(c)	RSA 282-A:31, I(c), (d)
Emp 303.05(d)	RSA 282-A:145
Emp 303.08	RSA 282-A:14; 32; 44; 45; 118; 26 U.S.C. 3303 (f)
Emp 303.09	RSA 541-A:1, XV; RSA 282-A:45, II; 45-a, I; 112; 118; 26 U.S.C. 3304; 42 U.S.C. 503(f); 1320-7(a), (b)(3)
Emp 303.10	RSA 282-A:14; 32; 44; 45; 69; 70; 71; 94; 96; 117; 117-a; 118
Emp 303.11	RSA 282-A:69, I, II; 118
Emp 303.12	RSA 541-A:1, XV; RSA 282-A:2 (applies to Emp 303.12(a)(2)(c)); RSA 282-A:45, II; 45-a, I; 112; 118; 26 U.S.C. 3304; 42 U.S.C. 503(f); 1320-7(a), (b)(3); 20 CFR 603.2; 603.20
Emp 303.13	RSA 262-B:11; RSA 282-A:14, II; 45-a; 117; 118; 42 U.S.C. 503(f); 1320b-7(a)(1),(2),(3); (b)(3); 20 C.F.R. 603.2; 603.20
Emp 303.15 Provisions implementing specific statutes or regulations are listed below.	RSA 282-A:91-a
Emp 303.15 (c)(5)	42 USC 503(f); 1320b-7(a)(1),(2),(3); (b)(3); 20 CFR 603.2; 603.20
Emp 304.01 Provisions implementing specific statutes or regulations are listed below.	RSA 282-A:69, I
Contributions Due and Payable	
Emp 304.01(d)	RSA 282-A:8; 91; 91-a; 93
Emp 304.01(e)	RSA 282-A:102
Emp 304.01(h)	RSA 282-A:14; 32; 44; 45; 69; 70; 71; 94; 96; 117; 117-a; 118
Emp 304.01(i)	RSA 282-A:14; 32; 44; 45; 69; 70; 71; 94; 96; 117; 117-a; 118
Emp 304.02	RSA 282-A:2, 14; 16; 44; 45; 45-a; 69-75

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Provisions implementing specific statutes or regulations are listed below.	
Emp 304.02(a)(1)	RSA 282-A:69, II; 71, II
Emp 304.02(a)(2)	RSA 282-A:71; 74; 75
Emp 304.02(a)(3)	RSA 282-A:72
Emp 304.02(a)(4)	RSA 282-A:14
Emp 304.02(a)(5)	RSA 282-A:44
Emp 304.02(a)(6)	RSA 282-A:78
Emp 304.02(b)	
Provisions implementing specific statutes or regulations are listed below	RSA 282-A:69, II; 70; 71; 72
Emp 304.02(b)(1)	RSA 282-A:45,III: 45-a, III; 69, II; 70; 71; 72
Emp 304.02(b)(3)	RSA 282-A:73; 74; 75
Emp 304.02(b)(4)	RSA 282-A:44
Emp 304.02(b)(5)	RSA 282-A:78
Emp 304.03	RSA 282-A:74
Emp 304.04	
Provisions implementing specific statutes or regulations are listed below.	RSA 282-A:14, III(a); 74, 75, 76, 77, 78
Emp 304.04(a)	RSA 282-A:74; 75; 76; 77; 78
Emp 304.04(b)	RSA 282-A:14, III(a); 74; 75; 76; 78
Emp 304.04 (b)(3)b	RSA 282-A: 14, III(a); 74; 75; 76; 78
Emp 304.05	RSA 282-A:86; 87; 91; 92
Emp 304.11 (a)	RSA 282-A:91-a
Emp 304.11(b), (c)	RSA 282-A:91-a, I(a)(1)
Emp 304.11(d)	RSA 282-A:91-a, I(a)(2)
Emp 304.11(e)	RSA 282-A:91-a, I(a)(1), (2)
Emp 304.11(f)	RSA 282-A:69,I; 91-a, I(a)(1)
Emp 304.11(g)	RSA 282-A:91-a, I(j)
Notices	
Emp 305.01	RSA 282-A:157; 166, I(g)
Employment Elections	
Emp 306.01	RSA 282-A:169-171
Employee Leasing	
Emp 307.01	RSA 282-A:69, I
Emp 307.02	RSA 277-B:2
Emp 307.03	RSA 282-A:69, I;78
Emp 307.04	RSA 277-B: 9, III, IV; RSA 282-A:69, I; 78
Emp 307.05	RSA 277-B:9, IV, V, IX; RSA 282-A:69, I;78; 79
New Hire	
Emp 308.01	RSA 282-A:117-a
Emp 308.02 (a), (b)	RSA 282-A:117-a, I; 42 U.S.C. 653a(a)(2)(C)
Emp 308.02(c) – (g)	RSA 282-A:117-a, IV
Emp 308.02(h)	RSA 282-A:117-a, I (c)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Emp 308.02(i)	RSA 282-A:117-a, IV
Emp 308.03(a), (b)	RSA 282-A:117-a, II
Emp 308.03(c), (d)	RSA 282-A:117-a, III
Emp 308.04	RSA 282-A:117-a, IV
Administration	
Emp 402.01	RSA 541-A:1, XV; RSA 6:11-a; 69; 70; 71; 112; 26 U.S.C. 3301; 3302; 3303; 42 U.S.C. 1320b-7(a)(3), (b)(3)
Emp 402.02	RSA 282-A:141; 165, II
Emp 402.03	RSA 282-A:69-71
Emp 403.01	RSA 282-A:8, II; 9, IV; 175; 26 U.S.C. 3304(a)(6)(A); (a)(13); 3306(c)(7), (8); 3309 (a) (1)
Emp 403.02	RESERVED
Emp 403.03	RSA 282-A:16
Emp 403.06	RSA 282-A:4, 175; 26 USC 3304(a)(7)
Emp 404	RSA 282-A:181; RSA 282-A:182
Emp 405 Provisions implementing specific statutes or regulations are listed below	RSA 282-A:44; 45; 118
Emp 405.01	RSA 541-A:1, XV; RSA 282-A:12;;43; 42 U.S.C. 1320b-7(a)(3), (b)(3);
Emp 405.02	RSA 541-A:1, XV; RSA 282-A:12;
Emp 405.04	RSA 541-A:1, XV; RSA 282-A:12; 45; 77; 26 U.S.C. 3301; 3302; 3303; 42 U.S.C. 1320b-7(a)(3), (b)(3)
Emp 406	RSA 282-A:43; Section 3 of the Unemployment Compensation Extension Act of 2010, H.R. 4213 effective July 22, 2010
Emp 407	RSA 282-A:30; Section 3 of the Unemployment Compensation Extension Act of 2010, H.R. 4213 effective July 22, 2010
Emp 408 Provisions implementing specific statutes or regulations are listed below	RSA 282-A:29
Emp 408.04(k)-(l)	RSA 282-A:165, II
Emp 408.07	31 C.F.R. 285.08 (f)-(g)
Emp 409 Provisions implementing specific statutes or regulations are listed below	26 U.S.C.6402(f); 31 C.F.R. 285.8
Emp 409.05, 409.06, 409.08	RSA 282-A:141-156, 163-165
Emp 409.07	31 C.F.R. 285.8(f)-(g)
Emp 410	RSA 282-A:15, II(a), RSA 282-A:41, 69-71; 8 USC Ch. 12 § 1101, (15) (F); 26 USC 3304(a)(14)(A); 22 CFR Part 62
Emp 411.01-Emp 411.02	RSA 282-A:31-g; 31-h

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Emp 411.03	RSA 282-A:31-g,VI; 31-h, II
Emp 411.04	RSA 282-A:31-h, II (c), VIII (a)
Emp 411.05-Emp 411.06	RSA 282-A:31-h, II, V(a)-(d), VIII (c)
Emp 411.07	RSA 282-A:31-h, II (e)-(g)
Emp 411.08	RSA 282-A:31-h, III, IV
Emp 411.09	RSA 282-A:31-g; 31-h
Emp 411.10	RSA 282-A:31-h, VI.
Claimant Requirements	
Emp 501.01	RSA 282-A:31, I(a)
Emp 501.02	RSA 282-A:31, I (a)
Emp 501.03	RSA 541-A:1, XV; RSA 282-A:42, II (a); 43; 112; 42 U.S.C 1320b-7(a), (b)(3);
Emp 501.04	RSA 541-A:1, XV; RSA 282-A:42, II (b); 43; 112; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 501.06	RSA 282-A:43
Emp 501.07 (Repealed)	RSA 282-A:43
Emp 501.08	RSA 282-A:31,I(f)
Emp 501.10	RSA 282-A:112; RSA 282-A:31, I; RSA 282-A:43 42 U.S.C. 1320b-7(a), (b)(3)
Emp 501.11	RSA 282-A:9, IV (x); 30, XI; 31, I, III;
Emp 501.12	RSA 282-A:31, I; III; 32, I(d); 39
Emp 501.13	
Provisions implementing specific statutes or regulations are listed below	RSA 282-A:43
Emp 501.13(d)	RSA 282-A:14, 16, 31, 32, 46; 42 USC 1320b-7(a)(1), (2), (3), (b)(3); 20 CFR 603.2; 603.20
Emp 501.14	RSA 282-A:31, I (a)
Emp 502.01	RSA 541-A:1, XV; RSA 282-A: 24, 112; 26 U.S.C. 3304(a)(1)
Emp 502.02	RSA 282-A:24
Emp 502.03	RSA 282-A:112; 165, II; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 502.04	RSA 282-A:16
Emp 502.05	RSA 541-A:1, XV; RSA 282-A:112;159; 42 USC 1320b-7(a)(1), (2), (3), (b)(3); 26 U.S.C. 3304(a)(18); 20 CFR 603.3
Emp 502.06	RSA 282-A:14, III(a)
Emp 502.07	
Provisions implementing specific statutes or regulations are listed below	RSA 282-A:14, III(a)
Emp 502.07(e)	RSA 282-A:178; ACA, P.L. 111-148, as amended; 20 CFR 617.11(a)(I)(iv)
Emp 502.08	RSA 282-A:31, I(h), 112; 42 U.S.C. 1320b-7(a), (b)(3); Federal-State Extended Unemployment Compensation Act of 1970, Sec. 204(a)(2)
Emp 502.09	RSA 282-A:164
Emp 503.01	RSA 282-A: 32, I(a); 112; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 503.02	RSA 282-A:32, I (a)(1), (d)
Emp 503.03	RSA 282-A:32, I(e); 112; 42 U.S.C. 1320b-7(a), (b)(3)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Emp 503.05	RSA 282-A:31, II
Emp 503.06	RSA 282-A: 32, I(a)(3); 112; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 503.08	RSA 282-A: 32, I(a)(4); 112; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 503.09	RSA 282-A: 32, I(a)(5); 112; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 503.10	RSA 282-A: 32, I(a)(6); 112; 42 U.S.C. 1320b-7(a), (b)(3)
Emp 504.01	RSA 282-A:112; RSA 282-A:31, III; 26 U.S.C. 3304(a)(8); 42 U.S.C. 1320b-7(a) and (b)(3)
Appellate Board Rules	
Emab 101.01	RSA 541-A:16,I,(a); RSA 282-A:62
Emab 102.01	RSA 541-A:16 I,(a); RSA 282-A:62; 63
Emab 103.01	RSA 541-A:16 I,(a)
Emab 202.01	RSA 282-A:62
Emab 202.02	RSA 541-A:22, IV
Emab 202.03	RSA 282-A:53; 62; 66; 107; 108
Emab 202.04	RSA 282-A:64; 65
Emab 202.05	RSA 282-A:64
Emab 202.06	RSA 282-A:65; 117-123
Emab 202.07	RSA 282-A:64
Emab 202.08	RSA 282-A:64
Emab 202.09	RSA 282-A:65; 66; 67
Emab 202.10	RSA 282-A:67
Emab 202.11	RSA 282-A:67
Emab 202.12	RSA 282-A:67
Emab 202.13 - 202.14	RSA 541-A:38; RSA 282-A:62; 64
Emab 202.15	RSA 91-A:6; RSA 282-A:117-123; 20 CFR 603.3 - 12
Emab 202.16	RSA 282-A:66
Emab 202.17	RSA 282-A:64
Emab 202.18	RSA 282-A:36
Emab 203	RSA 541-A:16, I(d)
Emab 204	RSA 541-A:16, I(c)
Emab 205.01 – 205.02	RSA 541-A:11
Emab 205.03	RSA 541-A: 6, I; 11
Emab 205.04	RSA 541-A:11
Emab 205.05	RSA 541-A:11, II
Emab 205.06	RSA 541-A:11, I, II, IV
Emab 206	RSA 541-A:11, VII

INDEX

This index is provided for the convenience of the user. It is not a part of the Rules and Regulations. Please also check the separate Index for the law.

A

EMP SECTION

acquisition -----	§§ 302.15, 303.05, 306.01
administrative contribution -----	§§ 404.10
affidavit -----	§§ 402.2, 502.2
alien -----	§§ 410.01, 410.02, 410.03, 501.13
annual earnings -----	§§ 301.03, 303.04, 403.03, 501.15, 502.03, 502.04
appeal tribunal -----	§§ 202.01, 204.03, 302.09
appeal tribunal chairperson -----	§ 202.01
appeal tribunal chairman -----	§ 202.01
approved training -----	§ 504.01
attorney -----	§§ 202.01, 204.03, 207.14, 207.15, 207.20
authorized Agents -----	§ 303.10
authorized representative -----	§§ 202.01, 205.03, 302.02, 502.03, 504.01
availability -----	§§ 202.01, 501.11, 501.15

B

EMP SECTION

bankruptcy -----	§ 503.3
base period -----	§§ 302.12, 303.02, 303.04, 501.08, 501.15
benefit charges -----	§§ 302.09, 303.02
benefit year -----	§§ 303.02, 303.04, 403.06, 410.03, 502.05
between terms -----	§§ 303.02, 303.04, 403.06, 502.05, 504.01
bonus -----	§§ 302.03, 302.05, 302.08, 302.13, 501.10, 502.07, 503.03
break in service -----	§ 301.01
burden of proof -----	§§ 207.21, 207.26, 207.27
bureau -----	§ 101.05

C

EMP SECTION

calendar quarter -----	§§ 302.01, 302.03, 302.12, 303.01, 303.11, 305.01, 402.03, 404.04, 404.10, 404.11
calendar year -----	§§ 302.01, 302.02, 302.05, 305.01, 307.02, 307.03, 402.03, 403.01, 404.03, 404.11
casual labor -----	§ 301.02
certifying officer -----	§§ 202.01, 302.08, 405.03, 405.05
cessation of benefits -----	§§ 211.01
chargeable -----	§§ 303.04, 303.06, 503.02
child support -----	§§ 307.02, 501.13, 502.05
commissioner -----	§ 101.02
commissions -----	§ 503.03
common paymaster -----	§ 306.03
compact disk -----	§ 301.03
compromise -----	§ 408.01
computation date -----	§ 303.05
concurrent employers -----	§§ 303.02, 304.04
confidentiality -----	§§ 205.04, 207.25
confomity -----	§§ 403
continued claims -----	§§ 501.04, 501.13
contract for services -----	§ 301.03
contribution rate -----	§ 303.11
contributions due -----	§§ 301.03, 303.01, 303.5, 402.03
court -----	§§ 402.01, 402.02
credits -----	§§ 302.08, 402.01
criminal -----	§ 503.06

D

EMP SECTION

date of hire-----§ 301.05
date of mailing ----- §§ 202.01, 204.02, 302.03, 302.08, 302.12, 302.14, 303.04, 303.05, 402.02
declaratory ruling ----- §§ 205.02, 205.03, 205.04, 205.05
department ----- § 101.01
department official ----- §§ 207.05, 207.32
department records ----- §§ 201.02, 201.04, 201.05, 201.07, 202.01, 207.28
deputy commissioner ----- § 101.03
destruction ----- § 206.01
direct deposit ----- § 502.01
director ----- §§ 205.05, 207.32, 306.03, 501.13, 503.03
disability ----- §§ 202.01, 303.04, 501.13, 503.03
discontinuance ----- § 302.08
diskette ----- § 301.06
disqualification ----- §§ 302.08, 501.08
dissent ----- §§ 302.08, 503.03
domestic abuse ----- § 503.06
domestic service ----- § 302.01
due date ----- §§ 302.02, 303.01, 307.04

E

EMP SECTION

earnings ----- §§ 301.03, 302.03, 302.12, 303.04, 403.03, 403.06, 501.10, 501.13, 501.15, 502.03, 502.04, 502.06
effective date ----- §§ 303.02, 305.01, 402.03, 501.06
election ----- §§ 303.02, 305.01, 405.01, 405.06, 502.05, 502.07
eligibility ----- §§ 211.01, 502.01, 502.07
e-mail ----- §§ 202.01, 207.09, 302.03, 302.08, 302.12, 405.01, 405.02, 405.03, 405.04, 405.05, 405.06
employee leasing company ----- § 306.01, 306.02, 306.03, 306.05
employer account number ----- §§ 302.02, 302.12
employment services ----- §§ 501.02, 501.08, 501.11, 501.14
employing unit ----- § 101.05
excluded ----- §§ 207.28, 302.05
exclusion ----- §§ 403.01
exhausted ----- § 502.03
extension ----- §§ 502.02, 503.04
extreme financial hardship ----- § 409.08

F

EMP SECTION

family members ----- § 501.04
federal unemployment ----- §§ 302.01, 302.10, 305.01, 403.01
federal unemployment tax ----- §§ 302.01, 403.01
fees ----- §§ 202.01, 204.01, 204.02, 204.03, 204.04, 402.01
findings of fact ----- §§ 201.09, 207.29
filing requirements ----- § 303.11
forbearance ----- §§ 409.01, 409.03, 409.04, 409.05, 409.06, 409.07, 409.09
fraud ----- §§ 202.01, 204.04

G

EMP SECTION

gifts ----- § 302.05
good cause ----- §§ 201.07, 201.08, 207.04, 207.05, 207.20, 302.09, 303.04, 307.03, 501.08, 501.14, 503.01

H

EMP SECTION

holiday ----- §§ 204.04, 302.03, 302.08, 302.13, 303.01, 501.10
hours ----- §§ 302.03, 302.05, 302.08, 302.14, 303.01, 307.04, 501.02, 501.13, 501.15, 503.07
house counsel ----- § 101.04

I

EMP SECTION

illness----- §§ 201.08, 202.01, 303.04, 501.04, 501.08, 501.14, 503.01
 incidental employment----- § 503.02
 in person----- §§ 202.01, 303.01, 501.01, 501.03, 501.04, 501.05
 ineligible----- § 502.03
 initial claims----- §§ 302.13, 405.02, 501.01, 501.02, 501.03, 501.11, 501.13, 502.05
 injured spouse allocation----- §§ 408.07, 409.07
 interest----- §§ 302.02, 305.01, 306.03, 402.01, 402.02
 internet----- §§ 405.02, 501.01, 501.03, 501.03, 501.13
 interstate----- §§ 202.01, 305.01

J

EMP SECTION

jurisdiction----- §§ 202.01, 207.33, 305.01

L

EMP SECTION

labor dispute----- § 501.12
 lay off----- § 302.13
 leasing----- §§ 306.01, 306.02, 306.03, 306.04, 306.05
 leave of absence----- § 503.01
 legal process----- § 503.03
 limited liability company----- §§ 101.05, 205.04, 302.04, 302.10, 302.13, 501.13
 location----- §§ 302.01, 302.02, 302.13, 306.05
 lockout----- § 501.12

M

EMP SECTION

magnetic media----- § 301.07
 maximum benefits----- § 502.03
 merit rate----- § 301.03, 303.08
 method----- §§ 207.25, 302.03, 302.05, 302.08, 302.09, 302.10, 402.03, 501.04
 military----- § 501.13
 most recent employer----- §§ 303.06, 303.10, 501.11, 504.01
 multistate employing unit----- § 301.08

N

EMP SECTION

notice of employment----- § 303.01
 notification----- § 306.04

O

EMP SECTION

objection----- §§ 204.02, 204.03, 204.04, 204.06, 207.11, 207.28, 207.30
 offset of federal tax refund payments----- §§ 408, 409
 other state----- §§ 305.01, 306.01
 out of state----- § 202.01
 overpayment----- §§ 303.02, 402.01

P

EMP SECTION

partial benefits----- § 302.05
 partial unemployment----- § 303.02
 payment in kind----- §§ 302, 503.03
 penalty weeks----- § 502.09
 perform services----- §§ 305.01, 306.02, 501.11, 501.12
 personnel----- §§ 201.03, 201.05
 postmarked----- §§ 302.14, 303.01, 307.04, 501.04
 postponement----- §§ 201.07, 201.08, 202.01, 207.04, 207.20

Q

EMP SECTION

quarterly reports ----- §§ 303.02, 303.021, 303.022, 303.023, 303.09, 303.10, 303.11

R

EMP SECTION

reasonable assurance ----- §§ 305.01, 501.11, 501.12, 501.14
 reasonable value ----- § 301.01
 rebuttable presumption ----- § 408.04
 reconsideration of compromise ----- § 408.09
 reduction ----- § 503.01
 registration ----- §§ 306.01, 405.04, 501.01, 501.02
 reimbursement ----- §§ 302.09, 303.02, 303.03, 307.02, 402.03
 reimbursing employers ----- §§ 303.02, 402.03
 remand ----- §§ 202.01
 reopening ----- §§ 202.01, 207.31
 reports required ----- §§ 117-a, 166
 request for information ----- §§ 207.23, 306.05, 405.03, 405.05
 residence ----- §§ 305.01, 501.03
 retirement ----- §§ 306.02, 501.13, 502.07, 503.03, 503.07
 Royer Rights ----- §§ 211.01

S

EMP SECTION

seeking work ----- § 501.12
 self-employment ----- §§ 501.13, 502.06, 503.03, 503.04
 separate account ----- §§ 301.03, 303.02, 303.03, 303.04, 306.05, 402.03, 503.02
 separation pay ----- § 302.08
 settlement ----- §§ 202.01, 207.16, 403
 shutdown ----- 302.13
 statute ----- §§ 205.01, 205.02, 207.04, 302.05
 stipulation ----- §§ 202.01, 207.16
 strike ----- § 501.12
 subcontractor ----- § 302.01
 subject date ----- § 303.01
 subject employer ----- §§ 302.02, 303.01
 subpoenas ----- §§ 201.01, 207.04
 suitable work ----- §§ 501.12, 503.02, 504.01

T

EMP SECTION

tape recording ----- § 207.25
 tax ----- §§ 302.01, 302.02, 302.10, 303.01, 303.05, 403.01, 502.05, 502.07
 temporary ----- §§ 302.13, 303.04, 303.07, 306.02, 405.02, 501.12, 503.03
 terminated ----- §§ 305.01, 306.02, 307.02
 termination ----- §§ 207.28, 303.04, 305.01, 503.03, 503.07
 time limits ----- §§ 501.03, 501.04
 tips and gratuities ----- § 302.03
 totality of the circumstances compromise ----- § 408.05
 T.O.P.S.(treasury offset payment system) ----- § 409
 training fund ----- §§ 404.01, 404.02, 404.03, 404.04, 404.10
 Trade Act ----- § 502.07
 tribunal ----- §§ 202.01, 204.03

U

EMP SECTION

union ----- §§ 501.12, 501.13

V

EMP SECTION

vacation pay ----- §§ 302.03, 302.08, 501.10
 voluntary quit ----- § 503.01

W

EMP SECTION

wages-----§410.03
waiver ----- §§ 201.08, 204.07, 207.06, 302.02, 302.04, 302.08, 302.09, 302.13, 303.04
willfully ----- § 202.01
withdrawal----- §§ 201.08, 207.05
withholding----- §§ 307.02, 502.05
without fault----- §§ 502.03
witness / witnesses---- §§ 201.05, 201.07, 202.01, 204.05, 207.04-.05, 207.16-.18, 207.20-21, 207.24, 207.27-28, 207.32
work search ----- § 501.12
work state ----- § 301.06
workers compensation ----- § 306.02

Chapter 200 EMAB

A

EMAB SECTION

appellate board----- §§ 201, 202
appellate board hearing – written transcript of Appeal Tribunal or AHC ----- § 202.17
appellate board recusal of board member----- § 202.14
appellate board withdrawal----- § 202.13
appellate decision reconsideration----- §§ 202.09, 202.10, 202.11

C

EMAB SECTION

chair, appellate borad ----- § 202.03
correspondence ----- § 103.01

D

declaratory rulings ----- § 203.01

H

EMAB SECTION

hearing, appellate borad ----- § 202.03

M

EMAB SECTION

media access, appellate borad ----- § 205.04
member, appellate borad ----- § 202.03
moderator, appellate borad ----- § 205.05
motions, appellate borad ----- § 202.07

O

EMAB SECTION

objections, appellate borad ----- § 202.07
offer of proof, appellate borad ----- § 202.03

P

EMAB SECTION

presiding member, appellate borad ----- § 101.01
public participation, appellate borad ----- § 205.06

R

requests for information ----- § 103.01

V

EMAB SECTION

Vice-chair, appellate borad ----- §§ 202.03