Colorado Employment Security Act

AND

RULES AND REGULATIONS PURSUANT THERETO

AS AMENDED BY

SESSION LAWS OF COLORADO 1963

Issued July 1963 by the

STATE OF COLORADO

DEPARTMENT OF EMPLOYMENT

Compiled and Annotated by

JAMES D. McKEVITT
Assistant Attorney General

Publication Approved by E. Gray Spurlin, State Controller

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COLORADO EMPLOYMENT SECURITY ACT

Chapter 82 Colorado Revised Status 1953, as amended.

ARTICLE 1

Definitions

82-1-1. SHORT TITLE.—This chapter shall be known and may be cited as "The Colorado Employment Security Act."

82-1-2. DECLARATION OF POLICY.—As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievenment of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

SUPREME COURT DECISIONS

Compensation for unemployment is subject related to public welfare as to authorize General Assembly, in exercise of police power, to enact law directing payment of benefits to unemployed persons and levying tax upon employers to defray cost thereof.—Cottrell Clothing Co. v. Teets, 342 P.2d 1016, 139 Colo. 558, followed in 342 P.2d 1021, 139 Colo. 567.

The Unemployment Insurance Act looks to the achievement of social security for labor.—Park Floral Co. v. Industrial Commission, 91 P.2d 492, 104 Colo. 350.

The purpose of the Colorado Employment Security Act was to afford relief to those who having been employed in the listed occupations since the enactment of the statute, were thrown out of work through no fault of their own.—Richlow Mfg. Co. v. Nicholas, 38 F.Supp. 864, reversed 126 F.2d 16.

The Colorado Employment Security Act was enacted in exercise of state's police power to assure measure of security against great hazard of unemployment.—Industrial Commission v. Northwestern Mut. Life Ins. Co., 88 P.2d 560, 103 Colo. 550.

The Employment Security Act was designed to accomplish a specific objective, namely, to lighten the burdens that fall upon the victims and their families as a result of involuntary unemployment.—Sandoval v. Industrial Commission, 130 P2d 930, 110 Colo. 108.

The Employment Security Act must be construed in the light of legislative declaration of policy as contained in the Act.—Sandoval v. Industrial Commission, 130 P.2d 930, 110 Colo. 108.

Unemployment compensation acts are to be liberally construed to further their remedial and beneficent purposes.—Industrial Commission of Colo. v. Sirokman, 306 P.2d 669, 134 Colo. 481.

82-1-3. DEFINITIONS.—As used in this chapter, unless the context clearly requires otherwise:

(1) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(2) "Commission" means the unemployment compensation commission of Colorado, the industrial commission of Colorado serving ex officio as such. "Department" means the Colorado department of employment.

(3) "Contributions" means the money payments to the unemployment compensation fund required by this chapter.

(4) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which 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 this chapter. Each individual employed to perform or to assist in performing the the work of any agent or employee of an employing unit shall be demed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(5) "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.

(6) (a) The term "employer" does not include any "employing unit" unless on each of some twenty days during the calendar year, each day being in a different calendar week, the total number of individuals who were employed by it in employment for some portion of the day, whether or not at the same moment of time, was four or more.

(b) The term "employer" shall include, for the effective period of its election pursuant to section 82-6-7 any employing unit which has elected to become fully subject to this chapter, any employing unit which has become an employer subject to this chapter pursuant to section 82-6-4 and any employing unit which, having become an employer pursuant to this chapter, has not, under sections 82-6-5 to 82-6-7, ceased to be an employer subject to this chapter.

(7) (a) "Employment" subject to the other provisions of this subsection, means any service of whatever nature, including service in interstate commerce, performed by an employee for the employing unit employing him.

(b) The term "employment" shall include an individual's entire service performed within or both within and without this state if the service is localized in this state; or the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or 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.

(c) Services not covered under paragraph (b) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(d) Service shall be deemed to be localized within a state if the service is performed entirely within such state; or the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(e) The term "employment" shall not include:

(i) Agricultural labor. The term agricultural labor includes all services performed:

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

In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, if the major part of such service is performed on a farm.

In connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

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

As used in this subsection the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(ii) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

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

(iv) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(v) Service performed in the employ of the United States

government, or a national bank or state bank which is a member of the federal reserve system, or a federal savings and loan association or a state building and loan asociation which is a member of the federal home loan bank system, which institutions were, prior hereto, exempt from this chapter, or any other instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter, 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 law, all of the provisions of this chapter shall be applicable to such instrumentalities, and to services 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 federal security agency under section 1603 (c) of the federal internal revenue code, 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 section 82-9-9 with respect to contributions erroneously collected.

(vi) Services performed in the employ of this state or of any other state, or of any political subdivisions thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the constitution of the United States from the tax imposed by section 1600 of the federal internal revenue code.

(vii) Services performed by lawyers, physicians, dentists, chiropractors, optometrists, pharmacists, nurses, or physical therapists which require that the persons rendering such services be licensed under the laws of this state; services performed by students regularly enrolled in a school of nursing approved by the state board of nurse examiners; services performed by residents or interns who have completed a four year course in medical school approved by the state board of medical examiners; services performed by the clergy and those within the discipline of a church or religious order; services performed by employees of a church when the compensated employment does not exceed twelve hours during any period of seven consecutive days; services performed by employees of a nonprofit organization such as scouts, campfire girls, YMCA, YWCA, community centers, and similar organizations, when the compensated employment does not exceed twelve hours

during any period of seven consecutive days; services performed by employees of seasonal camps operated by nonprofit organizations, such as scouts, campfire girls, YMCA, YWCA, community centers, and similar organizations when the compensated employment does not exceed twelve weeks within one year; services performed by administrative officials compensated seven thousand dollars or more per annum, teachers in elementary and secondary schools, research scientists, recreation counselors, full-time students, and faculty members, when the services herein enumerated are performed while in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; services performed other than as a regular staff member in a sheltered workshop certified by the federal government. No contrubution into the fund on account of services performed which are hereby declared to be exempt shall be made from and after the effective date of this act; but contribution amounts which may have been paid prior to the effective date of this act shall be used to pay contributions otherwise due from and after said effective date or to make voluntary contributions as otherwise provided in article 6 of this chapter. For the purposes of this subparagraph only, the term "employers" shall mean those employers who provided employment within the provisions of this subparagraph (vii).

(viii) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress. The department is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 82-3-2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(ix) Services performed by a real estate salesman, barber, insurance agent, insurance solicitor, or security salesman, to the extent that he is compensated by commissions;

(x) Services performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or services performed by an individual in the delivery or distribution of newspapers whose remuneration primarily consists of the difference between the amount he

pays or is obligated to pay for the said newspapers and the amount he receives or is entitled to receive on distribution or resale thereof;

(xi) Services performed in any calendar quarter in the employ of a public or private school, college or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, and the remuneration for such services does not exceed forty-five dollars exclusive of board, room and tuition.

If the services performed during one-half or more of any payroll period by an employee for the employing unit employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such payroll period by an employee for the employing unit employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this paragraph the term "payroll period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him.

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

(9) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

(10) (a) An individual shall be deemed "totally unemployed" in any week during which he performs no services and with respect to which no wages are payable to him. Should such week occur within an established payroll period in which the individual is not totally separated from his regular employer he shall be deemed not totally unemployed, but partially unemployed, as hereinafter defined, and subject to the conditions pertaining to partial unemployment.

(b) An individual shall be deemed "partially employed" in any week of less than full-time work if the wages payable to him by his regular employer for such week are less than the weekly benefit amount he would be entitled to receive if totally unemployed and eligible; or in any established payroll period, not longer than one month, of less than full-time work in which wages payable to him by his regular employer are less than an amount determined in accordance with the general rule proportionately equivalent for such pay period to the individual's weekly benefit amount.

(c) An individual's period of unemployment shall be deemed to commence only after his registration at an employ-

ment office, except as the commision, by regulation otherwise, may prescribe.

(11) "Interested party" to any benefit decision means the individual who is claiming benefits, the department, and any employer who has complied with the reporting requirements of the department with respect to wages or other information regarding such individual.

(12) (a) "Wages" means all remuneration for personal services, including the cash value of all remuneration paid in any medium other than cash. Except that for the purposes of sections 82-6-1 to 82-6-4, such term shall not include that part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year; or within any calendar year that part of an individual's remuneration from a single employer which, after three thousand dollars has been paid him and upon which contributions have been paid under the unemployment compensation law of any state, is paid with respect to employment; or when an employing unit, during a calendar year, beginning January 1, 1953, acquired the experience of an employer as provided in section 82-6-4, and if, immediately after such acquisition, the successor employer continues to employ an individual who immediately prior to the acquisition was an employee of the predecessor, then and in that event any remuneration theretofore paid to such individual by the predecessor shall be considered as having been paid by such successor.

(b) For the purpose of sections 82-4-2, 82-4-4, 82-4-8 (5), 82-6-1 to 82-6-4, such term shall not include any of the payments enumerated in paragraphs (c) to (g) of this subsection (12) as follows:

(c) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees, including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment, on account of: retirement; or sickness or accident disability; or medical and hospitalization expenses in connection with sickness or accident disability; or death, provided the employee has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums, or contributions to premiums, paid by his employer, and has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or

system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer.

(d) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 1400 of the internal revenue code or of any payment required from any employee under a state unemployment compensation law.

(e) Dismissal payments which the employer is not legally required to make.

(f) Amounts paid or payable to splitcheck lessees or other lessees working under mining lease agreements or contracts.

(g) The amount of any payment (including any amount paid by an employer into a fund to provide for any such payment) made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally, or for a class or classes of his employees, for the purpose of supplementing unemployment benefits; provided, that no employee shall have the option under any such plan or system to receive, instead of the supplemental unemployment benefits, any part of such fund.

(13) "Week" means such period of seven consecutive days, as the commission may by regulations prescribe.

(14) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment.

(15) Beginning July 1, 1951, the term "Base Period" shall mean the four completed calendar quarters immediately preceding the first day of an individual's benefit year.

(16) Beginning July 1, 1951, "Benefit Year" means a period of four consecutive calendar quarters beginning with the quarter which contains the first calendar week with respect to which the individual first files a valid initial claim, and thereafter the period of four calendar quarters, in the first of which the individual next files a valid initial claim for benefits, after the termination of his preceding benefit year.

As used in this subsection "valid initial claim" means an application for the determination of benefit rights which establishes that the claimant has met the eligibility condition set forth in section 82-4-8 (5).

As used in this subsection, a calendar week shall be deemed to be entirely within that calendar quarter which contains the first day of such week.

(17) "Calendar quarter" means the period of three con-

secutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first, excluding however, any calendar quarter or portion thereof which occurs prior to July first, 1937, or the equivalent thereof as the commission, by regulation, may prescribe.

(18) "Insured work" means employment for employers.

(19) For the purposes of this chapter, "a segregable unit" shall mean a distinct and severable portion of an employer's business.

(20) "An employee" is any person, including an officer, but not a director as such, of a corporation, employed by an employing unit who, unless excluded under paragraph (e) of subsection (7) of section 82-1-3 of this chapter, performs services of any kind for and at the request of an employing unit whether or not for remuneration.

SUPREME COURT DECISIONS

In determining whether term "employment" in Unemployment Compensation Act includes services of life insurance company's general district, special and soliciting agents, Supreme Court is concerned primarily with what is done under such agents' employment contracts, not what such contracts say, though stipulations thereof that nothing therein shall be construed to create relation of employer and employee may be considered. —Industrial Commission v. Northwestern Mut. Life Ins. Co., 88 P.2d 560, 103 Colo. 550.

The Supreme Court should not construe Unemployment Compensation Act as impliedly creating other exemptions from coverage thereof than those expressly made therein, unless such legislative intent clearly appears.—Industrial Commission v. Northwestern Mut. Life Ins. Co., 88 P.2d 560, 103 Colo. 550.

Evidence **held** to show that life insurance company's general, district, special and soliciting agents were not free from company's control and direction over performance of their services within provision of Unemployment Compensation Act that services performed by individual for wages shall be deemed "employment" subject to act, unless such individual is free from such control or direction, so as to sustain Industrial Commission's decision that such agents' activities were embraced in term "employment" as so defined.—Industrial Commission v. Northwestern Mut. Life Ins. Co., 88 P.2d 560, 103 Colo. 550.

Evidence established that mutual benefit association's soliciting agents were not free from association's control and direction over performance of their services within provisions of Unemployment Compensation Act that services performed by individual for wages shall be deemed "employment" subject to the act unless the individual is free from such control or direction, and hence services of such agents were subject to the provisions of the act, prior to approval of amendment exempting from the act services performed by an insurance agent to extent that he is compensated by commissions.—Brannaman v. International Service Union Ass'n, 118 P.2d 457, 108 Colo. 409, 137 A.L.R. 621.

Evidence that insurance agents were required to comply with company instruction, that agency contracts which were not assignable by agent but could be terminated without liability by company called for continuous employment by agents, and that company controlled agency offices and

determined who superivised activities of agents, authorized a finding by Industrial Commission that agents were "servants" and not "independent contractors" of insurance company under common-law rules as regards applicability of Unemployment Compensation Act to agents.—Equitable Life Ins. Co. of Iowa v. Industrial Commission, 95 P.2d 4, 105 Colo. 144.

Separation allowances, computed on basis of weekly wage and duration of continuous service and paid pursuant to collective bargaining agreement upon termination of employment by reason of employer's closing down a department, constituted wages payable with respect to period of employment prior to termination thereof and not "wages in lieu of notice", within disqualification provision of Employment Security Act and did not render former employees ineligible to receive employment benefits for period following termination of employment during which they performed no services.—Industrial Commission of Colo. v. Sirokman, 306 P.2d 669, 134 Colo. 481.

The Supreme Court is controlled by legislative intent in determining who are employees within Unemployment Compensation Act, and hence must follow test prescribed by such act.—Industrial Commission v. Northwestern Mut. Life Ins. Co., 88 P.2d 560, 103 Colo. 550.

The definition of "employment" in Unemployment Compensation Act as services performed by individuals for wages, with certain exceptions, does not limit meaning thereof to relationship of master and servant.

The question of control and direction over individual's performance of services for wages within provision of Unemployment Compensation Act that such services shall be deemed "employment" subject to act, unless shown that such individual is free from such control or direction, is not matter of degree, but such condition relates to general control and is not satisfied by some detail in which individual may be free to exercise his own judgment.—Industrial Commission v. Northwestern Mut. Life Ins. Co., 88 P.2d 560, 103 Colo. 550.

The power to terminate personal service contract at any time without liability for damages is important factor in determining whether individual is free from control and direction over his performance of services for wages within provision of Unemployment Compensation Act that such service shall be deemed "employment" subject to act, unless shown that such individual is free from such control or direction.—Id.

A cooperative marketing association, organized under cooperative marketing law, which was a nonstock, nonprofit, cooperative organization of agriculturists, actively engaged in growing fruit on farms and in orchards for purpose of sale and which operated solely in marketing fruit crops of its members, the remission of proceeds therefrom after payment of expenses thereof on a pro rata basis, and purchasing and distributing supplies to members for use in growing and marketing their crops, was not required to pay contributions on wages of individuals employed by it under provisions of Unemployment Compensation Act, since labor involved in activities of association was "agricultural labor" and exempt from operation of the act.—Industrial Commission v. United Fruit Growers Ass'n. 103 P.2d 15, 106 Colo. 223.

A regulation adopted by Industrial Commission under provisions of Unemployment Insurance Act defining "agricultural labor," as used in such act, in substance, as services performed by an employee on a farm in connection with cultivation of soil and crops or care of livestock, or by an employee of a tenant or owner of a farm in connection with processing articles from materials produced on farm, did not arbitrarily restrict "agricultural labor" as used in the act and was not illegal adiministrative legislation.—Park Floral Co. v. Industrial Commission, 91 P.2d 492, 104 Colo. 350.

In order to be an "unemployed person" as defined by Employment

Security Act, two conditions must co-exist, namely, such person may perform no services during the week and there must be no wages payable to him with respect to services performed in such week.—Industrial Commission of Colo. v. Sirokman, 306 P.2d 669, 134 Colo. 481.

The word "service", as used in statute defining employment to mean service performed by an employee for his employing unit, means an active participation in and not a passive connection with some given operation, so that merely owning or residing on a farm, upon or in connection with which an individual performs no service, does not make employee self-employed as a "farmer", so as to be disqualified for unemployment benefits for failing to return to farming as his customary self-employment.—Dellacroce v. Industrial Commission, 138 P.2d 280, 111 Colo. 129, 146 A.L.R. 745.

See Regulations No. 14 page 80.
See Rule No. 1 page 109.

82-1-4. ADDITIONAL DEFINITIONS.—(1) As used in this chapter unless the context clearly requires otherwise:

(a) "Old law" means the Colorado employment security act as amended prior to its amendment by the session laws of 1953.

(b) "New law" means the Colorado employment security act as amended by the session laws of 1953.

(c) "Effective date" means the date upon which the new law becomes effective.

(2) Except as otherwise specifically provided elsewhere in this chapter, the "new law" shall be exclusively applicable with respect to any individual on and after the effective date. No provision of the "old law" shall be construed to limit or to extend the rights of an individual as fixed by the "new law" after the "new law" becomes exclusively applicable with respect to such individual as provided in this section.

(3) Any claimant who has had a determination of his weekly benefit amount and of his maximum benefits based under the old law and before the effective date of the new law, upon his filing another claim after the effective date of the new law, shall have a redetermination of his weekly benefit amount and of his maximum benefits under section 82-4-2, section 82-4-4 and section 82-4-7, but there shall be deducted from such redetermined maximum benefits any benefits theretofore paid during his current benefit year. If any claimant shall be found to be ineligible by making such redetermination because of insufficient qualifying wage credits, he shall continue to draw benefits in the amounts and for the duration established by his initial determination.

82-1-5. BANKS AS INSTRUMENTALITIES OF THE UNITED STATES. —For all purposes of this chapter, and in conformity with federal laws, national banks doing business in Colorado and state bank members of the federal reserve system shall be

deemed and held to be instrumentalities of the United States, as referred to in this chapter.

Banks doing a commercial banking business in Colorado and maintaining an account with the federal reserve bank or with a member of the federal reserve system, for the purposes of this chapter, shall not be deemed to be instrumentalities of the United States.

82-1-6. No vested rights or immunities.—The general assembly reserves the right to extend the time of operation, amend or repeal all or any part of articles 1 to 11 of this chapter at any time; and there shall be no vested private right of any kind against such extension, amendment or repeal. All the rights, privileges or immunities conferred by said articles or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal said articles at any time.

82-1-7. Disposition of funds in event of unconstitutionality.—(1) Articles 1 to 11 of this chapter are enacted for the purpose of participating in the advantages available to the state of Colorado under the federal social security act. In the event that title IX of said act or any amendments thereto shall be amended or repealed by congress or shall be held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required under said articles may be credited against the tax imposed by said title IX, the department shall thereupon requisition from the unemployment trust fund all moneys therein standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be refunded to the contributors proportionate to their unexpended balances in the fund.

(2) In the event that the provisions of articles 1 to 11 of this chapter requiring the payment of contributions and benefits shall be held invalid under the constitution of this state by the supreme court of this state or the supreme court of the United States, or shall be held invalid under United States constitution by the supreme court of the United States or the supreme court of this state, the department shall thereupon requisition from the unemployment trust fund all moneys therein standing to the credit of the state of Colorado, and such moneys, together with any other moneys in the unemployment compensation fund, shall be held in custody by the state treasurer in the same manner as provided in section 82-7-5, until such time as the general assembly shall provide for the disposition thereof; provided, however, that the general assembly shall not dispose of such moneys otherwise than for unemployment compensation purposes or for reimbursements to the contributors, under the provisions of said articles, proportionate to their unexpended balances in the fund.

ARTICLE 2

Department of Employment Security—Organization

82-2-1. ADMINISTRATIVE DEPARTMENT SPECIFIED. — There shall be, and hereby is created, a department of employment security which, begining July 1, 1955, shall be known as the department of employment and the executive head thereof known as the executive director of employment.

82-2-2. FUNCTIONS OF THE DEPARTMENT.—The functions of the department of employment, shall comprise all administrative functions of the state in relation to the administration of this chapter. All such functions heretofore vested in the unemployment compensation commission, consisting of the industrial commission of Colorado serving ex officio as such, the division of industrial relations, the unemployment compensation divi-,sion, and the Colorado state employment service division, are hereby transferred to, and vested in, the department of employment.

82-2-3. ORGANIZATION OF THE DEPARTMENT.—There shall be in the department of employment, the unemployment compensation commission of Colorado and the position of executive director of employment, which latter position is hereby created, the division of unemployment compensation as heretofore organized and existing, and the Colorado state employment service division, as heretofore organized and existing, which shall be designated and known as the division of employment service. The division of unemployment compensation and the division of employment service shall be coordinate divisions of the administrative organization.

82-2-4. HEAD OF THE DEPARTMENT.—The executive director of employment shall be head of the department. The executive director of employment shall have all the functions, powers and duties heretofore vested in the industrial commission of Colorado by the unemployment compensation act, including any and all functions, powers and duties provided by this chapter except such functions as are specifically granted in this chapter to the unemployment compensation commission. The position of executive director, as heretofore created by the industrial commision of Colorado, pursuant to the powers heretofore vested in the commission by the unemployment compensation act, is hereby abolished and the incumbent thereof is hereby transferred to the office of executive director of employment created by section 82-2-3. Any vacancy in the

office of executive director of employment shall be filled by appointment by the governor in the manner provided by law for the appointment of heads of administrative departments.

82-2-5. UNEMPLOYMENT COMPENSATION COMMISSION. — The industrial commission of Colorado shall be the unemployment compensation commission of Colorado, to have and to exercise the functions, powers and duties as provided by this chapter.

82-2-6. STATE EMPLOYMENT SERVICE.—The Colorado state employment service is hereby established in the department of employment as a division thereof. The department, through such division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purposes of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for the co-operation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 [48 Stat. 113; U.S.C.A., Title 29, Sec. 49 (c), as amended]. It shall be the duty of the department to co-operate with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, or under such other acts of congress as may be created for similar purposes, and to co-operate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance and use of free employment service facilities, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The Colorado department of employment is hereby designated and constituted the agency of this state for the purposes of said act. The department is directed to appoint such officers and employees of the Colorado state employment service as is deemed necessary for the proper administration of this chapter.

ARTICLE 3

Administration of Department

82-3-1. DUTIES AND POWERS OF THE DEPARTMENT.—(1) It shall be the duty of the department to administer this chapter

and it shall have power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter. The commission shall have power and authority to adopt, amend or rescind rules and regulations as it deems necessary or suitable. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter which the commission shall prescribe.

(2) The department shall submit to the governor, not later than the first of July of each year, a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendment to this chapter as the department deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the department in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

SUPREME COURT DECISIONS

A regulation adopted by Industrial Commission under provisions of Unemployment Insurance Act defining "agricultural labor," as used in such act, in substance, as services performed by an employee on a farm in connection with cultivation of soil and crops or care of livestock, or by an employee of a tenant or owner of a farm in connection with processing articles from materials produced on farm, did not arbitrarily restrict "agricultural labor" as used in the act and was not illegal administrative legislation.—Park Floral Co. v. Industrial Commission, 91 P.2d 492, 104 Colo. 350.

See Regulation No. 4 page 73.
See Regulation No. 10 page 79.
See Regulation No. 37 page 105.

82-3-2. REGULATIONS—GENERAL AND SPECIAL RULES.—General and special rules may be adopted, amended, or recinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to

the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

82-3-3. PUBLICATIONS.—The department shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, the annual reports to the governor, and any other material the department deems relevant and suitable and shall furnish the same to any person upon application therefor.

82-3-4. PERSONNEL.—Subject to other provisions of this chapter and the civil service regulations, the department is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The department may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and, in its discretion, may bond any person handling moneys or signing checks hereunder.

82-3-5. ADVISORY COUNCIL.—There is hereby created a council which shall be known as the advisory council to the department of employment, composed of four employer representatives, four employee representatives, and three representatives of the general public, who may fairly be regarded as such representatives respectively because of their vocation, employment, and affiliations. Members of the council shall be appointed by the governor. Such appointments shall be for a period of four years. Vacancies shall be filled by appointment by the governor for unexpired terms, and in the case of a vacancy, or vacancies, the remaining members of the council shall exercise all the powers and authority of the council until such vacancy, or vacancies, are filled. Members of the council shall serve without compensation but shall be reimbursed for any necessary expenses. Such council shall aid the department in formulating policies and discussing problems related to the administration of this chapter and assuring impartiality and freedom from political influence in the solution of such problems. Expenditures out of the unemployment revenue fund pursuant to section 82-8-3 (2) (a) and (b) shall be made only upon the approval of a majority of the council first had and obtained. A majority of the council shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred.

82-3-6. EMPLOYMENT STABILIZATION.—The department with the advice and aid of such advisory councils as it may appoint, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and

assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

82-3-7. RECORDS AND REPORTS.—Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be retained for a period of not less than five years and shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The department or any referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which he or it deems necessary, for the effective administration of this chapter. Information thus obtained, or obtained from any individual pursuant to the administration of this chapter, shall except to the extent necessary for the proper presentation of a claim be held confidential and shall not be published or be open to public inspection, other than to public employees in performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant, or his legal representative, at a hearing before a referee or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of a claim. Any employee or member of the department or any referee who violates any provision of sections 82-3-1 to 82-3-10 shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days or both.

The department may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and, in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in section 1606 (c) of the Federal Internal Revenue Code.

See Regulation No. 3 page 71.

82-3-8. OATHS—WITNESSES—SUBPOENAS.—In the discharge of the duties imposed by this chapter, the department or its duly authorized representatives shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memo-

randa, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the department, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the department or its duly authorized representative shall be guilty of a misdemeanor and upon conviction be punished by a fine of not more than two hundred dollars or by imprisonment for not longer than sixty days, or by both fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

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

82-3-9. STATE-FEDERAL CO-OPERATION.—(1) In the administration of this chapter, the department shall co-operate with the department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards as may be necessary to secure to the state and its citizens all the advantages available under the provisions of the social security act, as ammended, section

1601 of the Federal Unemployment Tax Act, and the Wagner-Peyser Act, as amended.

(2) The department shall comply with the regulations of the secretary of labor or his successor relating to the receipt or expenditure by this state of money granted under any of such acts and shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor, from time to time, may find necessary to assure the correctness and verification of such reports. The department shall afford reasonable co-operation with every agency of the United States charged with the administration of any employment security law.

(3) The department is authorized to make such investigations, obtain and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any state or federal unemployment insurance or public employment service law and in like manner to acept and utilize information, services, and facilities made available to the state by the agency charged with the administration of any such other unemployment insurance or public employment service law.

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

(5) The department may make the state's records relating to the administration of this chapter available to the railroad retirement board and may furnish the railroad retirement board, at the expenss of such board, such copies thereof as the railroad retirement board deems necessary for its purposes.

(6) The department may afford reasonable co-operation with every agency of the United States charged with the administration of any law providing for payment of benefits arising out of unemployment, and in so doing may use its personnel and equipment and accept and use federal funds and make payments therefrom, provided that in so doing it is not required to neglect or to carry on with less efficiency its own program, and the state of Colorado and its employees shall be free from liability except in case of gross negligence or attempt to defraud the United States.

See Regulation No. 17 page 82.

82-3-10. RECIPROCAL INTERSTATE AGREEMENTS.—(1) The department is authorized to enter into reciprocal arrangements

with appropriate and duly authorized agencies of other states, or of the federal government, or both, whereby potential rights to benefits under this chapter may constitute the basis for payment of benefits by another state or by the federal government and potential rights to benefits accumulated under the law of another state or of the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under such provisions of this chapter or under the provisions of the law of such state or of the federal government or under such combination of the provisions of both laws as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service, subject to the law of another state or of the federal government, and provisions for reimbursement from the fund for such benefits as are paid by another state or by the federal government on the basis of wages and service, subject to this chapter. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of this chapter.

(2) The department is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his benefits under this chapter; and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such of the benefits paid under this chapter on the basis of such wages, and provision for reimbursement from the fund for such benefits paid under such other law on the basis of wages for insured work, as the department finds will be fair and reasonable to all affected interests. Reimbursements paid from the fund pursurant to this section shall be deemed to be benefits for the purposes of this chapter, except that no charge shall be made to an employer's account under sections 82-6-1 to 82-6-4.

(3) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for employing units under circumstances not specifically provided for in section 82-1-3 (7), or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in

employment performed entirely within this state or within one of such other states and whereby potential rights and benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(4) The department is further authorized to enter into arrangements with the appropriate agencies of other states, or of the federal government for the determination, adjustment, collection and assessment of contributions by employers with respect to employment within and without this state.

(5) For the purposes of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state or with any private, nonprofit organization, and as a part of any such agreement the department may accept moneys, services or quarters as a contribution to the unemployment revenue fund.

See Regulation No. 31 page 97.

See Regulation No. 32 page 100.

ARTICLE 4

Benefits—Eligibility—Benefit Awards

82-4-1. PAYMENT OF BENEFITS.—All benefits provided herein shall be payable from the fund. All benefits shall be paid through employment offices, or such other agencies as the commission, by general rule, may designate.

See Regulation No. 19 page 85.

82-4-2. WEEKLY BENEFIT AMOUNT FOR TOTAL UNEMPLOYMENT. —(1) Except as otherwise provided in section 82-4-4, each eligible individual who is totally unemployed in any week shall be paid, with respect to such week, benefits at the rate of sixty per cent of his average weekly wages for insured work paid during the quarter in his base period in which such total

wages were highest computed to the next higher multiple of one dollar but not more than one-half of the average of the average weekly earnings in selected industries in Colorado as published by the United States bureau of labor statistics, weighted by the volume of employment according to the department's records in each of the selected industries, as computed by the department in June and December for the ensuing six months, beginning respectively on January 1, and July 1, on the basis of the most recent available figures, and not less than fourteen dollars. Benefit amounts so computed shall apply only to those individuals whose benefit years begin subsequent to the effective date of each newly computed maximum benefit amount. No redetermination of benefit amounts already established shall be required by the computation of new maximum benefit amounts. Provided, that if the benefit amount as above computed does not reflect a benefit amount which is sixty per cent of the individual's usual full-time weekly wage, the department shall compute such individual's benefit amount in such manner as it deems fair and equitable so that the individual's benefit amount shall be sixty per cent of the individual's usual full-time weekly wage, but not more than the maximum amount as herein provided, and provided further, that any such computation made by the department pursuant hereto shall be final.

(2) Repealed by L. 63, ch. 188, ¶ 11.

(3) Repealed by L. 63, ch. 188, ¶ 11.

(4) There shall be deducted from the weekly benefit amount that part of wages payable to such individual with respect to such week which is in excess of three dollars, and the weekly benefit amount resulting shall be computed to the next higher multiple of fifty cents.

82-4-3. BENEFITS FOR PARTIAL UNEMPLOYMENT.— Each eligible individual who is partially unemployed shall be paid a partial benefit. Partial benefits shall be paid for and by pay periods. Partial benefits for weekly pay periods shall be in an amount equal to his weekly benefit amount for total unemployment, minus that part of wages payable to such individual with respect to such week which is in excess of three dollars.

The commission is hereby authorized to prescribe regulations governing benefits for partial unemployment for other pay periods which will result in benefit amounts for such periods proportionate to the amounts herein prescribed for weekly pay periods.

82-4-4. DURATION OF BENEFITS.—(1) The department shall compute wage credits for each individual by crediting him with the wages for insured work paid during each quarter of such individual's base period, or twenty-six times the current maximum benefit amount, whichever is the lesser. Any otherwise eligible individual shall be entitled during any benefit year to

a total amount of benefits equal to whichever is the lesser of twenty-six times his weekly benefit amount and one-third of his wage credits for insured work paid during his base period; provided, that benefits based on seasonal wages may be paid only for unemployment during the normal seasonal period or periods of the seasonal industry in which such wage credits were earned and only to seasonal workers who are available for work in such seasonal industry and the total thereof shall not exceed one-third of such individual's wages paid for insured seasonal work during the corresponding normal seasonal period or periods of his base period. For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of section 82-1-3 (6), section 82-6-7, or section 82-6-4, with respect to becoming an employer.

(2) This section shall become effective July 1, 1963, and the provisions hereof respecting determination of weekly benefit amounts and duration of benefits shall apply only to benefit years commencing on or after July 1, 1963. Benefits for individuals whose current benefit year has not expired on July 1, 1963, shall be completed in accordance with the provisions in effect at the time said benefit year began.

82-4-5. PART TIME WORKERS.—As used in this section the term "part time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full time hours prevailing in the establishment in which he is employed.

The commission shall prescribe fair and reasonable general rules applicable to part time workers for determining their full time weekly wage and the total wages for employment by employers required to qualify such workers for benefits. Such rules, with respect to such part time workers, shall supersede any inconsistent provisions of this chapter, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this chapter.

82-4-6. SEASONAL WORKERS.—(1) As used in this chapter, "seasonal industry" means an industry or establishment or occupation within an industry in which, because of climatic conditions or the seasonal nature of the employment, is is customary to operate only during a regularly recurring period or periods of less than twenty-five weeks in a calendar year; "normal seasonal period or periods" means the normal seasonal period or periods during which workers are ordinarily employed for the purpose of carrying on seasonal operations

in each seasonal industry; "non-seasonal period or periods" means the period or periods within a calendar year other than the normal seasonal period or periods as determined by the commission; "seasonal worker" means an individual who has been paid seasonal wages by a seasonal employer for seasonal work during the base period.

(2) Upon written application filed by an employer, the commission, after investigation and hearing, shall determine, and may thereafter redetermine, from time to time, the normal seasonal period or periods during which workers are oridnarily employed for the purpose of carrying on seasonal operations in the seasonal industry in which such employer is engaged. Such determination shall be made by the commission within ninety days after the filing of such application by an employer with the commission. Until such determination by the commission, no occupation or industry shall be deemed seasonal. For the purpose of determining whether an individual is a seasonal worker and the duration of such individual's benefits, the determination by the commission of the normal seasonal period or periods of a seasonal industry shall be applicable to the base period of individuals who file claims for benefits on or after the first day of the calendar quarter commencing after the date of such determination by the commission.

See Regulation No. 37 page 105.

82-4-7. EXTENDED AND INCREASED BENEFITS.—Repealed by L. 63, ch. 188, ¶11.

82-4-8. ELIGIBILITY CONDITIONS — PENALTY. — Any unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(1) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe; except that the commission, by regulation, may waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this chapter, provided that no such regulation shall conflict with section 82-4-1.

(2) He has made a claim for benefits in accordance with the provisions of section 82-5-1.

(3) He is able to work and is available for all work deemed suitable pursuant to the provisions of section 82-4-9.

(4) He has been either totally or partially unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this subsection:

(a) Unless it occurs within the benefit year which in-

cludes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment;

(b) If benefits have been paid with respect thereto;

(c) Unless the individual was eligible for benefits with respect thereto under provisions of sections 82-4-8 to 82-4-13, inclusive;

(d) Unless total wages earned for the week are less than the weekly benefit amount.

(5) He has during his base period been paid wages for insured work equal to not less than thirty times his weekly benefit amount. For the purposes of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year comes subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of sections 82-1-3 (6), 82-6-7 and 82-6-4 with respect to becoming an employer.

(6) His total wages earned for the week are less than his weekly benefit amount.

(7) He is actively seeking work.

(8) He has furnished the department with separation and other reports, containing such information as the commission may by regulation prescribe; provided that this provision shall not apply if he proves to the satisfaction of the department that he had good cause for failing to furnish such reports. The eligibility of any individual shall not be affected by the refusal or failure of an employer to furnish reports concerning separation and employment as required by this chapter and the regulations pursuant thereto and the department shall determine the eligibility of such individual upon the basis of such information as it may obtain and any employer who fails or refuses to furnish reports concerning separation and employment shall cease to be deemed an interested party to any such determination. For each instance of failure to furnish the department with such reports the employer, unless good cause to the contrary is shown to the satisfaction of the department, shall be assessed a penalty of twenty-five dollars which shall be collected in the same manner as contributions due under this chapter.

See Regulation No. 7A page 74.

See Regulation No. 7C page 76.

82-4-9. BENEFIT AWARDS. — In the granting of benefit awards, it is the intent of the general assembly that the department, at all times, be guided by the tenet that unemployment insurance is for the benefit of persons unemployed

through no fault of their own; and that each eligible individual who is unemployed through no fault of his own, shall be entitled to receive benefits; and that every person has the right to leave any job for any reason, but that the circumstances of his separation shall be considered in determining the amount of benefits he may draw; and that certain acts of individuals are the direct and proximate cause of their unemployment and such acts may result in such individuals receiving fifty per cent of full award, a special award, an optional award, or no award.

(1) A full award shall be the total amount of benefits as computed under sections 82-4-2 and 82-4-4 after having, prior to such computation:

(a) Deducted from the base period wages, all wages earned prior to any separation from employment which resulted in a determination of no award; and

(b) Reduced by fifty per cent the weekly benefit amount and total amount of benefits based on all wages earned prior to a separation from employment which resulted in a determination of a fifty per cent award; and

(c) Determined that thirty days have elapsed since the termination of a pregnancy which resulted in a special award to a claimant who is the sole support of her child, children, or invalid husband; and

(d) Determined that the claim was not filed within thirty days prior to the expected termination of the pregnancy, and determined that thirty days have elapsed since the termination of a pregnancy which resulted in a special award and that the claimant has re-entered the labor market and has engaged in full-time covered employment for a period of thirten weeks if the claimant is not the sole support of her child, children, or invalid husband; and

(e) Determined that the claimant has re-entered the labor market and has engaged in full-time covered employment for a period of thirteen weeks if the claimant's previous separation resulted in a special award because of marital, parental, filial, or domestim obligation, or because of school attendance.

(2) Benefits payable under the provisions of this section shall be awarded, subject to other applicable provisions of this chapter, when the unemployment is the result of one or more of the causes provided in the following schedule:

(3) FULL AWARD:

(a) Laid off for lack of work.

(b) A worker quitting employment because of:

(i) The health of the worker is such that he must quit his employment and refrain from working for a period of

time, but at the time of filing his claim he is able and available for work, or the worker's health is such that he must seek a new occupation or the health of the worker, his spouse, or his dependent child is such that the worker must leave the vicinity of his employment; provided, however, that if the health of the worker, or that of his spouse, or his dependent child has caused the separation from work, the worker, in order to be entitled to a full award must have complied with the following requirements: Informed his employer of the condition of his health prior to quitting his employment, and substantiated the cause by a competent written medical statement issued prior to the date of quitting and submitted himself or his spouse or his dependent child to an examination by a licensed practicing physician selected and paid by the interested employer when so requested by the employer, and submitted himself, his spouse, or his dependent child to an examination by a licensed practicing physician selected and paid by the department when so requested by the department. Any physician who shall make or be present at any examination required under these provisions shall testify as to the results of his examination; provided, however, no such physician shall be required to disclose any confidential communication imparted to him for the purpose of treatment which is not necessary to a proper understanding of the case.

(ii) Unsatisfactory or hazardous working conditions when so determined by the department. In determining whether or no working conditions are unsatisfactory for an individual, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the distance of the work from his residence, and the working conditions of workers engaged in the same or similar work for his last and other employers in the locality shall be considered. For the purpose of this subsection, "hazardous working conditions" shall mean such conditions as are determined by the department to exist that could result in a danger to the physical or mental well-being of the worker. In any such determination, the department shall consider, but shall not be limited to, a consideration of the following: The safety measures used or the lack thereof, and the condition of equipment or lack of proper equipment; provided, that no work shall be considered hazardous if the working condition surrounding a worker's employment is the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(iii) A substantial change in the worker's working conditions, said change in working conditions being substantially less favorable to the worker; provided, that requiring a worker to work a different shift shall not be considered a substantial

change in working conditions unless such requirement would be a violation of seniority rights which would entitle the worker to shift preferential, but in any such case the burden of proving such seniority rights shall rest upon the worker. No change in working conditions shall be considered substantial if it is determined by the department that the conditions prevailing after the change are those generally prevailing for other workers performing the same or similar work.

(iv) Unreasonable reduction in the worker's rate of pay as determined by the department. In determining whether or not there has been an unreasonable reduction in the worker's rate of pay, the department shall consider, but shall not be limited to a consideration of, whether or not the reduction in pay was applied by the employer to all workers in the same or similar class or merely to this individual; the general economic conditions prevailing in the state; the financial condition of the employer involved; and whether or not the reduction in wage was agreed to by other workers employed in the same or similar work.

(v) Accepting a better job. In determining whether or not the job accepted is a better job, the department shall consider, but shall not be limited to a consideration of, the rate of pay, the hours of work, and the probable permanency of the job quit as compared to the job accepted, cost to the worker in getting to the job quit and the job accepted, the distance from the worker's place of residence to the job accepted in comparison to the distance from the worker's residence to the job quit, and whether or not such worker acted as a reasonably prudent individual would have acted under the same or similar conditions; provided, no job shall be considered better that is not offered and accepted prior to the date of quitting; that does not last at least three months from the date of acceptance, except in cases where the loss of work is the result of contract cancellation; and that lasts longer than three months but with a definite termination date of less than one year from date of acceptance; provided, that this section shall not apply to construction workers who quit within thirty days immediately preceding the termination date of the project upon which they are working and who, at the time of their quitting, have been offered and have accepted another job prior to the date of quitting, which other job will last more than thirty days.

(vi) Being given the choice by his employer between being terminated, furloughed, or laid off, and replacing another worker, and the worker has elected to accept a termination, furlough, or layoff.

(vii) A violation of the employment contract by the employer; provided, that before such quitting the worker must

have exhausted all remedies provided in such contract for the settlement of disputes before quitting his job.

(c) A worker being discharged from employment:

(i) Without the employer informing either the worker or the department, after a request from the department, as to the reason for the discharge.

(ii) Being physically or mentally unable to perform the work or unqualified to perform the work as a result of insufficient educational attainment or inadequate occupational or professional skills.

(iii) Refusing with good cause to work overtime without reasonable advance notice. Good cause as used herein shall be restricted to compelling personal reasons affecting either the worker or his immediate family.

(d) A worker quitting his employment or being discharged from his employment because of:

(i) Being instructed or requested to perform a service or commit an act which is in violation of an ordinance or statute.

(4) FIFTY PER CENT OF FULL AWARD:

Fifty per cent of a full award shall be one-half the weekly benefit amount and for one-half the total benefit amount the claimant would otherwise have been entitled to receive as computed under sections 82-4-2 and 82-4-4 after having, prior to such computation, deducted from the base period wages all wages earned prior to any separation from employment, which resulted in a determination of no award. A determination of no award as set forth in subsection (5) of this section, will be made in connection with any separation which would otherwise have resulted in a fifty per cent award if such is the second consecutive separation since the beginning of the base period which resulted in a determination of a fifty per cent award. Fifty per cent of the full award of benefits payable under the provisions of this section shall be awarded, subject to other applicable provisions of this chapter, when the unemployment is the result of one or more of the causes provided in the following schedule:

(a) Being discharged from employment because of:

(i) Violation of a company rule which did not result or could not have resulted in serious damage to the employer's property or interests, or could not have endangered the life of the worker or other employees.

(b) Quitting employment or being discharged from employment:

(i) Under conditions indicating that the claimant contributed to, but was not wholly responsible for, incompatability with a supervisor or fellow employees.

(5) No award:

As a guide to the department in the administration of this chapter, the general assembly determines that no award of benefits shall be granted to a claimant who is unemployed as a result of any of the following conditions, as determined by the department, and all wages earned prior to such condition shall be cancelled for all purposes of this chapter, and no benefit year, base period, or valid claim shall be established on such wages, and any base period or benefit year heretofore established shall be cancelled for this claimant as of the effective date of this determination.

(a) Quitting employment because of:

(i) Dissatisfaction with prevailing rates of pay, standard hours of work, standard working conditions, or regularly assigned duties.

(ii) Dissatisfaction with opportunities for advancement.

(iii) Dissatisfaction with supervisor with no evidence to indicate that the supervision is other than that reasonably to be expected in the proper performance of work.

(iv) Moving to another area except for health reasons or moving to accept a better job.

(v) No apparent reason.

(vi) Lack of transportation. In cases of this type, transportation shall be the responsibility of the worker wherein suitable work is being offered; provided, that if in the opinion of the department it would not have been reasonable to require the worker to accept the employment at the time it was offered by reason of transportation difficulties, the worker shall not for this reason be denied an award.

(vii) Claimant not obtaining or renewing licenses for which he is qualified and which are necessary to permit him to perform his job.

(b) Being discharged from employment because of:

(i) Insubordination such as: Refusal to obtain or renew licenses which are necessary to permit the claimant to perform his job; failure to keep in good standing with the union by non-payment of dues; repeated acts of agitation against employer working conditions, pay scale, policies, or procedures; provided, that orderly action on the part of an employee or employees, or through union negotiation, shall not be so considered if such action does not interfere with work perform-

ance; deliberate disobedience of a reasonable instruction of an employer or his duly authorized representative.

(ii) Violation of a statute or of a company rule which resulted or could have resulted in serious damage to the employer's property or interests, or could have endangered the life of the worker or other employees, such as: Mistreatment of patients in hospital or nursing home; serving liquor to minors; selling prescription items without prescriptions from licensed doctors; profane or obscene language after warnings; immoral conduct, which has an effect on worker's job status; divulging of confidential information; failure to observe conspicuously posted safety rules; intentional falsification of expense accounts, inventories, or other records; or removal of employer's property from the premises of the employer without proper authority.

(iii) Of-the-job use of not medically prescribed intoxicating beverages or narcotics to a degree resulting in interference with job performance.

(iv) On-the-job use of not medically prescribed intoxicating beverages or narcotics.

(v) Incarceration for violation of law or loss of license essential to job performance through law violation.

(vi) Theft.

(vii) Assaulting or threatening to assault under circumstances such as to cause a reasonably emotionally stable person to become concerned as to his physical safety.

(viii) Wilful neglect or damage to an employer's property or interests.

(ix) Rudeness, insolence, or offensive behavior of the worker not reasonably to be countenanced by a customer.

(x) Careless or shoddy work. In determining whether or not work has been performed in a careless or shoddy manner, the department shall consider the length of time the worker has been performing the work satisfactorily, and no work shall be considered careless or shoddy that comes within the areas of reasonable mistakes and errors normally made by workers engaging in the same or similar work.

(xi) Refusal to perform the assigned job.

(xii) Failure to safeguard properly, maintain, or account for the employer's property when this obligation is an essential part of the job for which the worker is responsible.

(c) Quitting employment or being discharged from employment because of:

(i) Going hunting, engaging in sports, or taking unauthorized vacations.

(ii) Refusal to work a different shift by reason of seniority rights as provided in (3) (b) (iii) of this section.

(iii) Refusal to accept transfer to another department which does not involve a substantial change in working conditions or a substantial loss in wages.

(d) The refusal of suitable work or refusal of referral to suitable work. In consideration whether or not any work is suitable for an individual, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing work in his customary occupation, and the distance of the available local work from his residence, shall be considered. Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

(ii) 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.

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

(iv) An award shall not be denied to an individual more than once for failure to apply for or to accept the same or a similar position with the same employer.

(6) Optional award:

If in the administration of this chapter the department determines that a claim for benefits is not specifically covered under the provisions of full award, fifty per cent of full award, special award, or no award, the department shall grant a full award, fifty per cent of full award, a special award, or make a determination of no award. A complete list of any determinations so made shall be maintained by the department and shall be transmitted to the governor, the speaker of the house of representatives, and the president of the senate at the beginning of each ensuing session of the general assembly, together with the disposition made in each such case. The department shall maintain a cumulative record, which shall not disclose the names or in any other manner identify the interested parties, which shall be open to the inspection of the public dur-

ing normal working hours of the department. Said records shall state the issue involved, the pertinent facts, and the award made, if any. The general assembly hereby determines that by reason of the wide variance of facts and conditions surrounding the cause of separation from work, the department shall treat the following causes for separation from work under optional award: Tardiness, absenteeism, garnishment, constructive criticism, abuse of coffee break privileges, over-staying of lunch periods, sleeping on the job, and loafing on the job. In its consideration of granting any optional award the department shall consider but shall not be limited to a consideration of whether or not:

(a) The discharge was caused by a single instance or whether there were several instances.

(b) The claimant had been previously warned or whether the employer had condoned similar infractions.

(c) The act, or failure to act, on the part of the claimant interrupted the work schedule of the employer or endangered the health or safety of the claimant or others.

(d) Other employees were unable to work because of the act or failure to act on the part of the claimant.

(e) The claimant notified the employer in advance.

(f) The act or failure to act on the part of the claimant was unavoidable or was caused by the illness of the claimant or a member of his immediate family.

(g) The employer had an established and published or promulgated policy.

(h) The claimant's act or failure to act resulted in damage to the employer's property or interest or in a distinguishable difference in the quantity or quality of work performed.

(i) The claimant had kept the employer informed of his status during his absence.

(j) The criticism which resulted in separation was actually of a constructive nature and given in a considerate manner.

(7) SPECIAL AWARDS:

(a) Pregnancy. If involuntarily separated from a job because of pregnancy, the worker shall be awarded a full award if otherwise eligible until thirty days prior to the expected termination of pregnancy; provided, that if a pregnant worker has been separated prior to the termination of her pregnancy, according to the provisions of a reasonable rule of the employer providing for the separation of pregnant workers, such

worker shall not be entitled to benefits until thirty days subsequent to the termination of her pregnancy. However, if she is the sole support of child, children, or invalid husband, then full award for each remaining week of her benefit year after thirty days subsequent to the termination of pregnancy wherein she is the sole support, if otherwise eligible and has wage credits remaining. If she is not the sole support of child, children, or invalid husband, no award for thirty days subsequent to termination of pregnancy and until she has re-entered the labor market and has engaged in full-time covered employment for a period of thirteen weeks; then, full award if otherwise eligible and has wage credits remaining. If separated from job by voluntarily quitting for reason of her pregnancy, no award until thirty days subsequent to the termination of her pregnancy. If she is the sole support of a child, children, or an invalid husband, then full award for each remaining week of her benefit year after thirty days subsequent to the termination of pregnancy wherein she is the sole support, if otherwise eligible, and has wage credits remaining. If she is not the sole support of a child, children, or an invalid husband, no award until she has re-entered the labor market and has engaged in full-time covered employment for a period of thirteen weeks; then, full award if otherwise eligible and has wage credits remaining.

(b) Marital, parental, filial, or domestic obligation. No award until claimant has returned to labor market and has engaged in full-time covered employment for a period of thirteen weeks; then, full award, if otherwise eligible.

(c) Quit to return to school. No award until claimant has returned to labor market and engaged in full-time covered employment for a period of thirteen weeks; then, full award, if otherwise eligible.

SUPREME COURT DECISIONS

Statement made by employer as reason for discharge of employees was not willfully or deliberately "false" within Employment Security Act, and employer was not liable for penalty for delay in payment of benefits to discharged employees, where grounds assigned by employer for discharge of employees were ample, if believed by employer, even though given contrary construction by others.—Industrial Commission v. Emerson Western Co., 369 P.2d 791.

Statute providing for an award of unemployment benefits to one who has voluntarily left his employment without good cause and without extenuating circumstances after a certain period of disqualification, was not unconstitutional on theory such a grant of unemployment benefits deprived employer of his property without due process, nor on theory statute authorizing such award was an unlawful delegation of legislative power to an administrative body. U.S.C.A. Const. Amend. 14, § 1; Const. art. 2, § 25; art. 5, § 1. —Donnell v. Industrial Commission, 368 P.2d 777.

Statute pertaining to unemployment compensation benefits empowers the Department of Employment, subject to review by the Commission, to disqualify for unemployment benefits one who has voluntarily

left his employment without good cause and without any extenuating circumstances for a period of time not less than ten weeks, nor more than thirty-two and one-half weeks with the amount of benefits to be drawn dependent upon circumstances of each particular separation.—Donnell v. Industrial Commission, 368 P.2d 777.

In proceeding for unemployment compensation under Employment Security Act, evidence sustained state Industrial Commission's finding that wage rate offered claimant was prevailing wage rate, that mere fact that particular employer would not pay overtime at time and one-half rate did not render job unsuitable, and that claimant without good cause had voluntarily left his employment and later had failed to accept offer for suitable employment.—Industrial Commission v. Wilbanks, 274 P.2d 99, 130 Colo. 36.

The words "customary self-employment", appearing in statute providing that an unemployed individual shall be disqualified for unemployment benefits when he has failed to return to his customary self-employment, relate to work performed in the field of occupation of an habitual and continuing character, and not to acts of a sporadic and incidental nature. —Dellacroce v. Industrial Commission, 138 P.2d 280, 111 Colo. 129, 146 A.L.R. 745.

Where claimant was available for his customary employment as a coal miner and did not perform manual labor on or devote time in supervision of farm in which he owned a fractional interest and on which he resided and the farm work proceeded in the same routine regardless of whether claimant was employed at the farm, claimant was not self-employed as "farmer" so as to be ineligible for employment benefits during suspension of mining operations for failure to return to his customary self-employment.—Id.

The Industrial Commission erred in denying coal miners unemployment compensation benefits for time during which mines in which they had been employed were closed on ground of their refusal to accept employer's offer of suitable similar work in other mines 175 miles from their residence.—Industrial Commission v. Lazar, 137 P.2d 405, 111 Colo. 69.

Unemployment compensation benefits claimant was not disqualified by his refusal to accept employment at $2 per hour when prevailing union wage scale in his occupational field was $2.39 per hour.—Industrial Commission v. Brady, 263 P.2d 578, 128 Colo. 490.

Showing of what, in isolated instances, some contractors were willing to pay painters, did not constitute substantial evidence of prevailing wage scale sufficient to render conclusive in commission's finding that unemployment compensation benefits applicant had refused to accept tendered employment at prevailing wage.—Industrial Commission v. Brady, 263 P.2d 578, 128 Colo. 490.

82-4-10.—EMPLOYER NOT CHARGED, WHEN. — Repealed by L. 63, ch. 188, ¶11.

82-4-11. STRIKES OR OTHER LABOR DISPUTES.—(1) An individual shall be ineligible for unemployment compensation benefits for any week with respect to which the department finds that his total partial unemployment is due to a strike or labor dispute in the factory, establishment, or other premises in which he was employed and thereafter for such reasonable period of time, if any, as may be necessary for such factory, establishment, or other premises to resume normal operations. For the purposes of this section, a lockout by any member of a multi-employer bargaining unit shall constitute a labor dis-

pute if such lockout was initiated because of a strike or labor dispute involving any member of such multi-employer bargaining unit; provided, that if his unemployment is due to a lockout involving a multi-employer bargaining unit member or otherwise, the individual will not be determind ineligible unless the lockout results from the demands of employees as distinguished from an effort on the part of the employer to deprive the employees of some advantage they already possess. This section shall not apply if it is shown to the satisfaction of the department:

(a) He is not participating in or financing or directly interested in the strike or labor dispute; and

(b) He does not belong to a grade or class of workers of which, immediately before the commencement of the strike or labor dispute, there were members employed at the premises at which the strike or labor dispute occurs, any of whom are participating in or financing or directly interested in the strike or labor dispute.

(2) If in any case separate branches of work which are commonly conducted as separately businesses in separate premises are conducted in separate departments of the same premises, each such department, for the purposes of this section, shall be deemed to be a separate factory, establishment, or other premises.

SUPREME COURT DECISIONS

In proceeding for unemployment compensation benefits on ground that claimant was unemployed as he had been locked out of his immediate past job by his employer because of a strike called by union of which claimant was not a member, evidence supported finding of Industrial Commission that claimant belonged to the same grade or class of workers who were on strike, notwithstanding fact claimant contended that he was only employee doing particular kind of work to which he was assigned at time strike was called.—Burak v. American Smelting & Refining Co., 302 P.2d 182, 134 Colo. 255.

Burden rests upon claimant to prove that he comes within the exceptions of the statute which in general denies him right to unemployment compensation in the event of a strike.—Burak v. American Smelting & Refining Co., 302 P.2d 182, 134 Colo. 255.

A "labor dispute" within unemployment compensation acts includes any controversy concerning terms, tenure or conditions of employment or concerning association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether disputants stand in proximate relation of employer and employee. National Labor Relations Act, § 2(9) 29, U.S.C.A. § 152(9).—Sandoval v. Industrial Commission, 130 P.2d 930, 110 Colo. 108.

Evidence sustained finding that coal mine operator voluntarily closed operations three days before there was ground for a labor dispute on expiration of labor union's contract with operator and that no "strike" existed between operator and employees, authorizing award of unemployment compensation to operator's employees.—Bryant v. Hayden Coal Co., 137 P.2d 417, 111 Colo. 93.

In unemployment compensation proceeding, conflicting evidence as to

whether claimant's unemployment was due to coal mine operator's voluntary suspension of operation or a strike between claimants and operator was for the Industrial Commission.—Bryant v. Hayden Coal Co., 137 P.2d 417, 111 Colo. 93.

An employee is "directly interested" in a dispute within Employment Security Act provision denying compensation benefits for unemployment due to a stoppage of work because of a strike except if employee is not directly interested in strike, when his wages, hours or conditions of work will be affected favorably or adversely by the outcome of the strike regardless of whether such employee is a member of union conducting strike or may not be in sympathy with its purposes.—Burak v. American Smelting & Refining Co., 302 P.2d 182, 134 Colo. 255.

82-4-12. OTHER REMUNERATION.—(1) Individuals who receive the following types of remuneration shall be determined to have received, for weeks after separation from employment, the individual's full-time weekly wage for a number of consecutive weeks equal to the total amount of the remuneration awarded, divided by the full-time weekly wage:

(a) Wages in lieu of notice.

(b) Vacation pay.

(c) Severance allowances.

(2) An individual who has an award for any week and for which week he, at a subsequent date, received a pay award by reason of a decision of the national labor relations board or other source, as a result of the action taken by the national labor relations board or other source, shall immediately repay to the department such amounts as will reimburse for all benefit payments made for the period during which he drew benefits and for which the national labor relations board or other source has caused a payment to be made in the form of back pay award to the claimant and the employer's account charged for such benefits will be credited accordingly.

(3) Individuals who receive or are entitled to receive the following types of remuneration shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, and any such amounts which have been deducted from the benefit payment by reason of the provisions of this subsection shall not be available for future benefits:

(a) Retirement payments in the form of a primary insurance benefit under title II of the social security act, as amended.

(b) Retirement payments in the form of an annuity, pension, or other retirement pay from an employer or from any trust or fund contributed to by an employer; provided, that there shall be no denial or reduction of award if in the individual's base period there are no wages which were paid by the employer paying or contributing to such remuneration. If an

unemployment compensation claimant has not applied for the payments indicated under paragraph (3) (a) of this section to which he may be entitled, the department is authorized to make a determination of the amount of such entitlement and such determination shall be final and binding upon the claimant and not subject to review or adjustment until such time as the claimant presents to the department a valid determination of such remuneration.

(c) Compensation for temporary disability under the workman's compensation law of any state or under a similar law of the United States.

(d) Maternity benefits or other cash payments paid to the worker in lieu of wages for the week for which a benefit is claimed.

SUPREME COURT DECISIONS

Separation allowances, computed on basis of weekly wage and duration of continuous service and paid pursuant to collective bargaining agreement upon termination of employment by reason of employer's closing down a department, constituted wages payable with respect to period of employment prior to termination thereof and not "wages in lieu of notice", within disqualification provision of Employment Security Act and did not render former employees ineligible to receive employment benefits for period following termination of employment during which they performed no services.—Industrial Commission of Colo. v. Sirokman, 306 P.2d 669, 134 Colo. 481.

82-4-13. COMPENSATION FROM OTHER STATE.—An individual shall not receive an award for any week with respect to which or part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state, of the federal government, or of a foreign country. If the appropriate agency of such other state, of the federal government, or of a foreign country finally determines that he is not entitled to such unemployment benefits, this lack of award shall not apply. For the purposes of this section, a law of the federal government providing payments of any type and for any amount for periods of unemployment due to lack of work shall be considered an unemployment compensation law of the federal government.

ARTICLE 5

Claims for Benefits

82-5-1. FILING CLAIMS FOR BENEFIT.—Claim for benefits shall be made in accordance with such regulations as the com-

mission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

82-5-2. INITIAL DETERMINATION.—(1) An individual designated by the department, and hereinafter referred to as the deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the earliest week with respect to which benefits may commence, the weekly benefit amount payable and the maximum duration thereof.

(2) The deputy shall promptly notify the claimant and any other interested parties of the decision, including the earliest week with respect to which benefits may commence, the weekly benefit amount and the maximum duration thereof, and the reasons for the decision. The deputy, for good cause, may reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor. Unless the claimant or any such interested party, within eleven calendar days after the delivery of the deputy's notification, or within eleven calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, the department shall give notice thereof to the parties entitled to notice of the original determination. Benefits with respect to the period prior to the final determination of the department shall be paid only after such determination. If a referee affirms a decision of the deputy, or the commission affirms a decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

82-5-3. REDETERMINATIONS.—The department may reconsider a determination whenever it finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact.

The commission shall prescribe by regulation for the establishing of time limits within which requests for redetermination may be allowed.

Notice of any such redetermination shall be promptly

given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 82-5-4.

Subject to the same limitations and for the same reasons, the department may reconsider the determination in any case in which the final decision has been rendered by a referee, the commission or a court, and may apply to the referee, commission or court which rendered such final decision to issue a revised decision.

In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

See Regulation No. 21 page 93.

82-5-4. APPEALS. — Unless an appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. Whenever an appeal involves a question as to whether services were performed by a claimant in employment or for an employer, the referee shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the department both of whom shall thenceforth be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such issue. The parties shall be duly notified of such referee's decision together with his reasons therefor, which shall be deemed to be the final decision of the department unless within eleven days after the date of notification or mailing of such decision, further appeal is initiated pursuant to section 82-5-6.

82-5-5. REFEREES.—To hear and decide disputed claims, the department shall designate one or more impartial referees.

82-5-6. COMMISSION REVIEW.—The commission on its own motion may affirm, modify, or set aside any decision of a referee on the basis of the evidence, previously submitted in such case, or direct the taking of additional evidence. The commission shall permit any of the parties to initiate further appeals before it. The commission shall permit such further appeal by the deputy if the decision of the deputy has been overruled or modified by a referee. The commission may remove to itself or transfer to another referee the proceedings on any claim pending before a referee. Any proceedings so removed to the commission shall be heard in accordance with the requirements of section 82-5-4 by the commission or in the absence or disqualification of a partisan member by the im-

partial member acting alone. The commision shall promptly notify the interested parties of its findings and decision.

SUPREME COURT DECISIONS

Under statute authorizing the Industrial Commission on its own motion to affirm, modify, or set aside a referee's decision, and providing that the Commission shall permit initiation of further appeals before it, the appeal before the commission is permissible and not mandatory.—Bryant v. Hayden Coal Co., 137 P.2d 417, 111 Colo. 93.

An appeal before the Industrial Commission which appeal was made within ten days before Commission's award became final stayed finality of the award until ten days after appeal was determined and the required notice was given, and hence where action to review the commission's determination was instituted within 20 days after the ten days from notice of determination of the appeal the action was timely.—Id.

82-5-7. PROCEDURE.—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the commision for determining the rights of the parties whether or not such regulations comform to common law or statutory regulations of evidence and other technical rules of procedure.

When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the tribunal having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party.

No person shall participate on behalf of the department or the commission in any case in which he has direct or indirect interest.

A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

See Regulation No. 20 page 89.

82-5-8. WITNESS FEES.—Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expenses of administering this chapter.

82-5-9. CONCLUSIVENESS OF DETERMINATIONS AND DECISIONS. —Except in so far as reconsideration of any determination is had under the provisions of section 82-5-3, any right, fact, or

matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal under this section which has become final, shall be conclusive for all the purposes of this chapter as between the department, the claimant, and all employing units who had notice of such determination, redetermination, or decision.

82-5-10. APPEAL TO COURTS.—Any decision of the commission shall be final unless a petition to review same shall be filed by an interested party. Every petition for review shall be in writing and shall specify in detail the particular errors and objections. Such petition must be filed within ten days after the entry of the decision of the commission unless further time is granted by the commission within said ten days, and, unless so filed, said decision shall be final. All parties in interest shall be given due notice of any decision of the commission, and said period of ten days shall begin to run only after such notice, and the mailing of a copy of the said decision addressed to the last known address of any party in interest shall be sufficient notice.

No action, proceeding or suit to set aside, vacate, or amend any findings or decision of the commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the commission for a review as herein provided.

SUPREME COURT DECISIONS

An appeal before the Industrial Commission which appeal was made within ten days before Commission's award became final stayed finality of the award until ten days after appeal was determined and the required notice was given, and hence where action to review the commission's determination was instituted within 20 days after the ten days from notice of determination of the appeal the action was timely.—Bryant v. Hayden Coal Co., 137 P.2d 417, 111 Colo. 93.

82-5-11. COURT REVIEW.—Such action, proceedings or suit must be commenced within twenty days after the final findings or decision of the commission, and any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county where the claim for benefits was filed, or in the city and county of Denver for the review of the commission's findings or decision in the same manner as reviews are now provided by law in workmen's compensation cases. The commission, in its discretion, may also certify to such court questions of law involved in any decision by it. In any judicial proceeding under sections 82-5-1 to 82-5-11, the findings of the commission as to the facts, if supported by substantial evidence and in absence of fraud, shall be conclusive. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's

compensation law of this state. Writs of error may be taken to the supreme court from the decision of a district court reviewing any such proceedings in the same manner as now provided by law in workmen's compensation cases.

SUPREME COURT DECISIONS

In proceedings involving right to unemployment compensation benefits, commission's findings of fact, if supported by substantial evidence, are conclusive in courts.—Industrial Commission v. Brady, 263 P.2d 578, 128 Colo. 490.

Findings of fact by state Industrial Commission, if supported by substantial evidence, in proceeding under state Employment Security Act, are conclusive on court.—Industrial Commission v. Wilbanks, 274 P.2d 99, 130 Colo. 36.

Where finding of Industrial Commission in proceeding for unemployment compensation benefits is supported by competent evidence, finding must be accepted by the court.—Burak v. American Smelting & Refining Co., 302 P.2d 182, 134 Colo. 255.

Courts could reach their own conclusions and were not bound by findings of fact of Industrial Commission as ex-officio Unemployment Compensation Commission, where there were no material conflicts in evidence before Commission.—Industrial Commission v. Emerson Western Co., 369 P.2d 791.

In proceeding on a claim for unemployment compensation, trial court cannot substitute its discretion or its judgment for that of Industrial Commission.—Morrison Road Bar, Inc. v. Industrial Commission, 328 P.2d 1076, 138 Colo. 16.

Finding of Industrial Commission based upon substantial evidence that claimants for unemployment compensation had not been discharged for misconduct, was binding upon Supreme Court.—Morrison Road Bar, Inc. v. Industrial Commission, 328 P.2d 1076, 138 Colo. 16.

In unemployment compensation proceeding, conflicting evidence as to whether claimant's unemployment was due to coal mine operator's voluntary suspension of operation or a strike between claimants and operator was for the Industrial Commission.—Bryant v. Hayden Coal Co., 137 P.2d 417, 111 Colo. 93.

ARTICLE 6

Contributions—Coverage

82-6-1. PAYMENT.—(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter, with respect to wages for employment. Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

See Regulation No. 1 page 69.

82-6-2. RATE OF CONTRIBUTION.—(1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(a) Ten and eight-tenths per cent with respect to employment for the one month period beginning December 1, 1936, provided, that if the total of such contributions at such ten and eight-tenths per cent rate equals less than nine-tenths of one per cent of the annual payroll of any employer for the calendar year 1936, such employer shall pay, not later than January 15, 1937, an additional lump sum contribution with respect to employment for such one month period beginning December 1, 1936, equal to the difference between nine-tenths of one per cent of his annual payroll for the calendar year 1936 and the total of his contributions at such ten and eight-tenths per cent rate for such one month period beginning December 1, 1936; provided further, that the total contribution payable by any employer for such one month period shall not exceed nine-tenths of one per cent of his annual payroll for the calendar year 1936;

(b) One and eight-tenths per cent with respect to employment during the calendar year 1937;

(c) Two and seven-tenths per cent with respect to employment during the calendar years 1938, 1939, 1940 and during the first two calendar quarters of the calendar year 1941;

(d) Two and seven-tenths per cent of wages paid by each employer during the last two calendar quarters of the calendar year 1941, and during each calendar year thereafter, with respect to employment occurring after June 30, 1941, except as may be otherwise prescribed in section 82-6-3. As used in this section the term "wages paid" shall include wages constructively paid as well as wages actually paid.

(2) Each employing unit becoming an employer under the new definition of employer contained in this chapter who would not be an employer under the old definition for employer shall be liable for contribution only on wages paid subsequent to June 30, 1941, with respect to employment.

82-6-3. FUTURE RATES BASED ON BENEFIT EXPERIENCE.—(1) (a) The department shall maintain a separate account for each employer and shall credit his account with all contributions paid on his own behalf. Nothing in this chapter shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the

fund either on his own behalf or in behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount provided in this section, against the accounts of his employers in the base period in the inverse chronological order in which the employment of such individual occurred. Benefits paid to a seasonal worker during the normal seasonal periods shall be charged against the account of his most recent seasonal employers in the corresponding normal seasonal period of his base period in the inverse chronological order in which the seasonal employment of such individual occurred and prior to the charging of benefits based on nonseasonal employment.

(b) The maximum amount so charged against the account of any employer shall not exceed one-third of the wages paid to such individual by each such employer for insured work during such individual's base period, but not more per completed calendar quarter or portion thereof than one-third of the maximum wage credits as computed in section 82-4-4. Nothing in sections 82-6-1 to 82-6-4 shall be construed to limit benefits payable pursuant to sections 82-4-1 through 82-4-6. The commisssion, by general rules, shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

(c) This subsection (1) shall become effective July 1, 1963, and the provisions hereof respecting determination of weekly benefit amounts and duration of benefits shall apply only to benefit years commencing on or after July 1, 1963. Benefits for individuals whose current benefit year has not expired on July 1, 1963, shall be completed in accordance with the provisions in effect at the time said benefit year began.

(2) The commission may prescribe regulations for the establishment, and maintenance, and dissolution of joint accounts by two or more employers, and, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain such joint account as if it constituted a single employer's account.

(3) The department, for the year 1942 and for each calendar year thereafter, shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

(a) Each employer's rate shall be two and seven-tenths per cent except as otherwise provided in the following provisions. Beginning with the calendar year 1959 and for each

calendar year thereafter, the contribution rate for any employer who became subject to this chapter during the first half of a calendar year shall not be less than two and seven-tenths per cent unless and until there shall have been twenty-four consecutive calendar months immediately preceding the computation date throughout which his account has been chargeable with benefit payments and for any employer who became subject to this chapter during the last half of a calendar year the contribution rate shall not be less than two and seven-tenths per cent unless and until there shall have been eighteen consecutive calendar months immediately preceding the computation date throughout which his account has been chargeable with benefit payments.

(b) Each employer's rate for the twelve months commencing January 1st of any calendar year shall be determined on the basis of his record up to the computation date for such calendar year. The computation date for the calendar year 1942 shall be January 1, 1942, and the computation date for the calendar year 1943 and each calendar year thereafter shall be July 1st of the year next preceding such calendar year. For the calendar year 1953 and each calendar year thereafter if the total of all an employer's contributions paid on his own behalf on or before thirty-one days immediately following the computation date with respect to wages paid for all periods prior to the computation date exceeds the total benefits which were chargeable to his account and were paid on or before thirty-one days immediately following the computation date with respect to weeks, or any established payroll period, of unemployment beginning prior to the computation date, his contribution rate for the ensuing calendar year shall be in accordance with the following table. Percentage of excess in said table means the precentage resulting from dividing the excess of contributions paid over benefits charged by the average annual payroll.

Per Cent of Excess	Fund is 65 Million Plus	60 Million to 65 Million	50 Million to 60 Million	40 Million to 50 Million	30 Million to 40 Million	20 Million to 30 Million	10 Million to 20 Million	Below 10 Million
Over 20%	.0	.0	.0	.0	.0	1.5	1.8	2.7
18% to 19.9%	.0	.0	.0	.0	.0	1.5	1.8	2.7
16% to 17.9%	.0	.0	.0	.0	.0	1.8	2.1	2.7
14% to 15.9%	.0	.0	.0	.0	.0	1.8	2.1	2.7
12% to 13.9%	.0	.0	.0	.0	.3	1.8	2.1	2.7
10% to 11.9%	.0	.0	.0	.3	.6	2.1	2.4	2.7
8% to 9.9%	.0	.0	.3	.6	.9	2.1	2.4	2.7
6% to 7.9%	.0	.3	.6	.9	1.2	2.1	2.4	2.7
4% to 5.9%	.0	.6	.9	1.2	1.5	2.4	2.7	2.7
2% to 3.9%	.0	.9	1.2	1.5	1.8	2.4	2.7	2.7
0% to 1.9%	.5	1.2	1.5	1.8	2.1	2.4	2.7	2.7
Less than 0%	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7

If the federal unemployment tax rate is reduced below three per cent, the maximum rate listed in the table shall not exceed ninety per cent of the reduced federal unemployment tax rate.

Whenever an employer shall fail to furnish contribution reports required by the department, for each such failure, unless good cause to the contrary is shown to the satisfaction of the department, he shall be assessed a fine of twenty-five dollars for each delinquency and each day of delinquency shall be considered a separate offense. The penalty shall be collected in the same manner as contributions due under this chapter.

(c) Notwithstanding any provisions to the contrary, any employer, at any time prior to the fifteenth day of March of any year, may make voluntary contributions in addition to the contributions provided under this chapter, which contributions shall be credited to the employer's account and be used in determining said employer's rate for the current calendar year and subsequent calendar years.

(d) As used in sections 82-6-1 to 82-6-4 for the purpose of computing the contribution rate of any employer for the calendar year 1942, the term "annual payroll" means the total amount of wages for employment paid by an employer during a calendar year and the term "average annual payroll" means the average of the annual taxable payrolls of an employer for the last three or five preceding calendar years, whichever is higher. For the purpose of computing the contribution rate of any employer for the calendar year 1943 and each calendar year thereafter, the term "annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending June 30th and the term "average annual payroll" means the average of the annual taxable payrolls of an employer for the last three or five preceding fiscal years ending on June 30th, whichever is higher. For the purpose of computing the contribution rate of any employer for the year 1953 and each calendar year thereafter, the term "annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending June 30th, and the term "average annual payroll" means the average of the annual taxable payrolls for the last three preceding fiscal years ending on June 30th.

(4) The department shall furnish each employer quarterly statements of benefits charged to his account under the provisions of sections 82-6-1 to 82-6-4. Such statements shall report in detail all charges made to such employer's account during such calendar quarter, with the names and social security numbers of the individuals drawing benefits so charged and the amounts paid to each during such quarter.

(5) The department shall notify each employer as nearly as possible prior to the date upon which any contributions for each calendar year after 1941 become due, of his rate of contribution as determined for such calendar year pursuant to sections 82-6-1 to 82-6-4. Such notification shall include the amount determined as the employer's average annual payroll, the total of all his contributions paid on his own behalf and credited to his account for all past years, and the total benefits charged to his account for all such years.

See Regulation No. 25 page 94.
See Regulation No. 26 page 95.
See Rule No. 3 page 110.

82-6-4. SUCCESSOR EMPLOYER.—(1) Whenever an employer transfers by way of sale, lease, gift, exchange, or any other manner

(a) All of its trade and business to a successor (whether or not an employer within the meaning of section 82-1-3 (6) (a)), the entire separate account including the actual contribution, benefit, and pay roll experience of the transferring employer shall pass to the successor for the purpose of determining the liability and rate of contribution of such successor, and from the date of such transfer the successor shall become an employer; or

(b) any part of its trade or business which utilized the services of an average of ninety per cent or more of the total number of employees on the pay roll for each of the four pay periods immediately preceding the transfer to a successor (whether or not an employer within the meaning of section 82-1-3 (6) (a)), the entire separate account including the actual contribution, benefit, and pay roll experience of the transferring employer shall pass to the successor for the purpose of determining the liability and rate of contribution of such successor, and from the date of such transfer the successor shall become an employer.

(2) Notwithstanding any other provision of sections 82-6-1 to 82-6-4, if the successor employer was an employer subject to this chapter prior to the date of acquisition, his rate for contribution for the remainder of the calendar year shall be the same as his rate in the period immediately preceding the date of acquisition.

(3) If the successor was not an employer prior to the date of acquisition, his rate shall be the rate applicable to the predecessor employer or employers in the period immediately preceding the date of acquisition provided there was only one predecessor, or there were only predecessors with identical rates; but if the predecessor rates were not identical, the successor's rate shall be the highest rate applicable to any of the

predecessor employers in the period immediately preceding the date of acquisition.

(4) Notwithstanding the provisions of sections 82-6-5 and 82-1-3 (6), any subject employer whose entire reserve account has been transferred to a successor employer, as provided in subsection (1) of this section, shall immediately cease to be a subject employer and shall thereafter become a subject employer only upon his future employment experience.

(5) Whenever an employer in any manner transfers or has transferred a clearly segregable unit of his business, and for which segregable unit the transferring employer has maintained, in such form as to be separable, continuous records of wages, contributions, and benefits paid on account of such segregable unit, the transferring employer and successor may jointly request that the department transfer the actual contribution, benefit, and pay roll experience attributable to such unit, and only such experience, to the successor pursuant to such regulations as may be prescribed by the commission.

The department is hereby authorized to transfer such experience and to perform all other acts required by the provisions of this subsection.

The actual share of the transferring employer's reserve account attributable to the transferred unit shall pass to the successor.

The experience rate heretofore established for the transferring employer for all units of his business shall continue in effect for the remainder of the calendar year in which the transfer is made, and for succeeding calendar years it shall be computed on the experience of those units retained.

If the successor was an employer prior to the effective date of such transfer, the experience rate for the calendar year in which the transfer is made shall be the same as that previously established without reference to the acquired segregable unit, and for succeeding calendar years it shall be computed on the combined experience of all units of such successor's business.

If the successor was not an employer prior to the effective date of such transfer, and voluntarily elects to become an employer from the date of transfer, the actual contribution, benefit, and pay roll experience of the segregable unit shall be transferred to the successor and shall be used to compute the rate of contribution until a new rate is established. The same computation dates as are used to compute the contribution rates of all employers shall be used to compute the contribution rate of the successor.

If the successor was not an employer prior to the effective date of transfer and the same employer simultaneously trans-

fers two or more segregable units to such successor, the successor's contribution rate shall be computed from the combined contribution, benefit, and pay roll experience of such units.

If the successor was not an employer prior to the effective date of transfer, and two or more segregable units are simultaneously transferred to such successor by different employers, unless the rates with respect to such transferred units are identical, the successor's contribution rate shall be the highest rate applicable to any of such units.

Provided, however, that the transfer of experience with respect to a segregable unit shall be of no force and effect unless an application for such transfer, signed by both the transferring employer and the successor, is filed with the department. For transfers occurring prior to the effective date of this subsection, the application must be filed within thirty days of the effective date. For transfers occurring after the effective date of this subsection, the application must be filed within thirty days of the date of transfer.

See Regulation No. 36 page 104.

82-6-5. PERIOD OF EMPLOYER'S COVERAGE.—Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be deemed to be an employer during the whole of such calendar year.

82-6-6. TERMINATION OF EMPLOYER LIABILITY.—(1) An employing unit shall cease to be an employer subject to this chapter only as of the first day of any calendar year, only if, not later than the last day of February of such year, it has filed with the department a written application for termination of coverage as an employer as of the first day of January, and the department finds that during the preceding calendar year:

(a) Such employing unit was not an employer as defined in section 82-1-3 (6) (a); or

(b) Such employing unit was not liable by having elected to become liable during such year; or

(c) Such employing unit did first become liable under and by virtue of section 82-6-4 and was not liable under section 82-1-3 (6) (a) or section 82-6-7.

(2) Any employer who ceases in business and does not employ any individual at any time in this state for a period of one calendar year shall automatically cease to be an employer subject to this chapter as of the thirty-first day of December of such calendar year.

(3) Any employing unit which became liable during any calendar year preceding the calendar year in which its liability by virtue of section 82-1-3 (6) (a) was determined, may terminate coverage effective as of the end of the first year

during which such employing unit was not an employer by virtue of section 82-1-3 (6) (a), provided such year was prior to the date the determination was made by the department, by filing a written application to terminate coverage as an employer within thirty days of the date of such determination.

82-6-7. ELECTION TO BECOME LIABLE.—(1) An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject hereto for not less than two calendar years, with the written approval of such election by the department, shall become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January first of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the department a written application for termination as provided in subsection (2) of this section.

(2) Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the department such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January first of any calendar year subsequent to such two calendar years, only if such employing unit has filed with the department a written application for termination as provided in this subsection.

ARTICLE 7

Unemployment Compensation Fund

82-7-1. ESTABLISHMENT AND CONTROL.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the department exclusively for the purpose of this chapter. This fund shall consist of:

(1) All contributions collected under this chapter, together with any interest thereon collected and allocated pursuant to sections 82-8-3 and 82-9-1 to 82-9-9;

(2) All fines and penalties collected pursuant to the provisions of this chapter;

(3) Interest earned upon all moneys in the fund;

(4) Any property or securities acquired through the use of moneys belonging to the fund;

(5) All earnings of such property or securities;

(6) All moneys recovered on losses, sustained by the fund;

(7) All moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act as amended; and

(8) All money received for the fund from any other source.

All money in the fund shall be commingled and undivided.

SUPREME COURT DECISIONS

Even if employer had property interest in unemployment fund, statute which provides that employee should be disqualified for unemployment benefits, if he had been discharged for misconduct, for not more than 10 weeks, thereby enabling the employee who was discharged for misconduct to receive unemployment compensation for a period of 16 weeks, instead of 26 weeks, does not deprive employer of property without due process of law.—Cottrell Clothing Co. v. Teets, 342 P.2d 1016, 139 Colo. 558, followed in 342 P.2d 1021, 139 Colo. 567.

Even if employer had property interest in the fund, statute which provides that employee should be disqualified for unemployment, if employee had left work voluntarily without good cause, for not more than 10 weeks, thereby enabling employee, who had voluntarily quit work to get married and be with husband, to receive unemployment compensation for period of 16 weeks, instead of 26 weeks, does not deprive employer of property without due process of law.—Cottrell Clothing Co. v. Teets, 342 P.2d 1021, 139 Colo. 567.

82-7-2. ACCOUNTS AND DEPOSITS.—The state treasurer shall be ex officio the treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the department and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts:

(1) Clearing account.

(2) Unemployment trust fund account, and

(3) Benefit account.

All moneys payable to the fund, upon receipt thereof by the department, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account.

Refunds payable pursuant to sections 82-9-1 to 82-9-9 or section 82-1-3, paragraph (7) (e) (v), may be paid from the clearing account upon warrants issued by the treasurer under the direction of the department. After clearance thereof, all other moneys in the clearing account shall be deposited immediately with the secretary of the treasury of the United

States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the department, 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. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemploment compensation fund provided for under this chapter. Such liability on the official bond shall exist in addition to the liability upon any separate bond.

82-7-3. ADVANCES FROM THE FEDERAL UNEMPLOYMENT ACCOUNT.—The department is authorized and directed to apply for an advance to the Colorado unemployment compensation fund from the federal unemployment account in the unemployment trust fund, and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the social security act, as amended, in order to secure to this state and its citizens the advantage available under the provisions of said title.

82-7-4. WITHDRAWALS.—Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits in accordance with regulations prescribed by the commission. The department, from time to time, shall requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as it deemes necessary for the payment of such benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of such benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from 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 warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and be issued under the direction of the department. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from

estimates for, and may be utilized for the payment of benefits during, succeeding periods, or in the discretion of the department shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 82-7-2.

82-7-5. DISCONTINUANCE OF UNEMPLOYMENT TRUST FUND.—The provisions of sections 82-7-1 to 82-7-4 to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with provisions of this chapter. Such moneys shall be invested in readily marketable classes of securities as now provided by law with respect to public moneys of the state. Such investment, at all times, shall be so made that all 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 commission.

82-7-6. NONLIABILITY OF STATE.—Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemploment compensation fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

ARTICLE 8

Administrative Fund

82-8-1. ESTABLISHMENT OF ADMINISTRATION FUND.—There is hereby created in the state treasury a special fund to be

known as the employment security administration fund. All money deposited or paid into this fund shall be continuously available to the department for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of all money received from the United States of America, or any agency thereof; all money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency; all amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment security administration fund or by reason of damage to property, equipment, or supplies purchased from money in such fund; and all proceeds realized from the sale or disposition of any such property, equipment, or supplies which may no longer be necessary for the proper administration of this chapter.

82-8-2. PROTECTION AGAINST LOSS.—Such money shall be secured by the depository in which it is held to the same extent and in the same manner as required by the general depository law of this state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security administration fund provided under this chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future.

82-8-3. UNEMPLOYMENT REVENUE FUND.—(1) There is hereby created the unemployment revenue fund, to consist of all moneys collected as interest and paid pursuant to the provisions of section 82-9-1 and all moneys received pursuant to the provisions of section 82-3-10 (5). All moneys which are so collected are hereby appropriated and the same shall be deposited and paid into such fund and made available to the department, and such funds shall be handled by the department as other moneys are handled, but they shall be expended solely for the purposes specified in this section and the balance of such fund shall not lapse at any time but shall remain continuously available to the department for expenditures consistent herewith.

(2) The moneys available in the fund established by this section shall be used, subject to the limitations provided by section 82-3-5 except as to payment of refunds, for:

(a) The defrayment of expenditures deemed necessary by the department in the administration of this chapter for which no appropriation from federal funds shall be made, provided

the moneys are not substituted for appropriations from federal funds which in the absence of such moneys would be made available, and for which appropriations from federal funds have been requested but not yet received, provided the fund established by this section will be reimbursed upon receipt of the requested federal appropriations.

(c) Payments of interest refunds made pursuant to section 82-9-9.

82-8-4. Deposit and disbursement.—All money in the employment security administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other special funds in the state treasury. All money in this fund shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the employment security program except that moneys received pursuant to the federal social security act, as amended, which constitute this state's share of the excess remaining in the federal unemployment account on July first, of any fiscal year, shall be disbursed solely for the purposes and in the amounts found necessary for the proper and efficient administration of this chapter as determined and mutually agreed upon by the executive director, the state controller and the governor.

82-8-5. Reimbursement of the fund.—If any money received in the employment security administration fund after June 30, 1941, which is not a part of this state's share of the excess remaining in the federal unemployment account on July first, of any fiscal year, is found by the secretary of labor, because of any action or contingency, to have been lost or to have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the employment security program, it is the policy of this state that such money shall be replaced by money appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditures as provided in section 82-8-4 or by those funds which constitute this state's share of the excess remaining in the federal unemployment account on July first, of any fiscal year. Upon receipt of such finding by the secretary of labor, the department shall promptly report the amount required for such replacement to the governor and the governor, at the earliest opportunity, shall submit to the legislature a request for the appropriation of such amount. This section shall not be construed to relieve this state of its obligations with respect to funds received prior to July 1, 1941, pursuant to Title III of the social security act.

ARTICLE 9

Collection of Contributions, Penalties, Interest

82-9-1. INTEREST ON PAST DUE CONTRIBUTION.—Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of six per cent per annum from and after such date until payment plus accrued interest is received by the department. Interest collected pursuant to this section shall be paid into the unemployment revenue fund.

See Regulation No. 2 page 70.

82-9-2. COLLECTIONS.—If, after due notice, any employer defaults in any payment of contributions, penalties or interest thereon, the amount due may be collected by civil action, which shall include the right of attachment in the name of the department. Court costs shall not be charged to the department, but any employer against whom judgment is taken shall be taxed with all costs of such action. All costs collected by the department shal be paid into the registry of the court. Civil actions brought under this article to collect contributions, penalties or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workmen's compensation law of this state.

82-9-3. CONTRIBUTIONS A LIEN ON PROPERTY.—The contributions imposed by sections 82-6-1 to 82-6-4 shall be a first and prior lien upon the real and personal property of any employer subject to this chapter except as to the lien of general property taxes and except as to valid liens existing at the time of the filing of the notice provided for in section 82-9-5 and shall take precedence over all other liens or claims of whatsoever kind or nature; and any employer who shall sell, assign, transfer, convey, lose by foreclosure of a subsequent lien or otherwise dispose of his business, or any part thereof, shall file with the department such reports as the commission, by regulation may prescribe, within ten days after the date of any such transaction, and his successor shall be required to withhold sufficient of the purchase money to cover the amount of said contribution due and unpaid until such time as the former owner

shall produce a receipt from the department showing that said contributions have been paid, or a certificate that no contributions are due. Any such successor who fails to comply with the above provisions shall be personally liable for the payment of any contributions due and unpaid.

Whenever the business or property of any employer shall be placed in receivership, seized under distraint for property taxes, or assigned for the benefit of creditors, all contributions, penalties and interest imposed by this chapter shall be a prior and preferred claim against all of the property of said employer, except as to the lien of general property taxes and as to valid liens existing at the time of the filing of the notice provided for in section 82-9-5, and as to claims for wages of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding, and no sheriff, receiver, assignee or other officer shall sell the property of any employer under process or order of court in such cases without first ascertaining from the department the amount of any contribution due and payable under this chapter; and if there be any such contributions due, owing and unpaid it shall be the duty of such sheriff, receiver, assignee, or other officer, to first pay the amount of said contributions out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 (a) of that Act (U. S. C. A. Title II, Sec. 104 (a), as amended), for taxes due the state of Colorado.

82-9-4. FAILURE TO FILE TRUE REPORT—PENALTY.—If any employer fails or neglects to make and file such report as required by this chapter, or by the regulations of the commission pursuant thereto, or willfully makes a false or fraudulent report, the department may make an assessment of the contributions due from their own knowledge and from such information as they can obtain through testimony or otherwise. Upon the basis of assessments so made the department may compute and assess in addition thereto a penalty equal to ten per cent of such delinquent contributions or of the deficiency resulting from such false or fraudulent report and this penalty shall be in addition to the interest imposed in section 2-9-1. Any assessment so made and certified by the department shall be prima facie, good and sufficient for all legal purposes. Notice and demand for such contributions plus any interest and penalties imposed by this chapter shall be made upon such forms as the department may prescribe and such notice and demand shall become final fourteen days after the date of delivery of said

notice and demand to the employer in person or from the date of the transmittal thereof by registered mail to his last known address or place of business. The employer may file a request for review or modification of said assessment with the department within the fourteen days in the manner and form prescribed by the department. The department on the basis of evidence submitted by the employer disclosing the correct amount of contributions may amend or otherwise modify its previous assessments.

82-9-5. LEVY ON PROPERTY—SALE.—If any contributions, penalties or interest imposed by this chapter as shown by reports filed by the employer, or as shown by assessment duly made as provided in sections 82-9-4 or 82-9-7, are not paid within five days after the same are due and demand made therefor, the department may issue a notice setting forth the name of the employer, the amount of the contributions, penalties and interest, the date of the accural thereof and that the department claims a first and prior lien therefor except as hereinbefore provided. Such notices shall be on forms prepared by the department and shall be verified by any duly qualified representative of the department and may be filed or recorded in the office of the clerk and recorder of any county in the state in which the employer owns property. After such notice has been filed or recorded, the department may issue a warrant under its official seal directed to the sheriff of any county of the state, or any duly authorized agent of the department, commanding him to levy upon, seize and sell such of the real and personal property of the employer found within his county necessary for the payment of the amount due, together with interest and penalties, as now or hereafter may be provided by law.

It shall be the duty of any county clerk to whom such notices are sent to file or record the same without cost. Any lien for contributions as shown upon the records of the county clerk and recorder, upon the payment of all contributions, penalties and interest covered thereby, shall be released by the department in the same manner as judgments are released.

The sheriff, or any duly authorized agent of the department, shall forthwith levy upon the property of the employer and personal property so levied upon shall be sold in all respects with like effect and in the same manner as prescribed by law with respect to executions of distraint warrants issued by a county treasurer for the collection of taxes levied upon personal property. Real property shall be levied upon and sold in the same manner as prescribed by law with respect to executions against property upon judgment of a court of record. The sheriff shall be entitled to such fees for executing such warrants as now are allowed by law for similar services.

82-9-6. No indemnity bond required.—In any action of whatever nature brought under this chapter, no bond shall be required of the department, nor shall any constable or sheriff, or agent of the department, require from the department an indemnifying bond for executing the writs of levy or attachment herein provided for. No constable or sheriff, or agent of the department, shall be liable in damages to any person when acting in accordance with such writs.

82-9-7. Immediate assessment, when.—If the department believes that the collection of any contributions, penalties or interest under the provision of this chapter will be jeopardized by delay, whether or not the time otherwise prescribed by this chapter or any regulations issued pursuant thereto for making reports and paying such contributions has expired, it may immediately assess such contributions together with all penalties and interest, the assessment of which is provided for by this chapter. Such contributions, penalties and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the department for the payment thereof.

82-9-8. Assessment and action to collect, when. — The contributions, together with interest and penalties thereon, imposed by this chapter shall not be assessed, nor shall action to collect the same be commenced more than four years after the report was filed. In the case of a false or fraudulent contribution report with intent to evade contributions or a failure to file a contribution report, the contributions, together with interest and penalties thereon, may be assessed, or a proceeding in court for the collection of such contributions may be begun at any time. Before the expiration of such period of limitation the employer and the executive director of the department may agree in writing to an extension thereof; and the period so agreed on may be extended by subsequent agreements in writing.

82-9-9. Refunds.—An employing unit may file a written application for refund of money paid erroneously, and if the department shall determine that such payment, or any portion thereof, was paid erroneously, the department shall either issue to the employing unit a credit memo therefor, or make a refund thereof, in either event without interest thereon. In no event may an employing unit recover money paid erroneously, or otherwise, which has been paid prior to the first day of January of the first year of the two calendar years immediately preceding the date of the filing of the application for refund. If such application for refund is refused, or if no final action is taken thereon within six months, an employing unit may commence an action in the district court for the city and county of Denver for the collection thereof. In the event of

court action no recovery of any money paid prior to the first day of January of the first year of the two calendar years immediately preceding the date of the filing of the application shall be allowed. For like cause and for the same period a recovery as above indicated may be allowed on the department's own initiative.

If it is determined by the department, or by court action, that any employing unit is entitled to a refund of contributions, there shall be deducted from the amount of the refund granted, an amount equal to all benefits which the department has paid to those employees of such employing unit upon whose wages such contributions were based. At the time such refund is paid the employing unit's account relative to such contribution and wages and to benefits charged shall be corrected for experience rating purposes but such corrected amounts shall be used only in future computations.

Refunds of interest which were paid into the unemployment compensation fund shall be paid from the unemployment compensation fund, and refunds of interest which were paid into the unemployment revenue fund shall be paid from the unemployment revenue fund. All refunds of contributions shall be made from the unemployment compensation fund.

ARTICLE 10

Protection of Rights and Benefits

82-10-1. WAIVER OF RIGHTS VOID.—Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all ar any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any rights hereunder by any individual in his employ. Any employer or officer or agent of any employer who violates any provision of this section shall be guilty of a misdemeanor and upon conviction, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

82-10-2. LIMITATION OF FEES.—No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof. Any individual claiming

benefits in any proceeding before the department or a court may be represented by counsel; but no such counsel shall either charge or receive for such services more than an amount approved by the department. Any person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than six months, or both.

82-10-3. ASSIGNMENT OF BENEFITS VOID—EXEMPTIONS.—Any assignment, pledge, or encumbrance of any rights to benefits which are or may become due or payable under this chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

ARTICLE 11

Penalties and Enforcement

82-11-1. PENALTIES.—(1) (a) Any person who makes false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact with intent to defraud by obtaining or increasing any benefit under this chapter or under an employment security law of any other state, of the federal government, or of a foreign government, either for himself or for any other person shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not longer than six months, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any person who makes a false representation, knowing it to be false, or who fails to disclose a material fact, with intent to obtain or increase any benefit for himself or any other person shall be ineligible to receive benefits for a period of fifty-two consecutive weeks beginning with the first week for which a fraudulent payment has been made. The claimant

shall repay to the department any overpayments which have resulted due to his act of false representation or his failure to disclose material information and until such amounts are repaid the claimant shall be entitled to no benefits under this chapter. The penalty imposed by this paragraph shall be in addition to and not in lieu of any other penalty, civil or criminal, provided in this chapter.

(c) If any employer shall make or cause to be made a false statement as to the reason for a claimant's separation from employment or shall make or cause to be made a false offer of work to a claimant, which statement or offer shall result in a delay in the payment of benefits to any such claimant, such employer shall be penalized by having his account charged with one and one-half times the amount of benefits due during the period of the delay and with one hundred per cent of all other benefit payments paid to the claimant thereafter during his current benefit year, any other provisions of this chapter to the contrary notwithstanding, and the claimant shall be compensated by being paid one and one-half times his weekly benefit amount for the period of the delay. "The period of delay" as used herein shall be determined by the department and such determination shall be binding upon all parties affected and shall not be subject to review.

The penalty imposed by this paragraph shall be in addition to and not in lieu of any other penalty, civil or criminal, provided in this chapter.

(2) Any employing unit or any officer or agent of an employing unit, or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to defraud an individual by preventing or reducing the payment of benefits to which such individual would otherwise be entitled, or to avoid becoming or remaining a subject employer, or to avoid or reduce any contribution or other payment required from an employing unit, under this chapter, or under the employment security law of any other state, or of the federal government, or of a foreign government, or who willfully fails or refuses to make any such contributions or other payemnt or to furnish any reports required hereunder, or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment for not longer than six months, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day such failure or refusal continues shall constitute a separate offense.

(3) Any person who shall willfully violate any provision

of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense.

(4) Any person who by reason of his fraud has received any sum as benefits under this chapter to which he was not entitled shall be liable to repay such sum to the department for the fund, such sum shall be collectible in the manner provided in sections 82-9-2 to 82-9-8 for the collection of past due contributions, or to have such sum deducted from any future benefits payable to him under this chapter. If any person, other than by reason of his fraud, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this chapter, he has been found not entitled, he shall not be liable to repay such sum, but, in the discretion of the department, shall be liable to have such sum deducted from any future benefits payable to him. No such deduction from future benefits shall be made if such sum was received by such person without fault on his part and such deduction would defeat the purpose of this chapter or would be against equity and good conscience. The department may waive the recovery or adjustment of all or part of the amount of any such overpayment which it finds to be noncollectible, or the recovery or adjustment of which it finds to be administratively impracticable.

82-11-2. PENALTIES IN PRIOR LAW CONTINUE IN FORCE.—Any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred in former statutes relating to unemployment compensation shall be held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for the enforcement of such penalty, forfeiture or liability which are now pending, or which may hereafter be commenced within the time provided by law for the commencement of such actions, suits, proceedings and prosecutions, as well as for the purpose of sustaining any judgment, decree or order which has been or which may be entered or made in such actions, suits, proceedings or prosecutions.

82-11-3. REPRESENTATION IN COURT.—(1) In any civil action to enforce the provisions of this chapter the department and the state shall be represented by the attorney general.

Such assistant attorneys general shall be appointed as shall be necessary for this purpose.

(2) All criminal actions for violation of any provision of this chapter, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the district attorney of the judicial district in which the employer has a place of business or the violator resides.

ARTICLE 12

Acquisition of Lands and Buildings

(Has no effect on employers' or claimants' rights or obligations.)

ARTICLE 13

Temporary Unemployment Compensation

(All provisions of this article have become obsolete and no longer have any effect on employers' or claimants' rights or obligations.)

RULES AND REGULATIONS
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REGULATION NO. 1

CONTRIBUTIONS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-6-1 (1) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Contributions shall become due and be paid on the last day of the month next following the calendar quarter for which such contributions have accrued. Provided, however, that unless the Commission by special rule or regulation shall otherwise prescribe, an employer who has erroneously paid an amount as contributions under another unemployment compensation law shall not be delinquent if said contributions are paid within thirty days of the date on which the Department determines that such contributions are payable to Colorado.

B. Quarterly payments shall include all contributions with respect to wages paid for employment in all payroll periods which end within the quarter.

C. The first contribution payment of any employing unit which becomes an employer at an time during a calendar year shall become due and be paid on or before the last day of the month immediately following the calendar quarter in which such employing unit becomes an employer. Said payment shall include contributions with respect to wages paid for employment occurring on and from the first day of the calendar year through all payroll periods which end within the calendar quarter in which the employing unit becomes an employer Except that:

1. The first contribution payment of an employing unit which elects to become an employer shall include contributions with respect to wages paid for employment occurring on and from the date stated in the Department's written approval of election through all payroll periods ending in the calendar qaurter in which such election was approved.

2. An employing unit which becomes an employer after June 30 of any calendar year may be authorized, upon application, to pay its first contribution payment in installments. The Department may declare the unpaid balance due and immediately payable if any installment is not paid on the due date.

All regulations or parts of regulations in conflict herewith are repealed.

REGULATION NO. 2

INTEREST ON OVERDUE CONTRIBUTIONS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-9-1 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

> Interest on overdue contribution payments shall be computed at the rate of one-half of one per cent per month for each full month, and, for periods of less than one month, at the rate of one-tenth of one per cent for each six day period.

All regulations or part of regulations in conflict herewith are repealed.

REGULATION NO. 3

RECORDS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-3-7 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Each employing unit shall keep true and accurate work records which shall show:

1. For each payroll period:

a. Beginning and ending dates.

b. Total wages payable for emploment during such period and the date on which such wages were paid.

c. The date in each calendar week on which the largest number of workers was employed and the number of such workers.

d. A "Reporting Pay Period" of not to exceed one month, if any established payroll period be longer than one month.

2. For each worker:

a. Name.

b. State of residence.

c. Social Security Account Number. If a worker has no account number, the employer shall require him to produce a receipt of application therefor within seven days of entering upon employment.

d. Date of hire, rehire, or return to work after temporary layoff.

e. Date and reason separated from employment.

f. State or states in which services are performed.

g. If services are performed outside of Colorado, his base of operations, and if there is no base of operations, then the place from which such services are directed or controlled.

h. If such worker is paid:

(1) On a salary basis, the wage rate and period covered.

(2) On a fixed hourly basis, the hourly rate and the

customary scheduled days per week prevailing in the establishment for his occupation.

(3) On a fixed daily basis, the daily rate and the customary scheduled days per week in the establishment for his occupation.

(4) On a piece rate or other variable pay basis, the method by which his wages are computed.

i. If, during any payroll period, such worker shall work less than his customary full time hours:

(1) The specific amount of time lost.

(2) The specific reason or reasons, including his non-availability for work, and if there be more than one reason the amount of time attributable to each.

j. Wages paid during each payroll period and the date of payment thereof, with separate entries for:

(1) Money Wages.

(2) The reasonable cash value of wages paid in any medium other than money. (See Commission Rule No. 1)

(3) Amounts paid to a worker which exceed travel and other business expenses actually incurred or accounted for.

All regulations or parts of regulations in conflict herewith are repealed.

REGULATION NO. 4
REPORTS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-3-1 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Each employing unit shall make such reports as are prescribed by the Department in such form as it may require.

B. Any employer who ceases doing business, or in any manner transfers all of the trade and business, or any part of the trade or business which utilized the services of an average of ninety per cent or more of all employees during the four payroll periods immediately preceding the transfer, or changes the trade name or address of said business shall:

1. Within ten days thereof, give notice in writing to the Department.
2. Within thirty days thereof, file Department form "Report of Workers' Wages for the Quarter" (Form CUC1a) for the calendar quarter in which the employer ceased doing business or transferred all or part of the trade or business and for the four calendar quarters immediately preceding said calendar quarter. Provided, however, that such reports shall not be required if the successor employer, if any, has in his possession all of the wage and separation records for all of the transferring employer's workers for a minimum of fifteen months immediately preceding the date of the transfer, and such successor agrees to furnish requested wage and separation information from such records.

C. An employer shall include a worker's Social Security account number in all reports required by the Department with respect to such worker. If the worker has no number, the employer shall report the date of issue of the application receipt therefor, its termination date, the address of the issuing office and the name and address of the worker as shown on the receipt.

D. Whenever an employer becomes delinquent in payment of contributions or fails to furnish requested wage and separation information within seven days of such request, the Department, in its discretion, may require that the employer file Department forms "Report of Worker's Wages for the Quarter" (Form CUC1a) covering all base period and current quarters in addition to wage and separation reports for individual workers.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 7A

REGISTRATION FOR WORK AND FILING CLAIMS EXCEPT IN CASES OF PARTIAL UNEMPLOYMENT

(Revised January 14, 1963)

Pursuant to authority granted to the Commission by Section 82-4-8 (1) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. To qualify for unemployment compensation benefits, an unemployed worker who lives within twenty miles of a public employment office or itinerant service point or representative thereof must register for work and file an initial claim for benefits with the nearest public employment office or itinerant service point or representative thereof, and thereafter, unless otherwise instructed, continue to apply for work and to file continued claims for benefits each week. The term "initial claim" as used in this regulation means a claim filed to establish a new benefit year or to begin a new claim series in a previously established benefit year.

B. The Department, for reasons found to constitute good cause, may permit an individual to report to another Colorado public employment office or itinerant service point or representative thereof for the purpose of filing continued claims for benefits.

C. The Department, for reasons found to constitute good cause for failure to report to the public employment office or itinerant service point or representative thereof on the scheduled date, may accept a continued claim from any individual effective as of the first day of his week of total unemployment if such continued claim is filed within seven days of his regular reporting day.

D. Any person who by reason of his return to full time employment is unable to report to a local office or itinerant service point or representative thereof to file his continued claim as scheduled may file such claim by mail within seven days of his scheduled reporting day.

E. If in the judgment of the Department of Employment or the Industrial Commission of Colorado, acting as ex-officio Unemployment Compensation Commission of Colorado, it is found that such time limits as set forth above would be arbitrary or unreasonable because of compelling reasons

or hardships which have prevented the filing within the period so provided by the regulation above, the Department or Commission may permit the acceptance of a claim subsequent to a period set forth by the above time limits, but not more than six months from the last day of the aforementioned time limits period.

All regulations or parts of regulations in conflict herewith are repealed.

REGULATION NO. 7C

FILING CLAIMS BY MAIL

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-4-8 (1) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. To qualify for unemployment compensation benefits, an unemployed worker residing more than twenty miles from a public employment office or itinerant service point or representative thereof must register for work and file his initial claim for benefits in person with the public employment office or itinerant service point or representative thereof most accessible to him. Thereafter, unless otherwise instructed, he may file continued claims by mail as herein provided.

The term "initial claim" as used in this regulation means a claim filed to establish a new benefit year or to begin a new claims series in a previously established benefit year.

B. If the Department concludes that compliance with the reporting, registering, and filing requirements hereinabove set forth would be oppressive or would be inconsistent with the purposes of the Act, it may accept an application for work and initial claim for benefits completed by the claimant and mailed to the public employment office serving the area in which such claimant resides. The first week for an initial claim for benefits filed under the provisions of this paragraph shall be determined under the provisions of paragraph E of Regulation No. 14 as if the claimant had reported to the local office, registered for work, and filed his claim on the date shown by the postmark on the envelope in which the claim was mailed.

C. Continued claims filed by mail must be completed and mailed not more than seven days after the last day of the week for which the claim is made. The postmark date on the envelope in which the claim was mailed shall determine the date of mailing.

D. If, for any reason, prescribed continued claim forms are not received from the Department in time to comply with the provisions of section C, the claimant must request such forms from the office in which he is registered. The requirement of Paragraph C with respect to mailing date

shall have been met if the claimant within the seven-day period makes such request in person or by letter which carries a postmark date within such period.

E. A claim for benefits transmitted by mail must be signed by the claimant and such signature must be witnessed by a credible adult person not related to the claimant.

All regulations or parts of regulations in conflict herewith are repealed.

REGULATION NO. 9

POSTING NOTICES TO WORKERS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Every employer shall post and maintain notices to inform his employees that he is liable for contributions under The Colorado Employment Security Act and has been so registered by the Department of Employment.

B. Such notices shall be of such form and design and in such numbers as the Department may determine to be necessary.

C. Such notices shall be conspicuously posted at or near work locations.

D. An employer shall not be required to post notices until an employer's account number has been assigned by the Department.

All regulations or parts of regulations in conflict herewith are repealed.

REGULATION NO. 10

WAGE AND SEPARATION REPORTS

(Revised May 23, 1963)

Pursuant to authority granted to the Commission by Section 82-3-1 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Every employer shall furnish to the Department wage and/or separation information within seven days of the date on which said Department mails a request for such information. Department form "Request for Wage and Separation Information" (Form B-225) or "Request for Separation Information" (Form B-226) shall be used.

B. An employer who fails to comply with all the provisions of paragraph A. of this regulation shall be deemed not to be an interested party (as defined in Section 82-1-3(11) of the Act) and shall be barred from protesting either:

1. The payment of benefits to workers for whom wage and separation information was not furnished within the required time; or

2. The charging of his account for experience rating purposes with benefits paid such workers.

C. When workers become unemployed or separated from an employer because of a labor dispute, the employer shall furnish the Department with such information about each worker as it may require.

D. If an employer fails to furnish the wage and separation information as required by this regulation, the Department may require that such employer file quarterly wage reports at the same time it files its quarterly contribution reports. The filing of such wage reports shall not relieve the employer from liability for payment of the twenty-five dollar penalty for failure to furnish wage and separation reports as provided in Section 82-4-8 (8) of the Act. Quarterly wage reports shall be required so long as the Department, in its discretion, deems necessary.

E. Whenever an employer transfers all of its trade and business to a successor, or ceases to do business in Colorado, or terminates coverage, such employer shall file quarterly wage reports for the base period and for the portion of the current quarter in which the transfer occurs or the employer ceases to do business in Colorado.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 14

WEEK OF UNEMPLOYMENT

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-1-3 (13) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. As used in this regulation a calendar week shall consist of the seven consecutive days beginning at 12:01 a.m. on Sunday and ending at midnight on Saturday.

B. Except as provided in Regulation No. 7C and Sections C and D of this regulation, an individual's week of unemployment shall be the calendar week in which he registers for work and files a claim with a public employment office or itinerant service point or representative thereof, and each calendar week immediately following any such week during which said individual has reported as directed or failed to do so for good cause. Provided, however, that no week shall be considered a week of unemployment unless the individual has worked less than a full work week and earned less than his weekly benefit amount.

C. A week of unemployment for an individual who resides in an area served only at an itinerant service point of the Department shall be the calendar week in which such individual became unemployed, if such individual registers for work and files a claim at such itinerant service point at the first opportunity thereafter and each calendar week immediately following such week during which such individual has reported as directed or failed to do so for good cause. Provided, however, that no week shall be considered a week of unemployment unless the individual has worked less than a full work week and earned less than his weekly benefit amount.

D. A week of unemployment for an individual who for reasons found to constitute good cause by the Department fails to register for work and file a claim for benefits, as hereinabove provided, shall be the calendar week in which such individual became unemployed, if the individual registers for work with a public employment office or itinerant service point or representative thereof not more than seven days after such good cause has ceased to exist. Thereafter weeks of unemployment shall be the calendar weeks immediately following any such week during which the individual has reported as directed or failed to do so for good cause. Provided, however, that no week shall be considered a week of unemployment unless the individual

has worked less than a full work week and earned less than his weekly benefit amount.

E. To begin a claims series by reason of an initial, additional or reopened claim, an individual's first week in the claims series shall be determined as follows:

1. If the individual registers for work and files a claim on Monday, Tuesday, Wednesday, or Thursday, the first day of his first week in the claims series shall begin on the Sunday immediately preceding the day on which said claim was filed.

2. If the individual registers for work and files his claim on Friday or Saturday, the first day of his first week in the claims series shall begin on the Sunday immediately following the day upon which said claim was filed.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 17

PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-3-9 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. This regulation shall govern the Department of Employment in its administrative cooperation with other states which adopt similar regulations for the payment of benefits to interstate claimants.

B. Definitions.

The following definitions apply to this regulation unless the context clearly requires otherwise:

1. Interstate Benefit Payment Plan:
The plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

2. Interstate Claimant:
An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term shall not include an individual who customarily commutes from a residence in any agent state to work in a liable state unless the Colorado Department of Employment determines that such an exclusion would create undue hardship upon claimants in designated areas.

3. State: Any state of the United States, the District of Columbia, Alaska, Hawaii and the provinces of Canada.

4. Agent State: Any state in which an individual files a claim for benefits against another state.

5. Liable State: Any state against which an individual files a claim for benefits.

6. Benefits: The unemployment compensation payable to an individual under the unemployment insurance law of any state.

7. Week of Unemployment: Any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

C. Registration for Work.

1. Each interstate claimant shall be registered for work with any public employment office in the agent state when and as required by the law, regulations and procedures of such state. Such registration shall be deemed to meet the registration requirements of the liable state.

2. The agent state shall duly report to the liable state whether each interstate claimant meets the registration requirements of the agent state.

D. Benefit Rights of Interstate Claimants.

If an interstate claimant files a claim against a state and such state determines that benefit credits are available to the claimant in that state, claims may be filed only against that state and no other state so long as such benefit credits are available. Thereafter the claimant may file claims against any other state in which he has available benefit credits. Benefit credits, for the purposes of this regulation, shall be deemed to be unavailable whenever benefits are affected by the application of a seasonal restriction or have been exhausted, terminated or postponed for an indefinite period or for the entire period during which benefits would otherwise be payable.

E. Claims for Benefits.

1. Interstate claimants shall file claims for benefits and waiting periods on uniform interstate forms and in compliance with the uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed to conform to the type of week in effect in the agent state. The liable state shall make required adjustments on the basis of consecutive claims.

2. Agent state regulations for filing intrastate claims with public employment offices or itinerant service points or representatives thereof or by mail shall apply to interstate claims.

a. If the liable state, in its discretion, determines that an individual has good cause for failing to file a continued claim for a week of unemployment during which he was not working for his regular employer, such state shall accept such claim up to one week or one reporting period late. If a claimant for any reason files a continued claim more than one week or one reporting period late, an initial claim form shall be used to begin a new claim series and no claim for a past period shall be accepted.

b. With respect to weeks of unemployment during

which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

F. Determination of Claims.

1. When an interstate claim is filed, the agent state shall ascertain and report such facts relating to a claimant's availablity for work and eligibility for benefits as are readily determinable in and by the agent state.

2. The agent state's authority and responsibility with respect to the determination of interstate claims shall be limited to investigation and to reporting relevant facts.

3. The agent state shall not refuse to accept an interstate claim.

G. Appellate Procedure.

1. The agent state shall give all reasonable cooperation in conducting hearings and taking evidence in connection with disputed benefit determinations.

2. The time limit imposed by the liable state for filing an appeal in connection with a disputed benefit determination shall control. Provided, however, that a claimant's appeal shall be deemed to have been made and communicated to the liable state on the date on which it is received by an employee of the agent state.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 19

PARTIAL BENEFITS

(Revised May 23, 1963)

Pursuant to authority granted to the Commission by Section 82-4-3 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. The following definitions shall apply to this regulation unless the context clearly requires otherwise:

1. Partially Unemployed Individual: Any person who, during an established payroll period, earned less than his payroll period benefit amount, was connected with his regular employer, and worked less than his customary, full-time hours for such employer because of a lack of full-time work.

2. Payroll Period of Partial Unemployment: A partially unemployed individual's established payroll period. Provided, however, that if such established payroll period be longer than one month, the employer shall establish a reporting payroll period which shall be the calendar month. He shall maintain such records, make such reports, and do such other things as are required by this regulation on the basis of such reporting payroll period which, for the purposes of administering the Act and this regulation, shall be held to be the established payroll period.

3. Low Earnings Report: Department form "Low Earnings Report" (Form B-14-B) or a Department approved payroll by-product in printed form which must include at least the following information:

   a. The worker's name.

   b. Type of payroll period.

   c. Payroll period ending date.

   d. Wages earned during the period covered.

   e. The number of days and amount in wages lost during the period for reasons other than lack of work.

   f. The employer's name.

   g. Name of the issuing officer.

   h. Date of issue.

4. Employer: Any employing unit whether or not an employer as defined in Section 82-1-3 (6) of the Act.

B. The filing of an initial claim form for partial benefits and a low earnings report with any public employment office or itinerant service point or representative thereof shall constitute a partially unemployed individual's notice of partial unemployment, registration for work and claim for waiting period credit or benefits for each payroll period of partial unemployment covered by such claim. Provided, however, that such claim must be filed within the time limit hereinafter prescribed and provided, further, that a low earnings report need not be filed with the initial claim form if the provisions of Section E of this regulation apply.

C. An employer, no later than fifteen days after the customary pay day for an established payroll period, shall deliver a completed copy of a low earnings report to every worker to whom, because of a lack of work, he has provided an amount of work equal to less than sixty percent of the customary full-time hours for such payroll period or the time or money equivalent thereof.
Provided, however, that no such form need be delivered to any worker whose earnings for an established payroll period exceed the following amounts:

Established Payroll Period	Regular Benefit Amount
Weekly	W.B.A.
Bi-Weekly	W.B.A.X2
Semi-Monthly	W.B.A.X2-1/7
Monthly	W.B.A.X4-2/7

As used in this table the W.B.A. is the weekly benefit amount as computed for the worker under the provisions of Section 82-4-2.

Provided, further, that during the remainder of a benefit year for which the employer has received a determination of a worker's payroll period benefit amount from the Department, a copy of the aforementioned form shall be delivered to such worker only for those pay periods during which earnings do not exceed the benefit amount which appears on such determination.

D. To qualify for benefits under this regulation, a worker must file an initial or continued claim with the nearest public employment office or itinerant service point or representative thereof within thirty days of the date on which his employer delivered to him a copy of the hereinabovementioned low earnings report for an established pay period. Provided, however, that if such worker resides more than twenty miles from the nearest public employment office or itinerant service point or representative thereof,

he may use the mail claim procedure as outlined in Regulation No. 7C to file such claim to which the aforementioned form must be attached.

E. If the employer fails to deliver a properly executed copy of a low earnings report to a partially unemployed individual or if such individual has lost said report, the Department shall make a reasonable effort to secure a copy of said form and, thereafter, upon the basis of the best information available to it, it shall proceed without further delay to process said individual's claim and to pay such benefits as may be due.

F. No claim for waiting period credit or benefits on account of any payroll period of partial unemployment shall be valid if filed more than thirty days after a partially unemployed individual has received a copy of a low earnings report for the payroll period covered by such claim. Provided, however, that, if failure to file such claim within the thirty-day period is determined by the Department to be founded on good cause, such claim may be filed not later than seven days after such good cause has ceased to exist. In no case shall such claim be valid after the expiration of the thirteen-week period next following the end of the benefit year during which a payroll period of partial unemployment occurred.

Good cause, as used in this section, shall include, among other things, the employer's failure to comply with the requirements of this regulation, coercion or intimidation by the employer to forestall the filing of a claim, the failure of the Department to discharge its responsibility in connection with this regulation and the partial benefit provisions of the Act.

G. When a partially unemployed individual files an initial claim for partial benefits, the Department shall make a determination and notify such individual and his employer of his payroll period benefit amount.

H. An initial or continued claim for partial benefits which is filed within the prescribed time shall be dated as of the first day of the established payroll period as it appears on the low earnings report and shall be processed by the Department in the same manner as a claim for total unemployment benefits.

I. When a partially unemployed individual's compensable period is shorter than his established payroll period because part of said payroll period is allocable to his waiting period, partial benefits payable to him for such compensable period shall be computed (without regard to days or

dates) by multiplying the difference between his payroll period benefit amount reduced by that part of his earnings which the Act and this regulation prescribe shall be deducted therefrom, by the number of days in the compensable period divided by the number of days in the payroll period.

J. Partial benefits shall be paid to an eligible individual by and for established payroll periods in amounts proportionately equivalent to his weekly benefit amount as determined under the provisions of Section C of this regulation and according to the following schedule:

1. Weekly.
   The difference between his weekly benefit amount and the amount he earned from all sources in excess of $3.00.

2. Bi-Weekly.
   The difference between his bi-weekly benefit amount and the amount he earned from all sources in excess of $6.00.

3. Semi-Monthly.
   The difference between his semi-monthly benefit amount and the amount he earned from all sources in excess of $6.50.

4. Monthly.
   The difference between his monthly benefit amount and the amount he earned from all sources in excess of $13.00.

Provided, however, that benefit payments shall be reduced by an amount equal to the sum of any benefits paid or payable for any weeks of total unemployment which fall within the payroll period of partial unemployment. Provided, further, that if an individual who is not totally separated from his regular employer suffers a week or fraction thereof of no work during a payroll period of partial unemployment the entire payroll period for such individual shall be deemed a payroll period of partial unemployment. For purposes of this regulation, an individual shall not be deemed to be totally separated from his regular employer until the close of the payroll period during which he changed from a partially unemployed to a totally unemployed status.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 20

APPEALS ON DISPUTED CLAIMS

(Revised May 23, 1963)

Pursuant to authority granted to the Commission by Section 82-5-7 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Appeals to Referees.

1. Procedure for Filing Appeals.

   a. An appeal from a decision of the deputy shall be by written notice of appeal stating reasons therefor. Such notice shall be in any form which signifies an intent to appeal and shall be filed in the public employment office at which the disputed claim was filed or with the central office of the Department. The Department shall mail a copy of such notice to each party to the appeal.

   b. Notices, specifying time and place, shall be mailed to each party to the appeal at least seven days before the scheduled hearing date.

2. Disqualification of a Referee.

   Challenges to the interest of a referee in an appeal scheduled to be heard by him shall be heard and decided by him or, in his discretion, referred to the Commission.

3. Hearing the Appeal.

   a. Hearings shall be conducted informally and in such manner as to ascertain the substantive rights of the parties. All relevant issues shall be considered and passed upon. Parties to the appeal may present any pertinent evidence. The referee shall examine such parties and opposing parties may cross-examine each other and the others' witnesses. The referee, after notice to the parties, may hear such additional evidence as he deems necessary.

   b. With the consent of the referee, parties to an appeal may stipulate to the facts in writing. The referee may decide the case on the facts so stipulated, or, in his discretion, set the appeal down for hearing and take such additional evidence as he deems necessary.

4. Adjournment of Hearings.

   a. The referee may grant requests for adjournment

when, in his own best judgment, such an adjournment will result in adducing all necessary evidence and be equitable to the parties.

b. If a claimant fails to appear, the referee shall proceed with the hearing and decision, unless it shall appear to him that good cause for adjournment exists.

5. Decisions by the Referee.

The referee shall announce, in written and signed form, his findings of fact, decision and reasons therefor as soon as practicable after a hearing and a copy thereof shall be mailed to all parties to the appeal.

B. Appeals to the Unemployment Compensation Commission of Colorado.

1. Procedure for Filing Appeals.

a. An appeal from a decision of a referee shall be by written notice of appeal stating reasons therefor. Such notice shall be in any form which signified an intent to appeal and shall be filed in the public employment office at which the disputed claim was filed or with the central office of the Department or with the Commission. The Department shall mail copies of such notice to each party to the appeal.

b. Notices, specifying time and place, shall be mailed to each party to the appeal at least seven days before the scheduled hearing date.

2. Hearing the Appeal.

a. The Commission may limit the parties to argument on the record or it may take or direct the taking of any additional evidence considered necessary to reach a decision.

b. When the Commission remands an appeal to the Department with a direction to take additional evidence, the referee shall follow the established procedure for hearing appeals and such evidence shall be returned to the Commission.

3. Hearing Appeals on Commission's Own Motion.

a. Within eleven days of a decision by a referee and in the absence of a notice of appeal by any of the parties, the Commission, on its own motion, may order the parties to appear before it for a hearing.

b. Notices, specifying time and place, shall be mailed to each party to the appeal at least seven days before the scheduled hearing date.

c. The same procedure prescribed in this Regulation for conducting hearings before referees shall be followed by the Commission.

4. Hearing Pending Appeals on Cases Removed from Referee to Commission.

When the Commission removes a pending appeal to itself, the same procedures prescribed in this Regulation for notice to the parties and conducting hearings before a referee shall be followed by the Commission.

5. Decisions by the Commission.

a. Decisions shall be signed by those members of the Commission who hear an appeal and copies thereof mailed to all the parties.
b. The decision of the majority shall control; provided, however, that a dissent stating reasons therefor may be filed by the minority.

6. Disqualification of Commissioner.

Challenges to the interest of a Commissioner shall be heard and decided by the Commission.

C. General Provisions.

1. The Department may, after notice to the parties, request an agency which administers the Employment Security Act for another state to take evidence in that state for use by the Department. Such agency, after notice to the parties, may follow the procedure prescribed by the law and regulations of that state for conducting hearings.

2. Subpoenas.

a. The Department shall issue subpoenas to compel attendance of witnesses and production of records for a hearing before a referee or the Commission only upon a showing of a necessity therefor.

b. A subpoenaed witness shall be paid fees by the party requesting the issuance of the subpoenas according to the following schedule:

Witness fee.....Two Dollars per day
Mileage fee.....seven and one-half cents per mile

3. Representation at Hearing.

a. In a proceeding before a refree or the Commission an individual may appear for himself; a partnership may be represented by any partner or a duly authorized representative; and a corporation or association may be represented by an officer or duly authorized representative.

b. Any party may designate another person to represent him as counsel in an appeal proceeding before the Department or Commission. Provided, however, that any person, other that an attorney-at-law, duly admitted to the practice of law in any state or a territory of the United States, shall not charge or receive any fee for representing such party.

c. The Commission may refuse to permit any person to represent others in a proceeding before it or the Department who it finds is guilty of unethical conduct or who intentionally and repeatedly fails to comply with the Act, its regulations, or with instructions of said Commission.

4. Preserving Records of Decisions.

Copies of all decisions of referees and the Commission shall be kept in the main administrative office of the Department in Denver, Colorado. Copies of such decisions may be obtained upon written request therefor. Provided, however, that copies so released to other than parties to the appeal proceeding shall in no manner reveal the names of the parties or witnesses therein.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 21

REDETERMINATIONS

(Revised May 23, 1963)

Pursuant to authority granted to the Commission by Section 82-5-3 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

> A request for reconsideration of an original determination, for reasons prescribed in Section 82-5-3 of the Act, must be filed by written application within thirty days of the date on which such determination was delivered to the claimant or mailed to his last known address.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 25
JOINT ACCOUNTS
(Revised May 23, 1963)

Pursuant to authority granted to the Commission by Section 82-6-3 (2) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Employers who wish to join their individual accounts into a joint account shall file individual written applications with the Department on or before December 31 of the year immediately preceding the year for which such account is to be established. Provided, however, that membership in joint accounts shall be limited to those employers whose joint efforts would result in stabilizing employment to some degree, and provided, further, that the account of each such employer must have been chargeable with benefit payments for the thirty-six consecutive calendar months immediately preceding the computation date.

B. The Department shall maintain a separate account for each member in the group. In computing the joint rate applicable to all such members, the records of all members shall be used and said rate shall be binding upon all such members for the entire calendar year for which such rate was established.

C. A member may withdraw only upon application to and with consent of the Department. Said application must be filed on or before the thirty-first day of January of the year in which withdrawal from membership is to become effective. If in the opinion of the Department, the continued existence of any joint account is not promoting the purposes of the Act, it may dissolve said account by giving notice thereof to the members on or before the first day of April of the calendar year in which the dissolution is to become effective. A joint account may be dissolved upon application of all members of the group to and with the consent of the Department. Said application must be filed on or before the thirty-first day of January of the year in which the dissolution is to become effective.

When a joint account is dissolved or a member withdraws from the group, future contribution rates for former members shall be computed on the basis of their individual experience as recorded in their separate accounts.

If a member ceases to be an employer as defined in the Act, he shall cease to be a member of the group. None of the records of former members shall be used in computing future rates of remaining members.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 26

EXPERIENCE RATING

(Revised July 22, 1959)

Pursuant to authority granted to the Commission by Section 82-6-3 (3) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. If in the judgment of the Department, or upon its information and knowledge, the report of wages included in an employer's contribution report is incomplete or in error, the Department may require a further report, make an analysis of such employer's books or records, or use any other measure to obtain an accurate report.

B. Summary Methods.

If an employer is delinquent in filing a contribution report within the time prescribed by the Department, the Department may, in its discretion:

1. Use the information and knowledge available to it to estimate the amount of taxable wages paid by such employer during the contribution period or periods. Said amount shall be assessed against him and shall be used to determine the annual payroll.

2. Issue a subpoena duces tecum to compel such employer to release his books and record to the Department for use in obtaining required information.

C. Protest by Delinquent Employer.

1. A delinquent employer shall have notice of assessment as computed under Section B of this regulation. He shall have fourteen days after the mailing date thereof in which to file a protest against said assessment or to file a correct report of taxable wages paid during the contribution period or periods.

2. If said employer fails to act within the aforesaid fourteen day period, the amount assessed shall be final and the employer shall be barred from protesting the assessment.

D. Protests and Requests for Review and Redetermination of Benefits Charged to Employer's Account.

1. An employer shall have fourteen days after the mailing date of a quarterly statement of benefits charged to his account in which to file a written protest or application requesting a review and redetermination of benefit charges. Such application shall specify in detail the

grounds upon which such employer relies. The Department shall investigate the matters specified and give such employer notice by mail of its redetermination.

2. If the employer fails to act within the prescribed time, benefits charged to such account shall be deemed correct and final.

E. Protests and Requests for Review and Redetermination of Contribution Rates.

1. An employer shall have fourteen days after the mailing date of a notice of his contribution rate in which to give written notification of errors found therein or to file a written protest or an application for review and redetermination of the contribution rate. Such document shall specify in detail the grounds upon which such employer relies. The Department shall investigate the matters specified and give such employer notice by mail of its redetermination.

2. If the employer fails to act within the prescribed time, he shall be deemed to agree with the information contained in such notice, and the contribution rate shall be applicable during the year for which it was computed.

F. Corrections and Recomputations.

The Department, in its discretion, may correct errors and recompute rates whenever erroneous computations are found or brought to its attention.

G. Administrative Hearing Upon Application for Review.

1. An employer shall have fourteen days after the mailing date of the Department's redetermination of benefits charged or of the Department's redetermination of contribution rate in which to file a written application for a hearing before the Executive Director or his duly authorized representative.

2. Such hearing shall be held within a reasonable time and the decision of the Executive Director or his representative shall be the final determination of the Department.

H. Voluntary Contributions.

1. Whenever an employer makes a voluntary contribution, a statement to that effect shall accompany the payment.

2. No voluntary contribution shall be refunded.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 31

COMBINED WAGE CLAIMS

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-3-10 (3) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation which shall govern the Department in entering into agreements with other states subscribing to the "Interstate Plan for Combining Wages".

A. Definitions.

The following limitations shall apply to this regulation unless the context otherwise clearly requires:

1. Participating State: A state which has accepted the "Interstate Plan for Combining Wages".

2. Combined-Wage Claimant: A claimant who has earnings in covered employment in more than one participating state, but who has insufficient earnings in any state to qualify for benefits under the laws of the state in which he files his initial claim or of any state operating under the Interstate Benefit Payment Plan.

3. Paying State: The state in which the claim is filed.

4. Transferring State: A participating state which transfers to the paying state a record of wages currently available in such state for benefit payment purposes and any part of which wages may be used by the paying state to determine the benefit rights of a combined-wage claimant.

B. Filing Claims.

A combined-wage claimant shall file claims in the same manner as a claimant who files claims under the applicable laws of the paying state.

C. Liability for Benefit Payments.

A combined-wage claimant shall be paid benefits from the unemployment fund of the paying state, even though such claimant has no earnings in covered employment in such state.

D. Claims Determinations.

1. Wages paid to a combined-wage claimant during the paying state's applicable base-period and reported by a transferring state as being currently available for benefit paying purposes shall be used by the paying state to determine such claimant's benefit rights.

2. When a transferring state has once transferred a record of wages currently available for benefit paying purposes to a paying state and such paying state has used such wages to determine benefit rights, such wages shall not be available to the transferring state to determine or pay benefits under its laws except for purposes of redetermination or reuse by the transferring state by reason of a rolling base period.

3. The law and regulations of the paying state, including those relating to the base pay period, benefit year, qualifying wages, benefit rate and duration of benefits, shall apply to a combined-wage claimant. Such claimant's benefit rights shall be determined by combining all wages reported by the transferring states as being earned during the paying state's applicable base period with wages earned, if any, in the paying state during such base period.

E. Reports.

1. Each participating state shall utilize forms approved by the Interstate Benefit Payment Procedures Committee in making combined-wage claimant reports.

2. When acting as the paying state, a participating state shall promptly request from each other participating state in which the combined-wage claimant has worked during the paying state's base period a report of wages earned in covered employment during such other participating state's base period and a report of the claimant's eligibility for benefits under its law.

3. When acting as the transferring state, a participating state shall promptly reply to a paying state's request for:

   a. A combined-wage claimant's wages in covered employment during the transferring state's base period.

   b. The amount of wages currently available for benefit payment purposes.

   c. The claimant's current eligibility under the law of the transferring state.

4. When acting as paying state, a participating state shall:

   a. Send a copy of its initial determination and an explanation thereof to each transferring state.

   b. Send a copy of its initial determination and a notice of his right of appeal to the claimant.

   c. Send each transferring state a quarterly statement

of benefits chargeable to such state. Each charge shall bear the same ratio to the total benefits paid to the claimant by the paying state as his wages reported by the transferring state and used by the paying state bear to the total wages used by the paying state in making a determination.

F. Reimbursement.

A transferring state shall reimburse the paying state as soon as practicable after receipt of the quarterly statement of benefits chargeable to such state.

G. Exception to Combining Wages Notwithstanding any Other Provisions of this Regulation.

A claimant's wages shall not be combined if the paying state finds that on the basis of combined wages a claimant is ineligible for benefits. Wages reported by the transferring state shall be returned to and reinstated by such state. The Interstate Benefit Payment Plan provisions shall apply to such claimant.

H. Termination of Combined-Wage Claims.

1. A claimant's wages shall no longer be combined if the paying state determines that such claimant has become eligible for benefits under its law.

2. The combining of wages shall be terminated at the end of the paying state's benefit year or when a redetermination of benefit rights becomes necessary under the law of the paying state.

I. Relation to Interstate Benefit Payment Plan.

Whenever the provisions of or agreements made pursuant to this regulation are inconsistent with the Interstate Benefit Payment Plan and Regulation No. 17, such provisions and agreements shall take precedence.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 32

EMPLOYER ELECTIONS TO COVER WORKERS PERFORMING SERVICES IN MORE THAN ONE STATE

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-3-10 and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation which shall govern the Department in its cooperation with other states which have subscribed to the Interstate Reciprocal Coverage Arrangement:

A. Definitions.

The following definitions shall apply to this regulation unless the context otherwise clearly requires:

1. Arrangement: The Interstate Reciprocal Coverage Arrangement.

2. Jurisdiction: Any state of the United States, the District of Columbia, Alaska, Hawaii and Canada or the Federal Government with respect to coverage under a Federal Unemployment Compensation law.

3. Participating Jurisdiction: A jurisdiction whose agency has subscribed to and has not terminated participation in the arrangement.

4. Agency: Any officer, board, commission or other authority charged with the administration of the Unemployment Compensation law of a participating jurisdiction.

5. Electing Unit: An employing unit which requests that the services customarily performed for it by any individual in more than one participating jurisdiction be covered under the law of a single participating jurisdiction.

6. Election: The request of an electing unit for permission to cover under the law of a single participating jurisdiction all of the services customarily performed for such unit by any individual who customarily works in more than one participating jurisdiction.

7. Elected Jurisdiction: The participating jurisdiction selected by an employing unit to cover under its law any individual who customarily performs services for such unit in more than one participating jurisdiction.

8. Interested Jurisdiction: Any participating jurisdiction to which the elected jurisdiction submits an election for approval.

9. Interested Agency: The agency of the interested jurisdiction.

10. Services Customarily Performed: Services performed by an individual over a reasonable period of time, the nature of which is such that it can be expected that they will continue in more than one jurisdiction; services required or expected to be performed in more than one jurisdiction.

11. Multi-State Worker: An individual who customarily performs services for the same employing unit in more than one jurisdiction.

B. Procedure.

1. An electing unit shall use the prescribed form (Form RC-1) to file an election to cover multi-state workers under the unemployment compensation law of a participating jurisdiction.

2. An election may be filed with any participating jurisdiction in which:

   a. Any part of an individual's services are performed.

   b. An individual maintains his residence.

   c. The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

3. The agency of the elected jurisdiction shall approve or disapprove the election. If such election is approved, the agency shall forward a copy thereof to each interested agency (as specified on the election form) under whose unemployment compensation law the electing unit's employee might be covered, in the absence of such election.

4. Each interested agency shall approve or disapprove such election as soon as practicable and notify the elected jurisdiction. If the law of the interested jurisdiction so requires, an interested agency may, before taking action, require the electing unit to furnish satisfactory evidence that it has notified affected employees of its election and they have agreed thereto.

5. If the agency of the elected jurisdiction disapproves the election, it shall notify the electing unit stating reasons therefor.

6. An interested agency which disapproves the election shall notify the elected jurisdiction and electing unit, stating reasons therefor.

7. The election shall become effective only upon approval of the agency of the elected jurisdiction and one or more interested agencies.

8. An interested agency which disapproves the election shall not be bound by such election.

9. If the election is not approved by the agencies of all participating jurisdictions, the electing unit may withdraw such election within ten days of notification thereof.

C. Effective Period.

1. An election, duly approved under this regulation, shall become effective at the beginning of the calendar quarter during which such election is submitted unless such election, as approved, specifies a different calendar quarter.

   An electing unit may request an effective date for a calendar quarter earlier than the calendar quarter during which the election is submitted. Provided, however, that such earlier date may be approved solely as to those interested jurisdictions in which the electing unit had no liability to pay contributions during such earlier calendar quarter.

2. The application of an election to an individual shall terminate if the agency of the elected jurisdiction finds that the services of such individual are no longer performed in more than one participating jurisdiction. The termination date shall be the last day of the calendar quarter in which notice of termination is mailed to all affected parties.

   Except as provided in the foregoing paragraph, each election approved under this regulation shall be in effect through the end of the calendar year in which such election was filed and thereafter through the end of the calendar quarter during which the electing unit gives written notice of termination to the agencies of the elected and interested jurisdictions.

   The electing unit shall notify each affected individual when an election under this regulation ceases to apply to him.

D. Required Reports and Notices.

1. The electing unit shall promptly notify each affected individual when an election is approved. Prescribed form "Notice To Employee as to Unemployment Compensation Coverage" (Form RC-2) shall be used and a copy thereof shall be forwarded to the elected jurisdiction.

2. Whenever an individual affected by an election is separated from employment with the electing unit, such unit shall forthwith again notify him of the elected jurisdiction under whose law his services have been covered. If the individual is not in the elected jurisdiction when he is separated from his employment, the electing unit shall give him information concerning procedures to follow in filing interstate claims.

3. The electing unit shall immediately notify the elected jurisdiction of any changes which are applicable to and affect its election, as when an individual's services will no longer be customarily performed in more than one participating jurisdiction or when a change in an individual's work assignment requires him customarily to perform services in an additional participating jurisdiction.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 36

PARTIAL TRANSFER

(Revised September 30, 1955)

Pursuant to authority granted to the Commission by Section 82-6-4 (5) and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. Whenever a transferring employer and a successor jointly request that the Department transfer the actual contribution, benefit, and payroll experience attributable to a clearly segregable unit to the successor, the transferring employer shall furnish to the Department, in such form as it requests:

1. The payroll records for such unit for each of the twelve calendar quarters immediately preceding the computation date or for such lesser period as the segregable unit may have been in existence.

2. Such other information as the Department may require.

B. If the Department has maintained a separate account for the transferred unit, the information contained therein shall be used by the Department, and, unless requested by the Department, the transferring employer shall not be required to furnish any other information.

C. If the Department determines that the transfer or acquisition of a segregable unit was made for the purpose of ameliorating the rate of contribution, the experience and reserve account attributable to such unit shall not be transferred to the successor employer or, having been transferred, shall revert to the transferring employer. A transfer or acquisition shall be deemed to have been made for such purpose if the Department finds an absence of any reasonable business purpose for the transfer or acquisition other than a more favorable rate of contribution.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 37

SEASONAL INDUSTRY

(Revised May 23, 1963)

Pursuant to authority granted to the Commission by Section 82-3-1, 82-4-6, and other provisions of The Colorado Employment Security Act, the Commission hereby adopts and promulgates the following regulation:

A. As used in Section 82-4-6 (1), the words "a regularly recurring period or periods of less than twenty-five weeks in a calendar year" are deemed to include those years during which an employing unit was not subject to the provisions of this Act.

B. 1. No industry or establishment or occupation within an industry shall be deemed a "seasonal industry" as defined in Section 82-4-6 (1), unless it shall have operated for the last three consecutive years or three out of the last five consecutive years during a regularly recurring period or periods of less than twenty-five weeks in a calendar year; provided, however, that the Commission shall not grant a designation as a "seasonal industry" unless the employer shall have operated for a period or periods of less than twenty-five weeks in the calendar year immediately preceding application for designation as a "seasonal industry".

2. An employer who wishes designation as a "seasonal industry" or determination or redetermination of a normal seasonal period or periods shall make application with the Department for a hearing before the Commission and shall use such forms as are prescribed by the Department.

3. The Commission shall set a hearing date and forward notices of hearing to such employer.

4. Such notices of hearing shall be posted in such places on the employer's premises as shall give sufficient notice of such hearing to all affected employees.

5. A copy of such notice shall be forwarded to every union which represents any employees working under union agreements and who will be affected by a "seasonal industry" designation.

6. The employer shall cause such notice to be published at least once in a local paper of general circulation in every community in which the seasonal industry is operated.

C. 1. Each seasonal employer shall give written notice to the

Department when the "seasonal industry" is operated in excess of twenty-four weeks in a calendar year. Such written notice must be filed within thirty days after completion of the twenty-fifth week of operation.

2. In addition to the notice required in C. 1. of this regulation, every employer whose industry has been designated a "seasonal industry" must file a written report on prescribed forms on or before the last day of February, which report shall inform the Department of the beginning and ending dates of the previous calendar year's seasonal operations.

D. Each seasonal employer shall keep continuously posted such notices as are furnished by the Department in such places on his premises as will fairly advise his employees of the beginning and ending dates of his seasonal operations.

E. 1. If an employer, subsequent to the date on which his his industry was designated as a "seasonal industry", shall operate during a period or periods of twenty-five or more weeks in a calendar year in such "seasonal industry", such employer shall automatically lose his seasonal status at the end of such calendar year.

2. An employer whose industry has lost its designation as a "seasonal industry" and who wishes reinstatement as such, may make application with the Department for a hearing before the Commission in any calendar year subsequent to the year in which his industry lost its designation as a "seasonal industry"; provided, however, such employer must have operated such industry less than twenty-five weeks in the calendar year immediately preceding application for reinstatement.

All regulations or parts thereof in conflict herewith are repealed.

REGULATION NO. 39
OPTIONAL AWARDS

(Issued June 28, 1963)

Pursuant to authority granted to the Commission by Section 82-3-1 and other provisions of the Colorado Employment Security Act, the Commission hereby aodpts and promulgates the following regulation which shall guide the Department in its application of Optional Awards to be made under Section 82-4-9 (6).

A. Section 82-4-9 (6) of the Employment Security Act provides for optional awards and authorizes the Department on all claims for benefits not specifically covered under subsections (3), (4), (5), and (7) of Section 82-4-9 to determine whether a full award of benefits, fifty per cent of full award, a special award or no award shall be made.

B. A full award shall be made in any claim for benefits within the scope of the Department's optional award authority if the employer is basically responsible for the worker's separation.

C. No award of benefits shall be made in any claim for benefits within the scope of the Department's optional award authority if the worker is basically responsible for the separation.

D. Fifty per cent of full award shall be made in any claim for benefits within the scope of the Department's optional award authority if the employer and the worker are both responsible for the separation.

E. A special award of benefits shall be made in any claim for benefits within the scope of the Department's optional award authority, if the worker's separation was under conditions reflecting a separation from active attachment to labor force.

F. The following situations, among other not specifically covered by subsections (3), (4), (5), and (7) of Section 82-4-9, are within the scope of the Department's optional awards authority:

tardiness
absenteeism
garnishment
constructive criticism
abuse of coffee break privileges
overstaying of lunch periods
sleeping on the job
loafing on the job.

G. In making an optional award, the Department shall take into consideration such factors as may be appropriate, including the following when appropriate:

(a) The discharge was caused by a single instance or whether there were several instances.

(b) The claimant had been previously warned or whether the employer had condoned similar infractions.

(c) The act, or failure to act, on the part of the claimant interrupted the work schedule of the employer or endangered the health or safety of the claimant or others.

(d) Other employees were unable to work because of the act or failure to act on the part of the claimant.

(e) The claimant notified the employer in advance.

(f) The act or failure to act on the part of the claimant was unavoidable or was caused by the illness of the claimant or a member of his immediate family.

(g) The employer had an established and published or promulgated policy.

(h) The claimant's act or failure to act resulted in damage to the employer's property or interest or in a distinguishable difference in the quantity or quality of work performed.

(i) The claimant had kept the employer informed of his status during his absence.

(j) The criticism which resulted in separation was actually of a constructive nature and given in a considerate manner.

All regulations or parts thereof in conflict herewith are repealed.

RULE NO. 1

REMUNERATION PAYABLE IN ANY MEDIUM OTHER THAN CASH

(Adopted May 11, 1953)

Pursuant to Section 82-1-3 (12) of the Act, the Unemployment Compensation Commission of Colorado hereby establishes Rule Number One in form and substance as follows:

If board, lodging, payments in kind, and/or other benefits are given as compensation for services performed by employees, and where a cash value of such benefits is agreed upon in a contract of hire or otherwise, the amounts agreed upon shall be deemed a reasonable value of such benefits, if equal to, or greater than the amounts granted herein. The Commission reserves the right, after investigation, to determine in individual cases the amounts to be included as reasonable value of all such remuneration payable in any medium other than cash for the purpose of computing contributions due under the Act. Until, in a given case, the Commission has fixed, for the purpose of determining wages, the cash value of board or lodging, the amounts included for such items shall be not less than the following:

Board and Room—	
Weekly	$14.50
Meals—	
Weekly	10.50
Per Meal	.50
Lodging—	
Weekly	4.00
Per Day	.60

RULE NO. 3

BENEFIT CHARGE-BACKS IN CASES OF TWO OR MORE SIMULTANEOUS EMPLOYERS

(Adopted November 25, 1941)

(Renumbered Rule No. 3 on June 14, 1943)

1. Benefits paid to workers shall be prorated and charged against simultaneous employers in the same ratio as wages paid for simultaneous employment during a base period by such simultaneous employers.

2. In the event it is impossible for the Department to determine the chronological order of employment because of the employer's failure to report on the wage reports, separation dates of an employee or employees, where two or more employers have submitted wage reports for such employees, covering the same period or periods, such employment shall be deemed to be simultaneous. Any benefits paid to workers reported as receiving wages during said period or periods shall be prorated and charged to employers' accounts as provided in Section 1 of this rule.

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