

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE AND EXTEND BENEFITS, DECREASE EMPLOYERS' CONTRIBUTIONS AND ELIMINATE CERTAIN RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969, Chapter 213, Section 1, as amended by Laws 2000, Chapter 3, Section 1 and also by Laws 2000, Chapter 7, Section 1) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT

GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves by general rule.

B. Effective July 1, 2003, weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to fifty-two and one-half percent of the average weekly wage for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-two and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the

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department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, an eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of the individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of the individual and who is unemployed with respect to any week ending subsequent to April 9, 1981 shall be paid with respect to the week, in accordance with rules

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prescribed by the secretary, compensation equal to the individual's weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to the eligible individual shall be an amount not more than twenty-six times his reduced weekly benefit amount. If payments referred to in this section are being received by an individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to those weeks and shall reduce the amount of unemployment compensation for those weeks, but not below zero, by an amount equal to the prorated amount of the pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

C. Effective January 1, 2004, an individual otherwise eligible for

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benefits shall be paid for each week of unemployment, in addition to the amount payable under Subsection B of this section, the sum of fifteen dollars (\$15.00) for each unemancipated child, up to a maximum of four and subject to the maximum stated in Subsection D of this section, of the individual who is in fact dependent upon and wholly or mainly supported by the individual and is:

(1) under the age of eighteen;

(2) under the age of eighteen and in the individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction; or

(3) under the age of eighteen and for whom the individual is under a decree or order from a court of competent jurisdiction required to contribute to the child's support and for whom no other person is receiving allowances under the Unemployment Compensation Law if the child is domiciled within the United States or its territories or possessions, the payment to be withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

D. Effective January 1, 2004, dependency benefits shall not exceed fifty percent of the individual's weekly benefit rate. The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of the benefit year, but this provision does not prevent the transfer of dependents' benefits from one spouse to another in accordance with this subsection. If both the husband and wife receive benefits with respect to a week of unemployment, only one of them is entitled to a dependency allowance with respect to a child. The division shall prescribe standards as to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment

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compensation benefits. Dependency benefits shall not be paid unless the individual submits documentation satisfactory to the division establishing the existence of the claimed dependent. If the provisions of this subsection are satisfied, an otherwise eligible individual who has been appointed guardian of a dependent child by a court of competent jurisdiction shall be paid dependency benefits.

E. An otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times the individual's weekly benefit amount, plus any dependency benefit amount pursuant to Subsections C and D of this section, or sixty percent of the individual's wages for insured work paid during the individual's base period.

F. A benefit as determined in Subsection B or C of this section, if not a multiple of one dollar (\$1.00), shall be rounded to the next lower multiple of one dollar (\$1.00).

G. The secretary may prescribe rules to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or next of kin of claimants since deceased. These rules need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

H. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a

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redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969, Chapter 213, Section 2, as amended by Laws 2000, Chapter 3, Section 2 and also by Laws 2000, Chapter 7, Section 2) is amended to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent full-time work or part-time work in accordance with Subsection I of Section 51-1-42 NMSA 1978 and in accordance with the terms, conditions and hours

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common in the occupation or business in which the individual is seeking work, except that the secretary may, by rule, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. A week shall not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection D of Section 51-1-7 NMSA 1978;

(5) has been paid wages in at least two quarters of the individual's base period;

(6) has reported to an office of the division in accordance with the rules of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. An individual shall not be denied benefits under this section for any week that the individual is participating in a job finding or employability training and

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development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

- (a) the individual has completed such services; or
- (b) there is justifiable cause for the individual's failure to

participate in the services.

B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided an individual may not receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to at least five times the individual's weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar

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period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if the services are performed in the first of such academic years or terms and there is a reasonable assurance that the individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to an individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the rules of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that the individual will perform any such services in the period immediately following such vacation period or holiday recess;

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(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because the individual is in training or attending school on a full-time basis with the approval of the division nor is the individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Paragraph (3) of Subsection A of Section 51-1-7 NMSA 1978 with respect to any week in which

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the individual is in training or attending school on a full-time basis with the approval of the division. The secretary shall provide, by rule, standards for approved training and the conditions for approving training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services or was permanently residing in the United States under color of law at the time the 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; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) an individual shall not be denied benefits because of the individual's alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the services in the first of

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such seasons, or similar periods, and there is a reasonable assurance that the individual will perform the services in the latter of such seasons or similar periods.

H. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. An employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that the individual was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

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I. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Section 3. Section 51-1-7 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 5, as amended) is amended to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for, and shall not be eligible to receive, benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment; provided, however, that a person shall not be denied benefits under this paragraph:

(a) solely on the basis of pregnancy or the termination of pregnancy; or

(b) effective July 1, 2003, because of domestic abuse evidenced by medical documentation, legal documentation or a sworn statement from the claimant;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual

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pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, approved training or full-time school attendance, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

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

(3) 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 organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

(1) the individual is not participating in or directly interested in the labor dispute; and

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(2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in 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.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly

benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section:

(1) "domestic abuse" means that term as defined in Section 40-13-2 NMSA 1978; and

(2) "employment" means employment by the individual's last employer as defined by rules of the secretary."

Section 4. Section 51-1-11 NMSA 1978 (being Laws 1961, Chapter 139, Section 3, as amended by Laws 2000, Chapter 3, Section 3 and by Laws 2000, Chapter 7, Section 3) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of

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Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. The division shall not charge a contributing base-period employer's account with any portion of benefits paid to an individual for dependent allowance or because the individual to whom benefits are paid:

(1) separated from employment due to domestic abuse; or

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(2) is enrolled in approved training or is attending school on a full-time basis.

E. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

F. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) effective January 1, 2004, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two percent through December 31, 2003 shall be subject to the payment of contributions at the reduced rate of two percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months;

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection H of this section; and

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(4) an employer that, at the time of establishing an account, is in business in another state or states and that is not currently doing business in New Mexico may elect, pursuant to Paragraph (5) of this subsection, to receive a beginning contribution rate of two percent or a contribution rate based on the current contribution rate schedule in Paragraph (4) of Subsection I of this section, whichever is lower, if:

(a) the employer has been in operation in the other state or states for at least three years immediately preceding the date of becoming a liable employer in New Mexico, throughout which an individual in the employer's employ could have received benefits if eligible; and

(b) the employer provides the authenticated account history as defined by rule of the secretary from information accumulated from operations in the other state or all the other states to compute a current New Mexico rate;

(5) the election authorized in Paragraph (4) of this subsection shall be made in writing within thirty days after receiving notice of New Mexico liability and, if not made timely, a two percent rate will be assigned; if the election is made timely, the employer's account will receive the lesser of the computed rate determined by the condition of the account for the computation date immediately preceding the New Mexico liable date, or the reduced rate of two percent; rates for subsequent years will be determined by the condition of the account for the computation date.

G. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the

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employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

H. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection G of this section shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

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(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of

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reorganization described in this paragraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-

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half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection I of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

I. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection.

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection E of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the

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corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the corresponding rate in schedule 0 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and seven-tenths percent of the total payrolls;

(b) the corresponding rate in schedule 1 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and seven-tenths percent and not less than three and four-tenths percent of the total payrolls;

(c) the corresponding rate in schedule 2 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and four-tenths percent and not less than two and seven-tenths percent of the total payrolls;

(d) the corresponding rate in schedule 3 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two and seven-tenths percent and not less than two percent of the total payrolls;

(e) the corresponding rate in schedule 4 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two percent and not less than one and one-half percent of the total payrolls;

(f) the corresponding rate in schedule 5 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than one and one-half percent and not less than one percent of the total payrolls; or

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(g) the corresponding rate in schedule 6 of the table provided in Paragraph (4) of this subsection if the fund has dropped less than one percent of the total payrolls.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate

schedules:

Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.03%	0.05%	0.1%	0.6%
9.0%-9.9%	0.06%	0.1%	0.2%	0.9%

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8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

Employer	Contribution	Contribution	Contribution
Reserve	Schedule 4	Schedule 5	Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%
5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%
3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%

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1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%.

J. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination,

redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The

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employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

L. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

M. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same

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rights to review and redetermination as provided in Subsection I of this section.

N. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Section 5. Section 51-1-19 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 9, as amended) is amended to read:

"51-1-19. UNEMPLOYMENT COMPENSATION FUND.--

A. There is hereby established as a special fund, separate and apart from all public money, or funds of this state, an "unemployment compensation fund", which shall be administered by the department exclusively for the purposes of this section. The fund shall consist of:

- (1) all contributions collected and payments in lieu of contributions collected or due pursuant to the Unemployment Compensation Law;
- (2) interest earned upon any money in the fund;
- (3) any property or securities acquired through the use of money belonging to the fund;
- (4) all earnings of such property or securities;
- (5) all money received from the federal unemployment account in the unemployment trust fund in accordance with Title 12 of the Social Security Act, as amended;
- (6) all money credited to this state's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act, as

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amended;

(7) all money received or due from the federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(8) all money received for the fund from any other source. All money in the fund shall be mingled and undivided.

B. The state treasurer shall be the treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department and shall issue his checks upon it in accordance with such regulations as the secretary may prescribe. He shall maintain, within the fund, three separate accounts:

- (1) a clearing account;
- (2) an unemployment trust fund account; and
- (3) a benefit account.

C. All money payable to the fund upon receipt thereof by the department shall be forwarded to the treasurer, who shall immediately deposit it in the clearing account. Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA 1978 shall be paid from the clearing account or the benefit account upon checks issued by the treasurer under the direction of the department. After clearance thereof, all money in the clearing account, except as herein otherwise provided, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to Section 904 of the act of congress known as the Social Security Act, as amended (42 U.S.C. Section 1104), any provisions of law in this state relating to the deposits, administration, release or disbursements of money in the possession or

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custody of this state to the contrary notwithstanding. The benefit account shall consist of all money requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the secretary, 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 the fund. Money in the clearing and benefit accounts shall not be commingled with other state funds but shall be maintained in separate accounts on the books of the depository.

D. All of the money not deposited in the treasury of the United States shall be subject to the general laws applicable to the deposit of public money in the state; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of this state.

E. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation fund provided for under this section. The liability on the official bond of the state treasurer shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to the liability of any separate bond existent on the effective date of this provision or that may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

F. All money in the clearing account established under this section is hereby appropriated for the purpose of making refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA 1978, and all money in the clearing account not needed for the purpose of making the refunds shall be immediately paid to the secretary of the treasury of the United States to the credit of the account of this state in the

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unemployment trust fund, and the money in the unemployment trust fund is hereby appropriated for the purposes of this section.

G. Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and for the payment of refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA 1978 in accordance with regulations prescribed by the secretary, except that money credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Subsection H of this section. The secretary 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 for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his checks for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the benefit account or the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All money shall be withdrawn from the fund only upon a warrant issued by the department or its duly authorized agent upon the treasurer, and the treasurer upon receipt of such warrants shall issue his check against the fund in accordance with the warrant of the secretary. Any balance of money requisitioned from the unemployment trust fund that 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 and refunds during succeeding periods, or

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in the discretion of the secretary, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in Subsection C of this section. All money in the benefit account provided for hereinabove is hereby appropriated for the payment of benefits and refunds as provided herein.

H. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to Section 903 of the Social Security Act may be requisitioned from this state's account or used only for:

(1) the payment of benefits pursuant to Subsection G of this section; and

(2) the payment of expenses incurred for the administration of the Unemployment Compensation Law and the federal Wagner-Peyser Act; provided that any money requisitioned and used for the payment of expenses incurred for the administration of the Unemployment Compensation Law and the federal Wagner-Peyser Act must be authorized by the enactment of a specific appropriation by the legislature that:

(a) specifies the purpose for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, except for amounts distributed to the state of New Mexico on March 13, 2002 pursuant to Section 209 of the federal Temporary Extended Unemployment Compensation Act of 2002;

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(c) limits the amount that may be obligated to an amount which does not exceed the amount by which 1) the aggregate of the amounts credited to the account of this state pursuant to Section 903 of the Social Security Act exceeds 2) the aggregate of the amounts used by the state pursuant to this subsection and charged against the amounts transferred to the account of this state; and

(d) notwithstanding the provisions of Paragraph (1) of this subsection, money credited with respect to federal fiscal years 1999, 2000 and 2001 shall be used only for the administration of the Unemployment Compensation Law.

I. Amounts credited to this state's account in the unemployment trust fund under Section 903 of the Social Security Act that are obligated for administration shall be charged against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation and expenditure or other disposition of money appropriated under Subsection H of this section shall be accounted for in accordance with standards established by the United States secretary of labor.

J. Money appropriated under Subsection H of this section for payment of expenses of administration shall be requisitioned as needed for payment of the obligations incurred under such appropriations and, upon requisition, shall be deposited in the unemployment compensation administration fund but, until expended, shall remain a part of the unemployment compensation fund for use only in accordance with the conditions specified in Subsection H of this section, notwithstanding any provision of Section 51-1-34 NMSA 1978. Any money so deposited that will not be expended shall be returned promptly to the account of the state in the unemployment trust fund.

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K. The provisions of Subsections A through J of this section 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 continues to maintain for this state a separate book account of all funds deposited therein by the 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. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all money, 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 money, properties or securities in a manner approved by the secretary, in accordance with the provisions of this section; provided that such money shall be invested in the following readily marketable classes of securities; bonds or other interest-bearing obligations of the United States and of the state; and 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. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the secretary."

Section 6. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that

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"base period" means for benefit years effective on or after January 1, 2004 for an individual who does not have sufficient wages in the base period as defined to qualify for benefits pursuant to Section 51-1-5 NMSA 1978, the individual's base period shall be the last four completed calendar quarters immediately preceding the first day of the individual's benefit year if that period qualifies the individual for benefits pursuant to Section 51-1-5 NMSA 1978; provided that:

(1) wages that fall within the base period of claims established pursuant to this subsection are not available for reuse in qualifying for a subsequent benefit year; and

(2) in the case of a combined-wage claim pursuant to the arrangement approved by the federal secretary of labor, the base period is that base period applicable under the unemployment compensation law of the paying state;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to the individual's weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for the employer;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity to the extent required by law to be covered as an employer, which

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has in its employ one or more individuals performing services for it within this state. An individual performing services for an employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment Compensation Law. An individual performing services for a contractor, subcontractor or agent that is performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business, shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless the contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) an employing unit that:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars (\$450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this paragraph, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under

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Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit that at the time of the acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) an employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with the other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) an employing unit not an employer by reason of any other paragraph of this subsection:

(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

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(b) that, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to that act, to be an "employer" under the Unemployment Compensation Law;

(5) an employing unit that, having become an employer under Paragraph (1), (2), (3) or (4) of this subsection, has not, under Section 51-1-18 NMSA 1978, ceased to be an employer subject to the Unemployment Compensation Law;

(6) for the effective period of its election pursuant to Section 51-1-18 NMSA 1978, any other employing unit that has elected to become fully subject to the Unemployment Compensation Law;

(7) an employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978; and

(8) an Indian tribe as defined in 26 USCA Section 3306(u) for which service in employment is performed;

F. "employment":

(1) means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) means an individual's entire service, performed within or both within and without this state if:

(a) the service is primarily localized in this state with services performed outside the state being only incidental thereto; or

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(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations or, if there is no base of operations, the place from which such service is directed or controlled, is in this state; or 2) the 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;

(3) means services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

(4) means services covered by an election pursuant to Section 51-1-18 NMSA 1978 and services covered by an election duly approved by the secretary in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 shall be deemed to be employment during the effective period of the election;

(5) means services performed by an individual for an employer for wages or other remuneration unless and until it is established by a preponderance of evidence that:

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

(b) the service is either outside the usual course of business for which the service is performed or that such service is performed outside of

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all the places of business of the enterprise for which such service is performed; and

(c) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) the service is performed for an employing unit that:  
1) paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals in that employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same time;

(b) the service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(15)(H) of the federal Immigration and Nationality Act; and

(c) for purposes of this paragraph, an individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of the crew leader:

1) if the crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of the crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing the services are not, by written agreement or in fact, within the

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meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) means service performed after December 31, 1977 by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority for a person or organization that paid cash remuneration of one thousand dollars (\$1,000) in any calendar quarter in the current or preceding calendar year to individuals performing such services;

(8) means service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) the organization meets the requirements of "employer" as provided in Subparagraph (a) of Paragraph (1) of Subsection E of this section;

(9) means 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, other than service that is deemed "employment" under the provisions of Paragraph (2) of this subsection or the parallel provisions of another state's law, if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United

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States, but: 1) the employer is an individual who is a resident of this state; 2) the employer is a corporation organized under the laws of this state; or 3) 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; or

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are 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.

"American employer" for the purposes of this paragraph means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of this paragraph, "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(10) means, notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the Unemployment Compensation Law;

(11) means service performed in the employ of an Indian tribe  
if:

(a) the service is excluded from "employment" as

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defined in 26 USCA Section 3306(c) solely by reason of 26 USCA Section 3306(c)(7);  
and

(b) the service is not otherwise excluded from  
employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ of: 1) a church or  
convention or association of churches; or 2) an organization that is operated primarily  
for religious purposes and that is operated, supervised, controlled or principally  
supported by a church or convention or association of churches;

(b) service performed 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;

(c) service performed by an individual in the employ of  
his son, daughter or spouse, and service performed by a child under the age of  
majority in the employ of his father or mother;

(d) service performed in the employ of the United States  
government or an instrumentality of the United States immune under the constitution of  
the United States from the contributions imposed by the Unemployment Compensation  
Law except that to the extent that the congress of the United States shall permit states  
to require any instrumentalities of the United States to make payments into an  
unemployment fund under a state unemployment compensation act, all of the  
provisions of the Unemployment Compensation Law shall be applicable to such  
instrumentalities, and to service performed for such instrumentalities in the same  
manner, to the same extent and on the same terms as to all other employers,

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employing units, individuals and services; provided that if this state shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed 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 that rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including

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delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of the election;

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

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that 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 the institution that combines academic instruction with work experience, if the service is an integral part of such program and the 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;

(m) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, or services performed by an inmate of a custodial or penal institution for any employer;

(n) service performed by real estate salesmen for others when the services are performed for remuneration solely by way of commission;

(o) service performed in the employ of a school, college

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or university if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event;

(q) service performed for a private, for-profit person or entity by an individual as a product demonstrator or product merchandiser if the service is performed pursuant to a written contract between that individual and a person or entity whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties, for demonstration and merchandising purposes and the individual: 1) is compensated for each job or the compensation is based on factors related to the work performed; 2) provides the equipment used to perform the service, unless special equipment is required and provided by the manufacturer through an agency; 3) is responsible for completion of a specific job and for any failure to complete the job; 4) pays all expenses, and the opportunity for profit or loss rests solely with the individual; and 5) is responsible for operating costs, fuel, repairs and motor vehicle insurance. For the purpose of this subparagraph, "product demonstrator" means an individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of an advertising or sales promotion for the product and who is not otherwise employed directly by the manufacturer, distributor or retailer, and "product merchandiser" means an individual who, on a temporary, part-time basis builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor or retailer;

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or

(r) service performed for a private, for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual. For the purposes of this subparagraph, "landman" means a land professional who has been engaged primarily in: 1) negotiating for the acquisition or divestiture of mineral rights; 2) negotiating business agreements that provide for the exploration for or development of minerals; 3) determining ownership of minerals through the research of public and private records; and 4) reviewing the status of title, curing title defects and otherwise reducing title risk associated with ownership of minerals; managing rights or obligations derived from ownership of interests and minerals; or utilizing or pooling of interest in minerals; and

(13) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing the individual. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual

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where any of such service is excepted by Subparagraph (f) of Paragraph (12) of this subsection;

G. "employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices;

H. "fund" means the unemployment compensation fund established by the Unemployment Compensation Law to which all contributions and payments in lieu of contributions required under the Unemployment Compensation Law and from which all benefits provided under the Unemployment Compensation Law shall be paid;

I. "unemployment" means, with respect to an individual, any week during which the individual performs no services and with respect to which no wages are payable to the individual and during which the individual is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by rule what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits, but no individual who is otherwise eligible, shall be deemed ineligible for benefits solely for the reason that the individual seeks, applies for or accepts only part-time work, instead of full-time work, if the part-time work is for at least twenty hours per week;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative

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expenses under the Unemployment Compensation Law shall be paid. "Employment security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the federal Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on the crew leader's own behalf or on behalf of such other person, the individuals so furnished by the crew leader for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom the crew leader furnishes individuals in agricultural labor that the individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by rule prescribe. The secretary may by rule prescribe that a week shall be deemed to be "in", "within" or "during" the benefit year that includes the greater part of such week;

N. "calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31;

O. "insured work" means services performed for employers who are covered under the Unemployment Compensation Law;

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P. "benefit year" with respect to an individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978 and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of the individual's last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wage required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of a person, in connection with cultivating the soil or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of the farm and its tools and equipment, if the major part of the service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if the

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service is performed as an incident to ordinary farming operations. 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 subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection B of Section 51-1-13 NMSA 1978 or Subsection E of Section 51-1-59 NMSA 1978;

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with rules prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty percent of the state's average annual earnings computed by the division by dividing total wages reported to the division by contributing employers for the second preceding calendar year before the calendar year the computed base wage becomes effective by the average annual employment reported

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by contributing employers for the same period rounded to the next higher multiple of one hundred dollars (\$100); provided that the base wage so computed for any calendar year shall not be less than seven thousand dollars (\$7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2) the amount of any payment with respect to services performed after June 30, 1941 to or on behalf of an individual in the employ of an employing unit under a plan or system established by the employing unit that makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(a) retirement if the payments are made by an employer to or on behalf of an employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to the employee or class of employees and does not include any payments that represent deferred compensation or other reduction of an employee's normal taxable wages or remuneration or any payments made to a third party on behalf of an employee as part of an agreement of deferred remuneration;

(b) sickness or accident disability if the payments are received under a workers' compensation or occupational disease disablement law;

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(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death; provided the individual in its employ has not the option to receive, instead of provision for the 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 individual's employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for the death benefit to assign the benefit, or to receive a cash consideration in lieu of the benefit either upon the individual's withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of the individual's service with the employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) a payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) a payment made, or benefit furnished to or for the benefit of an employee if at the time of the payment or such furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) a payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died;

(7) a payment made to, or on behalf of, an employee or the employee's beneficiary under an arrangement to which Section 408(p) of the federal

Internal Revenue Code of 1986 applies, other than any elective contributions under Paragraph (2)(A)(i) of that section;

(8) a payment made to or for the benefit of an employee if at the time of the payment it is reasonable to believe that the employee will be able to exclude the payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

(9) the value of any meals or lodging furnished by or on behalf of the employer if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude such items from income under Section 119 of the federal Internal Revenue Code of 1986."

Section 7. Section 51-1-48 NMSA 1978 (being Laws 1971, Chapter 209, Section 7, as amended) is amended to read:

"51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

A. As used in this section, unless the context clearly requires otherwise, "extended benefit period" means a period that:

(1) begins with the third week after a week for which there is a state "on" indicator;

(2) ends with either of the following weeks, whichever occurs later:

(a) the third week after the first week for which there is a state "off" indicator; or

(b) the thirteenth consecutive week of such period; and

(3) does not begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period that was in

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effect with respect to this state.

B. There is a "state 'on' indicator" for this state for a week if the rate of insured unemployment not seasonally adjusted under this section for the period consisting of that week and the immediately preceding twelve weeks:

(1) equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(2) equaled or exceeded five percent; or

(3) equaled or exceeded six percent, regardless of the rate of insured unemployment in the two previous years; or

(4) with respect to benefits for weeks of unemployment beginning after July 1, 2003:

(a) the average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(b) the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in Subparagraph (a) of this paragraph, equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

C. There is a "state 'off' indicator" for this state for a week only if, for the period consisting of that week and the immediately preceding twelve weeks, none of the options specified in Subsection B of this section result in a "state 'on' indicator".

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D. Except as provided in Subsection E of this section, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) fifty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) thirteen times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) thirty-nine times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits that were paid, or deemed paid, to the individual pursuant to this section with respect to the benefit year; provided that the amount determined pursuant to this paragraph shall be reduced by the total amount of additional benefits paid, or deemed paid, to the individual under the provisions of this section for weeks of unemployment in the individual's benefit year that began prior to the effective date of the extended benefit period that is current in the week for which the individual first claims extended benefits; and provided further, if the benefit year of the individual ends within an extended benefit period, the remaining balance of the extended benefits that the individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances within that

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benefit year multiplied by the individual weekly benefit amount for extended benefits.

E. Effective with respect to weeks beginning in a high-unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) eighty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) twenty times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) forty-six times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year reduced by the total amount of regular benefits that were paid, or deemed paid, to the individual pursuant to this section with respect to the benefit year; provided that the amount determined pursuant to this paragraph shall be reduced by the total amount of additional benefits paid, or deemed paid, to the individual under the provisions of this section for weeks of unemployment in the individual's benefit year that began prior to the effective date of the extended benefit period that is current in the week for which the individual first claims extended benefits; and provided further, if the benefit year of an individual ends within an extended benefit period, the remaining balance of the extended benefits that the individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for

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which the individual received any amounts as readjustment allowances within that benefit year multiplied by the individual weekly benefit amount for extended benefits.

F. For purposes of Subsection E of this section, "high-unemployment period" means a period during which an extended benefit period would be in effect if Paragraph (4) of Subsection B of this section were applied by substituting "eight percent" for "six and one-half percent".

G. A benefit paid to an individual pursuant to this section shall be charged pursuant to Subsection B of Section 51-1-11 NMSA 1978.

H. As used in this section:

(1) "rate of insured unemployment" means the percentage derived by dividing:

(a) the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the secretary on the basis of his reports to the United States secretary of labor; by

(b) the average monthly employment covered under the Unemployment Compensation Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(2) "regular benefits" means benefits payable to an individual under the Unemployment Compensation Law 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;

(3) "extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C.,

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Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period;

(4) "eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter that begin in such period;

(5) "exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to the individual under the Unemployment Compensation Law or any other state law, including dependent's allowance and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., Chapter 85, in the individual's 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 the individual, although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

(b) if the individual's benefit year has expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and

(c) 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 Trade Act of 1974, the Automotive Products Trade

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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 the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee; and

(6) "state law" means the unemployment insurance law of any state, approved by the United States secretary of labor under Section 3304 of the Internal Revenue Code of 1986."

Section 8. Section 51-1-4 NMSA 1978 (being Laws 1969, Chapter 213, Section 1, as amended, and as further amended by Section 1 of this act) is repealed and a new Section 51-1-4 NMSA 1978 is enacted to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT

GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves by general rule.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-two and one-half percent of the state's average weekly wage for all insured work. The state's average weekly

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wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, an eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of the individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of the individual and who is unemployed with respect to any week ending subsequent

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to April 9, 1981 shall be paid with respect to the week, in accordance with rules prescribed by the secretary, compensation equal to the individual's weekly benefit amount reduced, but not below zero, by the prorated amount of the pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to the eligible individual shall be an amount not more than twenty-six times his reduced weekly benefit amount. If payments referred to in this section are being received by an individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to those weeks and shall reduce the amount of unemployment compensation for those weeks, but not below zero, by an amount equal to the prorated amount of the pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

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C. An otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times the individual's weekly benefit amount or sixty percent of the individual's wages for insured work paid during the individual's base period.

D. A benefit as determined in Subsection B or C of this section, if not a multiple of one dollar (\$1.00), shall be rounded to the next lower multiple of one dollar (\$1.00).

E. The secretary may prescribe rules to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or next of kin of claimants since deceased. These rules need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

F. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

Section 9. Section 51-1-5 NMSA 1978 (being Laws 1969, Chapter 213, Section

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2, as amended, and as further amended by Section 2 of this act) is repealed and a new Section 51-1-5 NMSA 1978 is enacted to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) has made a claim for benefits with respect to such week in accordance with such rules as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent and substantially full-time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by rule, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. A

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week shall not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection D of Section 51-1-7 NMSA 1978;

(5) has been paid wages in at least two quarters of the individual's base period;

(6) has reported to an office of the division in accordance with the rules of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. An individual shall not be denied benefits under this section for any week that the individual is participating in a job finding or employability training and development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

(a) the individual has completed such services; or

(b) there is justifiable cause for the individual's failure to participate in the services.

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B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided an individual may not receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to at least five times the individual's weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity

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shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if the services are performed in the first of such academic years or terms and there is a reasonable assurance that the individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to an individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the rules of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that the individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in

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a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because the individual is in training with the approval of the division nor is the individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Subsection C of Section 51-1-7 NMSA 1978 with respect to any week in which the individual is in training with the approval of the division. The secretary shall provide, by rule, standards for approved training and the conditions for approving training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time the services

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were performed, was lawfully present for the purposes of performing the services or was permanently residing in the United States under color of law at the time the 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; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) an individual shall not be denied benefits because of the individual's alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if the individual performed the services in the first of such seasons, or similar periods, and there is a reasonable assurance that the individual will perform the services in the latter of such seasons or similar periods.

H. Students who are enrolled in a full-time course schedule in an educational or training institution or program, other than those persons in an approved vocational training program in accordance with Subsection E of this section, shall not be eligible for unemployment benefits except as provided by regulations promulgated by the secretary.

I. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive

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months of the previous twelve months or nine of the previous twelve months. An employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless the individual establishes to the satisfaction of the secretary that the individual is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that the individual was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

J. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to

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appear for jury duty."

Section 10. Section 51-1-7 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 5, as amended, and as further amended by Section 3 of this act) is repealed and a new Section 51-1-7 NMSA 1978 is enacted to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for, and shall not be eligible to receive, benefits:

(1) if it is determined by the division that the individual left employment voluntarily without good cause in connection with the employment; provided, however, that a person shall not be denied benefits under this paragraph solely on the basis of pregnancy or the termination of pregnancy;

(2) if it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment; or

(3) if it is determined by the division that the individual has failed without good cause either to apply for available, suitable work when so directed or referred by the division or to accept suitable work when offered.

B. In determining whether or not any work is suitable for an individual pursuant to Paragraph (3) of Subsection A of this section, the division shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, prior training, experience, prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of available work from the individual's residence. Notwithstanding any other provisions of the Unemployment Compensation Law, no work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any

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otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) if the position offered is vacant due directly to a strike, lockout or other labor dispute;
- (2) if the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or
- (3) 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 organizations.

C. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which the division finds that the individual's unemployment is due to a labor dispute at the factory, establishment or other premises at which the individual is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

- (1) the individual is not participating in or directly interested in the labor dispute; and
- (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work that are commonly conducted in 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

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separate factory, establishment or other premises.

D. An individual shall be disqualified for, and shall not be eligible to receive, benefits for any week with respect to which, or a part of which, the individual has received or is seeking, through any agency other than the division, unemployment benefits under an unemployment compensation law of another state or of the United States; provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of Subsection A of this section shall include the week the failure occurred and shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit amount otherwise payable; provided that no more than one such disqualification shall be imposed upon an individual for failure to apply for or accept the same position, or a similar position, with the same employer, except upon a determination by the division of disqualification pursuant to Subsection C of this section.

F. As used in this section, "employment" means employment by the individual's last employer as defined by rules of the secretary."

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Section 11. Section 51-1-11 NMSA 1978 (being Laws 1961, Chapter 139, Section 3, as amended, and as further amended by Section 4 of this act) is repealed and a new Section 51-1-11 NMSA 1978 is enacted to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit the contributing employer's account with all contributions paid by that employer under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant an employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of the individual's base-period employers on a pro rata basis according to the proportion of the individual's total base-period wages received from each employer, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by rule prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with the individual's employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with the individual's employment;

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(3) is employed part time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(4) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts that the division can bill to or recover from the federal government as either regular or extended benefits.

D. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

E. An employer's rate shall not be varied from the standard rate for any calendar year unless, as of the computation date for that year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) subsequent to December 31, 1984, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two and seven-tenths percent through December 31, 1984 shall be

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subject to the payment of contributions at the reduced rate of two and seven-tenths percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months; and

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection G of this section.

F. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. An employer's rate for any calendar year shall be determined on the basis of the employer's record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to the employer's account in accordance with department rule. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer shall not be refunded in whole or in part.

G. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection F of this section shall be transferred from the predecessor employer to the successor under the following

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conditions and in accordance with the applicable rules of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the rules of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the

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employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, shall effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition, and the successor shall pay a penalty of fifty dollars (\$50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. A party to a merger, consolidation or other form of reorganization described in this paragraph shall not be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of the contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records that, together with records of contribution

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liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or the secretary's delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half year period preceding the computation date as defined in Subparagraph (d) of Paragraph (3) of Subsection H of this section through the date of transfer or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A shall be supported by the predecessor's permanent employment records, which shall be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and, upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

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H. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided in Paragraphs (1) through (4) of this subsection.

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection E of this section shall be fixed by the excess of the employer's total contributions over total benefit charges computed as a percentage of the employer's average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching the employer's reserve as shown in the reserve column with the corresponding rate in the rate column of the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the corresponding rate in schedule 1 of the table provided in Paragraph (4) of this subsection if the fund equals at least three and four-tenths percent of the total payrolls;

(b) the corresponding rate in schedule 2 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than three and four-tenths percent and not less than two and seven-tenths percent of the total payrolls;

(c) the corresponding rate in schedule 3 of the table

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provided in Paragraph (4) of this subsection if the fund has dropped to less than two and seven-tenths percent and not less than two percent of the total payrolls;

(d) the corresponding rate in schedule 4 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than two percent and not less than one and one-half percent of the total payrolls;

(e) the corresponding rate in schedule 5 of the table provided in Paragraph (4) of this subsection if the fund has dropped to less than one and one-half percent and not less than one percent of the total payrolls; or

(f) the corresponding rate in schedule 6 of the table provided in Paragraph (4) of this subsection if the fund has dropped less than one percent of the total payrolls.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate schedules:

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Employer	Contribution	Contribution	Contribution
Reserve	Schedule 1	Schedule 2	Schedule 3
10.0% and over	0.05%	0.1%	0.6%
9.0%-9.9%	0.1%	0.2%	0.9%
8.0%-8.9%	0.2%	0.4%	1.2%
7.0%-7.9%	0.4%	0.6%	1.5%
6.0%-6.9%	0.6%	0.8%	1.8%
5.0%-5.9%	0.8%	1.1%	2.1%
4.0%-4.9%	1.1%	1.4%	2.4%
3.0%-3.9%	1.4%	1.7%	2.7%
2.0%-2.9%	1.7%	2.0%	3.0%
1.0%-1.9%	2.0%	2.4%	3.3%
0.9%-0.0%	2.4%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
Under (-2.0%)	5.4%	5.4%	5.4%

Employer	Contribution	Contribution	Contribution
Reserve	Schedule 4	Schedule 5	Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%

5.0%-5.9%	2.4%	2.7%	3.0%
4.0%-4.9%	2.7%	3.0%	3.3%
3.0%-3.9%	3.0%	3.3%	3.6%
2.0%-2.9%	3.3%	3.6%	3.9%
1.0%-1.9%	3.6%	3.9%	4.2%
0.9%-0.0%	3.9%	4.2%	4.5%
(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
Under (-2.0%)	5.4%	5.4%	5.4%.

I. The division shall promptly notify each employer of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all of the employer's contributions paid on the employer's behalf and credited to the employer's account for all past years and total benefits charged to the employer's account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination,

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redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

J. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be

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chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

L. The secretary shall correct any error in the determination of an

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employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection I of this section.

M. Any interest required to be paid on advances to this state's unemployment compensation fund under Title 12 of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title 12 of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Section 12. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended, and as further amended by Section 5 of this act) is repealed and a new Section 51-1-42 NMSA 1978 is enacted to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to the individual's weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for the employer;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company,

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agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. An individual performing services for an employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment Compensation Law. An individual performing services for a contractor, subcontractor or agent that is performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business, shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless the contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) an employing unit that:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars (\$450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this

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paragraph, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit that at the time of the acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) an employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with the other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) an employing unit not an employer by reason of any other paragraph of this subsection:

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(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(b) that, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to that act, to be an "employer" under the Unemployment Compensation Law;

(5) an employing unit that, having become an employer under Paragraph (1), (2), (3) or (4) of this subsection, has not, under Section 51-1-18 NMSA 1978, ceased to be an employer subject to the Unemployment Compensation Law;

(6) for the effective period of its election pursuant to Section 51-1-18 NMSA 1978, any other employing unit that has elected to become fully subject to the Unemployment Compensation Law;

(7) an employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978; and

(8) an Indian tribe as defined in 26 USCA Section 3306(u) for which service in employment is performed;

F. "employment":

(1) means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

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(2) means an individual's entire service, performed within or both within and without this state if:

(a) the service is primarily localized in this state with services performed outside the state being only incidental thereto; or

(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations or, if there is no base of operations, the place from which such service is directed or controlled, is in this state; or 2) the 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;

(3) means services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

(4) means services covered by an election pursuant to Section 51-1-18 NMSA 1978 and services covered by an election duly approved by the secretary in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 shall be deemed to be employment during the effective period of the election;

(5) means services performed by an individual for an employer for wages or other remuneration unless and until it is established by a preponderance of evidence that:

(a) the individual has been and will continue to be free

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from control or direction over the performance of the services both under the individual's contract of service and in fact;

(b) the service is either outside the usual course of business for which the 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) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) means service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) the service is performed for an employing unit that:  
1) paid remuneration in cash of twenty thousand dollars (\$20,000) or more to individuals in that employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same time;

(b) the service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(15)(H) of the federal Immigration and Nationality Act; and

(c) for purposes of this paragraph, an individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of the crew leader:

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1) if the crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of the crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing the services are not, by written agreement or in fact, within the meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) means service performed after December 31, 1977 by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority for a person or organization that paid cash remuneration of one thousand dollars (\$1,000) in any calendar quarter in the current or preceding calendar year to individuals performing such services;

(8) means service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) the organization meets the requirements of "employer" as provided in Subparagraph (a) of Paragraph (1) of Subsection E of this section;

(9) means 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, other than service that is deemed "employment" under the provisions of Paragraph (2) of this subsection or the parallel

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provisions of another state's law, if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United States, but: 1) the employer is an individual who is a resident of this state; 2) the employer is a corporation organized under the laws of this state; or 3) 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; or

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are 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.

"American employer" for the purposes of this paragraph means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of this paragraph, "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(10) means, notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under

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the Unemployment Compensation Law;

(11) means service performed in the employ of an Indian tribe

if:

(a) the service is excluded from "employment" as defined in 26 USCA Section 3306(c) solely by reason of 26 USCA Section 3306(c)(7); and

(b) the service is not otherwise excluded from employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) service performed 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;

(c) service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of majority in the employ of his father or mother;

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation Law except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an

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unemployment fund under a state unemployment compensation act, all of the provisions of the Unemployment Compensation Law shall be applicable to such instrumentalities, and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed 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 that rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as

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an insurance agent or as an insurance solicitor, if all such service performed by the individual for the person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of the election;

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

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that 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 the institution that combines academic instruction with work experience, if the service is an integral part of such program and the 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;

(m) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, or services performed by an inmate of

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a custodial or penal institution for any employer;

(n) service performed by real estate salesmen for others when the services are performed for remuneration solely by way of commission;

(o) service performed in the employ of a school, college or university if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event;

(q) service performed for a private, for-profit person or entity by an individual as a product demonstrator or product merchandiser if the service is performed pursuant to a written contract between that individual and a person or entity whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties, for demonstration and merchandising purposes and the individual: 1) is compensated for each job or the compensation is based on factors related to the work performed; 2) provides the equipment used to perform the service, unless special equipment is required and provided by the manufacturer through an agency; 3) is responsible for completion of a specific job and for any failure to complete the job; 4) pays all expenses, and the opportunity for profit or loss rests solely with the individual; and 5) is responsible for operating costs, fuel, repairs and motor vehicle insurance. For the purpose of this subparagraph, "product demonstrator" means an individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of

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an advertising or sales promotion for the product and who is not otherwise employed directly by the manufacturer, distributor or retailer, and "product merchandiser" means an individual who, on a temporary, part-time basis builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor or retailer; or

(r) service performed for a private, for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual. For the purposes of this subparagraph, "landman" means a land professional who has been engaged primarily in: 1) negotiating for the acquisition or divestiture of mineral rights; 2) negotiating business agreements that provide for the exploration for or development of minerals; 3) determining ownership of minerals through the research of public and private records; and 4) reviewing the status of title, curing title defects and otherwise reducing title risk associated with ownership of minerals; managing rights or obligations derived from ownership of interests and minerals; or utilizing or pooling of interest in minerals; and

(13) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this paragraph, the term

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"pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing the individual. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual where any of such service is excepted by Subparagraph (f) of Paragraph (12) of this subsection;

G. "employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices;

H. "fund" means the unemployment compensation fund established by the Unemployment Compensation Law to which all contributions and payments in lieu of contributions required under the Unemployment Compensation Law and from which all benefits provided under the Unemployment Compensation Law shall be paid;

I. "unemployment" means, with respect to an individual, any week during which the individual performs no services and with respect to which no wages are payable to the individual and during which the individual is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by rule what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund

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established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative expenses under the Unemployment Compensation Law shall be paid. "Employment security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the federal Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on the crew leader's own behalf or on behalf of such other person, the individuals so furnished by the crew leader for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom the crew leader furnishes individuals in agricultural labor that the individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by rule prescribe. The secretary may by rule prescribe that a week shall be deemed to be "in", "within" or "during" the benefit year that includes the greater part of such week;

N. "calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31;

O. "insured work" means services performed for employers who are

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covered under the Unemployment Compensation Law;

P. "benefit year" with respect to an individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978 and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of the individual's last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wage required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of a person, in connection with cultivating the soil or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of the farm and its tools and equipment, if the major part of the service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier

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for transportation to market any agricultural or horticultural commodity but only if the service is performed as an incident to ordinary farming operations. 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 subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection B of Section 51-1-13 NMSA 1978 or Subsection E of Section 51-1-59 NMSA 1978;

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with rules prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty percent of the state's average annual earnings computed by the division by dividing total wages reported to the division by contributing employers for the second preceding calendar year before the calendar year the

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computed base wage becomes effective by the average annual employment reported by contributing employers for the same period rounded to the next higher multiple of one hundred dollars (\$100); provided that the base wage so computed for any calendar year shall not be less than seven thousand dollars (\$7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2) the amount of any payment with respect to services performed after June 30, 1941 to or on behalf of an individual in the employ of an employing unit under a plan or system established by the employing unit that makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any payment, on account of:

(a) retirement if the payments are made by an employer to or on behalf of an employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to the employee or class of employees and does not include any payments that represent deferred compensation or other reduction of an employee's normal taxable wages or remuneration or any payments made to a third party on behalf of an employee as part of an agreement of deferred remuneration;

(b) sickness or accident disability if the payments are

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received under a workers' compensation or occupational disease disablement law;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death; provided the individual in its employ has not the option to receive, instead of provision for the 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 individual's employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for the death benefit to assign the benefit, or to receive a cash consideration in lieu of the benefit either upon the individual's withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of the individual's service with the employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) a payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) a payment made, or benefit furnished to or for the benefit of an employee if at the time of the payment or such furnishing it is reasonable to believe that the employee will be able to exclude the payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986;

(6) a payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died;

(7) a payment made to, or on behalf of, an employee or the

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employee's beneficiary under an arrangement to which Section 408(p) of the federal Internal Revenue Code of 1986 applies, other than any elective contributions under Paragraph (2)(A)(i) of that section;

(8) a payment made to or for the benefit of an employee if at the time of the payment it is reasonable to believe that the employee will be able to exclude the payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

(9) the value of any meals or lodging furnished by or on behalf of the employer if at the time the benefit is provided it is reasonable to believe that the employee will be able to exclude such items from income under Section 119 of the federal Internal Revenue Code of 1986."

Section 13. APPROPRIATION.--Two million five hundred ninety-two thousand four hundred one dollars (\$2,592,401) is appropriated from the Reed Act distribution fund, consisting of funds made available to the state of New Mexico on March 13, 2002 pursuant to Section 209 of the federal Temporary Extended Unemployment Compensation Act of 2002, to the unemployment compensation administration fund for expenditure in fiscal years 2004 through 2007 to implement the provisions of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the Reed Act distribution fund.

Section 14. REPEAL.--Laws 2000, Chapter 3, Sections 1 and 2 are repealed.

Section 15. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 5 and 13 of this act is April 1, 2003.

B. The effective date of the provisions of Sections 2 and 6 of this act is

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January 1, 2004.

C. The effective date of the provisions of Sections 8 through 12 of this act is the earliest of the following:

(1) June 30, 2007; or

(2) the date that the unemployment compensation fund is less than three and three-fourths percent of total payrolls pursuant to the computation provided in Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

Section 16. EMERGENCY.--It is necessary for the public peace, health and safety that the act take effect immediately.