Mississippi Employment Security Law & Mississippi Department of Employment Security Regulations

MAIN CONTENTS

MISSISSIPPI CODE OF 1972

TITLE 71. LABOR AND INDUSTRY
CHAPTER 5. UNEMPLOYMENT COMPENSATION

REGULATIONS OF THE MISSISSIPPI
DEPARTMENT OF EMPLOYMENT SECURITY

MISSISSIPPI DEPARTMENT OF EMPLOYMENT
SECURITY DEFINITIONS AND PRECEDENT
CASES OF THE MISSISSIPPI SUPREME COURT

MISSISSIPPI WORKS FUND
RULES & REGULATIONS

Mississippi Code of 1972

TITLE 71. LABOR AND INDUSTRY
CHAPTER 5. UNEMPLOYMENT COMPENSATION

Current through HB 32, 342, 524, 669, 686, 883, 1125, and 1321, and SB 2448, 2647 and 2835, 2017 Regular Session, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication. The final official version of the statutes affected by 2017 legislation will appear on Lexis.com and Lexis Advance in September 2017.

CONTENTS

ARTICLE 1. GENERAL PROVISIONS 1

§ 71-5-1. Citation and purpose . . . 1
§ 71-5-3. Public policy . . . 1
§ 71-5-5. Suspension under federal conditions [Repealed effective July 1, 2019] . . . 1
§ 71-5-7. Suspension under state conditions . . . 2
§ 71-5-9. Refunds upon termination . . . 2
§ 71-5-11. Definitions [Repealed effective July 1, 2019] . . . 3
§ 71-5-13. Reciprocal arrangements . . . 17
§ 71-5-15. Non-liability of state . . . 19
§ 71-5-17. Representation in court . . . 19
§ 71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2019] . . . 19
§ 71-5-21. Saving clause . . . 21

ARTICLE 3. MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY 22

§ 71-5-101. Organization [Repealed effective July 1, 2019] . . . 22
§ 71-5-103 and 71-5-105. Repealed . . . 22
§ 71-5-107. Executive officer [Repealed effective July 1, 2019] . . . 22
§ 71-5-109. Board of review [Repealed effective July 1, 2019] . . . 22
§ 71-5-111. Employment security administration fund [Repealed effective July 1, 2019] . . . 23
§ 71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2019] . . . 23
§ 71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2019] . . . 23

§ 71-5-114. Special employment security administration fund [Repealed effective July 1, 2019] 24
§ 71-5-115. Duties and powers of executive director [Repealed effective July 1, 2019] 25
§ 71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs 25
§ 71-5-117. Regulations and general rules [Repealed effective July 1, 2019] 26
§ 71-5-119. Publication [Repealed effective July 1, 2019] 26
§ 71-5-121. Personnel [Repealed effective July 1, 2019] 26
§ 71-5-123. Advisory councils [Repealed effective July 1, 2019] 27
§ 71-5-125. Promotion of employment [Repealed effective July 1, 2019] 27
§ 71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2019] 28
§ 71-5-129. Destruction of useless records [Repealed effective July 1, 2019] 29
§ 71-5-131. Privileged communications [Repealed effective July 1, 2019] 30
§ 71-5-133. Failure to produce records [Repealed effective July 1, 2019] 30
§ 71-5-135. Failure to make reports [Repealed effective July 1, 2019] 31
§ 71-5-137. Oaths and witnesses [Repealed effective July 1, 2019] 31
§ 71-5-139. Subpoenas [Repealed effective July 1, 2019] 31
§ 71-5-141. Protection against self-incrimination [Repealed effective July 1, 2019] 32
§ 71-5-143. State-federal cooperation [Repealed effective July 1, 2019] 32
§ 71-5-145. 1235 Echelon Parkway named the Henry J. Kirksey Building 33

ARTICLE 5. EMPLOYMENT SERVICE **34**

§ 71-5-201. State employment service [Repealed effective July 1, 2019] 34
§ 71-5-203. Financing 34

ARTICLE 7. CONTRIBUTIONS **35**

§ 71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP) 35
§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances 37
§ 71-5-355. Modified rates 44
§ 71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2019] 54
§ 71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2019] 59
§ 71-5-361. Period, election, and termination 61
§ 71-5-363. Interest on past due contributions 63
§ 71-5-365. Failure to make reports and pay contributions 63
§ 71-5-367. Collection by warrant 64
§ 71-5-369. Jeopardy assessment and warrant 65
§ 71-5-371. Liability of sheriff for failure to execute warrant 66
§ 71-5-373. Defaulting employer 66

§ 71-5-375. Contributions a lien 66
§ 71-5-377. Priorities under legal dissolutions or distributions 67
§ 71-5-379. Collection by suit 67
§ 71-5-381. No injunction allowed to restrain collection 67
§ 71-5-383. Refunds 67
§ 71-5-385. Requesting permission to file reports in special format; regulations; penalty 68
§ 71-5-387. Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act 68
§ 71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality 70
§ 71-5-391. Use of administrative funds for payment of fees associated with receipt of electronic payments 72

ARTICLE 9. UNEMPLOYMENT COMPENSATION FUND **73**

§ 71-5-451. Establishment and control [Repealed effective July 1, 2019] 73
§ 71-5-453. Accounts and deposits 73
§ 71-5-455. Withdrawals 74
§ 71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2019] 75
§ 71-5-459. Management of funds upon discontinuance of unemployment trust fund 76

ARTICLE 11. BENEFITS **77**

§ 71-5-501. Payment 77
§ 71-5-503. Weekly benefit amount 77
§ 71-5-505. Weekly compensation for unemployment 78
§ 71-5-506. Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax 79
§ 71-5-507. Duration 79
§ 71-5-509. Seasonal workers 80
§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2019] 80
§ 71-5-513. Disqualifications [Repealed effective July 1, 2019] 84
§ 71-5-515. Filing 89
§ 71-5-516. Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit 89
§ 71-5-517. Initial determination [Repealed effective July 1, 2019] 90
§ 71-5-519. Appeals [Repealed effective July 1, 2019] 91
§ 71-5-521. Appeal tribunals 91
§ 71-5-523. Board of review [Repealed effective July 1, 2019] 91
§ 71-5-525. Procedure [Repealed effective July 1, 2019] 92

§ 71-5-527. Witness fees . . . 92
§ 71-5-529. Appeal to courts [Repealed effective July 1, 2019] . . . 92
§ 71-5-531. Court review [Repealed effective July 1, 2019] . . . 93
§ 71-5-533. Appeal by Department . . . 93
§ 71-5-535. Waiver of rights void . . . 93
§ 71-5-537. Limitation of fees . . . 94
§ 71-5-539. No assignment of benefits; exemptions . . . 94
§ 71-5-541. Construction [Repealed effective July 1, 2019] . . . 94
§ 71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances . . . 100
§ 71-5-545. Self-Employment Assistance Program [Repealed effective July 1, 2019] . . . 101

ADDITIONAL STATUTES **105**

Mississippi Code of 1972
TITLE 7. EXECUTIVE DEPARTMENT
CHAPTER 5. GOVERNOR
DIVISION OF JOB DEVELOPMENT AND TRAINING

§ 7-1-355. Administration of specified programs . . . 105

Mississippi Code of 1972
TITLE 37. EDUCATION
CHAPTER 153. WORKFORCE TRAINING AND EDUCATION CONSOLIDATION ACT

§ 37-153-1. Short title . . . 106
§ 37-153-3. Legislative intent . . . 106
§ 37-153-5. Definitions . . . 106
§ 37-153-7. Mississippi State Workforce Investment Board; membership; duties . . . 106
§ 37-153-9. Workforce Investment Boards; District Workforce Development Councils affiliated with community colleges . . . 111
§ 37-153-11. Workforce development centers . . . 112
§ 37-153-13. State Board for Community and Junior Colleges designated primary support agency; powers . . . 114

ARTICLE 1. GENERAL PROVISIONS

§ 71-5-1. Citation and purpose

This chapter shall be known and may be cited as the "Mississippi Employment Security Law." The purpose of the law is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment.

HISTORY: *SOURCES: Codes, 1942, § 7368; Laws, 1936, ch. 176; Laws, 1948, ch. 412, § 1, eff July 1, 1948, unless context expressly provides otherwise.*

§ 71-5-3. Public policy

As a guide to the interpretation and application of this chapter, 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 achievement 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.

HISTORY: *SOURCES: Codes, 1942, § 7369; Laws, 1936, ch. 176; Laws, 1936, 1st Ex. ch. 3.*

§ 71-5-5. Suspension under federal conditions [Repealed effective July 1, 2019]

The Legislature finds and declares that the existence and continued operation of a federal tax upon employers, against which some portion of the contributions required under this chapter may be credited, will protect Mississippi employers from undue disadvantages in their competition with employers in other states. If at any time, upon a formal complaint to the Governor, he shall find that Title IX of the Social Security Act has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, and that, as a result thereof, the provisions of this chapter requiring Mississippi employers to pay contributions will subject them to a serious competitive disadvantage in relation to employers in other states, he shall publish such findings and proclaim that the operation of the provisions of this chapter requiring the payment of contributions and benefits shall be suspended for a period of not more than six (6) months. The Department of Employment Security shall thereupon requisition from the Unemployment Trust Fund all monies therein standing to its credit, and shall deposit such monies, together with any other monies in the Unemployment Compensation Fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited.

In all other cases, and unless the Governor shall issue such proclamation, this chapter shall remain in full force and effect.

If within the aforesaid six-month period the Governor shall find that other federal legislation has been enacted which avoids the competitive disadvantage herein described, he shall forthwith publicly so proclaim, and upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall again become fully operative as of the date of such suspension with the same effect as if such suspension had not occurred. If within such six-month period no such other federal legislation is enacted or the Legislature of this state has not otherwise prescribed, the Department of Employment Security shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the Department of Employment Security to pay for the costs of making such refunds. When the Department of Employment Security shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this chapter, the Governor shall, by public proclamation, declare that the provisions of this chapter, in their entirety, shall cease to be operative.

HISTORY: *SOURCES: Codes, 1942, § 7370; Laws, 1936, 1st Ex. ch. 3; Laws, 2004, ch. 572, § 8; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 8; reenacted and amended, Laws, 2010, ch. 559, § 8; reenacted without change, Laws, 2011, ch. 471, § 8; reenacted without change, Laws, 2012, ch. 515, § 8; Laws, 2013, ch. 309, § 1, eff from and after passage (approved March 6, 2013.)*

§ 71-5-7. Suspension under state conditions

If at any time the provisions 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 invalid under the United States Constitution by the Supreme Court of the United States, the department shall forthwith requisition from the unemployment trust fund all monies therein standing to the credit of the department, and shall deposit such monies, together with any other monies in the unemployment compensation fund, in any banks or public depositories in this state in which general funds of the state may be deposited. If within six (6) months after the date of such decision the Legislature of this state enacts a new unemployment compensation law, such monies shall be paid into the unemployment compensation fund established thereunder. If within such six-month period the Legislature of this state has not enacted a new unemployment compensation law, the department shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid, his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the department to pay for the costs of making such refunds. The provisions of this chapter, so far as necessary to the execution by the department of the duties prescribed in this section and to the performance of such other acts as are incidental to the termination of its duties under this chapter, shall remain in full force and effect until the completion thereof.

HISTORY: *SOURCES: Codes, 1942, § 7371; Laws, 1936, 1st Ex. ch. 3; Laws, 2013, ch. 309, § 2, eff from and after passage (approved March 6, 2013.)*

§ 71-5-9. Refunds upon termination

Refunds provided under Sections 71-5-5 and 71-5-7 shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody.

HISTORY: *SOURCES: Codes, 1942, § 7372; Laws, 1936, 1st Ex. ch. 3.*

§ 71-5-11. Definitions [Repealed effective July 1, 2019]

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

A. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefit year" with respect to any individual means the period beginning with the first day of the first week with respect to which he first files a valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year; and, thereafter, the period beginning with the first day of the first week with respect to which he next files his valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year. Any claim for benefits made in accordance with Section 71-5-515 shall be deemed to be a "valid claim" for purposes of this subsection if the individual has been paid the wages for insured work required under Section 71-5-511(e).

C. "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

D. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

E. "Department" means the Mississippi Department of Employment Security, Office of the Governor.

F. "Executive director" means the Executive Director of the Mississippi Department of Employment Security, Office of the Governor, appointed under Section 71-5-107.

G. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, 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 or had 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 (2) 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 work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all 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. All individuals performing services in the employ of an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of the civil law to such fee-paid county official, shall be deemed to be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing unit"

which shall pay contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

H. "Employer" means:

(1) Any employing unit which,

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($ 1,500.00) or more, except as provided in paragraph (9) of this subsection, or

(b) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one (1) individual (irrespective of whether the same individual was in employment in each such day), except as provided in paragraph (9) of this subsection;

(2) Any employing unit for which service in employment, as defined in subsection I(3) of this section, is performed;

(3) Any employing unit for which service in employment, as defined in subsection I(4) of this section, is performed;

(4) (a) Any employing unit for which agricultural labor, as defined in subsection I(6) of this section, is performed;

(b) Any employing unit for which domestic service in employment, as defined in subsection I(7) of this section, is performed;

(5) Any individual or employing unit which acquired the organization, trade, business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(6) Any individual or employing unit which acquired its organization, trade, business, or substantially all the assets thereof, from another employing unit, if the employment record of the acquiring individual or employing unit subsequent to such acquisition, together with the employment record of the acquired organization, trade, or business prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

(7) Any employing unit which, having become an employer under paragraph (1), (3), (5) or (6) of this subsection or under any other provisions of this chapter, has not, under Section 71-5-361, ceased to be an employer subject to this chapter;

(8) For the effective period of its election pursuant to Section 71-5-361(3), any other employing unit which has elected to become subject to this chapter;

(9) (a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (1) or (4)(a) of this subsection, the wages earned or the employment of an employee performing domestic service, shall not be taken into account;

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4)(b) of this subsection, the wages earned or the employment of an employee performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help firms shall be considered the employer of the individuals they provide to perform services for other individuals or organizations.

I. "Employment" means and includes:

(1) Any service performed, which was employment as defined in this section and, subject to the other provisions of this subsection, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) Services performed for remuneration for a principal:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services;

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operator of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

However, for purposes of this subsection, the term "employment" shall include services described in subsection I(2)(a) and (b) of this section, only if:

(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe; however, such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subsection I(5) of this section.

(4) (a) Services performed in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

(b) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) For the purposes of subsection I(3) and (4) of this section, the term "employment" does not apply to service performed:

(a) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

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

(c) In the employ of a governmental entity referred to in subsection I(3), if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision or a member of an Indian tribal council;

(iii) As a member of the State National Guard or Air National Guard;

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

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:

1. A major nontenured policy-making or advisory position, or

2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

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

(e) By an inmate of a custodial or penal institution; or

(f) As part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training, unless coverage of such service is required by federal law or regulation.

(6) Service performed by an individual in agricultural labor as defined in paragraph (15)(a) of this subsection when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars ($ 20,000.00) or more to individuals employed in agricultural labor, or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of subsection I(6) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of subsection I(1).

(c) For the purpose of subsection I(6), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (6)(b) of this subsection:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of subsection I(6) the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(7) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars ($ 1,000.00) or more in any calendar quarter in the current or the preceding calendar year to individuals employed in such domestic service. For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the employ of an individual.

(8) An individual's entire service, performed within or both within and without this state, if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state; and

(i) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(ii) 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.

(9) Services not covered under paragraph (8) 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.

(10) Service shall be deemed to be localized within a state if:

(a) The service is performed entirely within such state; or

(b) 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.

(11) The services of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (8), (9) or (10) of this subsection or the parallel provisions of another state's law), if:

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

(b) The employer has no place of business in the United States; but

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

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

(iii) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state; or

(d) An "American employer," for purposes of this paragraph, means a person who is:

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

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

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

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

(12) All services performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state, notwithstanding the provisions of subsection I(8).

(13) Service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 USCS Section 3301 et seq., is required to be covered under this chapter, notwithstanding any other provisions of this subsection.

(14) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control and direction over the performance of such services both under his contract of service and in fact; and the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant.

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

(a) Agricultural labor, except as provided in subsection I(6) of this section. The term "agricultural labor" includes all services performed:

(i) On a farm or in a forest in the employ of any employing unit in connection with cultivating the soil, in connection with cutting, planting, deadening, marking or otherwise improving timber, 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, fur-bearing animals and wildlife;

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

(iii) In connection with the production or harvesting of naval stores products or any commodity defined in the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g), or in connection with the raising or harvesting of mushrooms, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals,

reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv) (A) In the employ of the operator of a farm 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, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subitem (A), but only if such operators produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(C) The provisions of subitems (A) and (B) 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;

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(vi) As used in paragraph (15)(a) of 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.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in subsection I(7) of this section, or service performed as a "sitter" at a hospital in the employ of an individual.

(c) Casual labor not in the usual course of the employing unit's trade or business.

(d) 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 (21) in the employ of his father or mother.

(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities

and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have been erroneously collected and shall be refunded by the department from the fund in accordance with the provisions of Section 71-5-383.

(f) Service performed in the employ of an "employer" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(a), or as an "employee representative" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(f), and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees, or under any other unemployment compensation system established by an act of Congress; however, the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 71-5-117 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 or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

(g) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the Internal Revenue Code, 26 USCS Section 501(a) (other than an organization described in 26 USCS Section 401(a)), or exempt from income tax under 26 USCS Section 521 if the remuneration for such service is less than Fifty Dollars ($ 50.00).

(h) Service performed in the employ of a school, college, or university if such service is performed:

(i) By a student who is enrolled and is regularly attending classes at such school, college or university, or

(ii) By the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that

(A) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(B) Such employment will not be covered by any program of unemployment insurance.

(i) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly

organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(j) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection M of this section.

(k) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and services performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law.

(l) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(m) Service 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, except those employed by political subdivisions, state and local governments, nonprofit organizations and Indian tribes, as defined by this chapter, or any other entities for which coverage is required by federal statute and regulation.

(n) If the services performed during one-half (1/2) or more of any pay 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 (1/2) of any such pay 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 subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him.

(o) Service performed by a barber or beautician whose work station is leased to him or her by the owner of the shop in which he or she works and who is compensated directly by the patrons he or she serves and who is free from direction and control by the lessor.

(p) Service performed by a "direct seller" if:

(i) Such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the department

prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;

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

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

J. "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of the state controlled system of public employment offices.

K. "Public employment service" means the operation of a program that offers free placement and referral services to applicants and employers, including job development.

L. "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

M. "Hospital" means an institution which has been licensed, certified, or approved by the State Department of Health as a hospital.

N. "Institution of higher learning," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;

(4) Is a public or other nonprofit institution;

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher learning for purposes of this section.

O. "Re-employment assistance" means money payments payable to an individual as provided in this chapter and in accordance with Section 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section 303(a)(5) of the Social Security Act, with respect to his unemployment through no fault of his own. Wherever the terms "benefits" or "unemployment benefits" appear in this chapter, they shall mean re-employment assistance.

P. (1) "State" includes, in addition to the states of the United States of America, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(2) The term "United States" when used in a geographical sense includes the states, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(3) The provisions of paragraphs (1) and (2) of subsection P, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under Section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to the secretary by the Virgin Islands for such approval.

Q. "Unemployment."

(1) An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount as computed and adjusted in Section 71-5-505. The department shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary.

(2) An individual's week of total unemployment shall be deemed to commence only after his registration at an employment office, except as the department may by regulation otherwise prescribe.

R. (1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that "wages," for purposes of determining employer's coverage and payment of contributions for agricultural and domestic service means cash remuneration only. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department; however, that the term "wages" shall not include:

(a) 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:

(i) Retirement, or

(ii) Sickness or accident disability, or

(iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

(iv) Death, provided the employee:

(A) 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

(B) 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;

(b) Dismissal payments which the employer is not legally required to make;

(c) Payment by an employer (without deduction from the remuneration of an employee) of the tax imposed by the Internal Revenue Code, 26 USCS Section 3101;

(d) From and after January 1, 1992, the amount of any payment made to or on behalf of an employee for a "cafeteria" plan, which meets the following requirements:

(i) Qualifies under Section 125 of the Internal Revenue Code;

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

S. "Week" means calendar week or such period of seven (7) consecutive days as the department may by regulation prescribe. The department may by regulation prescribe that a week shall be deemed to be in, within, or during any benefit year which includes any part of such week.

T. "Insured work" means "employment" for "employers."

U. The term "includes" and "including," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

W. "Employee leasing firm" means any entity which provides specified duties for a client company such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other administrative duties, in connection with the client's employees, that are directed and controlled by the client and that are providing ongoing services for the client.

X. (1) "Temporary help firm" means an entity which hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

(2) "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shall include any official communication, statement or other correspondence required under the administration of this chapter, and sent by the department through the United States Postal Service or electronic or digital transfer, via modem or the Internet.

HISTORY: *SOURCES: Codes, 1942, § 7440; Laws, 1940, ch. 295, § 13; Laws, 1948, ch. 412, § 10; Laws, 1955, Ex. Sess. ch. 93, § 2; Laws, 1971, ch. 519, § 13; Laws, 1977, ch. 497, § 1; Laws, 1978, ch. 533, § 1; Laws, 1979, ch. 311; Laws, 1981, ch. 343, § 1; Laws, 1983, ch. 371, § 1; Laws, 1985, ch. 406; Laws, 1992, ch. 339, § 1; Laws, 1993, ch. 328, § 1; Laws, 1998, ch. 331, § 1; Laws, 1998, ch. 491, § 1; Laws, 2002, ch. 562, § 1; Laws, 2004, ch. 572, § 9; Laws, 2007, ch. 606, § 3; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 9; reenacted and amended, Laws. 2011. ch. 471. § 9; Laws. 2012. ch. 414. § 1; reenacted without change, Laws. 2012. ch. 515. § 9; Laws. 2013. ch. 309, § 3, eff from and after passage (approved March 6, 2013.)*

§ 71-5-13. Reciprocal arrangements

(1) 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 a single employing unit under circumstances not specifically provided for in Section 71-5-11, subsection I, 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 (1) of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more 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.

(2) The department is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

(a) Whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government shall be deemed to be wages for employment by employers for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(e), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests; and

(b) Whereby the department will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government, upon the basis of employment or wages for employment by employers, as the department finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of Sections 71-5-451 through 71-5-459. The department is hereby authorized to make to other state or federal agencies, and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

(3) The department is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the department may be utilized for the taking of claims and the payment of unemployment compensation or allowances under any federal law enacted for the benefit of discharged members of the Armed Forces.

(4) The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws; and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.

HISTORY: *SOURCES: Codes, 1942, § 7441; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 4; Laws, 1971, ch. 519, § 14; Laws, 2013, ch. 309, § 14, eff from and after passage (approved March 6, 2013.)*

§ 71-5-15. Non-liability 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 unemployment compensation fund; and neither the state nor the commission shall be liable for any amount in excess of such sums.

HISTORY: *SOURCES: Codes, 1942, § 7439; Laws, 1936, ch. 176.*

§ 71-5-17. Representation in court

(1) In any civil action to enforce the provisions of this chapter, the Department, the board of review, and the state may be represented by any qualified attorney who is employed by the Department and is designated by it for this purpose or, at the Department's request, by the attorney general.

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

HISTORY: *SOURCES: Codes, 1942, § 7438; Laws, 1936, ch. 176; Laws, 1938, ch. 147.*

§ 71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2019]

(1) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment 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 punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than Five Hundred Dollars ($ 500.00), or by imprisonment for not longer than thirty (30) days, 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.

(2) Any employing unit, 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 prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from any employing unit under this chapter, or who willfully fails or refuses to make any such contribution or other payment, or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than One Thousand Dollars ($ 1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement, or representation, or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and

four-tenths percent (5.4%) for the tax year in which such violation is discovered by the department and for the next two (2) succeeding tax years.

(3) Any person who shall willfully violate any provision of this chapter or any other 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 punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than One Thousand Dollars ($ 1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which the violation is discovered by the department and for the next two (2) succeeding tax years.

(4) (a) An overpayment of benefits occurs when a person receives benefits under this chapter:

(i) While any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case;

(ii) While he was disqualified from receiving benefits; or

(iii) When such person receives benefits and is later found to be disqualified or ineligible for any reason, including, but not limited to, a redetermination or reversal by the department or the courts of a previous decision to award such person benefits.

(b) Any person receiving an overpayment shall, in the discretion of the department, be liable to have such sum deducted from any future benefits payable to him under this chapter and shall be liable to repay to the department for the Unemployment Compensation Fund a sum equal to the overpayment amount so received by him; and such sum shall be collectible in the manner provided in Sections 71-5-363 through 71-5-383 for the collection of past-due contributions. In addition to Sections 71-5-363 through 71-5-383, the following shall apply to cases involving damages for overpaid unemployment benefits which have been obtained and/or received through fraud as defined by department regulations and laws governing the department. By definition, fraud can include failure to report earnings while filing for unemployment benefits. In the event of fraud, a penalty of twenty percent (20%) of the amount of the overpayment shall be assessed. Three-fourths (3/4) of that twenty percent (20%) penalty shall be deposited into the unemployment trust fund and shall be used only for the purpose of payment of unemployment benefits. The remainder of that twenty percent (20%) penalty shall be deposited into the Special Employment Security Administrative Fund. Interest on the overpayment balance shall accrue at a rate of one percent (1%) per month on the unpaid balance until repaid and shall be deposited into the Special Employment Security Administration Fund. All interest, penalties and damages deposited into the Special Employment Security Administration Fund shall be used by the department for administration of the Mississippi Department of Employment Security.

(c) Any such judgment against such person for collection of such overpayment shall be in the form of a seven-year renewable lien. Unless action be brought thereon prior to expiration of the lien, the department must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the department may refile notices of liens for collection of overpayments.

(d) All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

(5) The department, by agreement with another state or the United States, as provided under Section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this state or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this state or of another state or under an unemployment program of the United States.

HISTORY: *SOURCES: Codes, 1942, § 7437; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1952, ch. 383, § 3; Laws, 1977, ch. 351; Laws, 1985, ch. 414; Laws, 1986, ch. 331; Laws, 1992, ch. 339, § 2; Laws, 1994, ch. 303, § 1; Laws, 2000, ch. 412, § 1; Laws, 2004, ch. 572, § 10; Laws, 2007, ch. 606, § 4; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 10; reenacted without change, Laws, 2010, ch. 559, § 9; reenacted without change, Laws, 2011, ch. 471, § 10; reenacted and amended, Laws, 2012, ch. 515, § 10; Laws, 2013, ch. 309, § 4, eff from and after passage (approved March 6, 2013.)*

§ 71-5-21. Saving clause

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

HISTORY: *SOURCES: Codes, 1942, § 7443; Laws, 1940, ch. 295.*

ARTICLE 3. MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

§ 71-5-101. Organization [Repealed effective July 1, 2019]

There is established the Mississippi Department of Employment Security, Office of the Governor. The Department of Employment Security shall be the Mississippi Employment Security Commission and shall retain all powers and duties as granted to the Mississippi Employment Security Commission. Wherever the term "Employment Security Commission" appears in any law, the same shall mean the Mississippi Department of Employment Security, Office of the Governor. The Executive Director of the Department of Employment Security may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

HISTORY: *SOURCES: Codes, 1942, §§ 7399, 7400; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, §§ 5a, 5b; Laws, 2004, ch. 572, § 11; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 11; reenacted without change, Laws, 2010, ch. 559, § 10; reenacted without change, Laws, 2011, ch. 471, § 11; reenacted without change, Laws, 2012, ch. 515, § 11, eff from and after July 1, 2012.*

§ 71-5-103 and 71-5-105. Repealed

Repealed by Laws, 2004, ch. 572, § 59 effective from and after July 1, 2004.

> **§ 71-5-103. Codes**, 1942, § 7401; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5c, eff July 1, 1948.
>
> **§ 71-5-105. Codes**, 1942, § 7402; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5d; Laws, 1975, ch. 514, eff from and after July 1, 1975.

§ 71-5-107. Executive officer [Repealed effective July 1, 2019]

The department shall administer this chapter through a full-time salaried executive director, to be appointed by the Governor, with the advice and consent of the Senate. He shall be responsible for the administration of this chapter under authority delegated to him by the Governor.

HISTORY: *SOURCES: Codes, 1942, § 7403; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5e; Laws, 2004, ch. 572, § 12; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 12; reenacted without change, Laws, 2010, ch. 559, § 11; reenacted without change, Laws, 2011, ch. 471, § 12, reenacted without change, Laws, 2012, ch. 515, § 12, eff from and after July 1, 2012.*

§ 71-5-109. Board of review [Repealed effective July 1, 2019]

There is created a Board of Review consisting of three (3) members to be appointed by the executive director. The executive director shall designate one (1) member of the Board of Review as chairman. Each member shall be paid a salary or per diem at a rate to be determined by the executive director, and such expenses as may be allowed by the executive director. All salaries, per diem and expenses of the Board of Review shall be paid from the Employment Security Administration Fund.

HISTORY: *SOURCES: Codes, 1942, § 7404; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5f; Laws, 2004, ch. 572, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 13; reenacted without change, Laws, 2010, ch. 559, § 12; reenacted without change, Laws, 2011, ch. 471, § 13; reenacted without change, Laws, 2012, ch. 515, § 13, eff from and after July 1, 2012.*

§ 71-5-111. Employment security administration fund [Repealed effective July 1, 2019]

There is created in the State Treasury a special fund to be known as the Employment Security Administration Fund. All monies which are deposited or paid into this fund are appropriated and made available to the department. All monies in this fund shall be expended solely for the purpose of defraying the cost of administration of this chapter, and for no other purpose whatsoever.
The fund shall consist of all monies appropriated by this state and all monies received from the United States of America, or any agency thereof, or from any other source for such purpose.
Notwithstanding any provision of this section, all monies requisitioned and deposited in this fund pursuant to Section 71-5-457 shall remain part of the Employment Security Administration Fund and shall be used only in accordance with the conditions specified in that section. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury.
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 under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7421; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8a; Laws, 1958, ch. 536, § 2(a); Laws, 2004, ch. 572, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 14; reenacted without change, Laws, 2010, ch. 559, § 13; reenacted without change, Laws, 2011, ch. 471, § 14; reenacted without change, Laws, 2012, ch. 515, § 14, eff from and after July 1, 2012.*

§ 71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2019]

All funds received by the Mississippi Department of Employment Security shall clear through the State Treasury as provided and required by Sections 71-5-111 and 71-5-453. All expenditures from the administration fund of the department authorized by Section 71-5-111 shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

HISTORY: *SOURCES: Laws, 1973, ch. 381, § 3; Laws, 1974, ch. 334; Laws, 1984, ch. 488, § 273; Laws, 2004, ch. 572, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 15; reenacted and amended, Laws, 2010, ch. 559, § 14; reenacted without change, Laws, 2011, ch. 471, § 15; reenacted without change, Laws, 2012, ch. 515, § 15, eff from and after July 1, 2012.*

§ 71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2019]

All monies received from the Social Security Board or its successors for the administration of this chapter shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board or its successors for the proper and efficient administration of this chapter.

It shall be the duty of the department to take appropriate action with respect to the replacement, within a reasonable time, of any monies received from the Social Security Board, or its successors, for the administration of this chapter, and monies used to match grants pursuant to the provisions of the Wagner-Peyser Act, which the board, or its successors, find, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of those found necessary by the Social Security Board, or its successors, for the proper administration of this chapter. Funds which have been expended by the department or its agents in accordance with the budget approved by the Social Security Board, or its successors, or in accordance with the general standards and limitations promulgated by the Social Security Board, or its successors, prior to such expenditure (where proposed expenditures have not been

specifically disapproved by the Social Security Board, or its successors), shall not be deemed to require replacement. To effectuate the purposes of this paragraph, it shall be the duty of the department to take such action to safeguard the expenditure of the funds referred to herein as it deems necessary. In the event of a loss of such funds or an improper expenditure thereof as herein defined, it shall be the duty of the department to notify the Governor of any such loss or improper expenditure and submit to him a request for an appropriation in the amount thereof. The Governor shall transmit to the next regular session of the Legislature following such notification, the department's request for an appropriation in an amount necessary to replace funds which have been lost or improperly expended as defined above. Such request of the department for an appropriation shall not be subject to the provisions of Sections 27-103-101 through 27-103-139. The Legislature recognizes its obligation to replace such funds as may be necessary and shall make necessary appropriations in accordance with such requests.

HISTORY: *SOURCES: Codes, 1942, § 7422; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8b, c; Laws, 1958, ch. 536, § 2b, c; Laws, 2004, ch. 572, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 16; reenacted without change, Laws, 2010, ch. 559, § 15; reenacted without change, Laws, 2011, ch. 471, § 16; reenacted without change, Laws, 2012, ch. 515, § 16, eff from and after July 1, 2012.*

§ 71-5-114. Special employment security administration fund [Repealed effective July 1, 2019]

There is created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Fund," into which shall be deposited or transferred all interest, penalties and damages collected on and after July 1, 1982, pursuant to Sections 71-5-363 through 71-5.379 and all interest and penalties required to be deposited into the fund pursuant to Section 71- 5-19(4)(b). Interest, penalties and damages collected on delinquent payments deposited during any calendar quarter in the clearing account in the Unemployment Trust Fund shall, as soon as practicable after the close of such calendar quarter, be transferred to the Special Employment Security Administration Fund. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund under this chapter. Those monies may be expended for any programs for which the department has administrative responsibility but shall not be expended or made available for expenditure in any manner which would permit their substitution for (or permit a corresponding reduction in) federal funds which would, in the absence of those monies, be available to finance expenditures for the administration of the state unemployment compensation and employment service laws or any other laws directing the administration of any programs for which the department has the administrative responsibility. Nothing in this section shall prevent those monies in this fund from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when necessary. The monies in this fund may be used by the department for the payment of costs of administration of the employment security laws of this state which are found not to be or not to have been properly and validly chargeable against funds obtained from federal sources. All monies in this Special Employment Security Administration 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. The monies in this fund are specifically made available to replace, as contemplated by Section 71-5-113, expenditures

from the Employment Security Administration Fund established by Section 71-5-111, which have been found, because of any action or contingency, to have been lost or improperly expended.

The department, whenever it is of the opinion that the money in the Special Employment Security Administration Fund is more than ample to pay for all foreseeable needs for which such special fund is set up, may, by written order, order the transfer therefrom to the Unemployment Compensation Fund of such amount of money in the Special Employment Security Administration Fund as it deems proper, and the same shall thereupon be immediately transferred to the Unemployment Compensation Fund.

HISTORY: *SOURCES: Laws, 1982, ch. 383, § 1; Laws, 2004, ch. 572, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 17; reenacted without change, Laws, 2010, ch. 559, § 16; reenacted without change, Laws, 2011, ch. 471, § 17; reenacted and amended, Laws, 2012, ch. 515, § 17, eff from and after July 1, 2012.*

§ 71-5-115. Duties and powers of executive director [Repealed effective July 1, 2019]

It shall be the duty of the executive director to administer this chapter; and the executive director shall have the power and authority to adopt, amend or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the executive director shall prescribe. The executive director shall determine the department's own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. Not later than the first day of February in each year, the executive director shall submit to the Governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the executive director deems proper. Whenever the executive director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

HISTORY: *SOURCES: Codes, 1942, § 7405; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6a; Laws, 1952, ch. 383, § 4a; Laws, 1958, ch. 533, § 6a; Laws, 1962, ch. 564, § 3a; Laws, 2004, ch. 572, § 18; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 18; reenacted without change, Laws, 2010, ch. 559, § 17; reenacted without change, Laws, 2011, ch. 471, § 18; reenacted without change, Laws, 2012, ch. 515, § 18, eff from and after July 1, 2012.*

§ 71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs

The Mississippi Department of Employment Security will develop an annual report which tracks data received from contractors. Contractors will cooperate with the Mississippi Department of Employment Security to accumulate relevant data. Collected data and reports are intended solely to allow the Mississippi Department of Employment Security to improve workforce training programs, tailoring trainings to employer needs and hiring trends for in-demand jobs in Mississippi.

HISTORY: *SOURCES: Laws, 2012, ch. 505, § 2, eff from and after passage (approved May 1, 2012.)*

§ 71-5-117. Regulations and general rules [Repealed effective July 1, 2019]

General rules may be adopted, amended or rescinded by the executive director only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this state. Regulations may be adopted, amended or rescinded by the executive director and shall become effective in the manner and at the time prescribed by the executive director.

HISTORY: *SOURCES: Codes, 1942, § 7406; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6b; Laws, 1952, ch. 383, § 4b; Laws, 1958, ch. 533, § 6b; Laws, 1962, ch. 564, § 3b; Laws, 2004, ch. 572, § 19; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 19; reenacted without change, Laws, 2010, ch. 559, § 18; reenacted without change, Laws, 2011, ch. 471, § 19; reenacted without change, Laws, 2012, ch. 515, § 19, eff from and after July 1, 2012.*
Miss. Code Ann. § 71-5-119

§ 71-5-119. Publication [Repealed effective July 1, 2019]

The department shall cause to be available for distribution to the public the text of this chapter, its regulations and general rules, its reports to the Governor, and any other material it deems relevant and suitable, and shall furnish the same to any person upon application therefor.

HISTORY: *SOURCES: Codes, 1942, § 7407; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6c; Laws, 1952, ch. 383, § 4c; Laws, 1958, ch. 533, § 6c; Laws, 1962, ch. 564, § 3c; Laws, 2004, ch. 572, § 20; Laws, 2007, ch. 606, § 5; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 20; reenacted without change, Laws, 2010, ch. 559, § 19; reenacted without change, Laws, 2011, ch. 471, § 20; reenacted without change, Laws, 2012, ch. 515, § 20, eff from and after July 1, 2012.*

§ 71-5-121. Personnel [Repealed effective July 1, 2019]

Subject to other provisions of this chapter, the executive director 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 department duties; however, all personnel who were former members of the Armed Forces of the United States of America shall be given credit regardless of rate, rank or commission. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, in accordance with Section 25- 9-101 et seq., that provides for a state service personnel system. The executive director shall not employ any person who is an officer or committee member of any political party organization. The executive director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling monies or signing checks hereunder. The veteran status of an individual shall be considered and preference given in accordance with the provisions of the State Personnel Board.

The department and its employees are exempt from Sections 25-15-101 and 25-15-103.

The department may use federal granted funds to provide such group health, life, accident and hospitalization insurance for its employees as may be agreed upon by the department and the federal granting authorities.

The department shall adopt a "layoff formula" to be used wherever it is determined that, because of reduced workload, budget reductions or in order to effect a more economical operation, a reduction in force shall occur in any group.

In establishing this formula, the department shall give effect to the principle of seniority and shall provide that seniority points may be added for disabled veterans and veterans, with due regard to the efficiency of the service. Any such layoff formula shall be implemented according to the policies, rules and regulations of the State Personnel Board.

HISTORY: *SOURCES: Codes, 1942, § 7408; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6d; Laws, 1952, ch. 383, § 4d; Laws, 1958, ch. 533, § 6d; Laws, 1962, ch. 564, § 3d; Laws, 1964, ch. 442, § 3; Laws, 1995, ch. 507, § 1; Laws, 2004, ch. 572, § 21; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 21; reenacted without change, Laws, 2010, ch. 559, § 20; reenacted without change, Laws, 2011, ch. 471, § 21; reenacted without change, Laws, 2012, ch. 515, § 21, eff from and after July 1, 2012.*

§ 71-5-123. Advisory councils [Repealed effective July 1, 2019]

The executive director shall retain all powers and duties as granted to the state advisory council appointed by the former Employment Security Commission. The executive director may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the executive director may designate. Such councils shall aid the department in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Members of the advisory councils shall receive a per diem in accordance with Section 25-3-69 for attendance upon meetings of the council, and shall be reimbursed for actual and necessary traveling expenses. The per diem and expenses herein authorized shall be paid from the Employment Security Administration Fund.

HISTORY: *SOURCES: Codes, 1942, § 7409; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6e; Laws, 1952, ch. 383, § 4e; Laws, 1958, ch. 533, § 6e; Laws, 1962, ch. 564, § 3e; Laws, 1989, ch. 320, § 1; Laws, 2004, ch. 572, § 22; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 22; reenacted without change, Laws, 2010, ch. 559, § 21; reenacted without change, Laws, 2011, ch. 471, § 22; reenacted without change, Laws, 2012, ch. 515, § 22, eff from and after July 1, 2012.*

§ 71-5-125. Promotion of employment [Repealed effective July 1, 2019]

The department 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 reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigation and research studies.

HISTORY: *SOURCES: Codes, 1942, § 7410; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6f; Laws, 1952, ch. 383, § 4f; Laws, 1958, ch. 533, § 6f; Laws, 1962, ch. 564, § 3f; Laws, 2004, ch. 572, § 23; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 23; reenacted without change, Laws, 2010, ch. 559, § 22; reenacted without change, Laws, 2011, ch. 471, § 23; reenacted without change, Laws, 2012, ch. 515, § 23, eff from and after July 1, 2012.*

§ 71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2019]

(1) Any information or records concerning an individual or employing unit obtained by the department pursuant to the administration of this chapter or any other federally funded programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this article or by regulation. Information or records may be released by the department when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department.

(2) Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records 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, Board of Review and any referee may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which they or any of them deem necessary for the effective administration of this chapter. Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for the proper administration of this chapter, be held confidential and shall not be published or be opened to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity.

(3) Any claimant or his legal representative at a hearing before an appeal tribunal or the Board of Review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter.

(4) Any employee or member of the Board of Review or any employee of the department who violates any provisions of this section shall be fined not less than Twenty Dollars ($ 20.00) nor more than Two Hundred Dollars ($ 200.00), or imprisoned for not longer than ninety (90) days, or both.

(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 expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

HISTORY: *SOURCES: Codes, 1942, § 7411; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(1); Laws, 1952, ch. 383, § 4g(1); Laws, 1958, ch. 533, § 6g(1); Laws, 1962, ch. 564, § 3g(1); Laws, 2004, ch. 572, § 24; Laws, 2007, ch. 606, § 6; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 24; reenacted without change, Laws, 2010, ch. 559, § 23; reenacted without change, Laws, 2011, ch. 471, § 24; reenacted without change, Laws, 2012, ch. 515, § 24, eff from and after July 1, 2012.*

§ 71-5-129. Destruction of useless records [Repealed effective July 1, 2019]

Records hereinafter designated, which are found by the department to be useless, may be disposed of in accordance with approved records control schedules.

(a) Records which have been preserved by it for not less than three (3) years:

(1) Initial claims for benefits,

(2) Continued claims for benefits,

(3) Correspondence and master index cards in connection with such claims for benefits, and

(4) Individual wage slips filed by employers subject to the provisions of the Unemployment Compensation Law.

(b) Records which have been preserved by it for not less than six (6) months after becoming inactive:

(1) Work applications,

(2) Cross-index cards for work applications,

(3) Test records,

(4) Employer records,

(5) Work orders,

(6) Clearance records,

(7) Counseling records,

(8) Farm placement records, and

(9) Correspondence relating to all such records.

Nothing herein contained shall be construed as authorizing the destruction or disposal of basic fiscal records reflecting the financial operations of the department and no records may be destroyed without the approval of the Director of the Department of Archives and History.

HISTORY: *SOURCES: Codes, 1942, §§ 7411-01, 7411-02, 7411-03; Laws, 1944, ch. 290, § 1; Laws, 1950, ch. 418; Laws, 1952, ch. 390; Laws, 1970, ch. 504, § 1; Laws, 1981, ch. 501, § 25; Laws, 1987, ch. 318; Laws, 2004, ch. 572, § 25; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 25; reenacted without change, Laws, 2010, ch. 559, § 24; reenacted without change, Laws, 2011, ch. 471, § 25; reenacted without change, Laws, 2012, ch. 515, § 25, eff from and after July 1, 2012.*

§ 71-5-131. Privileged communications [Repealed effective July 1, 2019]

All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or to the department or any of its agents, representatives or employees, which shall have been written, sent, delivered or made in connection with the requirements and administration of this chapter shall be absolutely privileged and shall not be made the subject matter or basis of any suit for slander or libel in any court of the State of Mississippi unless the same be false in fact and maliciously written, sent, delivered or made for the purpose of causing a denial of benefits under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7412; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(2); Laws, 1952, ch. 383, § 4g(2); Laws, 1958, ch. 533, § 6g(2); Laws, 1962, ch. 564, § 3g(2); Laws, 2004, ch. 572, § 26; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 26; reenacted without change, Laws, 2010, ch. 559, § 250; reenacted without change, Laws, 2011, ch. 471, § 26; reenacted without change, Laws, 2012, ch. 515, § 26, eff from and after July 1, 2012.*

§ 71-5-133. Failure to produce records [Repealed effective July 1, 2019]

In any case where an employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, shall fail or refuse upon demand by the department or its duly appointed agents to produce or permit the examination or copying of any book, paper, account, record or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any report, or for the purpose of making a report as required by this chapter where none has been made, then and in that event the department or its duly authorized agents may, by the issuance of a subpoena, require the attendance of such employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena. The department or its authorized agents at any such hearing shall have power to administer oaths to any such person or persons. When any person called as a witness by a subpoena signed by the department or its agents and served upon him by the sheriff of a county of which such person is a resident, or wherein is located the principal office of such employing unit or wherein such records are located or kept, shall fail to obey such subpoena to appear before the department or its authorized agent, or shall refuse to testify or to answer any questions or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the Attorney General, who shall thereupon institute proceedings by the filing of a petition in the name of the State of Mississippi, on the relation of the department, in the circuit court or other court of competent jurisdiction of the county where such witness resides, or wherein such records are located or kept, to compel the obedience of such witness. Such petition shall set forth the facts and circumstances of the demand for and refusal or failure to permit the examination or copying of such records, or the failure or refusal of such witness to testify in answer to such subpoena or to produce the records so required by such subpoena. Such court, upon the filing and docketing of such petition, shall thereupon promptly issue an order to the defendants named in the petition to produce forthwith in such court, or at a place in such county designated in such order for the examination or copying by the department or its duly appointed agents, the records, books or documents so described, and to testify concerning matters described in such petition. Unless such defendants to such petition shall appear in the court upon a day specified in such order, which day shall be not more than ten (10) days after the date of issuance of such order, and offer, under oath, good and sufficient reasons why such examination or copying should not be permitted, or why such subpoena should not be obeyed, such court shall thereupon deliver to the department or its agents, for examination or copying, the records, books and documents so described in the

petition and so produced in such court, and shall order the defendants to appear in answer to the subpoena of the department or its agents, and to testify concerning matters inquired about by the department. Any employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, who shall willfully disobey such order of the court after the same shall have been served upon him shall be guilty of indirect contempt of such court from which such order shall have issued, and may be adjudged in contempt of the court and punished therefor as provided by law.

HISTORY: *SOURCES: Codes, 1942, § 7413; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6h; Laws, 1952, ch. 383, § 4h; Laws, 1958, ch. 533, § 6h; Laws, 1962, ch. 564, § 3h; Laws, 2004, ch. 572, § 27; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 27; reenacted without change, Laws, 2010, ch. 559, § 26; reenacted without change, Laws, 2011, ch. 471, § 27; reenacted without change, Laws, 2012, ch. 515, § 27, eff from and after July 1, 2012.*

§ 71-5-135. Failure to make reports [Repealed effective July 1, 2019]

If any employing unit fails to make any report required by this chapter, the department or its authorized agents shall give notice to such employing unit to make and file such report within fifteen (15) days from the date of such notice. If such employing unit, by its proper members, officers or agents, shall fail or refuse to make and file such reports within such time, then and in that event such report shall be made by the department or its authorized agents from the best information available, and the amount of contributions due shall be computed thereon; and such report shall be prima facie correct for the purposes of this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7414; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6i; Laws, 1952, ch. 383, § 4i; Laws, 1958, ch. 533, § 6i; Laws, 1962, ch. 564, § 3i; Laws, 1992, ch. 362, § 1; Laws, 2004, ch. 572, § 28; Laws, 2007, ch. 606, § 7; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 28; reenacted without change, Laws, 2010, ch. 559, § 27; reenacted without change, Laws, 2011, ch. 471, § 28; reenacted without change, Laws, 2012, ch. 515, § 28, eff from and after July 1, 2012.*

§ 71-5-137. Oaths and witnesses [Repealed effective July 1, 2019]

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

HISTORY: *SOURCES: Codes, 1942, § 7415; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6j; Laws, 1952, ch. 383, § 4j; Laws, 1958, ch. 533, § 6j; Laws, 1962, ch. 564, § 3j; Laws, 2004, ch. 572, § 29; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 29; reenacted without change, Laws, 2010, ch. 559, § 28; reenacted without change, Laws, 2011, ch. 471, § 29, Laws, 2012, ch. 515, § 29, eff from and after July 1, 2012.*

§ 71-5-139. Subpoenas [Repealed effective July 1, 2019]

In case of contumacy or refusal to obey a subpoena issued to any person, any court in this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall have jurisdiction to issue to such person an order requiring

such person to appear before the department, the Board of Review, any referee, or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the 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, the Board of Review, any referee, or any duly authorized representative of any of them, shall be punished by a fine of not more than Two Hundred Dollars ($ 200.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense.

HISTORY: *SOURCES: Codes, 1942, § 7416; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6k; Laws, 1952, ch. 383, § 4k; Laws, 1958, ch. 533, § 6k; Laws, 1962, ch. 564, § 3k; Laws, 2004, ch. 572, § 30; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 30; reenacted without change, Laws, 2010, ch. 559, § 29; reenacted without change, Laws, 2011, ch. 471, § 30; reenacted without change, Laws, 2012, ch. 515, § 30, eff from and after July 1, 2012.*

§ 71-5-141. Protection against self-incrimination [Repealed effective July 1, 2019]

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

HISTORY: *SOURCES: Codes, 1942, § 7417; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6l; Laws, 1952, ch. 383, § 4l; Laws, 1958, ch. 533, § 6l; Laws, 1962, ch. 564, § 3l; Laws, 2004, ch. 572, § 31; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 31; reenacted without change, Laws, 2010, ch. 559, § 30; reenacted without change, Laws, 2011, ch. 471, § 31; reenacted without change, Laws, 2012, ch. 515, § 31, eff from and after July 1, 2012.*

§ 71-5-143. State-federal cooperation [Repealed effective July 1, 2019]

In the administration of this chapter, the department shall cooperate, to the fullest extent consistent with the provisions of this chapter, with the Social Security Board created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the reasonable, valid and lawful regulations prescribed by the Social Security Board pursuant to and under the authority of the Social Security Act, governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

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.

HISTORY: *SOURCES: Codes, 1942, § 7418; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6m; Laws, 1952, ch. 383, § 4m; Laws, 1958, ch. 533, § 6m; Laws, 1962, ch. 564, § 3m; Laws, 2004, ch. 572, § 32; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 32; reenacted without change, Laws, 2010, ch. 559, § 31; reenacted without change, Laws, 2011, ch. 471, § 32; reenacted without change, Laws, 2012, ch. 515, § 32, eff from and after July 1, 2012.*

§ 71-5-145. 1235 Echelon Parkway named the Henry J. Kirksey Building

The building located at 1235 Echelon Parkway in Jackson, Mississippi, and in which the Mississippi Department of Employment Security is housed, shall be named the Henry J. Kirksey Building. The Department of Finance and Administration shall prepare a distinctive plaque, to be placed in a prominent place within the Henry J. Kirksey Building, which states the background, accomplishments and service to the state of the Honorable Henry J. Kirksey.

HISTORY: *SOURCES: Laws, 2007, ch. 339, § 2, eff from and after passage (approved Mar. 14, 2007.)*

ARTICLE 5. EMPLOYMENT SERVICE

§ 71-5-201. State employment service [Repealed effective July 1, 2019]

The Mississippi State Employment Service is established in the Mississippi Department of Employment Security, Office of the Governor. The department, in the conduct of such service, 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 article and for the purpose of performing such functions 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 cooperation with the states in the promotion of such system, and for other purposes" (29 USCS Section 49 et seq.). Any existing free public employment offices maintained by the state but not heretofore under the jurisdiction of the department shall be transferred to the jurisdiction of the department, and upon such transfer all duties and powers conferred upon any other department, agency or officers of this state relating to the establishment, maintenance and operation of free public employment offices shall be vested in the department. The Mississippi State Employment Service shall be administered by the department, which is charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of that act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of that act of Congress, as amended, are accepted by this state, in conformity with 29 USCS Section 49c, and this state will observe and comply with the requirements thereof. The department is designated and constituted the agency of this state for the purposes of that act. The department may cooperate with or enter into agreements with the Railroad Retirement Board or veteran's organization with respect to the establishment, maintenance and use of free employment service facilities.

HISTORY: *SOURCES: Codes, 1942, § 7419; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7a; Laws, 1971, ch. 519, § 12; Laws, 1972, ch. 425, § 1; Laws, 2004, ch. 572, § 33; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 33; reenacted without change, Laws, 2010, ch. 559, § 32; reenacted without change, Laws, 2011, ch. 471, § 33; reenacted without change, Laws, 2012, ch. 515, § 33, eff from and after July 1, 2012.*

§ 71-5-203. Financing

All moneys received by this state under the said act of Congress, as amended, shall be paid into the employment security administration fund. Said moneys are hereby made available to the Department to be expended as provided by this article and by said act of Congress, upon voucher signed by the executive director or such other officer or employee of the Department as it may authorize so to do. For the purpose 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 unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization; and as a part of any such agreement, the Department may accept moneys, services, or quarters as a contribution to the employment security administration fund.

HISTORY: *SOURCES: Codes, 1942, § 7420; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7b, eff July 1, 1948.*

ARTICLE 7. CONTRIBUTIONS

§ 71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP)

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter. Such contributions shall become due and be paid by each employer to the department for the fund each calendar quarter on or before the last day of the month next succeeding each calendar quarter in which the contributions accrue unless the employer has filed an election with the department to participate in the Mississippi Level Payment Plan (MLPP) and complies with the provision of the MLPP. The department may extend the due date of such contributions if the due date falls on a Saturday, Sunday or state or federal holiday. Such contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) (a) Any employer who is a newly subject employer or any employer who meets the requirements of participation in the MLPP shall be allowed one (1) participation election per year. The department may by regulation establish exceptions to this rule as appropriate. The department shall establish by regulation the requirements for computation and adjustment of compensation and shall compute the amount of payments that will be made quarterly and notify each employer before the first tax payment is due for the year. Equal payments will be made for calendar quarters ending March, June and September and settlement will be made for any overage or shortage at the time payment is due for the December quarter.

(b) An employer who meets the following criteria may participate in the MLPP:

(i) The employer has not been delinquent in filing unemployment reports or paying unemployment taxes to the department during the last two (2) calendar years and must make current all other delinquent unemployment taxes and reports;

(ii) The employer has been an employer subject to the unemployment laws of the State of Mississippi, or in accordance with department regulations regarding MLPP, for at least twelve (12) months prior to the year the employer starts participating;

(iii) The employer must agree to file reports through the department's online system or other agency prescribed electronic facility and pay electronically;

(iv) The employer remains current in filing and paying taxes; and

(v) The employer must make the election by April 1 of the year.

(c) Employers who participate in the MLPP and pay their contribution by bank draft shall utilize the pay schedule provided for in this paragraph. The pay schedule shall be as follows:

(i) January to March due date May 15;

(ii) April to June due date August 15;

(iii) July to September due date November 15; and

(iv) October to December due date January 31.

(d) In the event the computed Size of Fund Index (SOFI) for any rate year computation falls below one percent (1.0%), the additional fifteen (15) days' delay provided for bank draft customers will be suspended for that year.

(3) For purposes of payment of contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to One-half Cent (1/2 cent(s)) or more, in which case it shall be increased to One Cent (1 cent(s)).

(4) For the purposes of this section and Sections 71-5-353, 71-5-357 and 71-5-359, taxable wages shall not include that part of remuneration which, after remuneration equal to Seven Thousand Dollars ($ 7,000.00) through December 31, 2010, and Fourteen Thousand Dollars ($ 14,000.00) thereafter, has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state employment fund. For the purposes of this section, the term "employment" shall include service constituting employment under any unemployment compensation law of another state.

(5) Absent evidence of willful or fraudulent attempt to avoid taxation, the effective date of liability of an employer or assessment of liability for covered employment against an employer shall not occur for any period preceding the three (3) calendar years before the date of registration or assessment, unless said three-year limitations period is waived by the employer.

(6) The executive director may grant a reasonable extension of time beyond the statutory due date within which to file any report required by this section to an employer located in an area included in a declaration of an emergency or disaster by the President or the Governor. The executive director may, in his discretion, recognize extensions of time authorized and granted by the Internal Revenue Service for the filing of tax returns.

HISTORY: *SOURCES: Codes, 1942, § 7390; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4a; Laws, 1950, ch. 454, § 1a; Laws, 1952, ch. 383, § 2a; Laws, 1956, ch. 404, § 2a; Laws, 1958, ch. 533, § 5a; Laws, 1962, ch. 564, § 2a; Laws, 1964, ch. 442, § 2a; Laws, 1971, ch. 519, § 6; Laws, 1977, ch. 497, § 2; Laws, 1983, ch. 371, § 2; Laws, 1985, ch. 413; Laws, 1998, ch. 331, § 2; Laws, 2001, ch. 431, § 1; Laws, 2005, ch. 437, § 4; Laws, 2010, ch. 504, § 1; Laws, 2013, ch. 309, § 5, eff from and after passage (approved March 6, 2013.)*

§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances

(1) (a) Each employer shall pay unemployment insurance contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay unemployment insurance contributions at the rate of one percent (1%) of taxable wages, for his first year of liability, one and one-tenth percent (1.1%) of taxable wages for his second year of liability, and one and two-tenths percent (1.2%) of taxable wages for his third and subsequent years of liability unless the employer's experience-rating record has been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's contribution rate shall be determined in accordance with the provisions of Section 71-5-355.

(b) Notwithstanding the newly subject employer contribution rate provided for in paragraph (a) of this subsection, the contribution rate of all newly subject employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only. The contribution rate of all newly subject employers shall be reduced by three one-hundredths of one percent (.03%) for calendar year 2014 only. For purposes of this chapter, "newly subject employers" means employers whose unemployment insurance experience-rating record has not been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the contribution rate for a year is determined.

(2) (a) (i) There is hereby created in the Treasury of the State of Mississippi special funds to be known as the "Mississippi Workforce Enhancement Training Fund" and the "Mississippi Works Fund" which consist of funds collected pursuant to subsection (3) of this section.

(ii) Funds collected shall initially be deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently appropriate amounts shall be transferred to the Mississippi Workforce Investment and Training Fund Holding Account described in Section 71-5-453. In the event any employer pays an amount insufficient to

cover the total contributions due, the amounts due shall be satisfied in the following order:

1. Unemployment contributions;

2. Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and the Mississippi Works contributions, known collectively as the Mississippi Workforce Investment and Training contributions, on a pro rata basis;

3. Interest and damages; then

4. Legal and processing costs.

The amount of unemployment insurance contributions due for any period will be the amount due according to the actual computations unless the employer is participating in the MLPP. In that event, the amount due is the MLPP amount computed by the department. Cost of collection and administration of the Mississippi Workforce Enhancement Training contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL). The Mississippi Community College Board shall pay the cost of collecting the Mississippi Workforce Enhancement Training contributions, the State Workforce Investment Board shall pay the cost of collecting the State Workforce Investment contributions and the Mississippi Department of Employment Security shall pay the cost of collecting the Mississippi Works contributions. Payments shall be made semiannually with the cost allocated to each based on a USDOL approved plan on a pro rata basis, for periods ending in June and December of each year. Payment shall be made by each organization to the department no later than sixty (60) days after the billing date. Cost shall be allocated under the USDOL's approved plan and in the same ratio as each contribution type represents to the total authorized by subparagraph (ii)(2) of this paragraph to be collected for the period.

(b) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be distributed as follows:

(i) For calendar year 2014, ninety-four and seventy-five one-hundredths percent (94.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(ii) For calendar years subsequent to calendar year 2014, ninety-three and seventy-five one-hundredths percent (93.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(iii) Workforce Enhancement Training contributions and State Workforce Investment contributions for calendar years 2014 and 2015 shall be distributed as provided in subparagraphs (i) and (ii) of this paragraph regardless of when the contributions were collected.

(c) All contributions collected for the State Workforce Enhancement Training Fund, the State Workforce Investment Fund and the Mississippi Works Fund will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Workforce Investment and Training Holding Account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than thirty (30) days. After such period, the Mississippi Workforce Enhancement Training contributions shall be transferred to the Mississippi Community College Board Treasury Account, the State Workforce Investment contributions and the Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Mississippi Works Treasury Account in the same ratio as each contribution type represents to the total authorized by paragraph (a)(ii)(2) of this subsection to be collected for the period and within the time frame determined by the department; however, except in cases of extraordinary circumstances, these funds shall be transferred within fifteen (15) days. Interest earnings or interest credits on deposit amounts in the Workforce Investment and Training Holding Account shall be retained in the account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars ($ 10,000.00), such excess amounts shall be transferred to the respective accounts within thirty (30) days following the end of each calendar year on the basis described in paragraph (b) of this subsection. Interest earnings and/or interest credits for the State Workforce Investments funds shall be used for the payment of banking costs and excess amounts shall be used in accordance with the rules and regulations of the State Workforce Investment Board expenditure policies.

(d) All enforcement procedures for the collection of delinquent unemployment contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent unemployment insurance contributions designated for the Unemployment Compensation Fund, the Mississippi Workforce Enhancement Training Fund, the State Workforce Investment Board Fund and the Mississippi Works Fund.

(e) (i) Except as otherwise provided for in this subparagraph (i), all monies deposited into the Mississippi Workforce Enhancement Training Fund treasury account shall be utilized exclusively by the Mississippi Community College Board in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.), policies approved by the Mississippi Community College Board and the annual plan developed by the State Workforce Investment Board for the following purposes: to provide training at no charge to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the State Workforce Investment Board subject to the advice of the Mississippi Community College Board. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the Mississippi Community College Board. The Mississippi Community College Board will be responsible for approving the training. A portion of the funds collected

for the Mississippi Workforce Enhancement Training Fund shall be used for the development of performance measures to measure the effectiveness of the use of the Mississippi Workforce Enhancement Training Fund dollars. These performance measures shall be uniform for all community colleges and shall be reported to the Governor, Lieutenant Governor and members of the Legislature. Nothing in this section or elsewhere in law shall be interpreted as giving the State Workforce Investment Board authority to direct the Mississippi Community College Board or individual community or junior colleges on how to expend money for workforce training, whether such money comes from the Mississippi Workforce Enhancement Training Fund, is appropriated by the Legislature to the Mississippi Community College Board for workforce training or comes from other sources. The Mississippi Community College Board, individual community or junior colleges and the State Workforce Investment Board shall cooperate with each other and with other state agencies to promote effective workforce training in Mississippi. Any subsequent changes to these performance measures shall also be reported to the Governor, Lieutenant Governor and members of the Legislature. A performance report for each community college, based upon these measures, shall be submitted annually to the Governor, Lieutenant Governor and members of the Legislature.

(ii) Except as otherwise provided in this paragraph (e), all funds deposited into the State Workforce Investment Board bank account shall be used for administration of State Workforce Investment Board business, grants related to training, and other projects as determined appropriate by the State Workforce Investment Board and shall be nonexpiring. Policies for grants and other projects shall be approved through a majority vote of the State Workforce Investment Board.

(iii) All funds deposited into the Mississippi Department of Employment Security Mississippi Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the State Workforce Investment Board Rules Committee in support of workforce training activities approved by the Mississippi Development Authority in support of economic development activities. Funds allocated by the executive director under this subparagraph (iii) shall only be utilized for the training of unemployed persons, for immediate training needs for the net new jobs created by an employer, for the retention of jobs or to create a work-ready applicant pool of Mississippians with credentials and/or postsecondary education in accordance with the state's Workforce Investment and Opportunity Act plan. The executive director shall give priority to the training of unemployed persons. Not more than twenty-five percent (25%) of the funds may be allocated for the retention of jobs and/or creation of a work-ready applicant pool. Not more than Five Hundred Thousand Dollars ($ 500,000.00) may be allocated annually for the training needs of any one (1) employer. The Mississippi Public Community College System and its partners shall be the primary entities to facilitate training. In no case shall these funds be used to supplant workforce funds available from any other sources, including, but not limited to, local, state or federal sources that are available for workforce training and development.

Training conducted utilizing these Mississippi Works funds may be subject to a minimal administrative fee to be paid from the Mississippi Works Fund as authorized by the Mississippi Department of Employment Security. All costs associated with the administration of these funds shall be reimbursed to the Mississippi Department of Employment Security from the Mississippi Works Fund.

(iv) 1. The Department of Employment Security shall be the fiscal agent for the receipt and disbursement of all funds in the State Workforce Investment Board bank account.

2. In managing the State Workforce Investment Board bank account, the department shall ensure that any funds expended for contractual services rendered to the State Workforce Investment Board shall be paid only to service providers who have been selected on a competitive basis. Any contract for services entered into using funds from the Workforce Investment Fund bank account shall contain the deliverables stated in terms that allow for the assessment of work performance against measurable performance standards and shall include milestones for completion of each deliverable under the contract. For each contract for services entered into by the State Workforce Investment Board, the board shall develop a quality assurance surveillance plan that specifies quality control obligations of the contractor as well as measurable inspection and acceptance criteria corresponding to the performance standards contained in the contract's statement of work.

3. Any commodities procured for the board shall be procured in accordance with the provisions of Section 31-7-13.

(v) In addition to other expenditures, the department shall expend from the State Workforce Investment Board bank account for the use and benefit of the State Workforce Investment Board, such funds as are necessary to prepare and develop a study of workforce development needs that will consist of the following:

1. An identification of the state's workforce development needs through a well-documented quantitative and qualitative analysis of:

a. The current and projected workforce training needs of existing and identified potential Mississippi industries, with priority given to assessing the needs of existing in-state industry and business. Where possible, the analysis should include a verification and expansion of existing information previously developed by workforce training and service providers, as well as analysis of existing workforce data, such as the data collected through the Statewide Longitudinal Data System.

b. The needs of the state's workers and residents requiring additional workforce training to improve their work skills in order to compete for better employment opportunities, including a priority-based

analysis of the critical factors currently limiting the state's ability to provide a trained and ready workforce.

c. The needs of workforce service and training providers in improving their ability to offer industry-relevant training, including an assessment of the practical limits of keeping training programs on the leading edge and eliminating those programs with marginal workforce relevance.

2. An assessment of Mississippi's current workforce development service delivery structure relative to the needs quantified in this subparagraph, including:

a. Development of a list of strengths/weaknesses/opportunities/threats (SWOT) of the current workforce development delivery system relative to the identified needs;

b. Identification of strategic options for workforce development services based on the results of the SWOT analysis; and

c. Development of results-oriented measures for each option that can be baselined and, if implemented, tracked over time, with quantifiable milestones and goals.

3. Preparation of a report presenting all subjects set out in this subparagraph to be delivered to the Lieutenant Governor, Speaker of the House of Representatives, Chairman of the Senate Finance Committee and Chairman of the House Appropriations Committee no later than February 1, 2015.

4. Following the preparation of the report, the State Workforce Investment Board shall make a recommendation to the House and Senate Appropriations Committees on future uses of funds deposited to the State Workforce Investment Fund account. Such future uses may include:

a. The development of promotion strategies for workforce development programs;

b. Initiatives designed to reduce the state's dropout rate including the development of a statewide career awareness program;

c. The long-term monitoring of the state's workforce development programs to determine whether they are addressing the needs of business, industry, and the workers of the state; and

d. The study of the potential restructuring of the state's workforce programs and delivery systems.

(3) (a) (i) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be collected at the following rates:

1. For calendar year 2014 only, the rate of nineteen one-hundredths of one percent (.19%) based upon taxable wages of which eighteen one-hundredths of one percent (.18%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution; and

2. For calendar year 2015 only, the rate of sixteen one-hundredths of one percent (.16%), based upon taxable wages of which fifteen one-hundredths of one percent (.15%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution.

(ii) Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2016 only, at a rate of twenty-four one-hundredths percent (.24%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and eight one-hundredths percent (.08%) shall be the Mississippi Works contribution.

2. For calendar years subsequent to calendar year 2016, at a rate of twenty one- hundredths percent (.20%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and four one-hundredths percent (.04%) shall be the Mississippi Works contribution. The Mississippi Works contribution shall be collected for calendar years in which the general experience ratio, adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%), results in a general experience rate of less than two-tenths percent (.2%). In all other years the Mississippi Works contribution shall not be in effect.

(iii) The Mississippi Workforce Enhancement Training Fund contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be in addition to the general experience rate plus the individual experience rate of all employers but shall not be charged to reimbursing or rate-paying political subdivisions or institutions of higher learning, or reimbursing nonprofit organizations, as described in Sections 71-5-357 and 71-5-359.

(b) All Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions collected shall be deposited initially into the Mississippi Department of

Employment Security bank account for clearing contribution collections and shall within two (2) business days be transferred to the Workforce Investment and Training Holding Account. Any Mississippi Workforce Enhancement Training Fund and/or State Workforce Investment Board bank account and/or Mississippi Works Fund transactions from the Mississippi Department of Employment Security bank account for clearing contribution collections that are deposited into the Workforce Investment and Training Fund Holding Account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security bank account for clearing contribution collections out of funds in the Mississippi Workforce Investment and Training Fund Holding Account.

(c) Suspension of the Workforce Enhancement Training Fund contributions required pursuant to this chapter shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year following such occurrence and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of the next rate year that has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%). Upon such occurrence, reactivation shall be effective upon the first day of the rate year following the event that lifts suspension and shall be in effect for that year and shall continue until such time as a subsequent suspension event as described in this chapter occurs.

(4) All collections due or accrued prior to any suspension of the Mississippi Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually collected.

HISTORY: *SOURCES: Codes, 1942, § 7391; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4b; Laws, 1950, ch. 454, § 1b; Laws, 1952, ch. 383, § 2b; Laws, 1956, ch. 404, § 2b; Laws, 1958, ch. 533, § 5b; Laws, 1962, ch. 564, § 2b; Laws, 1964, ch. 442, § 2b; Laws, 1971, ch. 519, § 7; Laws, 1979, ch. 465, § 1; Laws, 1984, ch. 301, § 1; Laws, 1998, ch. 331, § 3; Laws, 1998, ch. 491, § 2; Laws, 2005, ch. 437, § 1; Laws, 2010, ch. 302, § 1; Laws, 2010, ch. 504, § 2; Laws, 2013, ch. 309, § 6; Laws, 2014, ch. 504, § 1; Laws, 2016, ch. 302, § 1, eff from and after passage (approved Mar. 21, 2016.)*

§ 71-5-355. Modified rates

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administration pursuant to Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer unemployment insurance contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his experience-rating record has been chargeable with benefits, but in no event less than the twelve (12)

consecutive calendar-month period ending on the computation date throughout which his experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 16 of each calendar year or the next working day if November 16 falls on a holiday or a weekend, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles.

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC). The target size of fund index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for the most recent completed July to June period, the target SOFI will be.8 and will remain at that level until the computed SOFI (the average exposure criterion of the current year and the preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent (2.5%) for any period July to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

(l) No employer's unemployment contribution general experience rate plus individual unemployment experience rate shall exceed five and four-tenths percent (5.4%).

Accrual rules shall apply for purposes of computing contribution rates including associated functions.

(m) The term "general experience rate" has the same meaning as the minimum tax rate.

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 16, in the case of any tax year, equals or exceeds three percent (3%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer or to accept other work;

2. Was discharged by such employer for misconduct connected with his work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is

paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B, or for any week while in training approved under Section 236(a) (1) of the Trade Act of 1974, under the provisions of Section 71-5-513C;

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged; or

10. Was paid benefits as a result of a fraudulent claim, provided notification was made to the Mississippi Department of Employment Security in writing or by e.mail by the employer, within ten (10) days of the mailing of the notice of claim filed to the employer's last-known address.

(iii) Notwithstanding any other provision contained herein, an employer shall not be noncharged when the department finds that the employer or the employer's agent of record was at fault for failing to respond timely or adequately to the request of the department for information relating to an unemployment claim that was subsequently determined to be improperly paid, unless the employer or the employer's agent of record shows good cause for having failed to respond timely or adequately to the request of the department for information. For purposes of this subparagraph 'good cause" means an event that prevents the employer or employer's agent of record from timely responding, and includes a natural disaster, emergency or similar event, or an illness on the part of the employer, the employer's agent of record, or their staff charged with responding to such inquiries when there is no other individual who has the knowledge or ability to respond. Any agency error that resulted in a delay in, or the failure to deliver notice to, the employer or the employer's agent of record shall also be considered good cause for purposes of this subparagraph.

(iv) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

(v) 1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting unemployment insurance rate be in excess of five and four-tenths percent (5.4%), however, it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four- tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his benefit ratio as computed under subsection (2) (b) (iv) above.

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record throughout the period ending on the computation date, during which his experience-rating record has been chargeable with benefits, by his total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2)(b)(v)3a, b and c) to the taxable wages paid during the same period divided by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of

one percent (.1%), shall be the general experience rate; however, the general experience rate for rate year 2014 shall be two tenths of one percent (.2%) and to that will be added the employer's individual experience rate for the total unemployment insurance rate.

4. a. Except as otherwise provided in this item 4, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1)(k) of this section, subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty percent (50%) and this product shall be computed to one (1) decimal place, and rounded to the next higher tenth.

   b. Notwithstanding the minimum rate provisions as set forth in subsection (1) (l) of this section, the general experience rate of all employers shall be reduced by seven one hundredths of one percent (.07%) for calendar year 2013 only.

5. The general experience rate shall be zero percent (0%) unless the general experience ratio for any tax year as computed and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%) is an amount equal to or greater than two-tenths of one percent (.2%), then the general experience rate shall be the computed general experience ratio and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%); however, in no case shall the sum of the general experience plus the individual experience unemployment insurance rate exceed five and four- tenths percent (5.4%). For rate years subsequent to 2014, Mississippi Workforce Enhancement Training contribution rate, and/or State Workforce Investment contribution rate, and/or Mississippi Works contribution rate, when in effect, shall be added to the unemployment contribution rate, regardless of whether the addition of this contribution rate causes the total contribution rate for the employer to exceed five and four-tenths percent (5.4%).

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

(vi) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vii) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;

2. Approval of the department;

3. Continued operation of the transferred portion by the successor after transfer; and

4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(viii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay unemployment insurance contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay unemployment insurance contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of unemployment insurance contributions are applicable, it shall pay unemployment insurance contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of unemployment insurance contributions applicable to such successor for each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(ix) The department shall notify each employer quarterly of the benefits paid and charged to his experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of unemployment insurance contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(x) The department shall notify each employer of his rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his last-known address, the employer files with the department an application for review and redetermination of his contribution rate, setting forth his reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his rate of unemployment insurance contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him, and then only in the event that he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last-known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a) (i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business

shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of unemployment insurance contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

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

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of unemployment insurance contributions of two percent (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of unemployment insurance contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars ($ 5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars ($ 10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

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

HISTORY: *SOURCES: Codes, 1942, § 7392; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4c; Laws, 1950, ch. 454, § 1c; Laws, 1952, ch. 383, § 2c; Laws, 1956, ch. 404, § 2c; Laws, 1958, ch. 533, § 5c; Laws, 1962, ch. 564, § 2c; Laws, 1964, ch. 442, § 2c; Laws, 1971, ch. 519, § 8; Laws, 1977, ch. 497, § 3; Laws, 1979, ch. 465, § 2; Laws, 1980, ch. 350; Laws, 1981, ch. 447, § 1; Laws, 1982, ch. 349, § 1; Laws, 1984, ch. 301, § 2; Laws, 1985, ch. 442; Laws, 1986, ch. 319, § 1; Laws, 1987, ch. 394; Laws, 1988, ch. 322, § 1; Laws, 1991, ch. 511, § 1; Laws, 1992, ch. 463, § 1; Laws, 1993, ch. 307, § 1; Laws, 1994, ch. 303, § 2; reenacted, Laws, 1995, ch. 507, § 2; Laws, 1998, ch. 331, § 4; Laws, 1999, ch. 306, § 2; Laws, 2000, ch. 412, § 2; Laws, 2005, ch. 400, § 1; Laws, 2005, ch. 437, § 2; Laws, 2007, ch. 606, § 8; Laws, 2010, ch. 302, § 2; Laws, 2010, ch. 504, § 3; Laws, 2012, ch. 515, § 60; Laws, 2013, ch. 309, § 7; Laws, 2014, ch. 350, § 1; Laws, 2014, ch. 504, § 2; Laws, 2016, ch. 302, § 2, eff from and after passage (approved Mar. 21, 2016.)*

§ 71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2019]

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under Section 501(a) of such code (26 USCS Section 501).

(a) Any nonprofit organization which, under Section 71-5-11, subsection H(3), is or becomes subject to this chapter shall pay contributions under the provisions of Sections 71-5-351 through 71-5-355 unless it elects, in accordance with this paragraph, to pay to the department for the unemployment fund an amount equal to the amount of regular

benefits and one-half (1/2) of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(i) Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than twelve (12) months, beginning with the date on which such subjectivity begins, by filing a written notice of its election with the department not later than thirty (30) days immediately following the date of the determination of such subjectivity.

(ii) Any nonprofit organization which makes an election in accordance with subparagraph (i) of this paragraph will continue to be liable for payments in lieu of contributions unless it files with the department a written termination notice not later than thirty (30) days prior to the beginning of the tax year for which such termination shall first be effective.

(iii) Any nonprofit organization which has been paying contributions under this chapter may change to a reimbursable basis by filing with the department, not later than thirty (30) days prior to the beginning of any tax year, a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next tax year.

(iv) The department may for good cause extend the period within which a notice of election or a notice of termination must be filed, and may permit an election to be retroactive.

(v) The department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer, of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of Sections 71-5-351 through 71-5-355.

(b) Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (i) of this paragraph.

(i) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(ii) Payment of any bill rendered under subparagraph (i) of this paragraph shall be made not later than forty-five (45) days after such bill was delivered to the nonprofit organization, unless there has been an application for review and redetermination in accordance with subparagraph (v) of this paragraph.

1. All of the enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be

applicable in all respects for the collection of delinquent payments due by nonprofit organizations who have elected to become liable for payments in lieu of contributions.

2. If any nonprofit organization is delinquent in making payments in lieu of contributions, the department may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next tax year, and such termination shall be effective for the balance of such tax year.

(iii) Payments made by any nonprofit organization under the provisions of this paragraph shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(iv) Payments due by employers who elect to reimburse the fund in lieu of contributions as provided in this paragraph may not be noncharged under any condition. The reimbursement must be on a dollar-for-dollar basis (One Dollar ($ 1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such reimbursement to include, but not be limited to, benefits or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility which is subsequently reversed, or paid as a result of claimant fraud. However, political subdivisions who are reimbursing employers may elect to pay to the fund an amount equal to five-tenths percent (.5%) through December 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) thereafter of the taxable wages paid during the calendar year with respect to employment, and those employers who so elect shall be relieved of liability for reimbursement of benefits paid under the same conditions that benefits are not charged to the experience-rating record of a contributing employer as provided in Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits paid in such circumstances for which reimbursing employers are relieved of liability for reimbursement shall not be considered attributable to service in the employment of such reimbursing employer.

(v) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was delivered to it, the organization files an application for redetermination by the department, setting forth the grounds for such application or appeal. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen (15) days after the redetermination was delivered to it, the organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(vi) Past-due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 71-5-363, apply to past-due contributions.

(c) Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half (1/2) of extended benefits paid are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (i) or subparagraph (ii) of this paragraph.

(i) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payment in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(ii) If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(d) In the discretion of the department, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required to execute and file with the department a surety bond approved by the department, or it may elect instead to deposit with the department money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(i) The amount of the bond or deposit required by paragraph (d) shall be equal to two and seven-tenths percent (2.7%) thereafter to December 31, 2010, and one and thirty-five one-hundredths percent (1.35%) thereafter, of the organization's taxable wages paid for employment as defined in Section 71-5-11, subsection I(4), for the four (4) calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the bond or deposit shall be as determined by the department.

(ii) Any bond deposited under paragraph (d) shall be in force for a period of not less than two (2) tax years and shall be renewed with the approval of the department at such times as the department may prescribe, but not less frequently than at intervals of two (2) years as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty (30) days of the date notice of the required adjustment was delivered to it. Failure by

any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided in paragraph (b)(v) of this section, shall render the surety liable on the bond to the extent of the bond, as though the surety was such organization.

(iii) Any deposit of money or securities in accordance with paragraph (d) shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under paragraph (d) by a nonprofit organization, or sell the securities it has so deposited, to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (b)(v) of this section. The department shall require the organization, within thirty (30) days following any deduction from a money deposit or sale of deposited securities under the provisions hereof, to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty (30) days of notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(iv) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount, or to increase or make whole the amount of a previously made deposit as provided under this subparagraph, the department may terminate such organization's election to make payments in lieu of contributions, and such termination shall continue for not less than the four (4) consecutive calendar-quarter periods beginning with the quarter in which such termination becomes effective; however, the department may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty (30) days.

(v) Group account shall be established according to regulations prescribed by the department.

(e) Any employer which elects to make payments in lieu of contributions into the Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

HISTORY: *SOURCES: Codes, 1942, § 7392.3; Laws, 1971, ch. 519, § 16; Laws, 1977, ch. 497, § 4; Laws, 1978, ch. 339, § 1; Laws, 1982, ch. 480, § 1; Laws, 1983, ch. 361; Laws, 1998, ch. 331, § 5; Laws, 2002, ch. 562, § 2; Laws, 2004, ch. 572, § 34; Laws, 2007, ch. 606, § 9; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 34; Laws, 2010, ch. 504, § 4; reenacted without change, Laws, 2010, ch. 559, § 33; reenacted without change, Laws, 2011, ch. 471, § 34; reenacted and amended, Laws, 2012, ch. 515, § 34; Laws, 2013, ch. 309, § 15, eff from and after passage (approved March 6, 2013.)*

§ 71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2019]

(1) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and one-half (1/2) of the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(2) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon a notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(3) Each agency of state government shall deposit monthly for a period of twenty-four (24) months an amount equal to one-twelfth of one percent (1/12 of 1%) of the first Six Thousand Dollars ($ 6,000.00) paid to each employee thereof during the next preceding year into the Employment Compensation Revolving Fund that is created in the State Treasury. The Department of Finance and Administration shall determine the percentage to be applied to the amount of covered wages paid in order to maintain a balance in the revolving fund of not less than the amount determined by an actuary through an annual actuarial evaluation. The State Treasurer shall invest all funds in the Employment Compensation Revolving Fund and all interest earned shall be credited to the Employment Compensation Revolving Fund. The reimbursement of benefits paid by the Mississippi Department of Employment Security shall be paid by the Department of Finance and Administration from the Employment Compensation Revolving Fund upon notice from the department; and the Department of Finance and Administration shall issue warrants or may contract for the performance of the duties prescribed by subsections (2) and (3) of this section, and other duties necessarily related thereto.

(4) Any political subdivision of this state shall pay to the department for the unemployment compensation fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of such political subdivision unless it elects to make contributions to the unemployment fund as provided in subsection (9) of this section. The amount required to be reimbursed shall be billed and shall be paid as provided in Section 71-5-357, with respect to similar payments for nonprofit organizations.

(5) Each political subdivision, unless it elects to make contributions to the unemployment compensation fund as provided in subsection (9) of this section, shall establish a revolving fund and deposit an amount equal to two percent (2%) of the first Six

Thousand Dollars ($ 6,000.00) paid to each employee thereof during the next preceding year. However, the department shall by regulation establish a procedure to allow reimbursing political subdivisions to elect to maintain the balance in the revolving fund as required under this paragraph or to annually execute a surety bond to be approved by the department in an amount not less than two percent (2%) of the covered wages paid during the next preceding year.

(6) In the event any political subdivision becomes delinquent in payments due under this chapter, upon due notice, and upon certification of the delinquency by the department to the Department of Finance and Administration, the Department of Revenue, the Department of Environmental Quality and the Department of Insurance, or any of them, or any other agencies of the State of Mississippi that may be indebted to such delinquent political subdivision, such agencies shall direct the issuance of warrants which in the aggregate shall be the amount of such delinquency payable to the department and drawn upon any funds in the State Treasury which may be available to such political subdivision in satisfaction of any such delinquency. This remedy shall be in addition to any other collection remedies in this chapter or otherwise provided by law.

(7) Payments made by any political subdivision under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(8) Any governmental entity shall not be liable to make payments to the unemployment fund with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511, subsection (e), to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

(9) Any political subdivision of this state may elect to make contributions to the unemployment fund instead of making reimbursement for benefits paid as provided in subsections (4) and (5) of this section. A political subdivision which makes this election shall so notify the department, not later than three (3) months after it is officially organized or is otherwise established, and shall be subject to the provisions of Section 71-5-351, with regard to the payment of contributions. A political subdivision which makes this election shall pay contributions equal to two percent (2%) of taxable wages through calendar year 2010, and one percent (1%) of taxable wages thereafter paid by it during each calendar quarter it is subject to this chapter. The department shall by regulation establish a procedure to allow political subdivisions the option periodically to elect either the reimbursement or the contribution method of financing unemployment compensation coverage.

HISTORY: *SOURCES: Codes, 1942, § 7392.5; Laws, 1971, ch. 519, § 17; Laws, 1977, ch. 497, § 5; Laws, 1978, ch. 340, § 1; Laws, 1984, ch. 488, § 274; Laws, 1986, ch. 320; Laws, 1993, ch. 353, § 1; Laws, 1993, ch. 397, § 1; Laws, 1995, ch. 507, § 3; Laws, 2004, ch. 572, § 35; Laws, 2007, ch. 556, § 1; Laws, 2007, ch. 606, § 10; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 35; Laws, 2010, ch. 504, § 5; reenacted without change, Laws, 2010, ch. 559, § 34; reenacted and amended, Laws, 2011, ch. 471, § 35; reenacted without change, Laws, 2012, ch. 515, § 35, eff from and after July 1, 2012.*

§ 71-5-361. Period, election, and termination

(1) Except as provided in subsection (3) of this section, 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.

(2) Except as otherwise provided in subsection (3) of this section:

(a) An employing unit (other than a state hospital, state institution of higher learning, state or state agency or other political subdivision or instrumentality) except as provided in subsections (b) and (c) of this subsection, shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages of One Thousand Five Hundred Dollars ($ 1,500.00) or more in any calendar quarter and that there were no twenty (20) days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, or four (4) or more in the case of nonprofit organizations, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(b) An agricultural employer as defined under Section 71-5-11, subsection H(4)(a) shall cease to be an agricultural employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay for agricultural employment wages as defined in Section 71-5-11, subsection I(6) of Twenty Thousand Dollars ($ 20,000.00) in any calendar quarter of the preceding calendar year and that there were no twenty (20) days, each day being in a different week, within such calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this chapter, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(c) A domestic employer, as defined in Section 71-5-11, subsection H(4)(b), shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages for domestic employment of One Thousand Dollars ($ 1,000.00) or more in any calendar quarter of the preceding calendar year, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(d) For the purpose of this subsection, the two (2) or more employing units mentioned in Section 71-5-11, subsection H(5) or (6), shall be treated as a single employing unit. The department may, of its own motion, cancel and terminate the effect of registrations for purposes of its accounting records in cases where it has found that employing units, duly registered as covered employers under the chapter, have

died, ceased business or removed from the state without applying for termination of coverage, provided that the rights of claimants for benefits shall not be affected thereby.

(3) (a) An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject thereto for not less than two (2) calendar years shall, with the written approval of such election by the department or the executive director, 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 1 of any calendar year subsequent to such two (2) calendar years only if it files with the department, on or before the thirty-first day of May of such year, a written application for termination of coverage thereunder.

(b) 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 by an employer for all purposes of this chapter for not less than two (2) calendar years. Upon 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 1 of any calendar year subsequent to such two (2) calendar years only if, prior to the thirty-first day of May of such year, such employing unit has filed with the department a written notice to that effect.

(4) (a) Prior to January 1, 1978, any political subdivision of this state may elect to cover under this chapter, for a period of not less than two (2) calendar years, services performed by employees in all of the hospitals and institutions of higher learning, as defined in Section 71-5-11, subsection M or N, operated by such political subdivision.

Election is to be made by filing with the department a notice of such election at least thirty (30) days prior to the effective date of such election. The election may exclude any services described in Section 71-5-11, subsection I(5). Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (b) and (c) of Section 71-5-357.

(b) Prior to January 1, 1978, the provisions in Section 71-5-511, subsection (g) with respect to benefit rights based on service for state and nonprofit institutions of higher learning shall be applicable also to service covered by an election under this section.

(c) Prior to January 1, 1978, the amounts required to be paid in lieu of contributions by any political subdivision under this section shall be billed and payment made as provided in subsections (b) and (c) of Section 71-5-357.

(d) Prior to January 1, 1978, an election under this section, after having been in effect for not less than two (2) calendar years, may be terminated by filing with the department written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed on and after that date.

HISTORY: *SOURCES: Codes, 1942, § 7393; Laws, 1940, ch. 295; Laws, 1955, Ex. ch. 93, § 1; Laws, 1971, ch. 519, § 9; Laws, 1977, ch. 497, § 6; Laws, 2013, ch. 309, § 16, eff from and after passage (approved March 6, 2013.)*

§ 71-5-363. Interest on past due contributions

Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent (1%) per month from and after such date until payment plus accrued interest is received by the Department, provided that the Department may prescribe fair and reasonable general rules pursuant to which such interest shall not accrue during the first calendar year that any employer is subject to this chapter. Interest collected pursuant to this section shall be paid into the special employment security administration fund established by Section 71-5-114.

HISTORY: *SOURCES: Codes, 1942, § 7423; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9a; Laws, 1958, ch. 533, § 7a; Laws, 1968, ch. 561, § 3a; Laws, 1982, ch. 383, § 2, eff from and after July 1, 1982.*

§ 71-5-365. Failure to make reports and pay contributions

If any employer fails to make and file any report as and when required by the terms and provisions of this chapter or by any rule or regulation of the Department for the purpose of determining the amount of contributions due by him under this chapter, or if any report which has been filed is deemed by the executive director to be incorrect or insufficient, and such employer, after having been given notice by the executive director to file such report, or a corrected or sufficient report, as the case may be, shall fail to file such report within fifteen (15) days after the date of such notice, the executive director may (a) determine the amount of contributions due from such employer on the basis of such information as may be readily available to him, which said determination shall be prima facie correct, (b) assess such employer with the amount of contribution so determined, to which amount may be added and assessed by the executive director in his discretion, as damages, an amount equal to ten percent (10%) of said amount, and (c) immediately give notice to such employer of such determination, assessment, and damages, if any, added and assessed, demanding payment of same together with interest, as herein provided, on the amount of contributions from the date when same were due and payable. Such determination and assessment by the executive director shall be final at the expiration of fifteen (15) days from the date of such notice thereof demanding payment, unless:

(a) Such employer shall have filed with the department a written protest and petition for a hearing, specifying his objections thereto. Upon receipt of such petition within the fifteen (15) days allowed, the department shall fix the time and place for a hearing and shall notify the petitioner thereof. At any hearing held before the department as herein provided, evidence may be offered to support such determination and assessment or to prove that it is incorrect, and the Department shall have all the power provided in Sections 71-5-137 and 71-5-139. Immediately after such hearing a final decision in the matter shall be made by the Department, and any contributions or deficiencies in contributions found and determined by the Department to be due shall be assessed and

paid, together with interest, within fifteen (15) days after notice of such final decision and assessment, and demand for payment thereof by the department shall have been sent to such employer.

(b) The department, in its discretion, determines on the basis of information submitted by the employer that such assessment should be amended and adjusted to reflect the correct amount of taxes.

Sixty (60) days after the due date of the contributions, together with interest and damages, or upon issuance of a warrant, whichever occurs first, the department, in its discretion, may assess an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due as damages for failure to pay.

HISTORY: *SOURCES: Codes, 1942, § 7424; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9b; Laws, 1958, ch. 533, § 7b; Laws, 1968, ch. 561, § 3b; Laws, 1991, ch. 511, § 2; Laws, 1995, ch. 507, § 4; Laws, 2007, ch. 606, § 11, eff from and after July 1, 2007.*

§ 71-5-367. Collection by warrant

If an employer shall file a report in proper form and in proper amount, but shall fail to pay the amount of contributions shown to be due thereby at the time of such filing, or if an employer shall fail to pay any assessment as provided and made under Section 71-5-365 within fifteen (15) days after such assessment has become final as herein provided, the department may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such employer as has defaulted in the payment of such contributions or assessments, which may be found within his county, for the payment of the amount thereof, together with interest, damages, if any, assessed for failure to make and file a report or a corrected or sufficient report, and an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due, in the discretion of the department, as damages for failure to pay, if not already assessed under Section 71-5-365 and the costs of executing the warrant and to return such warrant to the department, and to pay to it the money collected by virtue thereof on the date specified therein. The department shall cause to be delivered to the clerk of the circuit court a copy of such warrant issued to the sheriff. Such clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such copy is filed. Thereupon the amount of such warrant so filed and entered shall become a lien upon the title to and interest in all real and personal property, including choses in action against negotiable instruments not past due, of the employer against whom the warrant is issued in the same manner as a judgment duly enrolled in the office of such clerk. Any such liens shall cover all contributions, interest and damages owed to the department from previous, current and future periods until the expiration of such lien or until the amount of the lien is fully satisfied. Such judgment shall not be a lien upon the property of the employer for a period of more than seven (7) years from the date of filing of the notice of the tax lien for failure to pay contributions, damages and interest unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the employer for a period of seven (7) years from the date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times

the department may refile notices of tax liens. The sheriff shall proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply; and for his services in executing the warrant the sheriff shall be entitled to the same fees, which he may collect in the same manner.

The department may elect to issue the warrant directly to the circuit clerk of any county of this state for enrollment upon the judgment rolls of the county. In such case, the clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such warrant is filed. The lien shall have the same effect and remedies as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply.

All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

HISTORY: *SOURCES: Codes, 1942, § 7425; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9c; Laws, 1958, ch. 533, § 7c; Laws, 1968, ch. 561, § 3c; Laws, 1995, ch. 507, § 5; Laws, 1996, ch. 464, § 2; Laws, 2000, ch. 508, § 1; Laws, 2013, ch. 309, § 8, eff from and after passage (approved March 6, 2013.)*

§ 71-5-369. Jeopardy assessment and warrant

If the Department has just cause to believe and does believe that the collection of contributions from an employer will be jeopardized by delay, it may assess such contributions immediately, together with interest and other amounts provided by this chapter, and may immediately issue a jeopardy warrant under its official seal, directed to the sheriff of any county of said state. The sheriff shall, immediately upon receipt of such jeopardy warrant, file with the clerk of the circuit court of his county a copy thereof, and thereafter both the clerk and the sheriff shall proceed in accordance with the provisions of Section 71-5-367.

HISTORY: *SOURCES: Codes, 1942, § 7426; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9d; Laws, 1958, ch. 533, § 7d; Laws, 1968, ch. 561, § 3d, eff from and after July 1, 1968.*

§ 71-5-371. Liability of sheriff for failure to execute warrant

If any sheriff shall fail to return any warrant directed to him as herein provided on the return day thereof, the Department shall be entitled to recover judgment against the sheriff and the sureties on his official bond for the amount of the warrant and all costs, with lawful interest thereon until paid, together with ten per centum (10%) of the full amount thereof as damages, to be recovered by suit against the sheriff and his sureties by the Department. If any sheriff shall falsely make a nulla bona return on any warrant directed to him as herein provided, the Department shall be entitled to recover judgment against the sheriff and the sureties on his official bond for such amount as he could reasonably have made under such warrant and all costs, together with lawful interest thereon until paid, together with ten per centum (10%) thereon as damages, to be recovered by a suit against the sheriff and his sureties by the Department.

HISTORY: *SOURCES: Codes, 1942, § 7427; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9e; Laws, 1958, ch. 533, § 7e; Laws, 1968, ch. 561, § 3e, eff from and after July 1, 1968.*

§ 71-5-373. Defaulting employer

An employer liable for contributions under the provisions of this chapter who fails to make and file his returns and reports as required, or who fails to pay any contributions when due under the provisions of this chapter, shall forfeit his right to do business in this state until he complies with all the provisions of this chapter and until he enters into a bond with sureties, to be approved by the Department, in an amount not to exceed all contributions estimated to become due by said employer under the provisions of this chapter for any three-month period, conditioned to comply with the provisions of this chapter, and to pay all contributions legally due or to become due by him. The Department may proceed by injunction to prevent the continuance of said business, and any temporary injunction enjoining the continuance of such business shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

HISTORY: *SOURCES: Codes, 1942, § 7428; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9f; Laws, 1958, ch. 533, § 7f; Laws, 1968, ch. 561, § 3f, eff from and after July 1, 1968.*

§ 71-5-375. Contributions a lien

The contributions required by this chapter shall be a lien upon the property of any employer subject to its provisions who shall sell out his business or stock of goods, or who shall quit business, or whose property used or acquired in the business shall be sold under voluntary conveyance or under foreclosure, execution, attachment, distraint, or other judicial proceedings. Such employer shall, within ten (10) days before the happening of any of the above contingencies, be required to file such reports as the Department shall prescribe and to pay the contributions required by this chapter with respect to wages payable for employment up to the date of the happening of such contingency. The purchaser or successor in business shall withhold sufficient of the purchase money to cover the amount of contributions due and unpaid, until such time as such employer shall produce a receipt from the Department showing that the contributions have been paid or a certificate that no contributions are due. If such purchaser or successor shall fail to withhold purchase money as above provided, and the contributions shall not be paid within the ten (10) days specified above, such purchaser or successor shall be personally liable for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner.

HISTORY: *SOURCES: Codes, 1942, § 7429; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9g; Laws, 1958, ch. 533, § 7g; Laws, 1968, ch. 561, § 3g; Laws, 1983, ch. 362, eff from and after passage (approved March 16, 1983).*

§ 71-5-377. Priorities under legal dissolutions or distributions

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, but on a parity with claims for wages of not more than Two Hundred and Fifty Dollars ($ 250.00) to each claimant, earned within six (6) months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposals, 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 therein for taxes due and owing this state.

HISTORY: *SOURCES: Codes, 1942, § 7430; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9h; Laws, 1958, ch. 533, § 7h; Laws, 1968, ch. 561, § 3h, eff from and after July 1, 1968.*

§ 71-5-379. Collection by suit

If, after due notice, an employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the Department, and this remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law. An employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions 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 of claims for benefits under this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7431; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9i; Laws, 1956, ch. 533, § 7i; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.*

§ 71-5-381. No injunction allowed to restrain collection

No injunction shall be awarded by any court or judge to restrain the collection of contributions required by this chapter or to restrain the enforcement of this chapter. The provisions of section 11-13-11, shall not apply to contributions required by this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7432; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9j; Laws, 1958, ch. 533, § 7j; Laws, 1968, ch. 561, § 3j, eff from and after July 1, 1968.*

§ 71-5-383. Refunds

The Department is authorized and empowered to refund, without interest, such contributions, interest, and penalties as it may determine were paid erroneously by an employer, or may make or authorize an adjustment thereof in connection with subsequent contribution payments, provided the employer shall make written application for such refund or adjustment within three (3) years to the last day of the calendar year in which the services of individuals in employment, with respect to which such contributions were erroneously paid, were performed. For like cause and within the same period, adjustment or refund may be made on the Department's own initiative.

HISTORY: *SOURCES: Codes, 1942, § 7433; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9k; Laws, 1958, ch. 533, § 7k; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.*

§ 71-5-385. Requesting permission to file reports in special format; regulations; penalty

Any employer may request permission to file unemployment compensation wage and contribution reports in a special format. If the request is approved by the Department, the employer must file the wage and contribution reports in accordance with regulations established by the Department. Failure to follow established regulations may result in a penalty of up to Five Hundred Dollars ($500.00) each calendar quarter for each employer connected with the report.

HISTORY: *SOURCES: Laws, 1998, ch. 491, § 3, eff from and after July 2, 1998.*

§ 71-5-387. Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act

(1) Indian tribe(s) as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe(s), subject to this chapter shall pay contributions under the same terms and conditions as all other subject employers, unless such Indian tribe elects to pay into the State Unemployment Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Tribal unit(s) means any subdivision, subsidiary or business enterprise wholly owned by any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA) or any combination of any such subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA).

(3) Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in Section 71-5-357 pertaining to nonprofit organizations subject to this chapter, except the tribe may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units or by combinations of individual tribal units. Any tribal unit not making such election, shall pay contributions as described in Sections 71-5-351 through 71-5-355.

(4) Payments in lieu of contributions shall be made in accordance with the provisions of Section 71-5-357.

(5) Failure of the Indian tribe or tribal unit to post any bond as required by this chapter or to make payments in lieu of contributions if so elected by the tribe or tribal unit, as provided in subsection (3) of this section, including assessments of interest and penalty, within ninety (90) days of mailing or transmittal of the first delinquency notice to the last known address, shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Section 71-5-357, for the following tax year, unless payment in full is received before January 1 of the next tax year.

(6) Any Indian tribe that loses the option to make payments in lieu of contributions, as provided in subsection (5) of this section, may have such options reinstated if, after a period of one (1) year, all contributions have been made timely and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain unpaid.

(7) Failure of the Indian tribe or any tribal unit thereof to make required payments, reimbursements or contributions whichever may apply, including assessments of interest and penalty, after all collection activities deemed necessary by the Department have been exhausted, may cause services performed for such tribe to not be treated as "employment" for purposes of Section 71-5-11.

(8) If any Indian tribe fails to post any bond as required by this chapter or make payments required under this chapter, including contributions, reimbursements or assessments of interest and penalty, within ninety (90) days of the mailing or transmittal of a final notice, the Department shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(9) The Department may determine that any Indian tribe that loses coverage under subsection (7) of this section, may again have services performed for such tribe included as "employment" for purposes of Section 71-5-11 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(10) Notices of payment and reporting delinquency to any Indian tribe or tribal unit shall include information that failure to make full payment within the prescribed time frame:

(a) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act (FUTA);

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

(c) May cause the Indian tribe to be excepted from the definition of "employer," as provided in Section 71-5-11, and services in the employ of the Indian tribe, as provided in Section 71-5-11, to be excepted from "employment."

(11) Benefits based on service performed in employment with an Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, shall be payable in the same amount, on the same terms and subject to the same conditions, as benefits payable on the basis of other service subject to this chapter.

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

(13) Any non-FUTA exclusions, that are by reference included in this section, shall not apply to Indian tribes if federal law requires coverage of such services.

HISTORY: *SOURCES: Laws, 2002, ch. 562, § 3, eff from and after July 1, 2002.*

§ 71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality

(1) For the purposes of this section, the following terms shall have the respective meanings ascribed by this section:

(a) "Claimant agency" means the Mississippi Department of Employment Security.

(b) "Debtor" means any individual, corporation or partnership owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any sum due and owing any claimant agency, including costs, court costs, fines, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

(d) "Department" or "Department of Revenue" means the Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund which the department determines to be due any individual taxpayer, corporation or partnership.

(2) The collection remedy authorized by this section is in addition to and is not substitution for any other remedy available by law.

(3) (a) A claimant agency may submit debts in excess of Twenty-five Dollars ($ 25.00) owed to it to the department for collection through setoff, under the procedure established by this section, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon the request of a claimant agency, the department shall set off any refund, as defined herein, against the sum certified by the claimant agency as provided in this section.

(4) (a) Within the time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and certify the amount of debt or debts owed by each such debtor.

(b) If a debtor identified by a claimant agency is determined by the department to be entitled to a refund of at least Twenty-five Dollars ($ 25.00), the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. The Department of Revenue shall send the excess amount to the debtor within a reasonable time after such excess

is determined. At the time of the transfer of funds to a claimant agency pursuant to this paragraph (b), the Department of Revenue shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to this paragraph (b) and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for such a hearing must be sent, and the fact that the failure to apply for such a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return or a joint refund, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing of such notice, he will have waived his opportunity to contest the setoff.

(c) Upon receipt of funds transferred from the Department of Revenue pursuant to paragraph (b) of this subsection, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

(d) The claimant agency shall pay the Department of Revenue a fee, not to exceed Seventeen Dollars ($ 17.00) in each case in which a tax refund is identified as being available for offset. Such fees shall be deposited by the Department of Revenue into a special fund hereby created in the State Treasury, out of which the Legislature shall appropriate monies to defray expenses of the Department of Revenue in employing personnel to administer the provisions of this section.

(5) (a) When the claimant agency receives a protest or an application in writing from a taxpayer within thirty (30) days of the notice issued by the Department of Revenue, the claimant agency shall set a date to hear the protest and give notice to the taxpayer through the United States Postal Service or electronic digital transfer of the date so set. The time and place of such hearing shall be designated in such notice and the date set shall not be less than fifteen (15) days from the date of such notice. If, at the hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may be made. The claimant agency shall give notice to the debtor of its final determination as provided in paragraph (c) of this subsection.

(b) No issues shall be reconsidered at the hearing which have been previously litigated.

(c) If any debtor is dissatisfied with the final determination made at the hearing by the claimant agency, he may appeal the final determination to the circuit court of the county in which the main office of the claimant agency is located by filing notice of appeal with the administrative head of the claimant agency and with the clerk

of the circuit court of the county in which the appeal shall be taken within thirty (30) days from the date the notice of final determination was given by the claimant agency.

(6) (a) Upon final determination of the amount of the debt due and owing by means of hearing or by the taxpayer's default through failure to comply with timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account and credit such amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting if the refund which was set off, including the amount of the refund to which the debtor was entitled prior to the setoff, the amount of the debt due and owing, the amount of the collection fee paid to the Department of Revenue, the amount of the refund in excess of the debt which was returned to the debtor by the Department of Revenue, and the amount of the funds transferred to the claimant agency in excess of the debt determined to be due and owing at a hearing, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the Department of Revenue in excess of the amount of debt finally found to be due and owing.

(7) (a) Notwithstanding the provision that prohibits disclosure by the Department of Revenue of the contents of taxpayer records or information and notwithstanding any other confidentiality statute, the Department of Revenue may provide to a claimant agency all information necessary to accomplish and effectuate the intent of the section.

(b) The information obtained by claimant agency from the Department of Revenue in accordance with the provisions of this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized confidential information by an agent or employee of the Department of Revenue.

HISTORY: *SOURCES: Laws, 2005, ch. 400, § 2; Laws, 2009, ch. 492, § 138; Laws, 2013, ch. 309, § 9, eff from and after passage (approved March 6, 2013.)*

§ 71-5-391. Use of administrative funds for payment of fees associated with receipt of electronic payments

The executive director of the department may use available administrative funds for payment of fees associated with receipt of electronic payments made to the department. In the event the fees are charged to an employer through a payment process external to the department, amounts not to exceed the charges for the electronic transaction may be credited to the employer and used as an offset to future indebtedness.

ARTICLE 9. UNEMPLOYMENT COMPENSATION FUND

§ 71-5-451. Establishment and control [Repealed effective July 1, 2019]

There is established as a special fund, separate and apart from all public monies or funds of this state, an Unemployment Compensation Fund, which shall be administered by the department exclusively for:

(a) All contributions collected under this chapter;

(b) Interest earned upon any monies in the fund;

(c) Any property or securities acquired through the use of monies belonging to the fund;

(d) All earnings of such property or securities;

(e) All monies credited to this state's account in the Unemployment Trust Fund pursuant to the Social Security Act, 42 USCS, Section 1104; and

(f) By way of reimbursement in accordance with Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (84 Stat. 711). All monies in the fund shall be mingled and undivided.

HISTORY: *SOURCES: Codes, 1942, § 7394; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(a); Laws, 1964, ch. 448, § 1(a); Laws, 1971, ch. 519, § 10; Laws, 1982, ch. 383, § 3; Laws, 2004, ch. 572, § 36; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 36; reenacted without change, Laws, 2010, ch. 559, § 35; reenacted without change, Laws, 2011, ch. 471, § 36; reenacted without change, Laws, 2012, ch. 515, § 36, eff from and after July 1, 2012.*

§ 71-5-453. Accounts and deposits

The department shall be the treasurer and custodian of the fund, and shall administer such fund in accordance with the directions of the department, and shall issue its warrants upon it in accordance with such regulations as the department shall prescribe. The department shall maintain within the fund three (3) separate accounts: (a) a clearing account, (b) an unemployment trust fund account, and (c) a benefit payment account. All monies payable to the fund, upon receipt thereof by the department, shall be immediately deposited in the clearing account. Refunds payable pursuant to Section 71-5-383 may be paid from the clearing account by the department. Transfers pursuant to Section 71-5-114 of all interest, penalties and damages collected shall be made to the Special Employment Security Administration Fund as soon as practicable after the end of each calendar quarter. Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be deposited into the Workforce Investment and Training Holding Account as described in this section. All other monies in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the Unemployment Trust Fund account for the State of Mississippi, 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 monies in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, monies in the clearing and benefit accounts may be deposited by 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 department shall be liable for the faithful performance of its duties in connection with the Unemployment Compensation Fund under this chapter. A Workforce Investment and Training Holding Account shall be established by and maintained under the control of the Mississippi Department of Employment Security. Contributions collected pursuant to the provisions in this chapter for the Workforce Enhancement Training Fund, State Workforce Investment Fund and the Mississippi Works Fund shall be transferred from the clearing account into the Workforce Investment and Training Holding Account on the same schedule and under the same conditions as funds transferred to the Unemployment Compensation Fund. Such funds shall remain on deposit in the holding account for a period of thirty (30) days. After such period, Workforce Enhancement Training contributions shall be transferred to the appropriate Mississippi Community College Board Treasury Account by the department. The State Workforce Investment contributions shall be transferred to the State Workforce Investment Board bank account established by the department, and the department shall have the authority to deposit and disburse funds from the State Workforce Investment Board bank account as directed by the State Workforce Investment Board. The Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Treasury Account for the Mississippi Works Fund. Such transfers shall occur within fifteen (15) days after the funds have resided in the Workforce Investment and Training Holding Account for thirty (30) days. One (1) such transfer shall be made monthly, but the department, in its discretion, may make additional transfers in any month. In the event such funds transferred are subsequently determined to be erroneously paid or collected, or if deposit of such funds is denied or rejected by the banking institution for any reason, or deposits are unable to clear drawer's account for any reason, the funds must be reimbursed by the recipient of such funds within thirty (30) days of mailing of notice by the department demanding such refund, unless funds are available in the Workforce Investment and Training Holding Account. In that event such amounts shall be immediately withdrawn from the Workforce Investment and Training Holding Account by the department and re-deposited into the clearing account.

HISTORY: *SOURCES: Codes, 1942, § 7395; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(b); Laws, 1964, ch. 448, § 1(b); Laws, 1982, ch. 383, § 4; Laws, 2005, ch. 437, § 3; Laws, 2013, ch. 309, § 10; Laws, 2014, ch. 504, § 3; Laws, 2016, ch. 302, § 3, eff from and after passage (approved Mar. 21, 2016.)*

§ 71-5-455. Withdrawals

Monies shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that monies credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Section 71-5-457. No monies in the Unemployment Compensation Fund shall be used to pay interest on any funds that might be borrowed for the purposes of this chapter, but any such interest that might be due shall be paid from other sources. The department shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amount standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Such sums shall be immediately deposited by the department in some bank within this state in an account to be known as the "benefit payment account," which shall be under the control of the department and on which said benefit payment account the department or its duly authorized representative is authorized to draw and issue its checks in payment of benefits to individuals entitled thereto under this chapter. Expenditures of such monies in the benefit account and benefit payment 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 shall bear the signature of the department's duly authorized agent for that purpose.

The department shall be subject to the applicable laws pertaining to security of public fund deposits as set forth in Sections 27-105-5 and 27-105-6.

HISTORY: *SOURCES: Codes, 1942, § 7396; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(c); Laws, 1964, ch. 448, § 1(c); Laws, 1984, ch. 301, § 3; Laws. 1994. ch. 303. § 3; Laws. 2013. ch. 309. § 11, eff from and after passage (approved March 6, 2013.)*

§ 71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2019]

(1) Except as otherwise provided in subsection (5), money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to the Social Security Act, 42 USCS Section 1103, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the Legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which:

(i) The aggregate of the amounts credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, during the same twelve-month period and the thirty-four (34) preceding twelve-month periods exceeds.

(ii) The aggregate of the amounts obligated pursuant to this section and charged against the amounts credited to the account of this state during such thirty-five (35) twelve-month periods. For the purposes of this section, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited andwhich are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.

(2) Money credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this section.

(3) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such

appropriation and, upon requisition, shall be deposited in the Employment Security Administration Fund, from which such payments shall be made. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(4) The thirty-five-year limitation provided in this section is no longer in force, effective October 1, 1991.

(5) Notwithstanding subsection (1), monies credited with respect to federal fiscal years 1999, 2000 and 2001 shall be used by the department solely for the administration of the unemployment compensation program.

HISTORY: *SOURCES: Codes, 1942, § 7396.5; Laws, 1958, ch. 536, § 1(d); Laws, 1964, ch. 448, § 1(d); Laws, 1971, ch. 519, § 11; Laws, 1975, ch. 393; Laws, 1981, ch. 321, § 1; Laws, 1983, ch. 357; Laws, 1984, ch. 301, § 4; Laws, 1991, ch. 449 § 1; Laws, 1998, ch. 372, § 1; Laws, 2004, ch. 572, § 37; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 37; reenacted without change, Laws, 2010, ch. 559, § 36; reenacted without change, Laws, 2011, ch. 471, § 37; reenacted without change, Laws, 2012, ch. 515, § 37, eff from and after July 1, 2012.*

§ 71-5-459. Management of funds upon discontinuance of unemployment trust fund

The provisions of Sections 71-5-451 through 71-5-459, 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 and of money credited pursuant to Section 903 of the Social Security Act, as amended, 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 Department, in accordance with the provisions of this chapter, provided that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest bearing obligations of the United States of America, the State of Mississippi, and of any county; consolidated school district, supervisors district road bonds, and municipal bonds of counties, cities, and towns of Mississippi; federal land bank bonds and home owners loan corporation bonds; Yazoo and Mississippi Delta Levee District bonds; Mississippi Levee District bonds; municipal bonds of cities with a population of one hundred thousand (100,000) and over located in the states of Louisiana, Texas, Arkansas, Alabama, Georgia, Florida, and Tennessee; and provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under direction of the Department.

HISTORY: *SOURCES: Codes, 1942, § 7397; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(e); Laws, 1964, ch. 448, § 1(e), eff from and after passage (approved June 6, 1964).*

ARTICLE 11. BENEFITS

§ 71-5-501. Payment

Wages earned for services defined in Section 71-5-11(I)(15)(g), irrespective of when performed, shall not be included for purposes of determining eligibility under Section 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor shall any benefits with respect to unemployment be payable under Section 71-5-505 on the basis of such wages. All benefits shall be paid through employment offices or such other agency or agencies as the department may, by regulation, designate, in accordance with such regulations as the department may prescribe. The department may, by regulation, prescribe that benefits due and payable to claimants who die prior to the receipt or cashing of benefits checks may be paid to the legal representative, dependents, or next of kin, of the deceased as may be found by it to be equitably entitled thereto, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the decedent.

HISTORY: *SOURCES: Codes, 1942, § 7373; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2a; Laws, 1952, ch. 383, § 1a; Laws, 1956, ch. 404, § 1a; Laws, 1958, ch. 533, § 1a; Laws, 1968, ch. 561, § 1a; Laws, 1971, ch. 519, § 1; Laws, 2002, ch. 562, § 4; Laws, 2013, ch. 309, § 17, eff from and after passage (approved March 6, 2013.)*

§ 71-5-503. Weekly benefit amount

An individual's weekly benefit amount for a benefit year shall be one-twenty-sixth (1/26) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, computed to the next lower multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00).

On or before June 15 of each year, the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported on contribution reports pursuant to the regulations of the department for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. Sixty percent (60%) of this amount, rounded to the nearest dollar, shall constitute the maximum "weekly benefit amount" paid to any individual whose benefit year commences on or after July 1 of such year and prior to July 1 of the next following year; provided however, that the maximum weekly benefit amount shall not exceed Two Hundred Ten Dollars ($ 210.00) for any benefit year that begins on or after July 1, 2002, and shall not exceed Two Hundred Thirty Dollars ($ 230.00) for any benefit year that begins on or after July 1, 2008, and shall not exceed Two Hundred Thirty-five Dollars ($ 235.00) for any benefit year that begins on or after July 1, 2009. The minimum weekly benefit amount for the individual shall be Thirty Dollars ($ 30.00). If an individual's weekly benefit amount would compute to less than the said minimum, then such individual would be entitled to no benefits.

An individual's weekly benefit amount, as determined at the beginning of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

The Mississippi Department of Employment Security, with the assistance of the United States Department of Labor, is directed to generate actuarially sound models for computation of weekly benefit amounts. Such models shall include scenarios for increasing the weekly benefit amounts at each increment from the minimum to the maximum amount and the impact such increments would have on the Unemployment Compensation Fund. Such report shall be provided to the Mississippi Legislature on or before December 31, 2008.

HISTORY: *SOURCES: Codes, 1942, § 7374; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2b; Laws, 1952, ch. 383, § 1b; Laws, 1956, ch. 404, § 1b; Laws, 1958, ch. 533, § 1b; Laws, 1968, ch. 561, § 1b; Laws, 1971, ch. 519, § 2; Laws, 1974, ch. 570, § 1; Laws, 1976, ch. 382; Laws, 1979, ch. 465, § 3; Laws, 1982, ch. 349, § 2; Laws, 1983, ch. 364, § 1; Laws, 1984, ch. 438; Laws, 1986, ch. 316, § 1; Laws, 1988, ch. 322, § 2; Laws, 1991, ch. 511, § 3; Laws, 1995, ch. 507, § 6; Laws, 1998, ch. 423, § 1; Laws, 2001, ch. 413, § 1; Laws, 2008, 1st Ex Sess, ch. 43, § 1; reenacted and amended, Laws, 2010, ch. 559, § 37; Laws, 2011, ch. 471, § 38; Laws, 2012, ch. 515, § 38, eff from and after July 1, 2012.*

§ 71-5-505. Weekly compensation for unemployment

(1) For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such week which is in excess of Forty Dollars ($ 40.00). Such individuals must have been totally unemployed or part totally unemployed for a waiting period of one (1) week during which he earned less than his weekly benefit amount plus Forty Dollars ($ 40.00). Such benefit for a benefit year effective on or after October 1, 1983, if not a multiple of One Dollar ($ 1.00), shall be computed to the next lower multiple of One Dollar ($ 1.00). Provided, however, that remuneration for “inactive duty training” or “unit training assembly” payable to such eligible individual who is a member of any of the reserve components, or remuneration for jury duty pursuant to a lawfully issued summons therefor payable to such eligible individual, shall not be considered wages which serve to reduce the otherwise payable benefit amount.

In determining whether an eligible individual is unemployed during a week, the date of commencing a shift shall determine the week for which the earnings are deducted.

(2) However, the one-week waiting period described herein shall be waived if the President of the United States declares a major disaster with regard to individual assistance in accordance with Section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act. The department, in its discretion, shall have the authority to noncharge an employer account for any benefits paid for unemployment due directly to such disaster, but only in those counties and/or areas identified by the disaster area for individual assistance.

HISTORY: *SOURCES: Codes, 1942, § 7375; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2c; Laws, 1952, ch. 383, § 1c; Laws, 1956, ch. 404, § 1c; Laws, 1958, ch. 533, § 1c; Laws, 1968, ch. 561, § 1c; Laws, 1979, ch. 381; Laws, 1983, ch. 364, § 2; Laws, 1984, ch. 498, § 1; Laws, 1991, ch. 511, § 4; Laws, 1999, ch. 306, § 1; Laws, 2007, ch. 606, § 12; Laws, 2013, ch. 309, § 12, eff from and after passage (approved March 6, 2013.)*

§ 71-5-506. Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(a) Unemployment compensation is subject to federal, state and local income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code;

(d) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The Department shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld in accordance with the priorities established in regulations developed by the Department.

HISTORY: *SOURCES: Laws, 1996, ch. 464, § 1, eff from and after July 1, 1996.*

§ 71-5-507. Duration

Any otherwise eligible individual shall be entitled during any benefit year to a total amount of regular benefits equal to twenty-six (26) times his weekly benefit amount or one-third (1/3) of his total wages for insured work paid during his base period, whichever is the lesser. Provided, that for a benefit year effective prior to October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($ 1.00), it shall be computed to the next higher multiple of One Dollar ($ 1.00); and for a benefit year effective on or after October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($ 1.00), it shall be computed to the next lower multiple of One Dollar ($ 1.00). An individual's total amount of regular benefits as determined at the beginning of his benefit year shall constitute his total amount of regular benefits throughout such benefit year.

HISTORY: *SOURCES: Codes, 1942, § 7376; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2d; Laws, 1952, ch. 383, § 1d; Laws, 1956, ch. 404, § 1d; Laws, 1958, ch. 533, § 1d; Laws, 1968, ch. 561, § 1d; Laws, 1971, ch. 519, § 3; Laws, 1983, ch. 364, § 3, eff from and after passage (approved March 16, 1983).*

§ 71-5-509. Seasonal workers

(1) For the purposes of this section, cotton ginning and professional baseball only are classified as seasonal industries.

(2) The term "seasonal worker" means an individual who is employed in a seasonal industry, and who has base period wages paid on and after July 1, 1983, in such seasonal industry, except that the term shall not include workers in such industry where employment continues substantially throughout the year. Any individual who has earnings in a seasonal industry having a seasonal operating period within the limits shown in the first column at the end of this subsection, and who has base period wages earned in such seasonal industry in the nonoperating season of such seasonal industry in an amount equal to the amount specified on the corresponding line of the second column at the end of this subsection, shall be considered as having employment which continues substantially throughout the year and shall not be considered a seasonal worker.

Operating Period of Seasonal Industry	Wages Earned in Seasonal Industry During Nonoperating Period
27-36 Weeks	24 Times Weekly Benefit Amount
6-26 Weeks	30 Times Weekly Benefit Amount

(3) The Department shall prescribe fair and reasonable general rules consistent with this chapter which are applicable to seasonal workers for determining the period or periods during which benefits shall be payable to them. The Department may prescribe fair and reasonable general rules with respect to such other matters relating to benefits for seasonal workers as the Department finds necessary and consistent with the policy and purposes of this chapter.

HISTORY: *SOURCES: [Prior § 71-5-509, Codes, 1942, § 7377, Laws, 1940, ch. 295, repealed by implication by Laws, 1948, ch. 412, § 2] Laws, 1983, ch. 369; Laws, 1986, ch. 319, § 2, eff from and after passage (approved March 13, 1986).*

§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2019]

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

(a) (i) He has registered for work at and thereafter has continued to report to the department in accordance with such regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of the requirements of this subparagraph as to such 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; and

(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services, unless the department determines that:

1. The individual has completed such services; or

2. There is justifiable cause for the claimant's failure to participate in such services.

(b) He has made a claim for benefits in accordance with the provisions of Section 71-5.515 and in accordance with such regulations as the department may prescribe thereunder.

(c) He is able to work, available for work and actively seeking work.

(d) He has been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this subsection:

(i) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

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

(iii) Unless the individual was eligible for benefits with respect thereto, as provided in Sections 71-5-511 and 71-5-513, except for the requirements of this subsection.

(e) For weeks beginning on or before July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than thirty-six (36) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period; and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen (16) times the minimum weekly benefit amount. For benefit years beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount. For 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 begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection H, or Section 71-5-361, subsection (3), with respect to becoming an employer.

(f) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in "employment" as defined in Section 71-5-11, subsection I, and earned remuneration for such service in an amount equal to not less than eight (8) times his weekly benefit amount applicable to his next preceding benefit year.

(g) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361, subsection (4) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher learning (as defined in Section 71-5-11, subsection N) with respect to service performed prior to January 1, 1978, shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic

years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher learning for both such academic years or both such terms.

(h) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that:

(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and provided that subsection (g) of this section shall apply with respect to such services prior to January 1, 1978. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(ii) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(iii) With respect to services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the first of such academic years or terms, or in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(iv) With respect to any services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities as specified in subsection (h)(i), (ii) and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency.

For purposes of this subsection, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(v) With respect to services to which Sections 71-5-357 and 71-5-359 apply, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subsection (h)(i), (ii), (iii) and (iv).

(i) Subsequent to December 31, 1977, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(j) (i) Subsequent to December 31, 1977, benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

(ii) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

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

(k) An individual shall be deemed prima facie unavailable for work, and therefore ineligible to receive benefits, during any period which, with respect to his employment status, is found by the department to be a holiday or vacation period.

(l) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

HISTORY: *SOURCES: Codes, 1972, § 7378; Laws, 1940, ch. 295, § 2; Laws, 1948, ch. 412, § 3; Laws, 1954, ch. 353, § 1; Laws, 1958, ch. 533, § 2; Laws, 1968, ch. 561, § 2; Laws, 1971, ch. 519, § 4; Laws, 1977, ch. 497, § 7; Laws, 1978, ch. 339, § 2; Laws, 1981, ch. 466, § 1; Laws, 1982, ch. 480, § 2; Laws, 1983, ch. 358; Laws, 1984, ch. 498, § 2; Laws, 1990, ch. 417, § 1; Laws, 1994, ch. 357, § 1; Laws, 1995, ch. 507, § 7; Laws, 2004, ch. 572, § 38; Laws, 2007, ch. 606, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 38; reenacted without change, Laws, 2010, ch. 559, § 380; reenacted without change, Laws, 2011, ch. 471, § 39; reenacted without change, Laws, 2012, ch. 515, § 39; Laws, 2013, ch. 309, § 13, eff from and after passage (approved March 6, 2013.)*

§ 71-5-513. Disqualifications [Repealed effective July 1, 2019]

A. An individual shall be disqualified for benefits:

(1) (a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection.

(b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.

(2) For the week, or fraction thereof, with respect to which he willfully makes a false statement, a false representation of fact, or willfully fails to disclose a material fact for the purpose of obtaining or increasing benefits under the provisions of this law, if so found by the department, and such individual's maximum benefit allowance shall be reduced by the amount of benefits so paid to him during any such week of disqualification; and additional disqualification shall be imposed for a period not exceeding fifty-two (52) weeks, the length of such period of disqualification and the time when such period begins to be determined by the department, in its discretion, according to the circumstances in each case.

(3) If the department finds that he has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self- employment (if any) when so directed by the department, such disqualification shall continue for the week in which such failure occurred and

for not more than the twelve (12) weeks which immediately follow such week, as determined by the department according to the circumstances in each case.

(a) In determining whether or not any work is suitable for an individual, the department shall consider among other factors 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 local work in his customary occupation, and the distance of the available work from his residence; however, offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

(b) 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 unfavorable or unreasonable to the individual's work. The department shall have the sole discretion to determine whether or not there has been an unfavorable or unreasonable condition placed on the individual's work. Moreover, the department may consider, but shall not be limited to a consideration of, whether or not the unfavorable condition was applied by the employer to all workers in the same or similar class or merely to this individual;

(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) If unsatisfactory or hazardous working conditions 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. No work shall be considered hazardous if the working conditions surrounding a worker's employment are 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.

(c) Pursuant to Section 303(1) of the Social Security Act (42 USCS 503), the department may conduct drug tests of applicants for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, if such applicant:

(i) Was terminated from employment with the claimant's most recent employer, as defined by Mississippi law, because of the unlawful use of controlled substances; or

(ii) Is an individual for whom suitable work, as defined by Mississippi law, is only available in an occupation (as determined under regulations issued by the U.S. Secretary of Labor) that requires drug testing.

The department may deny unemployment compensation to any applicant based on the result of a drug test conducted by the department in accordance with this subsection. A positive drug test result shall be deemed by the department to be a failure to accept suitable work, and shall subject the applicant to the disqualification provisions set forth in this subsection A(3). During the disqualification period imposed by the department under this subsection, the individual may provide information to end the disqualification period early by submitting acceptable proof to the department of a negative test result from a testing facility approved by the department.

(iii) Pursuant to the provisions set forth in this subsection A(3)(c) of this section, the department shall have the authority to institute a random drug testing program for all individuals who meet the requirements set forth in this section. Moreover, the department shall have the authority to create the necessary regulations, policies rules, guidelines and procedures to implement such a program.

Any term or provision set forth in this subsection A(3)(c) that otherwise conflicts with federal or state law shall be disregarded but shall not, in any way, affect the remaining provisions.

(4) For any week with respect to which the department finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at a factory, establishment or other premises at which he is or was last employed; however, this subsection shall not apply if it is shown to the satisfaction of the department:

(a) He is unemployed due to a stoppage of work occasioned by an unjustified lockout, if such lockout was not occasioned or brought about by such individual acting alone or with other workers in concert; or

(b) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and

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

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the

same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which he has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment compensation benefits, this disqualification shall not apply. Nothing in this subsection contained shall be construed to include within its terms any law of the United States providing unemployment compensation or allowances for honorably discharged members of the Armed Forces.

(6) For any week with respect to which he is receiving or has received remuneration in the form of payments under any governmental or private retirement or pension plan, system or policy which a base-period employer is maintaining or contributing to or has maintained or contributed to on behalf of the individual; however, if the amount payable with respect to any week is less than the benefits which would otherwise be due under Section 71-5-501, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. However, on or after the first Sunday immediately following July 1, 2001, no social security payments, to which the employee has made contributions, shall be deducted from unemployment benefits paid for any period of unemployment beginning on or after the first Sunday following July 1, 2001. This one hundred percent (100%) exclusion shall not apply to any other governmental or private retirement or pension plan, system or policy. If benefits payable under this section, after being reduced by the amount of such remuneration, are not a multiple of One Dollar ($ 1.00), they shall be adjusted to the next lower multiple of One Dollar ($ 1.00).

(7) For any week with respect to which he is receiving or has received remuneration in the form of a back pay award, or other compensation allocable to any week, whether by settlement or otherwise. Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly to the department by the employer for application against the overpayment and credit to the claimant's maximum benefit amount and prompt deposit into the fund; however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year and the calendar quarter in which the overpayment is transmitted to the department, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the department shall be subject to the same procedures for collection as is provided for contributions by Sections 71-5-363 through 71-5-381. Any amount of overpayment not deducted by the employer shall be established as an overpayment against the claimant and collected as provided above. It is the purpose of this paragraph to assure equity in the situations to which it applies, and it shall be construed accordingly.

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the department; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the department by reason of the application of provisions in Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

C. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work or refusal to accept work.

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

D. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week in which they are engaged in the Self-Employment Assistance Program established in Section 71-5-545 by reason of the application of Section 71-5-511(c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

E. Any individual who is receiving benefits may participate in an approved training program under the Mississippi Employment Security Law to gain skills that may lead to employment while continuing to receive benefits. Authorization for participation of a recipient of unemployment benefits in such a program must be granted by the department and continuation of participation must be certified weekly by the participant recipient. While participating in such program approved by the department, availability and work search requirements will be waived. No individual will be allowed to participate in this program for more than twelve (12) weeks in any benefit year. Such participation shall not be considered employment for any purposes and shall not accrue benefits or wage credits. Participation in this training program shall meet the definition set forth in the U.S. Fair Labor Standards Act.

HISTORY: *SOURCES: Codes, 1942, § 7379; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 1; Laws, 1954, ch. 353, § 2; Laws, 1958, ch. 533, § 3; Laws, 1962, ch. 564, § 1; Laws, 1971, ch. 519, § 5; Laws, 1977, ch. 497, § 8; Laws, 1982, ch. 480, § 3; Laws, 1983, ch. 364, § 4; Laws, 1984, ch. 498, § 3; Laws, 1986, ch. 316, § 2; Laws, 1988, ch. 365; Laws, 1994, ch. 303, § 4; Laws, 1996, ch. 464, § 3; Laws, 2001, ch. 405, § 1; Laws, 2004, ch. 572, § 39; Laws, 2007, ch. 606, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 39; reenacted without change, Laws, 2010, ch. 559, § 39; reenacted without change, Laws, 2011, ch. 471, § 40; reenacted and amended, Laws, 2012, ch. 515, § 40, eff from and after July 1, 2012.*

§ 71-5-515. Filing

Claims for benefits shall be made in accordance with such regulations as the Department may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the Department may by regulation prescribe. Each employer shall supply such individuals copies of such printed statements or materials relating to claims for benefits as the Department may by regulation prescribe. Such printed statements or materials shall be supplied by the Department to each employer without cost to him.

HISTORY: *SOURCES: Codes, 1942, § 7380; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4a; Laws, 1964, ch. 442, § 1a.*

§ 71-5-516. Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit

(1) An individual filing a new claim for benefits shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection (7). If any such individual discloses that he owes child support obligations, and is determined to be eligible for benefits, the Department shall notify the child support enforcement agency that the individual has been determined to be eligible for benefits.

(2) The Department shall deduct and withhold from any benefits payable to an individual that owes child support obligations as defined under subsection (7):

(a) The amount specified by the individual to the Department to be deducted and withheld under this subsection, if neither (b) nor (c) is applicable; or

(b) The amount (if any) determined pursuant to an agreement submitted to the Department under Section 454(19)(A)and(B)(i) of the Social Security Act by the child support enforcement agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such benefits pursuant to legal process (as that term is defined in Section 462(e) of the Social Security Act) properly served upon the Department. Transmittal of the information in subsection (b) or (c) by automated means shall constitute proper service of legal process upon the Department.

(3) Any amount deducted and withheld under subsection (2) shall be paid by the Department to the child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For purposes of subsections (1) through (4), the term "benefits" means any compensation payable under this chapter (including amounts payable by the Department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement agency for the administrative costs incurred by the Department under this section which are attributable to child support obligations being enforced by the child support enforcement agency. No administrative costs of either the Department or the child support enforcement agency shall be deducted or withheld by the Department from any benefits payable, however. The amount to be deducted and withheld shall be in an even dollar amount, and the agency shall distribute the support collection in the manner prescribed by Title IV-D of the Social Security Act.

(7) The term "child support obligations" is defined for purposes of this section as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

HISTORY: *SOURCES: Laws, 1982, ch. 480, § 4; Laws, 1986, ch. 332; Laws, 1991, ch. 406, § 1; Laws, 1993, ch. 346, § 1, eff from and after July 1, 1993.*

§ 71-5-517. Initial determination [Repealed effective July 1, 2019]

Upon the taking of a claim by the department, an initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of subsection A(4) of Section 71-5-513, the examiner shall promptly transmit all the evidence with respect to that subsection to the department, which, on the basis of evidence so submitted and such additional evidence as it may require, shall make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. The claimant, his most recent employing unit and all employers whose experience-rating record would be charged with benefits pursuant to such determination shall be promptly notified of such initial determination or any amended initial determination and the reason therefor. Benefits shall be denied or, if the claimant is otherwise eligible, promptly paid in accordance with the initial determination or amended initial determination. The jurisdiction of the department over benefit claims which have not been appealed shall be continuous. The claimant or any party to the initial determination or amended initial determination may file an appeal from such initial determination or amended initial determination within fourteen (14) days after notification thereof, or after the date such notification was sent to his last known address.

Notwithstanding any other provision of this section, benefits shall be paid promptly in accordance with a determination or redetermination, or the decision of an appeal tribunal, the Board of Review or a reviewing court upon the issuance of such determination, redetermination or decision in favor of the claimant (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, as the case may be, or the pendency of any such application, filing or petition), unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with such modifying or reversing redetermination or decision. Any benefits finally determined to have been erroneously paid may be set up as an overpayment to the claimant and must be liquidated before any future benefits can be paid to the claimant. If, subsequent to such initial determination or amended initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination or amended initial determination, the claimant

shall be promptly notified of the denial and the reason therefor and may appeal therefrom in accordance with the procedure herein described for appeals from initial determination or amended initial determination.

HISTORY: *SOURCES: Codes, 1942, § 7381; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4b; Laws, 1964, ch. 442, § 1b; Laws, 1972, ch. 375, § 1; Laws, 1977, ch. 352; Laws, 1986, ch. 316, § 3; Laws, 2004, ch. 572, § 40; Laws, 2007, ch. 606, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 40; reenacted without change, Laws, 2010, ch. 559, § 40; reenacted without change, Laws, 2011, ch. 471, § 41; reenacted without change, Laws, 2012, ch. 515, § 41, eff from and after July 1, 2012.*

§ 71-5-519. Appeals [Repealed effective July 1, 2019]

Unless such appeal is withdrawn, an appeal tribunal appointed by the executive director, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the findings of fact and initial determination or amended initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the executive director unless, within fourteen (14) days after the date of notification of such decision, further appeal is initiated pursuant to Section 71-5-523.

HISTORY: *SOURCES: Codes, 1942, § 7382; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4c; Laws, 1964, ch. 442, § 1c; Laws, 1977, ch. 448; Laws, 2004, ch. 572, § 41; Laws, 2007, ch. 606, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 41; reenacted without change, Laws, 2010, ch. 559, § 41; reenacted without change, Laws, 2011, ch. 471, § 42; reenacted without change, Laws, 2012, ch. 515, § 42, eff from and after July 1, 2012.*

§ 71-5-521. Appeal tribunals

To hear and decide appealed claims, the board of review shall appoint one or more impartial appeal tribunals consisting in each case of either a referee, who shall be selected in accordance with Section 71-5-121, or a body consisting of three (3) members, one (1) of whom shall be a referee, who shall serve as chairman, one (1) of whom shall be a representative of employers, and the other of whom shall serve as a representative of employees. Each of the latter two (2) members shall serve at the pleasure of the board of review and be paid a fee of not more than Twenty Dollars ($ 20.00) per day for active service on such tribunals, plus necessary expenses. Referees shall be paid such salary or per diem as may be determined by the Department, and such expenses as may be allowed by the Department. No person shall participate on behalf of the Department or the board of review in any case in which he is an interested party. The board of review may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

HISTORY: *SOURCES: Codes, 1942, § 7383; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4d; Laws, 1964, ch. 442, § 1d.*

§ 71-5-523. Board of review [Repealed effective July 1, 2019]

The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Board of Review shall permit such further appeal by any of the parties to a decision of an appeal tribunal which is not unanimous, and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Board of Review may remove to itself or transfer

to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the Board of Review shall be heard by a quorum thereof in accordance with the requirements of Section 71-5-519 and within fifteen (15) days after notice of appeal has been received by the executive director. No notice of appeal shall be deemed to be received by the executive director, within the meaning of this section, until all prior appeals pending before the Board of Review have been heard. The Board of Review shall, within four (4) days after its decision, so notify the parties to any proceeding of its findings and decision.

HISTORY: *SOURCES: Codes, 1942, § 7384; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4e; Laws, 1964, ch. 442, § 1e; Laws, 2004, ch. 572, § 42; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 42; reenacted without change, Laws, 2010, ch. 559, § 42; reenacted without change, Laws, 2011, ch. 471, § 43; reenacted without change, Laws, 2012, ch. 515, § 43, eff from and after July 1, 2012.*

§ 71-5-525. Procedure [Repealed effective July 1, 2019]

The manner in which appealed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Board of Review for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with an appealed claim. The department's entire file relative to the appealed claim shall be a part of such record and shall be considered as evidence. All testimony at any hearing upon an appealed claim shall be recorded, but need not be transcribed unless the claim is further appealed.

HISTORY: *SOURCES: Codes, 1942, § 7385; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4f; Laws, 1964, ch. 442, § 1f; Laws, 2004, ch. 572, § 43; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 43; reenacted without change, Laws, 2010, ch. 559, § 43; reenacted without change, Laws, 2011, ch. 471, § 44; reenacted without change, Laws, 2012, ch. 515, § 44, eff from and after July 1, 2012.*

§ 71-5-527. Witness fees

Witnesses subpoenaed pursuant to Sections 71-5-515 through 71-5-533 shall be allowed fees at a rate fixed by the Department. Such fees shall be deemed a part of the expense of administering this chapter.

HISTORY: *SOURCES: Codes, 1942, § 7386; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4g; Laws, 1964, ch. 442, § 1g.*

§ 71-5-529. Appeal to courts [Repealed effective July 1, 2019]

Any decision of the Board of Review, in the absence of an appeal therefrom as herein provided, shall become final ten (10) days after the date of notification; and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this chapter. The department shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the department and designated by it for that purpose or, at the department's request, by the Attorney General.

HISTORY: *SOURCES: Codes, 1942, § 7387; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4h; Laws, 1964, ch. 442, § 1h; Laws, 2004, ch. 572, § 44; Laws, 2007, ch. 606, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 44; reenacted without change, Laws, 2010, ch. 559, § 44; reenacted without change, Laws, 2011, ch. 471, § 45, ; reenacted without change, Laws, 2012, ch. 515, § 45, eff from and after July 1, 2012.*

§ 71-5-531. Court review [Repealed effective July 1, 2019]

Within ten (10) days after the decision of the Board of Review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the plaintiff resides, against the department for the review of such decision, in which action any other party to the proceeding before the Board of Review shall be made a defendant. In cases wherein the plaintiff is not a resident of the State of Mississippi, such action may be filed in the circuit court of the county in which the employer resides, the county in which the cause of action arose, or in the county of employment. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the department or upon such person as the department may designate, and such service shall be deemed completed service on all parties; but there shall be left with the party so served as many copies of the petition as there are defendants, and the department shall forthwith mail one (1) such copy to each such defendant. With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's findings of fact and decision therein. The department may also, in its discretion, certify to such court questions of law involved in any decision. In any judicial proceedings under this section, the findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the circuit court of the county in which the plaintiff resides to the Supreme Court of Mississippi, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review, and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Board of Review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Board of Review shall so order.

HISTORY: *SOURCES: Codes, 1942, § 7388; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4i; Laws, 1964, ch. 442, § li; Laws, 1996, ch. 464, § 4; Laws, 2004, ch. 572, § 45; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 45; reenacted without change, Laws, 2010, ch. 559, § 45; reenacted without change, Laws, 2011, ch. 471, § 46; reenacted without change, Laws, 2012, ch. 515, § 46, eff from and after July 1, 2012.*

§ 71-5-533. Appeal by Department

The Department shall be authorized to appeal from decisions of the board of review involving questions of interpretation of this chapter. Such appeals shall be served upon the other parties to the decision of the board of review and shall be heard by the courts in the manner as provided in Section 71-5-531. Such an appeal by the Department under this section shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the board of review from which the appeal is taken.

HISTORY: *SOURCES: Codes, 1942, § 7389; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4j; Laws, 1964, ch. 442, § 1j.*

§ 71-5-535. Waiver of rights void

Any agreement by an individual to waive, release, or commute his right 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 or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require

or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not less than One Hundred Dollars ($ 100.00) nor more than One Thousand Dollars ($ 1,000.00), or be imprisoned for not more than six (6) months, or both.

HISTORY: *SOURCES: Codes, 1942, § 7434; Laws, 1936, ch. 176; Laws, 1938, ch. 147.*

§ 71-5-537. Limitation of fees

No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the board of review, the Department, their representatives, or by any court or any officer thereof. Any individual claiming benefits in any proceedings before the Department, the board of review, their representatives, or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this section shall, for each such offense, be fined not less than Fifty Dollars ($ 50.00) nor more than Five Hundred Dollars ($ 500.00), or imprisoned for not more than six (6) months, or both.

HISTORY: *SOURCES: Codes, 1942, § 7435; Laws, 1936, ch. 176; Laws, 1938, ch. 147.*

§ 71-5-539. No assignment of benefits; exemptions

Any assignment, pledge or incumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment or any other remedy whatsoever provided for the collection of debt; 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 necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided in this section shall be void. This section does not apply to the deduction from benefits provided by Section 71-5-516.

HISTORY: *SOURCES: Codes, 1942, § 7436; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1982, ch. 480, § 5, eff from and after October 1, 1982.*

§ 71-5-541. Construction [Repealed effective July 1, 2019]

(A) (1) In the administration of this chapter, the department shall cooperate 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 this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act and the Federal-State Extended Unemployment Compensation Act of 1970, all as amended.

(2) In the administration of the provisions of this section, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, the department shall take such actions as may be necessary:

(a) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor; and

(b) To secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal act; and also

(c) To limit the amount of extended benefits paid as may be necessary so that the reimbursement of the federal share of extended benefits paid shall remain at one-half (1/2) of the total extended benefits paid.

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

(1) "Extended benefit period" means a period which:

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

(b) Ends with either of the following weeks, whichever occurs later:

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

(ii) The thirteenth consecutive week of such period.

No extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For weeks beginning after September 25, 1982, there is a "state 'on' indicator" for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding twelve (12) weeks:

(a) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding period of thirteen (13) weeks ending in each of the preceding two (2) calendar years; and

(b) Equaled or exceeded five percent (5%).

The determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (2) did not contain subparagraph (a) thereof, and (ii) the figure "5" contained in subparagraph (b) thereof were "6"; except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a "state 'on' indicator" shall continue to be such week and shall not be determined to be a week for which there is a "state 'off' indicator."

(3) There is a "state 'off' indicator" for a week if, for the period consisting of such week and the immediately preceding twelve (12) weeks, either subparagraph (a) or (b) of paragraph (2) was not satisfied.

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this subsection, means the percentage derived by dividing:

(a) The average number of continued weeks claimed for regular state compensation in this state for weeks of unemployment with respect to the most recent period of thirteen (13) consecutive weeks, as determined by the department on the basis of its reports to the United States Secretary of Labor; by

(b) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such period of thirteen (13) weeks.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

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

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

(a) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 USCS Section 8501-8525) in his current benefit year that includes such week.

For the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(b) Has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week, his benefit year having expired prior to such week; and

(c) (i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965,

and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(ii) Has not received and is not seeking unemployment benefits under the Unemployment Compensation Law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee; however, the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the United States Secretary of Labor approves under Section 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

(9) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section 3304).

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

D. An individual shall be eligible to receiveextended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to such week:

(1) He is an "exhaustee" as defined in subsection B(8) of this section.

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

(3) For a week beginning after September 25, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty- six (26) times the minimum weekly benefit amount.

E. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00); and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00). In no event shall the weekly extended benefit amount payable to an individual be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

F. (1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00), and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($ 1.00), if not a multiple of One Dollar ($ 1.00); or

(b) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

(2) The total extended benefits otherwise payable to an individual who is filing an interstate claim under the interstate benefit payment plan shall not exceed two (2) weeks whenever an extended benefit period is not in effect for such week in the state where the claim is filed.

(3) In no event shall the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

G. (1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection B(4) shall be made by the department, in accordance with regulations prescribed by the United States Secretary of Labor.

H. Extended benefits paid under the provisions of this section which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers.

I. (1) Notwithstanding the provisions of subsections C and D of this section, an individual shall be disqualified for receipt of extended benefits if the department finds that during any week of his eligibility period:

(a) He has failed either to apply for or to accept an offer of suitable work (as defined under paragraph (3)) to which he was referred by the department; or

(b) He has failed to furnish tangible evidence that he has actively engaged in a systematic and sustained effort to find work, unless such individual is not actively engaged in seeking work because such individual is:

(i) Before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty;

(ii) Hospitalized for treatment of an emergency or a life-threatening condition.

The entitlement to benefits of any individual who is determined not to be actively engaged in seeking work in any week for the foregoing reasons shall be decided pursuant to the able and available requirements in Section 71-5-511 without regard to the disqualification provisions otherwise applicable under Section 71-5-541. The conditions prescribed in clauses (i) and (ii) of this subparagraph (b) must be applied in the same manner to individuals filing claims for regular benefits.

(2) Such disqualification shall begin with the week in which such failure occurred and shall continue until he has been employed in each of eight (8) subsequent weeks (whether or not consecutive) and has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly extended benefit amount.

(3) For the purpose of subparagraph (a) of paragraph (1) the term "suitable work" means any work which is within the individual's capabilities to perform, if:

(a) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c) (17) (D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(b) The wages payable for the work equal the higher of the minimum wages provided by Section 6(a) (1) of the Fair Labor Standards Act of 1938 (without regard to any exemption), or the state or local minimum wage; and

(c) The position was offered to the individual in writing or was listed with the state employment service; and

(d) Such work otherwise meets the definition of "suitable work" for regular benefits contained in Section 71-5-513A(4) to the extent that such criteria of suitability are not inconsistent with the provisions of this paragraph (3); and

(e) The individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work contained in Section 71-5-513A(4) without regard to the definition specified by this paragraph (3).

(4) Notwithstanding any provisions of subsection I to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth herein under Section 71-5-513A(4).

(5) The employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in paragraph (3).

(6) An individual shall be disqualified for extended benefits for the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause (as defined in Section 71-5-513A(1)), was discharged for misconduct connected with his work, or refused suitable work (except as provided in subsection I of this section), and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(7) The provisions of paragraphs I(1) through (6) of this section shall not apply to claims for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and during that period the provisions of this chapter applicable to claims for regular compensation shall apply.

J. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

HISTORY: *SOURCES: Codes, 1942, § 7389.5; Laws, 1971, ch. 519, § 15; Laws, 1977, ch. 497, § 9; Laws, 1981, ch. 466, § 2; Laws, 1982, ch. 480, § 6; Laws, 1983, ch. 364, § 5; Laws, 1984, ch. 498, § 4; Laws, 1986, ch. 316, § 4; Laws, 1986, ch. 335; Laws, 1993, ch. 329, § 1; Laws, 2004, ch. 572, § 46; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 46; reenacted without change, Laws, 2010, ch. 559, § 46; reenacted without change, Laws, 2011, ch. 471, § 47; reenacted without change, Laws, 2012, ch. 515, § 47, eff from and after July 1, 2012.*

§ 71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances

(1) Except as otherwise provided in this section, the executive director of the department may waive recovery of benefits paid under this chapter to a person if the person is subsequently found to be ineligible for the benefit and the benefits were paid as a direct result of unemployment caused by a natural disaster which is declared by the President of the United States in accordance with Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. All waivers shall be granted based upon a consistent methodology and shall include consideration of ability to repay and other similar considerations.

(2) The waiver authorized in subsection (1) of this section shall not be granted if:

(a) The individual receiving the benefit is found to be guilty of fraud involving filing for, or receipt of, the benefits; or

(b) The size of fund index (as defined in Section 71-5-355) for the year in which a request for a waiver is made is less than five-tenths (.5).

(3) All waiver requests shall be considered on a case by case basis.

HISTORY: *SOURCES: Laws, 2007, ch. 606, § 2, eff from and after July 1, 2007.*

§ 71-5-545. Self-Employment Assistance Program [Repealed effective July 1, 2019]

(1) Definitions. As used in this section:

(a) "Self-employment assistance activities" means activities (including entrepreneurial training, business counseling, technical assistance and any other requirements set forth by the executive director in regulation) approved by the executive director in which an individual, identified through an established system consistent with the system requirements of Section 303(j)(1)(A) of the Social Security Act (SSA) as likely to exhaust regular unemployment benefits, participates for the purpose of establishing a business and becoming self-employed.

(b) "Self-employment assistance allowance" means an allowance, payable in lieu of, and on the same schedule as, regular benefits and from the unemployment fund established under Section 71-5-451, to an individual participating in self-employment assistance activities who meets the requirements of this section.

(c) "Regular benefits" means benefits payable to an individual under this chapter (including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 USC Chapter 85) excluding emergency unemployment benefits and extended benefits.

(d) "Full-time basis" shall have the meaning contained in regulations prescribed by the executive director who has authority to set, modify and rescind such regulations as are required for the proper and efficient administration of this section.

(e) "SEAP" means the Self-Employment Assistance Program.

(2) Amount of self-employment assistance allowance. The weekly allowance payable under this section to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under Section 71-5-503.

The sum of (a) the allowance paid under this section, and (b) regular benefits paid under this chapter with respect to any benefit year shall not exceed the maximum benefit amount as established by Section 71-5-507 with respect to such benefit year.

(3) Eligibility for self-employment assistance allowance. The allowance described in subsection (1) of this section shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except that:

(a) The requirements of Sections 71-5-511 and 71-5-513 relating to availability for work, active search for work, and refusal to accept work are not applicable to an individual while engaged in establishment of a business;

(b) The requirements of Section 71-5-505 relating to other earnings are not applicable to income earned from self-employment by such individual while engaged in establishment of a business;

(c) An individual who meets the requirements of this section shall be considered to be unemployed under Section 71-5-501 et seq.; and

(d) An individual who fails to participate in self-employment assistance activities as prescribed by this section or by the executive director, or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed, shall be disqualified for any week in which the failure occurs.

(4) Limitation on receipt of self-employment assistance allowances. The aggregate number of individuals receiving the allowance under this section at any time shall not exceed five percent (5%) of the number of individuals receiving regular benefits as defined in Section 71-5-541.

(5) Steering committee membership. The executive director shall appoint a steering committee. Each member of the steering committee shall have equal voting rights on the SEAP Steering Committee. The voting members of the board who are not state employees or state elected officials shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(6) Steering committee purpose. The steering committee shall initially adopt the rules of operation for the SEAP and shall select and certify SEAP training programs. The rules shall be enforced by the department. Rules shall include the continuing role of the steering committee. Participants in training programs that are not certified by the SEAP shall not be paid SEAP benefits and any benefits paid to them shall be considered overpaid and shall be due to be repaid to the department and the Unemployment Trust Fund.

(7) Rules and regulations for operation of SEAP by the Mississippi Department of Employment Security. The executive director shall cause regulations adopted by the SEAP Steering Committee to be adopted by the department and the executive director may adopt other regulations as necessary for proper administration of this section.

(8) Financing costs of self-employment assistance allowances. Allowances paid under this section shall not be charged to employers as provided under provisions of this chapter relating to the noncharging of regular benefits as defined in Section 71-5-541, and shall be used in the computation of the annual unemployment tax rate as noncharges for receipt of unemployment benefits paid by this chapter. Noncharging provisions do not apply to unemployment compensation for federal employees, unemployment compensation for ex-servicemen or unemployment compensation paid to individuals based upon their wages earned with reimbursing employers, except as allowed by Section 71-5-357(b)(iv). In the event federal regulations allow changes to noncharging provisions associated with the SEAP, regulations may be adopted by the SEAP Steering Committee to make such changes as are reasonable and appropriate to the Mississippi program and charging or not charging of SEAP benefits.

(9) **Federal law and regulations.** Nothing in this section or the rules adopted related to this section or any other provision of this chapter is intended to be inconsistent with laws and regulations prescribed by the United States Department of Labor. Any part of this section or this chapter that is determined to not be in conformity with United State Department of labor regulations and applicable federal laws will not be enforced until such time as the deficiencies can be remedied.

(10) **Effective date and termination date.** The provisions of this section will apply to weeks beginning on or after the first Sunday sixty (60) days following passage, or after any plan required by the United States Department of Labor is approved by such department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this section, unless such date is a Saturday in which case the authority shall terminate as of such date.

HISTORY: *SOURCES: Laws, 2012, ch. 515, § 59, eff from and after July 1, 2012.*

Mississippi Code of 1972
TITLE 7. EXECUTIVE DEPARTMENT
CHAPTER 5. GOVERNOR
DIVISION OF JOB DEVELOPMENT AND TRAINING

§ 7-1-355. Administration of specified programs

(1) The Mississippi Department of Employment Security, Office of the Governor, is designated as the sole administrator of all programs for which the state is the prime sponsor under Title 1(B) of Public Law 105-220, Workforce Investment Act of 1998, and the regulations promulgated thereunder, and may take all necessary action to secure to this state the benefits of that legislation. The Mississippi Department of Employment Security, Office of the Governor, may receive and disburse funds for those programs that become available to it from any source.

(2) The Mississippi Department of Employment Security, Office of the Governor, shall establish guidelines on the amount and/or percentage of indirect and/or administrative expenses by the local fiscal agent or the Workforce Development Center operator. The Mississippi Department of Employment Security, Office of the Governor, shall develop an accountability system and make an annual report to the Legislature before December 31 of each year on Workforce Investment Act activities. The report shall include, but is not limited to, the following:

(a) The total number of individuals served through the Workforce Development Centers and the percentage and number of individuals for which a quarterly follow-up is provided;

(b) The number of individuals who receive core services by each center;

(c) The number of individuals who receive intensive services by each center;

(d) The number of Workforce Investment Act vouchers issued by the Workforce Development Centers including:

(i) A list of schools and colleges to which these vouchers were issued and the average cost per school of the vouchers; and

(ii) A list of the types of programs for which these vouchers were issued;

(e) The number of individuals placed in a job through Workforce Development Centers;

(f) The monies and the amount retained for administrative and other costs received from Workforce Investment Act funds for each agency or organization that Workforce Investment Act funds flow through as a percentage and actual dollar amount of all Workforce Investment Act funds received.

Mississippi Code of 1972
TITLE 37. EDUCATION
CHAPTER 153. WORKFORCE TRAINING AND EDUCATION CONSOLIDATION ACT

§ 37-153-1. Short title

This chapter shall be known and may be cited as the "Mississippi Comprehensive Workforce Training and Education Consolidation Act of 2004."

§ 37-153-3. Legislative intent

It is the intent of the Legislature by the passage of Chapter 572, Laws of 2004, to establish one (1) comprehensive workforce development system in the State of Mississippi that is focused on achieving results, using resources efficiently and ensuring that workers and employers can easily access needed services. This system shall reflect a consolidation of the Mississippi Workforce Development Advisory Council and the Mississippi State Workforce Investment Act Board. The purpose of Chapter 572, Laws of 2004, is to provide workforce activities, through a statewide system that maximizes cooperation among state agencies, that increase the employment, retention and earnings of participants, and increase occupational skill attainment by participants and as a result, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the State of Mississippi.

§ 37-153-5. Definitions

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed in this section unless the context clearly indicates otherwise:

(a) "State board" means the Mississippi State Workforce Investment Board;

(b) "District councils" means the Local Workforce Development Councils;

(c) "Local workforce investment board" means the board that oversees the workforce development activities of local workforce areas under the federal Workforce Investment Act.

§ 37-153-7. Mississippi State Workforce Investment Board; membership; duties

(1) There is created the Mississippi State Workforce Investment Board. The Mississippi State Workforce Investment Board shall be composed of forty-one (41) voting members, of which a majority shall be representatives of business and industry in accordance with the federal Workforce Investment Act.

(a) The Governor shall appoint the following members of the board to serve a term of four (4) years:

(i) The Executive Director of the Mississippi Association of Supervisors, or his/her designee;

(ii) The Executive Director of the Mississippi Municipal League;

(iii) One (1) elected mayor;

(iv) One (1) representative of an apprenticeship program in the state;

(v) One (1) representative of labor organizations, who has been nominated by state labor federations;

(vi) One (1) representative of individuals and organizations that has experience with respect to youth activities;

(vii) One (1) representative of the Mississippi Association of Planning and Development Districts;

(viii) One (1) representative from each of the four (4) workforce areas in the state, who has been nominated by the community colleges in each respective area, with the consent of the elected county supervisors within the respective workforce area;

(ix) The chair of the Mississippi Association of Community and Junior Colleges; and

(x) Twenty-one (21) representatives of business owners nominated by business and industry organizations, which may include representatives of the various planning and development districts in Mississippi.

(b) The following state officials shall be members of the board:

(i) The Executive Director of the Mississippi Department of Employment Security;

(ii) The Executive Director of the Department of Rehabilitation Services;

(iii) The State Superintendent of Public Education;

(iv) The Executive Director of the Mississippi Development Authority;

(v) The Executive Director of the Mississippi Department of Human Services;

(vi) The Executive Director of the Mississippi Community College Board; and

(vii The Commissioner of the Institutions of Higher Learning.

(c) The Governor, or his designee, shall serve as a member.

(d) Four (4) legislators, who shall serve in a nonvoting capacity, two (2) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate, and two (2) of whom shall be appointed by the Speaker of the House from the membership of the Mississippi House of Representatives.

(e) The membership of the board shall reflect the diversity of the State of Mississippi.

(f) The Governor shall designate the Chairman of the Mississippi State Workforce Investment Board from among the voting members of the board, and a quorum of the board shall consist of a majority of the voting members of the board.

(g) The voting members of the board who are not state employees shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(2) The Mississippi Department of Employment Security shall establish limits on administrative costs for each portion of Mississippi's workforce development system consistent with the federal Workforce Investment Act or any future federal workforce legislation.

(3) The Mississippi State Workforce Investment Board shall have the following duties:

(a) Develop and submit to the Governor a strategic plan for an integrated state workforce development system that aligns resources and structures the system to more effectively and efficiently meet the demands of Mississippi's employers and job seekers. This plan will comply with the federal Workforce Investment Act of 1998, as amended, the federal Workforce Innovation and Opportunity Act of 2014 and amendments and successor legislation to these acts;

(b) Assist the Governor in the development and continuous improvement of the statewide workforce investment system that shall include:

(i) Development of linkages in order to assure coordination and nonduplication among programs and activities; and

(ii) Review local workforce development plans that reflect the use of funds from the federal Workforce Investment Act, Workforce Innovation and Opportunity Act, the Wagner-Peyser Act and the amendment or successor legislation to the acts, and the Mississippi Comprehensive Workforce Training and Education Consolidation Act;

(c) Recommend the designation of local workforce investment areas as required in Section 116 of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014. There shall be four (4) workforce investment areas that are generally aligned with the planning and development district structure in Mississippi. Planning and development districts will serve as the fiscal agents to manage Workforce Investment Act funds, oversee and support the local workforce investment boards aligned with the area and the local programs and activities as delivered by the one-stop employment and training system. The planning and development districts will perform this function through the

provisions of the county cooperative service districts created under Sections 19-3-101 through 19-3-115; however, planning and development districts currently performing this function under the Interlocal Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may continue to do so;

(d) Assist the Governor in the development of an allocation formula for the distribution of funds for adult employment and training activities and youth activities to local workforce investment areas;

(e) Recommend comprehensive, results-oriented measures that shall be applied to all of Mississippi's workforce development system programs;

(f) Assist the Governor in the establishment and management of a one-stop employment and training system conforming to the requirements of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014, as amended, recommending policy for implementing the Governor's approved plan for employment and training activities and services within the state. In developing this one-stop career operating system, the Mississippi State Workforce Investment Board, in conjunction with local workforce investment boards, shall:

(i) Design broad guidelines for the delivery of workforce development programs;

(ii) Identify all existing delivery agencies and other resources;

(iii) Define appropriate roles of the various agencies to include an analysis of service providers' strengths and weaknesses;

(iv) Determine the best way to utilize the various agencies to deliver services to recipients; and

(v) Develop a financial plan to support the delivery system that shall, at a minimum, include an accountability system;

(g) Assist the Governor in reducing duplication of services by urging the local workforce investment boards to designate the local community/junior college as the operator of the WIN Job Center. Incentive grants of Two Hundred Thousand Dollars ($200,000.00) from federal Workforce Investment Act funds may be awarded to the local workforce boards where the community/junior college district is designated as the WIN Job Center. These grants must be provided to the community and junior colleges for the extraordinary costs of coordinating with the Workforce Investment Act, advanced technology centers and advanced skills centers. In no case shall these funds be used to supplant state resources being used for operation of workforce development programs;

(h) To provide authority, in accordance with any executive order of the Governor, for developing the necessary collaboration among state agencies at the highest level for accomplishing the purposes of this chapter;

(i) To monitor the effectiveness of the workforce development centers and WIN job centers;

(j) To advise the Governor, public schools, community/junior colleges and institutions of higher learning on effective school-to-work transition policies and programs that link students moving from high school to higher education and students moving between community colleges and four-year institutions in pursuit of academic and technical skills training;

(k) To work with industry to identify barriers that inhibit the delivery of quality workforce education and the responsiveness of educational institutions to the needs of industry;

(l) To provide periodic assessments on effectiveness and results of the overall Mississippi comprehensive workforce development system and district councils; and

(m) To assist the Governor in carrying out any other responsibility required by the federal Workforce Investment Act of 1998, as amended and the Workforce Innovation and Opportunity Act, successor legislation and amendments.

(4) The Mississippi State Workforce Investment Board shall coordinate all training programs and funds in the State of Mississippi.

Each state agency director responsible for workforce training activities shall advise the Mississippi State Workforce Investment Board of appropriate federal and state requirements. Each such state agency director shall remain responsible for the actions of his agency; however, each state agency and director shall work cooperatively, and shall be individually and collectively responsible to the Governor for the successful implementation of the statewide workforce investment system. The Governor, as the Chief Executive Officer of the state, shall have complete authority to enforce cooperation among all entities within the state that utilize federal or state funding for the conduct of workforce development activities.

(5) The State Workforce Investment Board shall establish a Rules Committee. The Rules Committee, in consultation with the full board, shall be designated as the body with the sole authority to promulgate rules and regulations for distribution of Mississippi Works Funds created in Section 71-5-353. The State Workforce Investment Board Rules Committee shall develop and submit rules and regulations in accordance with the Mississippi Administrative Procedures Act, within sixty (60) days of March 21, 2016. The State Workforce Investment Board Rules Committee shall consist of the following State Workforce Investment Board members:

(a) The Executive Director of the Mississippi Development Authority;

(b) The Executive Director of the Mississippi Department of Employment Security;

(c) The Executive Director of the Mississippi Community College Board;

(d) The Chair of the Mississippi Association of Community and Junior Colleges;

(e) The Chair of the State Workforce Investment Board;

(f) A representative from the workforce areas selected by the Mississippi Association of Workforce Areas, Inc.;

(g) A business representative currently serving on the board, selected by the Chairman of the State Workforce Investment Board; and

(h) Two (2) legislators, who shall serve in a nonvoting capacity, one (1) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate and one (1) of whom shall be appointed by the Speaker of the House of Representatives from the membership of the Mississippi House of Representatives.

(6) The Mississippi State Workforce Investment Board shall create and implement performance metrics for the Mississippi Works Fund to determine the added value to the local and state economy and the contribution to the future growth of the state economy. A report on the performance of the fund shall be made to the Governor, Lieutenant Governor and Speaker of the House of Representatives annually, throughout the life of the fund.

The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (1)(b)(vi).

The 2014 amendment substituted "forty-one (41)" for "thirty-nine (39)" in (1)(a). rewrote (iv) which read: "One (1) elected county supervisor," substituted "One (1)" for "Two (2)" and made related grammatical changes in (v) and (vi). added (ix). redesignated former (ix) as (x) and therein substituted "Twenty-one (21)" for "Nineteen (1)": added (1)(b)(vii) and made related stylistic changes; deleted former (1)(h). which read: "The Mississippi Department of Employment Security shall be responsible for providing necessary administrative, clerical and budget support for the State Workforce Investment Board"; in (3), added references to "the Workforce Innovation and Opportunity Act of 2014" and "amendments and successor legislation to these acts" or similar language wherever they appear; and added (5) and (6).

§ 37-153-9. Workforce Investment Boards; District Workforce Development Councils affiliated with community colleges

(1) In accordance with the federal Workforce Investment Act of 1998, there shall be established, for each of the four (4) state workforce areas prescribed in Section 37-153-3 (2)(c), a local workforce investment board to set policy for the portion of the state workforce investment system within the local area and carry out the provisions of the Workforce Investment Act.

(2) Each community college district shall have an affiliated District Workforce Development Council. The district council shall be composed of a diverse group of fifteen (15) persons appointed by the board of trustees of the affiliated public community or junior college. The members of each district council shall be selected from persons recommended by the chambers of commerce, employee groups, industrial foundations, community organizations and local governments located in the community college district of the affiliated community college with one (1) appointee being involved in basic literacy training. However, at least eight (8) members of each district council shall be chief executive officers, plant managers that are representatives of employers in that district

or service sector executives. The District Workforce Development Council affiliated with each respective community or junior college shall advise the president of the community or junior college on the operation of its workforce development center/one-stop center.

The Workforce Development Council shall have the following advisory duties:

(a) To develop an integrated and coordinated district workforce investment strategic plan that:

(i) Identifies workforce investment needs through job and employee assessments of local business and industry;

(ii) Sets short-term and long-term goals for industry-specific training and upgrading and for general development of the workforce; and

(iii) Provides for coordination of all training programs, including ABE/ High School Equivalency Diploma, Skills Enhancement and Industrial Services, and shall work collaboratively with the State Literacy Resource Center;

(b) To coordinate and integrate delivery of training as provided by the workforce development plan;

(c) To assist business and industry management in the transition to a high-powered, quality organization;

(d) To encourage continuous improvement through evaluation and assessment; and

(e) To oversee development of an extensive marketing plan to the employer community.

The 2014 amendment substituted "High School Equivalency Diploma " for "GED" in (2)(a)(iii).

§ 37-153-11. Workforce development centers

(1) There are created workforce development centers to provide assessment, training and placement services to individuals needing retraining, training and upgrading for small business and local industry. Each workforce development center shall be affiliated with a separate public community or junior college district.

(2) Each workforce development center shall be staffed and organized locally by the affiliated community college. The workforce development center shall serve as staff to the affiliated district council.

(3) Each workforce development center, working in concert with its affiliated district council, shall offer and arrange services to accomplish the purposes of this chapter, including, but not limited to, the following:

(a) For individuals needing training and retraining:

(i) Recruiting, assessing, counseling and referring to training or jobs;

(ii) Preemployment training for those with no experience in the private enterprise system;

(iii) Basic literacy skills training and high school equivalency education;

(iv) Vocational and technical training, full-time or part-time; and

(v) Short-term skills training for educationally and economically disadvantaged adults in cooperation with federally established employment and training programs;

(b) For specific small businesses, industries or firms within the district:

(i) Job analysis, testing and curriculum development;

(ii) Development of specific long-range training plans;

(iii) Industry or firm-related preemployment training;

(iv) Workplace basic skills and literacy training;

(v) Customized skills training;

(vi) Assistance in developing the capacity for total quality management training;

(vii) Technology transfer information and referral services to business of local applications of new research in cooperation with the University Research Center, the state's universities and other laboratories; and

(viii) Development of business plans;

(c) For public schools within the district technical assistance to secondary schools in curriculum coordination, development of tech prep programs, instructional development and resource coordination; and

(d) For economic development, a local forum and resource center for all local industrial development groups to meet and promote regional economic development.

(4) Each workforce development center shall compile and make accessible to the Mississippi Workforce Investment Board necessary information for use in evaluating outcomes of its efforts and in improving the quality of programs at each community college, and shall include information on literacy initiatives. Each workforce development center shall, through an interagency management information system, maintain records on new small businesses, placement, length of time on the job after placement and wage rates of those placed in a form containing such information as established by the state council.

(5) The Mississippi Community College Board is authorized to designate one or more workforce development centers at the request of affiliated community or junior colleges to provide skills training to individuals to enhance their ability to be employed in the motion picture industry in this state.

§ 37-153-13. State Board for Community and Junior Colleges designated primary support agency; powers

The Mississippi Community College Board is designated as the primary support agency to the workforce development centers. The Mississippi Community College Board may exercise the following powers:

(a) To provide the workforce development centers the assistance necessary to accomplish the purposes of this chapter;

(b) To provide the workforce development centers consistent standards and benchmarks to guide development of the local workforce development system and to provide a means by which the outcomes of local services can be measured;

(c) To develop the staff capacity to provide, broker or contract for the provision of technical assistance to the workforce development centers, including, but not limited to:

(i) Training local staff in methods of recruiting, assessment and career counseling;

(ii) Establishing rigorous and comprehensive local preemployment training programs;

(iii) Developing local institutional capacity to deliver total quality management training;

(iv) Developing local institutional capacity to transfer new technologists into the marketplace;

(v) Expanding the Skills Enhancement Program and improving the quality of adult literacy programs; and

(vi) Developing data for strategic planning;

(d) To collaborate with the Mississippi Development Authority and other economic development organizations to increase the community college systems' economic development potential;

(e) To administer presented and approved certification programs by the community colleges for tax credits and partnership funding for corporate training;

(f) To create and maintain an evaluation team that examines which kinds of curricula and programs and what forms of quality control of training are most productive so that the knowledge developed at one (1) institution of education can be transferred to others;

(g) To develop internal capacity to provide services and to contract for services from universities and other providers directly to local institutions;

(h) To develop and administer an incentive certification program;

(i) To develop and hire staff and purchase equipment necessary to accomplish the goals set forth in this section; and

(j) To collaborate, partner and contract for services with community-based organizations and disadvantaged businesses in the delivery of workforce training and career information especially to youth, as defined by the federal Workforce Investment Act, and to those adults who are in low income jobs or whose individual skill levels are so low as to be unable initially to be aided by a workforce development center. Community-based organizations and disadvantaged businesses must meet performance-based certification requirements set by the Mississippi Community College Board.

REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

This document reflects changes received through May 5, 2017

CONTENTS

CHAPTER 101. PART 101 - REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY 1

INTRODUCTION 1

CHAPTER 200. BENEFIT APPEAL REGULATIONS 2

200.00 Administrative Law Judge Defined. 2
200.01 Filing an Appeal. 2
200.02 Scheduling of Hearings before the Appeals Department. 2
200.03 Disqualification Duties; Reports; Conflicts of Interest:. 4
200.04 Conduct of Hearings. 5
200.05 Disposition without full hearing. 8
200.06 Decisions. 9
201.00 Appeals Pending before Administrative Law Judge and Removed to Board of Review. 9
202.00 Appeals from Decisions of Administrative Law Judges to the Board of Review. 9
202.01 Method of Review. 10
202.02 Appeals by Board of Review of its Own Motion. 10
202.03 Board of Review Decision. 10
202.04 Appeals to Courts.. 11
203.00 Requests to Supply Information from the Records of the Department of Employment Security. 11
204.00 Representation before Administrative Law Judges and Board of Review. 11
205.00 Waiver of Notice and Entry of Appearance. 12
206.00 Records of Decisions of Administrative Law Judges and Board of Review to be Kept. 12
207.00 Precedent Decision. 13

208.00 Responsibility of Parties to Notify the Appeals Department of Address Change. 13
209.00 Notices from the Appeals Department. 14

CHAPTER 300. BENEFIT REGULATIONS **14**

300.00 Filing Initial, Additional and Reopened Claims. 14
301.00 Reconsideration of Initial Determination. 15
302.00 Filing Mass Lay-off Initial Claims. 15
303.00 Filing Weekly Certifications for Benefits. 15
304.00 Reporting Requirements. 15
305.00 Eligibility for Unemployment Benefits. 16
305.01 Registering for Work. 16
305.02 Work Search. 16
305.03 Able and Available. 18
306.00 Lifting Disqualification. 18
307.00 Approved Training. 18
308.00 Misconduct Defined. 19
309.00 Good Cause Defined. 19
309.01 Domestic Violence Exception. 20
309.02 Military Exception. 20
309.03 Temporary Agencies. 20
310.00 Refusal of Work Disqualification. 20
311.00 New Benefit Year Requalification Provision. 21
312.00 School Employee Designated Vacation or Holiday. 21
313.00 Total Unemployment Definition. 21
314.00 Claim Week. 21
315.00 Change of Address. 21
316.00 Employers' responsibility to furnish separation information. 22
317.00 Employers Required to Report Labor Disputes. 22
318.00 Payment of Benefits to Interstate Claimants. 22
318.01 Definitions. 22
318.02 Registration for work. 23
318.03 Benefit Rights for Interstate Claimants. 23
318.04 Claims for Benefits. 23
318.05 Determination of Claims. 24
318.06 Appellate Procedure. 24
318.07 Extension of interstate benefit payments to include claims taken in and for Canada. 24
319.00 Benefits - Deceased Claimants. 25
320.00 Seasonal Industry. 25
321.00 Charging and Non-Charging of Benefits. 27

322.00 Vacation and Holiday Pay. 28

CHAPTER 400. BENEFIT PAYMENT CONTROL REGULATIONS **29**

400.00 Overpayments Generally. 29
401.00 Reporting Earnings While Filing for Benefits. 29
402.00 Criteria for Determining Overpayments (Fraud and Non- Fraud). 29
403.00 Collection of Overpayments. 30
404.00 Disqualification Period Assessed for Fraud. 31
405.00 Interest Accrual. 31
406.00 Prosecution of Fraudulent Overpayments. 31

CHAPTER 500. LEGAL **31**

CHAPTER 600. CONTRIBUTIONS **32**

600.00 First Contribution Payment. 32
600.01 Payment of Contribution. 32
600.02 Transmittal of Contributions Payments. 33
600.03 Overpayment of Contributions. 33
601.00 Wages Defined. 33
601.01 Exclusions. 34
601.02 Items Included. 34
601.03 Private Unemployment Benefit Plans. 36
601.04 Reduction of Commissions, Sales Cancelled in Later Years. 36
601.05 Bonuses in the Form of Securities. 36
601.06 Sales Contest Prize Awards. 36
601.07 Gifts. 36
601.08 Gift to Spouse of Deceased Employee. 36
601.09 Spouse Employed by Corporation Wholly or Principally Owned by Other Spouse. 36
601.10 Spouse Employed by Partnership in Which the Other Spouse Is Partner. 37
601.11 Trustees in Bankruptcy-Compensation Paid To. 37
601.12 Payments Made to Labor Union Representatives for Lost Wages. 37
601.13 “Idle Time” Payments under Minimum Number of Hours Guarantee. 37
601.14 Tips. 37
601.15 Remuneration Covering Salary and Expenses. 37
601.16 Training Courses. 38
601.17 Use of Employer’s Car by Employee. 38
601.18 Payments to Employees Absent on Account of Sickness. 38
601.19 Cash Value of Certain Remunerations. 38

602.00 Employer. 38
602.01 Demonstrators. 39
602.02 Employers Disposing of Business Assets Thereof, Ceasing Business, Etc. 39
602.03 For Profit Corporation Owned by Non-Profit Charitable Organization. 39
602.04 Payroll Records of Predecessor "Employer" Modified Rate of Contribution for Successor. . . . 39
602.05 Successors to Reimbursable Employer Who Become Tax Paying (contributory) Employers by Requirements of the Law. 40
602.06 Reimbursable Employers Who Elect to Become Tax Paying (Contributory). 40
602.07 Predecessor Employers Who Resume Employment. 40
602.08 Status by Voluntary Election. 40
603.00 Employment. 40
603.01 Service in Usual Trade or Business. 42
603.02 Services Excluded from the Definition of Employment (Generally). 42
603.03 Officers and Members of Crews. 43
603.04 Family Services. 43
603.05 Religious, Charitable, Scientific, Literary, and Educational Exemption. 44
603.06 Aliens, Non-Residents and Minors. 44
603.07 Newspaper and Magazine Distributor. 44
603.08 Temporary, Casual and Training Period Workers. 44
603.09 Pieceworkers. 45
603.10 Non-resident Employers. 45
603.11 Services Performed for the United States. 45
603.12 Dredges. 45
603.13 Concessionaires on Vessels on Navigable Water of the United States. 45
603.14 Book Publishing Establishment Owned and Operated by Religious Organizations. 45
603.15 Privately Owned Hospitals. 46
603.16 Privately Owned Colleges. 46
603.17 Newspaper Correspondents. 46
603.18 Newspaper Carrier. 46
603.19 Traveling Salesperson. 46
603.20 Agents of Magazine Publishing and Distributing Companies. 46
603.21 Officers of Parent Corporation Serving Subsidiary Corporation. 47
603.22 Voluntary Coverage of Exempted Employments. 47
603.23 Beneficiaries Employed by Administrator. 47
603.24 Trustees and Estate-Fiduciaries, Receivers, Trustee, Trustees in Bankruptcy, ... 47
603.25 Banks Acting as Trustee, Receiver, Administrator, or Guardian. 47
603.26 Real Estate Agents Managing Real Estate for Owner. 48
603.27 Self-Employed Fishermen. 48
604.00 Records. 48
604.01 Reporting. 49

604.02 Reports of Subsidiary Employing Units. 50
605.00 Determining the Number of Employees. 50
606.00 Computation of Employer Tax Rates. 50
607.00 Political Subdivision Surety Bond. 51
608.00 Reimbursing Employer Payment Liability. 51
609.00 Funding Options. 51
610.00 Temporary Help Firm. 52
611.00 Power of Attorney. 53
612.00 Tax Appeal Regulation. 53
613.00 Contractors and Sub-contractors Must be Reported. 54
614.00 Establishment of Employer Contribution Rate during Pendency of Appeal on Liability Questions. 55

CHAPTER 700. FINANCIAL **55**

700.00 Combining Securities. 55

CHAPTER 800. EMPLOYMENT SERVICES **55**

800.00 Mississippi First Initiative (Senate Bill 2662). 55
800.01 Responsibility of State and Local Government. 56
800.02 Contractor Responsibilities. 56
800.03 Role of the MDES WIN Job Center. 58
800.04 Reporting Requirement. 58

STATUTORY AUTHORITY **59**

CHAPTER 101. PART 101 - REGULATIONS OF THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

INTRODUCTION

The Mississippi Department of Employment Security (hereafter MDES) is a state agency whose primary function is to promote employment security by helping individuals find jobs and obtain necessary vocational guidance, training, and retraining. An important adjunct duty of MDES is to collect unemployment insurance taxes from employers, administer the Unemployment Insurance Benefit Trust Fund, and distribute unemployment insurance benefits to individuals who, through no fault of their own, are temporarily unemployed. This system helps to stabilize Mississippi during times of economic insecurity caused by involuntary unemployment, while at the same time providing long term benefits to the state by creating a highly trained, versatile, and overall more successful workforce.

The law that governs the duties and responsibilities of MDES is known as the "Mississippi Employment Security Law," and is set forth in Sections 71-5-1 to 71-5-541 of the Mississippi Code Annotated. From these statutes, MDES is given the power to adopt, amend, or rescind such rules and regulations as it deems necessary to administer and interpret the Mississippi Employment Security Law. Thus, the following regulations are promulgated in furtherance of this power. They are set forth into the following sections: **Benefit Payment Regulations, Tax Regulations, Benefit Payment Control Regulations, and Benefit Appeal Regulations.**

For purposes of these regulations, the following terms and definitions shall apply:

References to the word **"Agency"** shall mean the Mississippi Department of Employment Security.

References to the word **"Law"** shall mean the "Mississippi Employment Security Law," which is the law that governs the duties and powers of the Mississippi Department of Employment Security. (Sections 71-5-1 to 71-5-541 of the Mississippi Code Annotated)

"ALJ" stands for Administrative Law Judge. The ALJ is the MDES official who presides over unemployment benefit and tax rate appeals.

"WIN Job Center" stands for Workforce Investment Network Job Center. A WIN Job Center is an office that provides convenient, one-stop employment and training services to employers and job seekers. The center combines federal, state, and community workforce programs. These centers are found throughout the state.

Any reference to the word **"Department"** shall mean the Mississippi Department of Employment Security.

CHAPTER 200. BENEFIT APPEAL REGULATIONS

200.00 Administrative Law Judge Defined.

(A) For purposes of the Law, a referee shall be an Administrative Law Judge (ALJ) as used throughout the following Regulations.

(B) Pursuant to and as provided by the Employment Security Act, appealed claims shall be heard and decided by an ALJ.

(C) Pursuant to and as provided by the Law, appeals of ALJ's decisions shall be heard and decided by the Board of Review.

200.01 Filing an Appeal.

(A) Time for Filing: Pursuant to Sections 71-5-517 and 71-5-519 of the Law, an interested party must file an appeal for an initial or amended determination within fourteen (14) days of the date the determination was mailed to the last known address or delivered electronically to the email address on record. If the last day to appeal falls on a Saturday, Sunday, or other legal holiday, or day in which the Agency is closed for business, then the time allowed to appeal shall run until the end of the next business day.

(B) Method of Filing: Appeals shall be filed using methods and procedures the Agency has established. Those methods prescribed by the Agency and new methods that may develop with technological advances and specifically include the following:

(1) delivery by the United States Postal Services to the address provided on the determination or decision being appealed;

(2) faxing to the number provided in the determination or decision being appealed;

(3) in-person at any WIN Job Center;

(4) electronically at the address provided in the determination or decision being appealed; or

(5) telephonically by calling the number provided on the determination or decision being appealed.

200.02 Scheduling of Hearings before the Appeals Department.

(A) Telephone Hearings: Filed appeals will be set for a hearing to be conducted using a telephone conferencing system, unless a request for a Video Conference or In-person Hearing is made and the Department determines it necessary.

(1) In-person Factors: Factors that will be considered prior to granting a request for a Video Conference or In-person Hearing include, but are not limited to, the timeliness of the request, the location of the hearing if held in-person, cost factors for the Agency and the parties, the number of witnesses and/or exhibits to be introduced, credibility issues, sense related issues (i.e. visual appearance), interpreter issues, and any clear and present safety concerns.

(2) Scheduling of a Hearing: Within fifteen (15) days of the receipt of an appeal (barring extraordinary circumstances) the Appeals Department of the Agency (the "Appeals Department"), shall schedule the appeal for a hearing before an ALJ. At least seven (7) days prior to the scheduled hearing date, a Notice of Hearing shall be sent by regular mail or electronically to the parties interested in the determination being appealed.

(3) Contents of the Notice of Hearing:

(a) A statement of the legal authority and jurisdiction under which the proceeding is being conducted;

(b) A reference to the applicable statutes and rules;

(c) A statement of the issues to be decided;

(d) A statement of the time (and if in person the place) of the hearing;

(e) A phone number that the parties must call the day before and leave their phone contact number for the time of the hearing.

(B) Consolidation: If the Agency determines that a number of appeals cases are similar in facts and circumstances, the Agency has the discretion to consolidate the cases. The Agency shall advise the parties to select from their members an individual to act as representative for their side (a claimants' representative and an employers' representative).

(C) Exhibits: A party desiring to offer exhibits as evidence shall provide copies to the Appeals Department and the opposing party which must be post marked, faxed, hand-delivered, or sent by electronic delivery, no less than three (3) days prior to the hearing unless approval for a later date is requested and granted for good cause.

(1) Information submitted to the Agency is not part of the appeals record unless discussed at the hearing and entered in the record. See Section 200.04 (D), Page 11 of these regulations for more on exhibits, evidence, and the record.

(D) Continuances: A request for a continuance must be made no later than three (3) days prior to the scheduled date of the hearing. A request for a continuance must include reasons that constitute good cause for granting the continuance. The need to attend to other business does not constitute

good cause. A request for continuance does not grant a stay of the scheduled hearing. The Appeals Department must affirmatively grant the request or the hearing remains as scheduled. In determining whether there is good cause to grant a continuance, the following factors will be considered:

(1) The amount of time between the receipt of the Notice of Hearing and the request for continuance;

(2) What actions the party requesting the continuance has taken to attend the hearing;

(3) Whether the request for continuance is due to illness or incapacity;

(4) Whether granting the continuance would result in a decision being issued over thirty (30) days after the appeal was filed; and

(5) To the extent the reason is the unavailability of counsel and whether there are other attorneys in the firm that may represent the requesting party.

200.03 Disqualification Duties; Reports; Conflicts of Interest:.

(A) An Administrative Law Judge (ALJ) or Board of Review Member (Board Member) may not participate in the hearing of an appeal in which they have an interest. Challenges to the interest of an ALJ or Board Member who refuses to recuse themselves may be heard and decided by the Chairman of the Board of Review.

(B) Whenever an ALJ is disqualified or it becomes impracticable for the ALJ to continue the hearing, another ALJ may continue with the hearing. If it is shown that substantial prejudice to any party will result, the new ALJ shall start the hearing over with a blank record. Whenever a Board Member is disqualified or it becomes impracticable for the Board Member to continue the hearing review, the remaining Board Members may continue with the review. If it is shown that substantial prejudice to any party will result, the remaining Board of Review members shall disregard prior discussions and start the hearing review over.

(C) Ex parte Communications: An ex parte communication is an off-the- record communication between a presiding ALJ or Board Member and one party to the appeal without the other party's presence. This practice is generally not acceptable. Further, the ALJ and the Board of Review shall maintain independent decision making from one another.

(1) In any adjudicatory proceeding, no Board Member or ALJ authorized to take final action or to make findings of fact and conclusions of law shall communicate directly or indirectly in connection with any issue of fact, law, or procedure, with any party or other persons legally interested in the proceeding, except with proper notice and opportunity for all parties to participate.

(2) This subsection does not prohibit Board Members from:

(a) Communicating in any respect with other Board Members; or

(b) Having the aid and advice of their own staff, counsel or consultants retained by the Board of Review who have not participated and will not participate in the Board of Review proceeding in an advocate capacity.

(3) This subsection does not prohibit any ALJ from:

(a) Communicating in any respect with other members of the Appeals Department; or

(b) Having the aid or advice of those members of her own staff, counsel or consultants retained by the Appeals Department who have not participated and will not participate in the Appeals Department proceeding in an advocate capacity.

200.04 Conduct of Hearings.

(A) The ALJ's duties are to:

(1) preside over and control the hearing;

(2) maintain the official timepiece of the hearing;

(3) administer oaths and affirmations;

(4) rule on the admissibility of evidence;

(5) set the time and place for continued hearings;

(6) when warranted, fix the time for filing evidence, briefs, and other written submissions; and

(7) take other actions authorized by the Law and these Regulations.

(B) Every interested party shall have the right to present evidence and arguments on all relevant and noticed issues during the course of a hearing. This shall be done through the opportunity to testify, call and question witnesses, question or cross examine the other party and their witnesses that testify, present exhibits, and object to the other party's exhibits.

(C) The parties to an appeal, with the consent of the ALJ, may stipulate to facts involved in writing or on the record. The ALJ may decide the appeal on the basis of the stipulated facts or, in their discretion, may proceed with a hearing and take such further evidence as they deem necessary to determine the facts and proper decision.

(D) Evidence (Testimony and Exhibits):

(1) Hearsay evidence may be admitted and weighed accordingly. Generally, evidence will only be admitted and/or given weight if:

a. it meets a hearsay exception, or

b. is from a source normally considered reliable, or

c. is corroborated by other witnesses, or

d. the ALJ otherwise determines that, in his or her opinion, the hearsay may be relied upon considering all of the facts and circumstances.

(2) All testimony shall be under oath. The ALJ shall administer an oath to all witnesses before they testify in a proceeding.

(3) Exhibits to be offered into evidence at the hearing must be submitted as described in 200.02 (D) above. A party or witness must explain what the exhibits are, and then must request the exhibits be entered as evidence. Prior to entering exhibits into the record as evidence, the ALJ will give the other party an opportunity to object to the admission. The ALJ will then decide whether or not to enter the exhibits in as evidence.

(4) Parties should submit all relevant documents prior to the hearing date in accordance with 200.02(D). Further, parties should bring individuals with first-hand knowledge of facts and events regarding the issues to the hearing as witnesses.

(5) When the decision is made, the ALJ will consider only the evidence entered into the record during the hearing, or evidence from which judicial notice is taken.

(6) The ALJ and the Board of Review may take judicial notice of evidence, including Agency generated documents and forms, which shall then become record evidence. Judicial notice for purposes of these regulations is defined as:

(a) that which is commonly known or accepted;

(b) that which is accepted as an authority on a matter especially of a scientific or technical nature;

(c) that which is generated by a Court, Agency or other government body; or (d) that which is the best evidence available to prove or disprove a fact in the case; and (e) such evidence is admissible without being formerly explained and offered by a party.

(7) Facts entered through judicial notice will be indicated as such in the record and/or the decision.

(8) If an appeal is made to the Board of Review, only testimony and exhibits entered into evidence at the hearing, or otherwise submitted by the ALJ with the appeal, will be included in the appeals record forwarded to the Board of Review. Only the record transcript and exhibits before the Board of Review will be submitted to the Courts, including additional evidence, exhibits, and testimony taken by the Board.

(E) Sequestration of Witnesses. All witnesses present, not including any interested party or their designated representative, who has not yet testified in the proceeding before the Board of Review or Appeals Department, may be sequestered at the request of a party or the discretion of the ALJ or Board of Review. Witnesses who have testified, but who may be recalled to testify further may also be sequestered at the request of any party or upon the initiative of the Board of Review or the ALJ.

(F) Subpoenas.

(1) Subpoenas to compel the attendance of witnesses and the production of records for a hearing of an appeal may be issued by a member of the Board of Review or by the ALJ before whom the hearing is scheduled. A subpoena will only be issued if a request showing the necessity for the issuance of the subpoena is made in writing and the ALJ or Board of Review deems it necessary.

(2) Witnesses subpoenaed for hearings before an ALJ or the Board of Review shall be paid a daily witness fee amount, as well as a mileage per diem for in-person hearings according to the rates provided in Section 25-3-41 of the Law.

(3) No witness fee shall be allowed a witness who does not appear at the hearing when called or who is disqualified from testifying. No witness fees or mileage will be paid unless the ALJ or the Chairman of the Board of Review before whom the witness was called to testify certifies the attendance of the witness and the amount of witness fee to which she is entitled. One copy of such witness certificate shall be given to the witness, one transmitted to the Agency, and one copy preserved in the file of the case.

(G) Record: A record shall be kept of the proceedings, which shall include the following:

(1) All applications, pleadings, motions, preliminary and interlocutory rulings, and orders;

(2) Evidence received or considered;

(3) A statement of facts officially noticed;

(4) Offers of proof, objections, and rulings thereon; and

(5) Proposed findings and exceptions, if any;

(6) The decision of the Board of Review and the Appeals Department

The record does not include documents submitted to the Agency prior to an appeal being filed that are not either resubmitted after the appeal is filed or discussed during the hearing.

(H) Other recordings: In order to assure the confidentiality of hearings before an ALJ, no party or participant at a hearing shall be permitted to record such hearing by any means, and the recording made by the ALJ shall be the official record of the proceeding. This prohibition is pursuant to the provisions of Sections 71-5-127 and 71-5-525 of the Law.

(I) [omitted by agency]

(J) Dismissal Due To Behavior. In the event any party or party's representative during a hearing conducts themselves in a manner determined by the ALJ to be disrespectful, and who, after having been warned once to stop, fails to stop, shall be dismissed from the hearing. If, in the ALJ's opinion, justice requires that the party be granted a continuance to obtain another representative, then it shall be granted.

200.05 Disposition without full hearing.

(A) The Board of Review or the Appeals Department may make informal disposition of any adjudicatory proceeding by default when the appealing party or the party with the burden of proof fails to appear at the scheduled hearing. A party shall be deemed to have failed to timely appear at a hearing when the party fails to appear as provided in the notice of hearing, including calling an Appeals Department telephone number or providing in advance a telephone number as required by the notice of hearing, or by failing to be present at the telephone number provided by the party for ten (10) or more minutes past the scheduled start time of the hearing.

(B) Any such default may be set-aside by the Board of Review or Appeals Department for good cause shown. The procedure for good cause hearings is as follows:

(1) No later than fourteen (14) days after the date of the postal or electronic mailing of the decision, upon written request setting forth the reasons for failing to appear, the Appeals Department may provide a good cause hearing to a party that failed to appear at the hearing. If the Appeals Department determines that good cause exists, it will conduct a hearing on the underlying substantive issues. Similarly, upon written request setting forth the reasons for failing to appear at a hearing, the Board of Review may provide a good cause hearing to the appealing party. A hearing on the underlying substantive issues shall be conducted only if the Board of Review determines that good cause exists.

(2) If it is decided that a party did not have good cause for nonappearance, no evidence will be taken on the substantive issues, and the decision previously made will remain unaffected and in force.

200.06 Decisions.

(A) Every decision of the Board of Review and Appeals Department shall be in writing and shall include findings of fact sufficient to inform the parties of the basis for the conclusions of law and the decision. Findings of fact must be supported by substantial evidence in the record.

(B) A copy of the decision shall be promptly mailed via U.S. Mail or electronically to each party to the proceeding and their representative of record. Written notice of the party's rights to appeal to the Board of Review or the courts, and the time within which such action must be taken, shall be given to each party with the decision.

(C) The following statement shall appear on the ALJ's decision: "If an appeal is taken to the Board of Review, such appeal will be considered on the record previously made, and no hearing before the Board will be scheduled."

(D) The Board of Review shall maintain a record of the vote of each member of the Board of Review with respect to the Board of Review decision. If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision setting forth the reasons why it fails to agree with the majority.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

201.00 Appeals Pending before Administrative Law Judge and Removed to Board of Review.

(A) The Chairman of the Board of Review may remove to the Board of Review the proceedings on any claim pending before an ALJ.

(B) Any appeal removed to the Board of Review shall be presented, heard, and decided by the Board of Review in the manner prescribed by the Law and in the preceding and following Regulations.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

202.00 Appeals from Decisions of Administrative Law Judges to the Board of Review.

Any interested party to a decision of an ALJ, adversely affected by the decision, shall have the right to appeal to the Board of Review.

202.01 Method of Review.

(A) The Board of Review may affirm, modify, reverse, or set aside any ALJ decision based on the record previously made by the ALJ. All appeals to the Board of Review shall be heard upon the evidence in the record previously made. The Board of Review, at its discretion, may also consider written arguments or briefs filed by any of the parties.

(B) The Board of Review, in its discretion, may remand any claim that is before it to an ALJ for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the ALJ in the manner prescribed for the conduct of hearings on appeal before the ALJ. Upon the completion of the taking of evidence by an ALJ, pursuant to the direction of the Board of Review, the record of such evidence shall be returned to the Board of Review for a decision. Alternatively, the ALJ may be instructed to issue a decision and in that case, a right of appeal to the Board of Review shall be provided to the parties.

202.02 Appeals by Board of Review of its Own Motion.

(A) Within fourteen (14) days following a decision issued by an ALJ, and in the absence of filing of a notice of appeal by any of the parties, the Board of Review, on its own motion, may order the parties to appear before it for a hearing on the claim or any issue involved.

(B) Such hearing shall be held only after ten (10) days prior notice to the parties, and shall be heard in the manner prescribed for the hearing of appeals from the decision of the ALJ.

202.03 Board of Review Decision.

Any decision of the Board of Review shall become final ten (10) days after the regular U.S. Mail mailing date or electronic transmittal date of the notification. No request by any party for reconsideration by the Board of its decision, made by a standard review of an ALJ's hearing record, shall be considered by the Board.

However, in any case in which the Board of Review conducts a hearing and receives additional evidence, testimony, or hears argument on the issues, any party not present or represented at such a hearing may, not later than ten (10) days after the date of notification of the Board's decision, file with the Board a written request to set aside such decision and reopen the case for further hearings.

Such request shall state the reasons for the party's failure to appear and if the Board of Review determines that the party has made a showing of good cause for his or her failure to appear, it shall reschedule the case for further hearing and its final decision.

202.04 Appeals to Courts.

Within ten (10) days after the decision of the Board of Review has become final (see 202.4), any party who is aggrieved thereby may appeal an action in the Circuit Court of the County in which they reside against the Agency for a review of such decision. The Agency is also authorized to appeal decisions of the Board of Review involving questions of interpretation of the Law. The Agency will provide notice to the parties to the decision, and such an appeal shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the Board of Review from which the appeal is taken.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

203.00 Requests to Supply Information from the Records of the Department of Employment Security.

Requests for information from the records of the Agency by a party to an appeal, or their representative, shall be complied with to the extent necessary for the proper disposition of the claim, in accordance with Section 71-5-127 of the :Law, All such requests shall state the nature of the information desired. Such compliance may include the furnishing of a copy of the record on appeal to a party, which will generally be a recorded copy of the hearing.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

204.00 Representation before Administrative Law Judges and Board of Review.

(A) Any individual may represent themselves, or have a duly authorized representative or counsel in any evidentiary hearing before an ALJ or the Board of Review. Any partnership may be represented by any of its members or its duly authorized representative. Any corporation or association may be represented by an officer or its duly authorized representative.

(B) All fees for representation that are charged to claimants must be approved by the ALJ or the Board of Review, as the case may be, for representation in hearings before them. No fee shall be allowed unless request for such fee shall have been filed with the ALJ or the Board of Review, as the case may be, prior to the adjournment of the hearing.

(C) As authorized in Section 71-5-537 of the Law, the Board of Review hereby approves, subject to the provisions of subsection (4) below, the following charges for representing claimants by persons entitled to charge for such representation by the laws of this State:

(1) For representation in proceedings before an ALJ, not to exceed eighty (80%) per centum of the claimant's weekly benefit amount or thirty dollars ($ 30.00), whichever is greater.

(2) For representation in proceedings before the Board of Review, not to exceed one hundred twenty (120%) per centum of the claimant's weekly benefits amount or fifty dollars ($ 50.00) whichever is greater.

(3) For representation in proceedings in the Circuit Court or the Supreme Court, such fee as may be approved by the Court.

(4) In any case in which the claimant and his or her counsel believe the fee as approved in subsection (1) or (2) above for representation in proceedings before the ALJ or the Board of Review is insufficient, the amount of the fee may be appealed by giving notice in writing to the ALJ or the Board of Review at the hearing and filing within ten (10) days. A sworn statement, signed by the claimant and the counsel, of the facts upon which they base their contention must be presented. The Board of Review will render its final decision on any such appeal on the amount of fee at its next regular meeting after receipt of the sworn statement. In appeals on the amount of fee for representation in proceedings before the ALJ, the Board of Review may request a statement from the ALJ on the reasonableness of the fee being requested.

(5) An appeal on the amount of fee for representation of a claimant shall be entirely separate and apart from and shall have no bearings whatsoever upon the appeal proceedings on the merits of the pertinent claim, decisions, or appeals.

(6) If a party is represented by more than one duly authorized representative at a hearing, only one of them may participate in the hearing. Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

205.00 Waiver of Notice and Entry of Appearance.

Interested parties to whom a notice of any hearing on appeal is required by these Regulations to be given, whether before an ALJ or the Board of Review, may, prior to or at such hearing, waive the requirement of such notice and enter their appearance at such hearing for all purposes. Such waiver and entry of appearance is evidenced by a statement in writing to that effect, or a statement duly recorded, which is made part of the record of the hearing.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

206.00 Records of Decisions of Administrative Law Judges and Board of Review to be Kept.

(A) All decisions of any ALJ and of the Board of Review shall be listed in a minute book and /or electronic file provided for such purpose. Decisions of any ALJ shall be signed by the individual rendering the same, and decisions of the Board of Review shall be signed as "The Board of Review." The minute book or electronic file shall be kept by the Chairman of the Board of Review.

(B) Copies of all decisions of the ALJ and the Board of Review shall be kept on file, via either paper file or electronic file, at the Agency in Jackson, Mississippi. Such decisions shall be open for inspection, without in any manner without revealing the names of any of the parties or witnesses involved. The said decisions shall be numbered, codified, or identified by the Board of Review, or its authorized representative, and in such manner as it shall determine.

(C) For purposes of these regulations, "parties in interest", "interested parties", and "parties interested" shall mean, unless otherwise indicated, the claimant, the Agency, the Claims Examiner whose determination has been appealed, and the claimant's last employer, and any other person whose interests may be proximately affected.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

207.00 Precedent Decision.

(A) The Board of Review, by unanimous vote, may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(B) A legal or policy determination is significant if it establishes a rule of law or policy, resolves an unsettled area of law or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(C) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the Agency.

(D) A precedent decision shall be clearly identified as such and published in such a manner as to make it available for public use. Information identifying any party shall be removed prior to the publications.

(E) The Board shall maintain an index of significant legal and policy determinations made in precedent decisions.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

208.00 Responsibility of Parties to Notify the Appeals Department of Address Change.

(A) It is the responsibility of each party to an appeal before the ALJ or the Board of Review to notify the Appeals Department of any change of name or address. If any party to an appeal has reason to believe that it will be difficult to receive mail or email at the address or email address provided to the Appeals Department, the party shall make the necessary arrangements to insure timely receipt of all correspondence from the Agency.

(B) In any instance where a party alleges failure to receive timely notice of a hearing, or of a decision from the ALJ or Board of Review, it shall be the burden of such party to prove compliance with subsection (A) above.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

209.00 Notices from the Appeals Department.

Any notice of hearing, decision, or continuance properly named, addressed, and mailed or electronically delivered by the Appeals Department and Board of Review to any interested party, and not returned by the U.S. Postal Service or as undeliverable through email, shall create a rebuttable presumption of proper delivery and receipt of such notice or decision.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 300. BENEFIT REGULATIONS

300.00 Filing Initial, Additional and Reopened Claims.

The effective date of an initial claim will be the Sunday preceding the date on which the individual files a claim for benefits by any method provided by the Agency.

If the claim is filed on a Sunday, then the claim will be effective on the Sunday it is filed. If the Agency determines that an individual filed their initial claim at the first available opportunity, the effective date of the claim will be the Sunday prior to the date they became unemployed.

An initial claim for benefits may be backdated to the Sunday proceeding the date the individual became unemployed provided good cause is established, and the individual reports within seven (7) calendar days of the date the first opportunity was afforded by the Agency.

Good cause will be defined as circumstances beyond the control of the person. For the purposes of this paragraph, the first day of unemployment for an individual whose unemployment begins on Saturday or Sunday shall be the following Monday.

In case of a catastrophic occurrence, the Agency will have the authority to waive the time afforded the applicant to file a claim.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

301.00 Reconsideration of Initial Determination.

An initial determination may for good cause be reconsidered if the request is filed within fourteen (14) days from the date such notification was mailed or electronically delivered to an individual's last known address or email address. The Agency has the discretionary authority to consider untimely filed requests made under this regulation if it can be shown there are compelling circumstances which justify a reconsideration such as fraud, misconception of facts or any other reason the Agency deems compelling.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

302.00 Filing Mass Lay-off Initial Claims.

Initial claims for benefits for individuals may be filed in groups for a layoff from the same employer for the same time period of unemployment. The effective date of the claims will be determined by the Agency based on the first day of unemployment, provided the person files in the specified manner, at a designated time, date, and place agreed on by the employer and the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

303.00 Filing Weekly Certifications for Benefits.

A claim for waiting period credit or benefits must be filed by the Friday following the week being claimed, using methods prescribed by the Agency. An exception to this rule can be considered if the individual files their claim within fourteen (14) days of the week being filed, provided no availability issue exists.

If an individual is in a claim series and makes no attempt to file a continued claim for three (3) or more consecutive weeks, no claim for benefits will be allowed until the claim is reopened. A reopened claim is an additional claim without interim employment with a new effective date. The effective date of the reopened claim will be the Sunday prior to the date in which the individual attempted to file another claim.

The Agency will have the authority to deny benefits or waiting period credit for any week which is not properly filed within set guidelines.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

304.00 Reporting Requirements.

Individuals must report to the Agency as directed. Such reporting may be in person or by other methods established by the Agency. Failure to report may result in a denial of benefits.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

305.00 Eligibility for Unemployment Benefits.

An individual must follow the requirements in Mississippi Code Annotated Section 71-5.511 to be eligible for unemployment benefits and to maintain their ongoing eligibility.

305.01 Registering for Work.

In order to receive unemployment benefits an individual must be registered for work through the Agency unless they fall within one the following categories of workers:

1. Temporary layoff of less than four (4) weeks;
2. In Agency approved training;
3. Unemployed due to a Labor Dispute; and/or
4. Individuals who have a specific return to work date.

305.02 Work Search.

In accordance with Mississippi Code Annotated Section 71-5-11, individuals must make an active search for full-time (35 hours or more) work in order to maintain continuing eligibility for unemployment insurance benefits. The Agency defines "actively seeking work" as follows:

1. The individual must register for employment services as prescribed by MDES.
2. The individual must engage in a course of action which is reasonably designed to result in his/her prompt reemployment in suitable full-time work. This includes making contact with at least three (3) employers each week. At least one (1) employer contact must include the submission of an application for employment. Additionally, the work applied for must be appropriate in light of the labor market and the individual's skills and capabilities. An "application for employment" is defined as any completed application or resume submitted to an employer that may reasonably be expected to have an opening for suitable work, either in-person, via mail, or via electronic communication; or any telephonic or in-person interview with an employer that may reasonably be expected to have an opening for suitable work.
3. The individual must make a written list of his/her work search each week and, if requested by MDES, send a copy of this list, other documents, or evidence demonstrating his/her weekly work search activity to MDES, including the name, address and phone number of the employer contacted; and, if contacted via electronic means, the website, email address, or fax number of the employer, the name of the individual contacted, the platform used (employer site, Indeed, Monster, ZipRecruiter, LinkedIn, etc.), and the date of contact.

4. The individual cannot report the same employer contact until three (3) weeks after it was first reported to MDES, unless the employer contact is part of a progressive hiring process.

5. The individual may be deemed to have failed to make a reasonable effort to seek work on his/her own behalf if the individual has willingly followed a course of action to discourage prospective employers from hiring him/her for suitable work. This includes, but is not limited to, failing to return a phone call from an employer or failing to appear for a scheduled interview with an employer without good cause.

   The facts and circumstances in each case shall be considered in determining whether a claimant has made a reasonable effort to search for suitable work. If an individual fails to comply with any of the above stated requirements, the individual shall be disqualified from receiving unemployment benefits for the week or weeks in which the violation or violations occurred. The agency may impose more stringent penalties in situations in which an individual is shown to be a habitual violator of the requirements contained in this regulation.

   Acceptable employer contacts may include, but are not limited to:

   a. Making a self-referral for job openings via the MDES Online Employment Services System through the MDES Web site at www.mdes.ms.gov.

   b. Visiting a local WIN Job Center for staff-assisted job referrals and making employer contacts based on those referrals.

   c. Completing a job application with employers who may reasonably be expected to have openings for suitable work. The job application may be submitted in person, online, by fax, or in any other manner directed by the employer and appropriate for the type of work the individual is seeking.

   d. Mailing a job application and/or resume as instructed by a job notice.

   e. Making in-person visits with employers that may reasonably be expected to have openings for suitable work.

   f. Interviewing with potential employers in person, by telephone, or in any other manner directed by the employer and appropriate for the type of work the individual is seeking.

   g. Attending a job fair and submitting an application or providing a resume to employers in attendance.

The work search requirements for certain individuals may be waived by the Agency for the following reasons: job attached (as defined by the Agency), Jury Duty, Approved Training, Approved Self-Employment Assistance Program, and individuals who are members in good standing of a union that maintains a nondiscriminatory hiring hall, as that term is defined by the Landrum-Griffin Act, and who maintain contact with and use the placement services of the hiring hall. The Agency may also waive this requirement due to other extenuating circumstances as determined by the Agency.

305.03 Able and Available.

Individuals must be able to work and available for work to be eligible for unemployment benefits with respect to any week. If the Department finds that an individual may not be able to work and available for work due to a medical condition, illness or disability, that individual will be required to provide the Department certification from a physician, medical facility, medical practice, physician assistant, or nurse practitioner that includes the following:

1. Whether the individual was advised to leave work;

2. Whether the individual is released to return to their usual work, and if so, the date of release;

3. If the individual is not released to return to their usual work, an explanation of their restrictions.

After the certification is received, the Department will investigate to determine whether the individual is able to work and available for work. If the Department finds that the individual is not able to work and available for work, an appealable decision outlining the Department's decision will be sent to the individual. If the individual fails to return the medical certificate within time period prescribed by the Department, the Department has the discretion to disallow benefits to the individual for failure to return the requested information.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

306.00 Lifting Disqualification.

Some disqualifications require that an individual return to work and earn eight times the Weekly Benefit Amount (8XWBA) in covered employment. The WBA of the benefit year in which the separation occurred must be used to remove this disqualification.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

307.00 Approved Training.

An individual is considered to be in approved training if they are participating in training which will enhance their chances of obtaining employment. Usually, the individual is referred to such training through the Agency. However, if the training is self-funded, and is identical to the training to which applicants are normally referred, they will be considered to be in approved training.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

308.00 Misconduct Defined.

A. For purposes of Mississippi Code Section 71-5-513, misconduct shall be defined as including but not limited to:

1. The failure to obey orders, rules or instructions, or failure to discharge the duties for which an individual was employed;

   a. An individual shall be found guilty of employee misconduct for the violation of an employer rule only under the following conditions:

      i. the employee knew or should have known of the rule;

      ii. the rule was lawful and reasonably related to the job environment and performance; and

      iii. the rule is fairly and consistently enforced.

2. A substantial disregard of the employer's interests or of the employee's duties and obligations to the employer;

3. Conduct which shows intentional disregard -or if not intentional disregard, utter indifference - of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee; or

4. Carelessness or negligence of such degree or recurrence as to demonstrate wrongful intent.

   However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief or the law is not misconduct. Conduct mandated by the law does not include court ordered conduct resulting from claimant's illegal activity; this may be considered misconduct

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

309.00 Good Cause Defined.

If the employment conditions or circumstances leading to claimant's voluntary separation from employment are such that an ordinary prudent employee would leave their employment, the claimant has demonstrated good cause, for the purpose of Mississippi Code Annotated Section 71-5-513. Additionally, claimant must show that after exploring alternatives to quitting, and after making reasonable efforts to preserve their employment, an ordinary prudent person would be compelled to voluntarily quit their employment.

309.01 Domestic Violence Exception.

An individual is disqualified for leaving employment for marital, filial, or domestic circumstances. However, the claim may be allowed if sufficient evidence shows that continuing in the employment would be a detriment to the welfare of the claimant, or the claimant's under-aged dependents, due to domestic violence.

309.02 Military Exception.

An individual is disqualified for leaving employment for marital, filial, or domestic circumstances, however, leaving an employer to accompany a spouse who is on active duty, and has been reassigned from one military assignment to another shall be deemed to be for good cause; provided, however, that a rated employer's account shall not be charged for benefits paid. Reimbursing employers are not entitled to an non-charge under the law.

309.03 Temporary Agencies.

The Agency will have sole discretion to determine if a temporary employer or employee has met the requirements of Section 71-5-511(l) of the Law. In making its determination, the Agency may consider the following factors:

(1) the policy of the temporary agency;

(2) the reasonableness of the policy;

(3) the actions of the temporary agency; and

(4) the actions of the temporary employee.

Upon the completion of an assignment, if the temporary employee contacts the temporary employer and is given a new job assignment, the Agency may examine the suitability of the new assignment under Section 71-5-513 (A)(3)(a) of the Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

310.00 Refusal of Work Disqualification.

An individual is disqualified for the week in which the failure to accept work occurred, and for not more than twelve (12) weeks immediately following such week, as determined by the Agency according to the circumstances in each case. The Agency has the discretion of issuing varying lengths of disqualification. However, a disqualification for refusing an offer of suitable work should not exceed the length of the available suitable work.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

311.00 New Benefit Year Requalification Provision.

An individual who established one (1) benefit year, and received benefits, is not eligible for benefits in the second benefit year unless they have returned to work and earned eight (8) times their previous weekly benefit amount (WBA). These wages must be in covered employment and must be earned after the effective date of the prior benefit year.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

312.00 School Employee Designated Vacation or Holiday.

School employees who are off work for a designated vacation period, such as Christmas holiday or spring break are subject to denial under Section 71-5-511(k) of the Law which provides for denial of benefits during a designated holiday or vacation period. However, if claims are filed by school employees between academic years or terms, such as summer break, they must be adjudicated under Section 71-5-511(h) of the Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

313.00 Total Unemployment Definition.

An individual is considered totally unemployed during any week in which they perform no services and in which no wages are payable to him or her. They are considered part totally unemployed if wages are less than their weekly benefit amount plus forty dollars ($ 40.00) or if they work less than full time. Employment less than thirty-five (35) hours per week will not be considered full time, unless industry standards are considered. Such consideration will be at the discretion of the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

314.00 Claim Week.

An individual's week of total or part-total unemployment shall consist of a calendar week (Sunday through Saturday). If any part of a week falls within a benefit year, the entire week is considered to be in that benefit year.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

315.00 Change of Address.

Each claimant or employer must notify the Agency immediately of any change in their address.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

316.00 Employers' responsibility to furnish separation information.

Upon request of the Agency, each employer or employing unit shall furnish to the Agency information concerning any worker separated from their work with such employer or employing unit, including:

(1) the last day on which such worker was employed;

(2) the reason for their separation from work; and

(3) such other matters as may be requested. Such information shall be furnished to the Agency within the specified time. It will be presumed that employers who fail to furnish such information within the time required have admitted that the individual claiming benefits is not subject to disqualification.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

317.00 Employers Required to Report Labor Disputes.

An employer is required to notify the Agency of cases of unemployment due to a strike, lockout. or other labor dispute. This may be through the WIN Job Center nearest to their place of business or to the state office of the Agency. The notification by employer should include the circumstances surrounding the dispute, including the number of workers affected and a list of workers ordinarily attached to the business or the establishment where such unemployment exists.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

318.00 Payment of Benefits to Interstate Claimants.

Regulations 318.01 through 318.07 shall govern the Agency in its administrative cooperation with other states adopting similar regulations for the payment of benefits to interstate claimants.

318.01 Definitions.

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

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

(B) Interstate claimant means an individual who claims benefits under the unemployment insurance law of one or more liable states, through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Agency finds that this exclusion would create undue hardship on such claimant in specified areas.

(C) State includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(D) Agent State means any state in which an individual files a claim for benefits from another state.

(E) Liable State means any state against which an individual files a claim for benefits through another state.

(F) Benefits mean the compensation payable to an individual, with respect to their unemployment under the unemployment insurance law of any state.

(G) Week of Unemployment includes any week of unemployment as defined in the Law of the liable state from which benefits with respect to such week are claimed.

318.02 Registration for work.

(A) Each interstate claimant shall be registered for work, through any public employment office in the agent state as required by the Law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state provided Mississippi is the liable state and such requirements are not contrary to the provisions of the Mississippi Employment Security Law.

(B) Each agent state shall duly report to the liable state, whether each interstate claimant meets the registration requirements of the agent state.

318.03 Benefit Rights for Interstate Claimants.

If a claimant files a claim against a state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

318.04 Claims for Benefits.

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

(B) Claims shall be filed in accordance with agent state regulations for intrastate claims by established agency methods.

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

(2) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state, provided the same is not inconsistent with the provisions of the Mississippi Employment Security Law.

318.05 Determination of Claims.

(A) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state such facts relating to the claimant's availability for work and eligibility for benefits as are readily determined in and by the agent state.

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

318.06 Appellate Procedure.

(A) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

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

318.07 Extension of interstate benefit payments to include claims taken in and for Canada.

As part of the interstate agreement, the regulations regarding interstate claims shall apply to claims taken in and for Canada.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

319.00 Benefits - Deceased Claimants.

In order to provide for the payment of benefits in cases where the claimant has filed a valid claim and has died before receiving payment, the Agency adopts the following regulations:

(A) Wholly or partially paid benefits due at the time of the claimant's death will be paid to the duly qualified administrator or executor of the estate of the deceased claimant. If an administrator or executor is not appointed, the benefits will be paid to the claimant's heir or heirs at law as determined by the laws of descent and distribution in the State of Mississippi, and supported by appropriate affidavit.

(B) Any benefit checks that have not been cashed that were issued directly to the deceased claimant shall be returned to the Agency for cancellation before any funds shall be paid in lieu of such check.

(C) Any claim for benefits due a deceased claimant by any person as herein provided must be filed with the Agency within ninety (90) days following the death of the claimant; provided, however, the Executive Director, may extend said period.

(D) It is the responsibility of the person claiming payment of benefits due a deceased claimant to request payment of such benefits, and must provide an affidavit setting forth facts upon which the claim is based.

(E) Payments due a deceased claimant that are made by electronic processes will only be issued to the individual requesting said benefits under the guidelines established by the banking industry.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

320.00 Seasonal Industry.

(A) Definitions:

(1) Seasonal industry is

(a) that group of employers classified as "cotton gins" under the four-digit Industrial Classification Code based on the Standard Industrial Classification Manual. If an employer with a different classification has a cotton ginning operation, the Agency will assign such unit a sub-classification for cotton gins.

(b) that group of employers who employ vendors, concessionaires, and people working at jobs providing services at professional baseball stadiums.

(2) Seasonal employment is employment in a seasonal industry within the seasonal operating period, as determined by the Agency.

(3) Seasonal wages are wages paid in seasonal employment as above defined.

(4) Seasonal benefits are benefits based on seasonal wages as above defined.

(5) Non-seasonal employment is employment for which wages paid in such employment carry no seasonal restrictions. This employment may consist of :

(a) Employment in the seasonal industry for which wages are paid outside the seasonal operating period (employment in the seasonal industry and in no other part of an employer's operations).

(b) Employment in any other covered employment as defined in the Law.

(6) Non-seasonal wages are wages paid in non-seasonal employment as defined above.

(7) Non-seasonal benefits are benefits based on non-seasonal wages as defined above.

(B) The seasonal operating period, as determined by the Department:

(1) for the cotton ginning industry, shall be from September 1 through December 31 of each year.

(2) for the professional baseball industry, as defined in A(1)(b), above shall be from April 1 through September 15 of each year.

(C) Employer quarterly reports- Each employer in the cotton ginning industry shall keep separate accounts of wages paid to employees so that the following separate quarterly reports may be made to the Department if appropriate.

(1) Wages paid in the cotton ginning industry inside the seasonal operating period.

(2) Wages paid in the cotton ginning industry outside the seasonal operating period.

(3) Wages paid in any other covered employment.

(D) Professional Baseball Industry Report - Each employer in the professional baseball industry, as defined in A(1)(b) above, shall, within fourteen (14) days from the mailing date or date of electronic delivery of the Notice to Employer of Claim Filed and Request for Information (Form UI-21A) submit to the Agency information as to the type of service performed by the individual, and the period of employment, in order for the Agency to properly administer the seasonal provision of the Law.

(E) (1) Payment of benefits to Seasonal Workers. The weekly benefit amount and the maximum benefit amount of any claimant who is a seasonal worker shall be calculated in the usual manner as prescribed by the Law. Seasonal benefit rights shall be used in payment of such worker's benefits only when the benefits accrue during weeks of unemployment within the seasonal operating period as defined above. Any week which begins within the seasonal operating period shall be deemed to be within the seasonal operating period.

(2) The calculation of a benefit determination for individuals with seasonal cotton ginning wages shall include the amount of "seasonal" benefits which may be payable only for weeks of unemployment occurring within the seasonal operating period, and the amount of benefits based on wages with no seasonal restrictions, if any. Benefits with no seasonal restrictions shall be payable to cotton gin workers for a week of unemployment during the season only if their seasonal benefits have previously been exhausted. Seasonal benefits and benefits with no seasonal restrictions may be payable for weeks of unemployment occurring during the seasonal operating period. Benefits with no seasonal restrictions shall be payable to a seasonal worker for weeks of unemployment occurring outside such period, but shall be based only on wages earned in employment with no seasonal restrictions.

(3) Benefits paid to a seasonal worker and a non-seasonal worker shall be charged to an employer's experience rating in the usual manner as prescribed by Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

321.00 Charging and Non-Charging of Benefits.

(A) Benefits paid to a claimant will be charged or non-charged as set forth in Section 71- 5-355(2) (b)(ii) the Law.

(B) An employer shall be eligible for non-charging as provided in (A) above only when they have furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, whichever is applicable, in the manner and within the time required, by one of the following methods:

(1) The employer has, within ten (10) days from the mailing date or date of electronic delivery of Notice to Employer of Claim Filed and Request for Information (Form UI-21A) to submit to the Agency a written statement showing the date and detailed reason for the separation or the date and details with respect to the refusal of an offer of suitable employment from such employer, whichever is applicable, identifying the individual involved by name and Social Security account number. Failure to furnish such information within the time required will result in the employer being denied eligibility for the relief of charges as provided in the referenced section of the Law.

(2) The employer has ten (10) days from the date of the refusal of an offer of suitable employment to notify the Agency in writing of such refusal, giving the date and details with respect thereto.

(C) When an employer has furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, within the time and in the manner prescribed, a decision regarding the chargeability to the employer's experience rating record will be issued. This determination will be final unless the employer files an appeal within fourteen (14) days from the regular mailing or electronic mailing date or notification of the decision.

The appeal will be heard in accordance with Section 71-5-519 of the Law. After affording all interested parties an opportunity for a fair hearing, a decision will be issued to affirm, modify or reverse the determination. That decision will become final unless within fourteen (14) days after the mailing or notification of such decision an appeal is filed to the Board of Review.

Any decision of the Board of Review will become final ten (10) days after the date of mailing or notification of that decision. Any party may secure judicial review in accordance with Section 71-5-531 of the Law by commencing action in the circuit court. The circuit court to which action should be pursued is that of the county in which the plaintiff resides, or the county in which the action occurred.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

322.00 Vacation and Holiday Pay.

The legislative definition of unemployment specifies that an individual shall be deemed "unemployed" in any week during which they perform no services, and with respect to which no wages are payable to him or her. Vacation and holiday wages flow from services rendered prior to being laid off temporarily or released from employment, and are earned prior to such action. Vacation and holiday pay shall not be deducted from unemployment insurance benefits to which an individual is otherwise entitled.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 400. BENEFIT PAYMENT CONTROL REGULATIONS

400.00 Overpayments Generally.

Any benefits erroneously paid to claimant pursuant to the provisions of Section 71-5-517 of the Law may be set up as an overpayment to the claimant; and must be liquidated before any future benefits can be paid to the claimant. Further, the Agency shall be entitled to reimbursement or repayment of overpayments when benefits were paid to a claimant erroneously for any reason, including but not limited to a re-determination or reversal due to an appeal. However, the Agency shall have the discretion not to setup an overpayment when the Agency deems the overpayment amount to be too small to offset, recoup, or otherwise justify the administrative costs of doing so. The Agency may also have the discretion to write-off an overpayment when the claimant proves total disability according to the Agency's rules and regulations or the Social Security Administration, and in the event of proof of death.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

401.00 Reporting Earnings While Filing for Benefits.

For purposes of determining entitlement to benefits, an individual must report wages as defined by the Law payable to him or her in any week, regardless of whether compensation has been received.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

402.00 Criteria for Determining Overpayments (Fraud and Non- Fraud).

An overpayment of benefits occurs when a person receives benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his/her case, while the claimant was disqualified from receiving benefits, or when the claimant receives benefits and is later found to be disqualified or ineligible due to any reason. Reasons for disqualification and ineligibility may include but are not limited to a re-determination or reversal by the Agency or the courts of a previous decision to award the claimant benefits or failure by the claimant to properly report his/her earnings during the week earned when filing a weekly certification.

For purposes of determining unreported earnings, the Agency will consider the claim week to be Sunday through Saturday. The Agency will not consider holiday pay, vacation pay, severance pay, bonus pay, jury duty, reserve components (week-end drill), unit training assembly (summer camp), loans, cash advances and retroactive wages in the computation of unreported earnings overpayments.

Any person determined to have received an overpayment of benefits for any reason may be liable to the Agency for the repayment of those benefits. The Agency shall also determine whether the overpayment was received by the claimant through fraud committed by the claimant and assess appropriate penalties under such circumstances.

For the purpose of determining fraud, the Agency will consider that (1) a person received benefits, (2) at a time when he/she was ineligible, (3) by reason of a nondisclosure or misrepresentation of a material fact, (4) made by that person or another, and/or (5) had the willful intent to commit fraud or had knowledge of the omitted or misrepresented fact. Fraud may be implied or presumed from the circumstances, such as but not be limited to, failure to report earnings on weekly claims forms, or falsification of any documents. This inference may be overcome by the introduction of contrary evidence. Fraud shall include, but not be limited to the claimant's actual falsification of any documents which will include but not be limited to certification or proof of earnings and doctor's statements.

If the claimant does not report his earnings correctly, but does report at least fifty percent (50%) of his earnings for a particular week, the week would be considered non-fraudulent with a non-fraud overpayment established.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

403.00 Collection of Overpayments.

Pursuant to the authority granted to the Agency by Section 71-5-19(4) of the Law, the Agency shall have the authority or discretion to pursue repayment and collection of overpayments that occurred due to any reason, including overpayments that result from a re-determination by the Agency, or that occur as the result of an appeal within the Agency or to the courts, and irrespective of whether said overpayment resulted from fraud, non.disclosure, or misrepresentation by the claimant. The Agency shall have the authority to pursue collection of all overpayments, including overpayments that result from a re.determination or reversal from an appeal, by the methods or manner as provided in Sections 71-5-363 through 71-5-383 of the Law, for the collection of past-due contributions, also authorized by Section 71-5-19 of the Law. Methods of collection shall include, but not be limited to, cash repayment, offset of future benefits, filing liens, warrants, or suit, garnishment, and interception of state income tax refunds.

Any such judgment, lien or warrant against a person for collection of an overpayment shall be in the form of a seven (7) year renewable lien. Unless action is brought thereon prior to expiration of the lien, the Agency must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the Agency may refile notices of liens for collection of overpayments. The Agency will participate in the Interstate Reciprocal Overpayment Recovery Arrangement, which will include withholding benefits in order to assist other states in collecting overpayments.

Overpayments must be liquidated in accordance with specific program restrictions before future benefits can be paid to the individual.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

404.00 Disqualification Period Assessed for Fraud.

The Agency has the authority to assess disqualifications for a period up to 52 weeks, according to the circumstances of each case. Under this authority the Agency shall impose the following penalties under the stated conditions:

1. For the first fraudulent overpayment received by a claimant a six week disqualification is established for each week up to a total of four such weeks. For five or more fraudulent weeks a fifty-two (52) week disqualification is assessed.

2. For the second or greater fraudulent overpayment received by a claimant within three years of the establishment date of a previous fraudulent overpayment, a twelve week disqualification is established for each week up to a total of four such weeks. For five or more fraudulent weeks a fifty-two (52) week disqualification is assessed.

The disqualification period shall start no later than the week during which the initial determination of such fraudulent overpayment is made.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

405.00 Interest Accrual.

Interest accrues at the rate of one per centum (1%) per month on the unpaid principal balance beginning with the month following the month in which the overpayment is established.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

406.00 Prosecution of Fraudulent Overpayments.

The Agency has the authority to prosecute overpayments due to fraud as defined in Subsection 402.00 above and Section 71-5-19(4) of the Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 500. LEGAL

No applicable Administrative Regulations as of July, 2011.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 600. CONTRIBUTIONS

600.00 First Contribution Payment.

The first contribution payment of an employer who is newly liable for contribution in any year will become due and be payable on or before the last day of the month immediately following the calendar quarter the individual or employing unit became a liable employer.

600.01 Payment of Contribution.

(A) Each quarterly contribution payment shall be based upon wages paid for employment in all pay periods (weekly, biweekly, monthly, semimonthly) ending within the quarter.

(B) The first contribution payment of an employer who becomes newly liable for contributions in any year because of employment performed for such employer within such a year shall include contributions with respect to all wages paid for employment from the first day of the calendar year. Such wages shall be reported in the calendar quarter in which the wages were paid and contributions shall be paid for the quarter in which the wages were paid.

(C) The first contribution payment of an employer who becomes newly liable for contributions by any of the three following methods is due for the quarter in which the wages were paid. Employers establish liability by:

(1) Acquiring the business of an employer;

(2) Employer and/or employer's predecessor(s) who employed one or more workers, acquiring the business of an employing unit whose employment record together with his or her own employment record totals one or more employees on one or more days in each of twenty (20) weeks of the current or last calendar year, regardless of whether the workers were the same person or different in each of the different weeks; and/or

(3) Affiliation with one or more other employing units whose employment record together with his or her employment record totals one or more employees on one or more days in each of twenty (20) weeks of the current or last calendar year.

(D) Contributions shall be due for all wages paid that are subject to this chapter in the calendar year if contributions are due on any part of the wages paid in the calendar year.

(E) With respect to employment, the measure of the contribution is the total amount of wages paid by an employer during each calendar quarter.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

600.02 Transmittal of Contributions Payments.

Payment of contributions sent through the United States mail shall be deemed to have been made as of the date shown by the postmark thereon. All other payments of contributions shall be considered to have been made on date received by the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

600.03 Overpayment of Contributions.

Overpayment of contributions by an employer for one period may be credited on subsequent contributions due.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

601.00 Wages Defined.

(A) Definition

"Wages" means all remuneration for personal services, including commissions and bonuses, and the value of all remuneration in any medium other than cash. The name by which such remuneration is designated is immaterial. Thus, salaries, commissions on sales or on insurance premiums, fees, and bonuses are wages within the meaning of the Law if they are, in fact, remuneration or compensation for services not excluded by the Law. The basis upon which the remuneration is payable or paid, the amount of remuneration, and the time of payment are immaterial in determining whether the remuneration constitutes "wages". Thus it may be paid or payable on the basis of piecework or a percentage of profits; and it may be paid or payable hourly, daily, weekly, monthly, or annually. Facilities or privileges (such as entertainment, cafeterias, restaurants, medical services, so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees, generally are not considered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employee or as a means of promoting the health, good will, contentment, or efficiency of his employees.

(B) Definition of Wages for Tax Purposes

Wages paid in any calendar quarter shall include wages actually or constructively paid for all pay periods ending within the quarter and wages paid during the quarter for services performed in prior quarters or prior years. Wages constructively paid means payments credited to the account of, or set apart for, the wage earner so that they may be drawn upon by him or her at any time although not then actually reduced to possession.

601.01 Exclusions.

Certain exclusions apply as directed by Section 71-5-11 of the Law, however, the plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or implied, by the contract of service.

601.02 Items Included.

The total wages paid by an employer to his or her employees with respect to employment during any calendar year, or any pay period thereof, shall include items actually or constructively paid during that calendar year, or any part thereof.

(A) Items actually paid shall include:

(1) Cash; and

(2) The fair market value, at the time of payment, of all items other than money. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him or her at any time although not then actually reduced to possession.

(B) Items actually or constructively paid shall include:

(1) Cash; and

(2) The fair value, at the time of actual or constructive payment, or all items other than money.

(3) Vacation allowances - Payment to an employee's so-called vacation allowances constitute wages.

(4) Traveling and other expenses - Amounts paid to traveling salespersons or other employees as allowances or reimbursements for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.

(5) Premium on life insurance - Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his or her employees are not wages, if the employee has no option to take the amount of premiums instead of accepting

the insurance and has no equity in the policy (such as the right of assignment or the right to surrender value on termination of his employment).

(6) Deductions - Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the employee at the time of such deduction. It is immaterial that the Law, or any Act of Congress or the law of any state, requires or permits such deduction and the payment of the amount thereof to the United States, a state, or any political subdivision thereof.

(7) Payments by employers into stock bonus or profit-sharing funds -Payments made by an employer into a stock bonus or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

(8) Hiring of individual with his or her equipment - Only remuneration employment is the basis of contributions. Equipment is only rented and its rental value should not be included in the basis for contributions, provided it is accounted for separately. Contributions should be based on the remuneration for services only. In the case of hiring an individual and his or her equipment, such as a truck driver who owns his or her truck, the employer may differentiate between the fair value of the wages and the rental value of the equipment and pay contributions only on the wages.

(9) Pensioned employees-Retirement Pay - Contributions are based only on wages of employees arising out of the performance of service. Employees who have been pensioned or retired by an employer and who perform no service for such former employer are pensioned or retired employees and the remuneration or compensations received by them as pension or retirement pay is not considered wages and should not be included in the payroll upon which contributions are based. However, if a pensioned or retired employee receives any compensation or remuneration distinct from such pensions or retirement pay for any employment, whether occasional, temporary or permanent, such pensioned or retired employee is covered by the Law and his or her earnings must be included in the payroll upon which contributions are based.

C. For all political subdivisions that elect to make contributions under the provisions of either Section 71-5-559 (2)(j), or Section 71-5-357 (b)(iv), the Law provides that the rates specified in those sections, i.e., two percent (2%) and five tenths percent (.5%) respectively, shall be applied to the first seven thousand dollars ($ 7,000) of remuneration paid to each employee in the calendar year, from and after January 1, 1983.

601.03 Private Unemployment Benefit Plans.

Employees covered by private unemployment benefit plans are not thereby excluded from the requirement to be reported and their wages taxed as all other employees described in the Law.

601.04 Reduction of Commissions, Sales Cancelled in Later Years.

Commission on sales made in one calendar year constitutes wages with respect to employment during the calendar year. When a sale made in one calendar year is cancelled in a subsequent calendar year and the commission is deducted from the earnings of the salesperson during the calendar year in which the sale is cancelled, such a reduction in commission is a reduction of the wages of the salesperson for the calendar year in which the services were performed and not for the year in which the sale is cancelled.

601.05 Bonuses in the Form of Securities.

Bonuses in the form of securities are wages and contributions are payable on the fair market value of such securities at the time of transfer.

601.06 Sales Contest Prize Awards.

The cash or fair market value of prizes awarded to salespersons as winners of contests conducted by their employer for the purpose of stimulating the sales of certain products constitute wages upon which contributions are required, and shall be included in the total amount of wages paid, as additional compensation or remuneration, in computing contribution liability.

601.07 Gifts.

Gifts from employers to employees, such as Christmas gifts, directly or indirectly based upon or related to services rendered, constitute wages upon which contributions are payable.

601.08 Gift to Spouse of Deceased Employee.

An amount paid to the widow or widower of a deceased employee in excess of the compensation earned by the decedent in the course of his or her employment and for which the widow or widower renders no services does not constitute wages.

601.09 Spouse Employed by Corporation Wholly or Principally Owned by Other Spouse.

Services performed by the spouse of the sole or principal stockholder of a corporation are not exempt since the corporation and its stockholders are entirely separate and distinct legal entities.

601.10 Spouse Employed by Partnership in Which the Other Spouse Is Partner.

Although the Law excludes from its operation services performed by a spouse in the employ of the other spouse, the exclusion does not apply to the services performed by a spouse of a member of a partnership in the employ of such partnership, since the partnership is a legal entity separate and distinct from the individuals who comprise it.

601.11 Trustees in Bankruptcy-Compensation Paid To.

Compensation paid to trustees in bankruptcy is not subject to the contribution liability imposed under the Law.

601.12 Payments Made to Labor Union Representatives for Lost Wages.

Payments made to labor union representatives for lost wages will not be considered wages for unemployment insurance purposes provided the individual is not otherwise employed by the labor union.

601.13 "Idle Time" Payments under Minimum Number of Hours Guarantee.

Payments made to an employee for "idle time" by a company which guarantees to its employees a minimum number of hours of employment per week and makes payments to them for "idle time" when they do not render services for the minimum number of hours, constitutes wages with respect to employment and the total of such remuneration should be included in the computation of wages for the purpose of determining the amount of contributions.

601.14 Tips.

Tips accounted for by an employee to his or her employer are wages on which contributions are payable.

601.15 Remuneration Covering Salary and Expenses.

Where an employee, such as a salesperson, is paid an amount to cover salary and expenses incurred in the employer's business, the amount constituting wages subject to contribution liability is the total amount paid minus the expenses actually incurred by the salesperson in the employer's business and is accounted for as such by him or her. It is, therefore, necessary for the salesperson to maintain such records as will enable accountability to the employer for the amount of expenses actually incurred, and the employer must keep such records as will show the portions of the total amount paid to the salesperson which represent, respectively, expenses and remuneration for services.

601.16 Training Courses.

Expenses for employees' training courses, paid by the employer, do not constitute wages on which contributions are payable.

601.17 Use of Employer's Car by Employee.

Where an employee keeps a car belonging to his or her employer and at times uses same for his or her own personal use, such use of the car does not constitute wages or remuneration.

601.18 Payments to Employees Absent on Account of Sickness.

Where an employee is absent on account of sickness and he or she is kept on the payroll and wages are paid to him or her, such wages must be reported and contributions paid thereon.

601.19 Cash Value of Certain Remunerations.

If board, lodging, or any other payment in kind, considered as payment for services performed by an employee, is in addition to (rather than a deduction from) monetary wages, or wholly comprises an employee's wages, the Agency may determine the cash value of such board and lodging in individual cases for the purpose of computing contributions due under the Law. The cash value for such board and lodging furnished an employee as agreed upon shall be deemed the value of such board and lodging.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

602.00 Employer.

(A) Proprietors
A proprietor of a business is not considered an employee even though a salary may be paid for services performed.

(B) Partners
Partners are not considered employees of the partnership, and the income of partners from the business whether recorded as salary or drawings, is considered a distribution of profits, and not wages.

(C) Officers of Corporations
Corporate officers, who perform services for wages or under any contract of hire, written or oral, expressed or implied, are employees.

(D) Directors of Corporations
A director of a corporation, who performs no service for the corporation except as director in the usual and ordinary sense of the term, is not an employee and the compensation paid as a director is not subject to contributions. A director, who performs services for the corporation other than as a director, is an employee, and the compensation paid him therefore is subject to contributions.

602.01 Demonstrators.

A demonstrator, who is placed by a manufacturer in department and specialty stores to aid in the sale of the specialized products of such a manufacturer, and who is engaged by the manufacturer, who are paid directly or indirectly by the manufacturer, and who work under the direction which may be delegated to the retailer, is an employee of the manufacturer. If the retailer, not acting as an agent for the manufacturer, engaged a demonstrator and the demonstrator works under the direction of the retailer and receives the salary directly from the retailer, the retailer is the employer. If the wages are paid in part by the manufacturer and in part by the retailer, the demonstrator is an employee of both manufacturer and retailer and each is required to pay contributions on that part of the salary that he pays.

602.02 Employers Disposing of Business Assets Thereof, Ceasing Business, Etc.

Every employer who shall sell, convey, or otherwise dispose of his or her business or any part of the assets of the business, or who shall cease business for any reason, whether voluntary by being in bankruptcy, or otherwise, shall no less than thirty (30) days prior to such sale or conveyance of business, report such fact in writing to the Agency, stating the name, address and telephone number of the person, firm or corporation, or other entity to whom such business or all of any part of the assets thereof shall have been conveyed. In cases of bankruptcy, receivership, or similar situations, such employer shall report the name address and telephone number of the trustee, receiver, or other official placed in charge of the business.

602.03 For Profit Corporation Owned by Non-Profit Charitable Organization.

Services performed in the employ of a corporation operated as a business enterprise but wholly owned by a non-profit charitable organization are not exempt under the Law. Such organizations are separate legal entities and must be considered separately.

602.04 Payroll Records of Predecessor “Employer” Modified Rate of Contribution for Successor.

In determining “modified” rates of contributions, under Section 71-5-355 of the Law, for an employer who succeeds, or has succeeded, or acquires, or has acquired the organization, trade, separate establishment (provided separate payroll records have been kept and maintained for such separate establishment by the predecessor and are clearly identifiable and segregable), or business, or substantially all the assets thereof, or another, the payroll records of the predecessor may be used only if such predecessor was an “employer” as defined and subject to the Law at the time of such acquisition. The term “separate establishment,” as used herein, means a distinct and separate portion of the business.

602.05 Successors to Reimbursable Employer Who Become Tax Paying (contributory) Employers by Requirements of the Law.

When a successor employer becomes a contributory employer (pursuant to requirements defined by the Law) by acquiring the business of a reimbursing employer, then such successor shall be considered a newly subject employer, within the meaning of Section 71-5-353 of the Law.

602.06 Reimbursable Employers Who Elect to Become Tax Paying (Contributory).

When an employer elects to change from reimbursing status to contributory status, the employer shall be considered a newly subject employer, within the meaning of Section 71-5-353 of the Law.

602.07 Predecessor Employers Who Resume Employment.

In any case in which the account of an employer is terminated (inactivated) by the Agency because the employer sold the business and the experience was transferred to the successor, and the predecessor resumes employment, he or she shall be considered a newly subject employer, within the meaning of Section 71-3-353 of the Law.

602.08 Status by Voluntary Election.

An employing unit not otherwise subject to the Law that elects voluntarily to become subject thereto must furnish the Agency detailed data sufficient in the opinion of the Agency to warrant approval of such election.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

603.00 Employment.

(A) Independent Contractors

The Law provides that the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant. Generally, the relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done, but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he or she has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work to the individual who performs the service. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he or she is an independent contractor, not an employee.

If the relationship of employer and employees exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two (2) individuals in fact stand in relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, co-adventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

Generally, physicians, lawyers, dentists, veterinarians, contractors, sub-contractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether or not persons performing services, directly or indirectly, for an employing unit are employees depends upon the particular facts in each case. No single test is conclusive and every employing unit claiming the existence of a relationship other than that of employer-employee shall make application to the Agency for determination of its status. They shall furnish to the Agency a full and complete statement of all facts concerning its relationship with the person claimed to be an independent contractor, together with a copy of the contract existing between them. All persons performing services for any employing unit shall be deemed employees unless and until this rule shall have been complied with and their status shall have been otherwise determined by the Agency after a decision has been made by the Agency relative to the employer-employee relationship, and the business has been notified by mail or electronically. The business has the right within ten (10) days from the transmittal date of this decision to protest the decision and request a hearing before the Agency, as provided in Section 71-5-355(2)(b)(ix) of the Law.

(B) Employed Individuals

The words “employ”, “employer”, and “employee”, as used herein, are to be taken in their ordinary meaning. An employer, however, may be an individual, a corporation, partnership, a limited liability company, trust, estate, association, joint-stock company, insurance company, or corporation, or other recognized business organization, whether domestic or foreign, syndicate group, or entity. An employer may be a person acting in a fiduciary capacity or on behalf of another, such as a guardian, committee, trustee, executor or administrator, trustees in bankruptcy, receiver, assignee, for the benefit of creditors, or conservator.

An individual is in the employment or employ of another within the meaning of the Law if he performs a service, including service in interstate commerce, for such other, for wages or under any contract of hire, written or oral, expressed, or implied. The relationship between the individual who performs such service and the person for whom such service is rendered must be the legal relationship of employer and employee. The Law makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the Law.

Whether the relationship of employer and employee exists, will in questionable cases be determined upon examination of the particular facts of each case.

603.01 Service in Usual Trade or Business.

An employing unit which contracts with or has under it any contractor or sub-contractor for any employment which it claims is not part of its usual trade, occupation, profession, or business shall submit to the Agency a complete, detailed written statement of facts in support of such claim. No such claim shall be recognized until and unless the Agency is satisfied of its validity and correctness.

603.02 Services Excluded from the Definition of Employment (Generally).

(A) To constitute "employment" within the meaning of the Law the services performed by the employee must be performed, in whole or in part, primarily or incidentally, within the State of Mississippi; or if performed elsewhere, must be incidental to service in the United States for a Mississippi based employer. To the extent that an employee performs services wholly or outside of the State of Mississippi for the person who employs him or her, he or she is not in "employment" within the meaning of the Law unless such services are incidental to service in this state, or unless such services are performed outside the United States for a Mississippi based employer.

Furthermore, the employee's remuneration for services that he or she performs wholly outside the State of Mississippi, and that are in no way incidental to services in this state, is excluded from the computation of wages upon which his or her employer's contribution is based, except that wages paid by a Mississippi based employer for services performed outside the United States must be included in the computation of wages upon which the employer's computation is based. However, if any services are performed by the employee within the State of Mississippi, such services, unless specifically excluded by the Law, constitute "employment."

In such cases the employee is counted for the purpose for determining whether the person who employs him or her is an "employer," within the meaning of the Law and his wages on account of such employment are included in the computation of wages for the purpose of determining the amount of the employer's contribution. The place where the contract for services is entered into and the citizenship or residence of the employee or of the person who employs him or her is immaterial.

Thus, the employee and the person who employs him or her may be citizens and residents of a foreign country or a foreign state and the contract for the services may be entered into in a foreign country or foreign state, and yet, if the employee under such contract actually performs services within the State of Mississippi, there is an "employment" within the meaning of the Law, and the person who has employed such individual may be an "employer" within the meaning of the Law.

(B) Even though the services of the employee are performed within the State of Mississippi, if they are in a class which is excluded by the Law, they are excluded for the following purposes:

(1) In determining whether a person employs a sufficient number of individuals to be an employer subject to contribution; or

(2) In computing the employer's total wages with respect to employment during the calendar year.

The exclusion is attached to the services performed by the employee and not to the employee as an individual; and the exclusion applies only for the period during which the individual is rendering services in an excluded class.

603.03 Officers and Members of Crews.

The expression "navigable waters within, or within and without the United States" means such waters are navigable in fact and which by themselves or in connection with other waters form a continuous channel for commerce with foreign countries or among the states.

The word "vessel: includes every description of watercraft or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual subject to his or her authority serving on board and contributing in any way to the operation and welfare of the vessel. The expression extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids and by seal hunters and fishermen on sealing and fishing vessels.

603.04 Family Services.

Under Section 71-5-11 J (15) (d) of the Law, certain services are excluded because of the existence of family relationship between the employee and the person for whom he or she performs the services. The exclusions are as follows:

(A) services performed by a husband for his wife, or by a wife for her husband;

(B) services performed by a father or mother for a son or daughter, or for a partnership composed of sons and/or daughters only; or

(C) services performed by a son or daughter under twenty-one (21) years of age for the father or mother, or for a partnership composed of the father and mother only.

(D) The term "child" shall mean and include adopted or stepchild. Under (A) and (B) above, the exclusion is conditioned solely upon the relationship of the

employer to the employee. Under (C), in addition to the relationship of parent and child, there is a further requirement that the child shall be under the age of twenty-one (21) and the exclusion continues only during the time that such child is under the age of twenty-one (21).

The exclusions do not extend to services performed by an employee for a corporation or other entity except such family partnerships as are set forth in (B) and (C) above.

603.05 Religious, Charitable, Scientific, Literary, and Educational Exemption.

Any organization claiming an exemption under Section 71-5-11 J (4) of the Law must provide a copy of Internal Revenue Service documents that show exemption under Section 501 (c) (3) of the Internal Revenue Code.

603.06 Aliens, Non-Residents and Minors.

Aliens, non-residents, and minors are employees if they are performing any service for an employer within the State of Mississippi and come within the definition of employee and employment.

603.07 Newspaper and Magazine Distributor.

A newspaper distributor who owns his own truck, hires or discharges his or her own employees or helpers, distributes newspapers or magazines in his own territory, and keeps track of his or her own records as to sales and collections, with all sales to such distributor by the publisher and all magazines or newspapers returned within certain limited period being credited to the distributor, who receives no salary, wages or other remuneration from the publisher, no record being kept on where the distributor disposes of the magazines or newspapers which are taken by him or her, is not an employee of the publisher for the reason that the distributor's remuneration for his or her services or activities in distribution of magazines or newspapers is derived solely from the resale of magazines or newspapers to customers.

603.08 Temporary, Casual and Training Period Workers.

The length of employment of an individual employee, however short, and the amount of remuneration paid to him or her, however small, does not affect the employer's liability to pay contributions. Contributions are required to be paid on wages of temporary employees as well as on wages of permanent employees.

The term "casual labor" exempted under Section 71-5-11 J (15) (c) of the Law includes labor, which is occasional, incidental, and irregular. The expression "not in the usual course of the employing unit's trade or business" includes labor that does not promote or advance the trade or business of the employing unit.

603.09 Pieceworkers.

Persons who are paid on the basis of the amount of work accomplished are employees, especially where they are subject to the direction or control of the employer.

603.10 Non-resident Employers.

Non-resident employers may be subject to Mississippi Law and the employer's citizenship or residence is immaterial.

603.11 Services Performed for the United States.

Service performed in the employ of the United States or of an instrumentality wholly owned by the United States is excluded. The exemption of federal instrumentalities is restricted to those instrumentalities:

(A) wholly owned by the United States; and/or

(B) exempt from the Law by virtue of some federal statutory provision.

603.12 Dredges.

Services are exempt that are performed on dredges used for navigation and transportation in carrying on the work of deepening and removing obstructions from channels and harbors which are navigable waters of the United States are exempt.

603.13 Concessionaires on Vessels on Navigable Water of the United States.

Services performed in the employ of concessionaires on vessels on the navigable waters of the United States are not exempt under the Law.

603.14 Book Publishing Establishment Owned and Operated by Religious Organizations.

Services performed in the employ of a book publishing establishment owned by a church or convention or association of churches, or that is owned by an organization that is operated primarily for religious purposes, or that is operated, supervised, controlled, or principally supported by a church or convention or association of churches primarily for religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, are exempt from the Law.

603.15 Privately Owned Hospitals.

Services performed in the employ of privately owned hospitals are not exempt under the Law. If they are organized and operated exclusively for charitable purposes and no part of the net earnings inures to the benefit of any private shareholder or individual, they come under the "four (4) or more in twenty (20) weeks" provision of Section 7-1-5-11 J (4) of the Law.

603.16 Privately Owned Colleges.

Services performed in the employ of privately owned institutions of higher learning are not exempt, but if the institution is a non-profit organization it is not a covered employer unless it employs four (4) or more employees for some day in each of twenty (20) different weeks in the current or preceding calendar year.

603.17 Newspaper Correspondents.

Newspaper correspondents who contribute items subject to acceptance for publication by the newspaper at a stipulated remuneration per item or per inch for news items accepted and published, but who are not employed full time and whose time and effort are not subject to the control of the newspaper, are not employees of the newspaper under the Law.

603.18 Newspaper Carrier.

Section 71-5-11 J (15) (m) of the Law, exempts services performed by a person under the age of eighteen (18) in making street sales of newspapers and in making house-to-house delivery of newspapers or shopping news, including handbills and other similar types of advertising material. This exemption does not apply to the handling of newspapers and advertising material prior to the time they are turned over for subsequent delivery or distribution.

603.19 Traveling Salesperson.

The Law covers individuals performing services for another as salespersons and remunerated on a commission basis and contributions are required on their commissions. Section 71-5-11 J (2) of the Law specifically covers certain agent-drivers and commission-drivers and certain traveling or city salespersons.

603.20 Agents of Magazine Publishing and Distributing Companies.

Salespersons and collectors for publishing companies engaged in selling magazines and other publications of such company and collecting for same on a commission basis are employees of the company.

603.21 Officers of Parent Corporation Serving Subsidiary Corporation.

Officers of a parent corporation serving as officers of a subsidiary corporation, whether they receive remuneration as such or not, are to be included and counted as employees for the purpose of determining whether such subsidiary corporation employs a sufficient number of employees to be subject to the payment of contributions.

603.22 Voluntary Coverage of Exempted Employments.

An employer may, under certain circumstances, waive his or her exemption and voluntarily become subject to the Law, thereby covering and entitling to benefits his or her employees who would otherwise be exempt.

603.23 Beneficiaries Employed by Administrator.

Beneficiaries of an estate employed by the administrator of the estate in the operation of the business previously conducted by the decedent are employees of the estate.

603.24 Trustees and Estate-Fiduciaries, Receivers, Trustee, Trustees in Bankruptcy,

Administrators of Estates, Guardians and Liquidators of Banks. Trusts or estates managed and conducted by a fiduciary, such as a receiver, trustee, trustee in bankruptcy, administrator of an estate, guardian, or liquidator of a bank, are held generally to the employer of persons employed to render and rendering services in connection with the trust, estate, or bank. This construction is applicable not only to strict trusts but also to corporations and estates whose affairs are being administered or liquidated by trustees in bankruptcy and state and federal estates should be filed by the fiduciary. The fiduciary, whether receiver, trustee, trustee in bankruptcy, administrator of an estate, guardian, or liquidator of a bank, is not himself or herself considered an employee of the trust or estate.

603.25 Banks Acting as Trustee, Receiver, Administrator, or Guardian.

Where a bank acts in the capacity of trustee, receiver, administrator, or guardian and employs persons to render services for the corporation in receivership or the estate being administered, paying such persons out of the funds of such trust or estate, the services performed by such persons are not exempt. The trust, company in receivership, or estate, as the case may be, is the employer. Returns and reports must be made in the name of the trust, company in receivership, or estate, by the bank in its fiduciary capacity.

603.26 Real Estate Agents Managing Real Estate for Owner.

Where a real estate agent or company manages improved real estate for the owner thereof under an agency contract and in accordance with such contract and as agent of the owner, employs, supervises, directs, controls, and discharges building managers, janitors, maids, and other help, but is not responsible for the payment of their wages except from the funds of the owner in its possession that are deposited in a special account un-comingled with the company's fund, the owner of the real estate, and not the real estate agent or company, who is an independent person, is the employer of such individuals.

603.27 Self-Employed Fishermen.

Certain fishermen who work on a fishing boat are considered self-employed.

A fisherman is considered self-employed if he meets all of the following:

1. The amount received is based on a share of the catch or a share of the proceeds from the sale of the catch;

2. The share received depends on the amount of the catch:

3. He receives his share from a boat (or from each boat in the case of a fishing operation involving more than one boat) with an operating crew that is normally made up of fewer than ten (10) individuals. This requirement is considered to be met if the average number of crew members on the trips the boat made during the last four (4) calendar quarters was less than ten (10);

4. Any money received other than for a share of the catch or a share of the proceeds from the sale of the catch is less than one hundred dollars ($ 100.00) per trip, paid only if there is some minimum catch and paid solely for additional duties (such as services performed as mate, engineer, or cook).

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

604.00 Records.

(A) Each employing unit shall keep a true, accurate and complete record which shall show:

(1) all disbursements by items;

(2) the amount of each disbursement;

(3) to whom each disbursement is made;

(4) for what each disbursement is made; and

(5) the number of employees on that day in each week in which it employed the highest number.

(B) For each individual worker and each pay period the records shall show:

(1) employee's Social Security account number;

(2) employee's name;

(3) employee's place of employment within the state;

(4) period covered by each payment;

(5) number of hours worked for each pay period;

(6) employee's wages for employment under this act, showing separately

(a) cash wages and

(b) the cash value of any other remuneration;

(7) any special payments for services other than those rendered exclusively in a given quarter such as annual bonuses, gifts, prizes, etc., showing separately

(a) cash payments and

(b) any other remuneration and the nature of said payment; and

(8) number of hours worked and wages payable in each week (except for workers paid on a salary or fixed stipend).

604.01 Reporting.

(A) Each employer shall report to the Agency at the time of paying each contribution upon a form or any type of media, and in such a format as prescribed by the Agency, all information concerning the number of employees, total wages paid and total other remuneration paid, if any, for employment for each pay period covered by the contribution, together with such other information as may be prescribed on the report forms or requested by the Agency. He or she shall also furnish quarterly, when and as directed and upon such forms or format as the Agency may prescribe, a report showing for each of his employees during the quarter:

(1) Social Security Account Number;

(2) employee name;

(3) wages paid for employment;

(4) amount of other compensation paid for employment, during the quarter; and

(5) such other information as may be prescribed on the report forms or requested by the Agency.

604.02 Reports of Subsidiary Employing Units.

Any employing unit that owns or controls another separate employing unit within this State may, with the approval of the Agency, designate such separate employing unit as its agent or attorney for the purpose of keeping records and making reports or contributions with respect to employment performed for such separate employing unit. Such designation, however, shall not subrogate the primary liability of the controlling employing unit.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

605.00 Determining the Number of Employees.

One or more individuals must be employed on any days within the weeks used to calculate the number of employees. The days used to calculate the number of employees does not need to be consecutive. It is not necessary that the individuals so employed be the same individuals; they may be different individuals on each such calendar day. It is also not necessary that the one or more individuals be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient that one or more individuals be employed during the twenty-four (24) hours of a calendar day, regardless of the period of service during that day or the basis of compensation.

In determining whether a person employs a sufficient number of individuals to be an employer subject to the contribution, no individual is counted unless he is engaged in the performance, in whole or in part, primarily, or incidentally, within the State of Mississippi, of services not excluded by Section 71-5-11 (J) of the Law; or is engaged in the performance elsewhere of services which are incidental to such services in this state, and which are not excluded by Section 71-5-11 (J). Any individuals who perform services outside the United States for a Mississippi based employer are counted.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

606.00 Computation of Employer Tax Rates.

All components of the general experience rate and the employers individual experience rate involving the accumulation of data shall be computed for each rate year independent of previous computations. The Agency will utilize the Cost Rate Criterion (CRC) computations provided by the

Unemployment Insurance Service of the U.S. Department of Labor Employment and Training Administration for each period, ending with the CRC computation for December 2001. Computations of CRC for periods subsequent to December 2001 will be made by the Agency from data accumulated through the Agency's reporting processes.

Under no circumstances will the Agency computations specified in this regulation in any manner change or affect the general experience rating of any period prior to the computation for the 2004 calendar year.

This regulation will be effective with the computation of the 2004 annual rates and for all subsequent years.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

607.00 Political Subdivision Surety Bond.

Reimbursing Political Subdivisions may execute a Surety Bond in lieu of establishing a revolving fund as provided in Section 71-5-355 9 (2)(f) of the Law. The bond shall be executed annually, and shall be for less than two percent (2%) of the covered wages paid during the next preceding year. This bond shall be submitted to the Agency for approval. Failure to submit an approved renewal bond in the allotted time will automatically place the political subdivision under the revolving fund requirement of the Law. Any Surety Bond approved under this regulation shall remain effective according to its terms regardless of the continuation of a contractual relationship between the Political Subdivision and any company providing unemployment insurance services to it.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

608.00 Reimbursing Employer Payment Liability.

Reimbursing employers who elect to become contributory, whether political subdivisions or non-profit employers defined by the Law, are liable for reimbursements which may accrue, until such time as wages paid by such employer as a reimbursing employer are no longer in the base period of a claim or in the case of extended benefits, the parent claim.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

609.00 Funding Options.

Any political subdivision rated at two percent (2%), reimbursing, or rated at five tenths of one percent (.5%) and reimbursing, may elect to change its funding option from reimbursing to rate paying in accordance with Section 71-5-359 of the Law provided the requested information is delivered to the Agency on or before December 1 of the year immediately prior to January 1 of the year for which the election is made. The election will be in effect and in force for no less than two (2) calendar years and the first election shall be made effective the first day of employment and subsequent elections will be made effective January 1 of the year. In the event an employer does not make an election within thirty (30) days of registration, the employer will become a reimbursable employer but will be allowed to make an election for the next calendar year provided the election is received by the Agency as described.

Any IRS 501(C)(3) exempt nonprofit organization that is paying contributions or reimbursing under the authority of the Law may elect to change its funding option by filing a written notice of election with the Agency not later than thirty (30) days prior to the election. Such election shall not be terminable by the organization for that and the next tax year. Any nonprofit organization which makes an election in accordance with 71-5- 357(a)(i) of the Law will continue to be liable for contributions unless it files with the Agency a written termination notice not later than thirty (30) days immediately following the date of determination of such subjectivity. In the event the non-profit employer chooses to give up its right to be a reimbursing employer, such employer must give written notification to the Agency no later than November 30 of the year preceding the year for which it will again become liable for contributions. Any reimbursements that accrue following such election will continue to be the responsibility of the non-profit employer.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

610.00 Temporary Help Firm.

A temporary help firm is any individual or organization who recruits and hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

A temporary help firm is presumed to be the employer for unemployment insurance purposes of a temporary employee assigned to a client for up to one (1) year of continuous service with that client from the last day of the first quarter in which the worker was assigned, irrespective of the number of hours the temporary employee works at the client's place of business. Continuous service means service to the same client with less than thirty (30) consecutive days break in service. After a temporary employee has completed one (1) year of continuous service with the same client, the relationship of employer and employee shall be determined in accordance with the principles of a common law governing the relation of master and servant and a temporary help firm may be required to demonstrate that it is an employer consistent with such principles.

Provided however that any temporary help firm will be considered prima facia in compliance with this regulation if at least ninety percent (90%) of the total number of individuals working for the temporary help firm on any day has been assigned to all clients for a period not exceeding twelve (12) months from the last day of the first calendar quarter in which the worker was assigned.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

611.00 Power of Attorney.

Any individual or organization providing representation to any employer or claimant, in any unemployment issues in the absence of the client, must provide a power of attorney signed by the entity they will represent. A power of attorney is not required if the individual is a Certified Public Accountant who is a member of the AICPA, or an attorney who is a member of the Mississippi Bar Association or another Bar Association of equal status in another state or jurisdiction of the United States of America; or an Enrolled Agent who is a federally-authorized tax practitioner and is a member of the National Association of Enrolled Agents.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

612.00 Tax Appeal Regulation.

1. Any employer who appeals a determination or redetermination of his or her unemployment tax liability, hereinafter called tax protest, shall have such tax protest heard by a hearing officer designated for that purpose by the Agency.

2. Any tax protest filed by an employer under the provisions of Section 71-5-355 of the Law shall be promptly forwarded to the MDES Appeals Department for processing purposes.

3. The ALJ who has been assigned the tax protest shall notify the employer of the scheduling of a hearing thereon, and a notice shall be mailed or electronically delivered to the employer not later than fourteen (14) days prior to the date set for the hearing.

4. Prior to the hearing, the ALJ shall obtain from the Contributions and Status Department of the Agency the complete file pertaining to the employer filing the protest, as well as any claim file appertaining thereto, in order that he or she may prepare for the hearing. The complete files shall be made available to the employer at the hearing so that they may have an opportunity to review same at the time. The files shall be made a part of the record that is made at the hearing.

5. The Agency shall have the discretion to set the time and place of the hearing, and shall designate whether the hearing will be in-person or by telephone.

6. The employer may be represented at the hearing by an attorney or any other representative he or she has authorized.

7. Any testimony received shall be under oath, and the hearing shall be recorded by the ALJ, but need not be transcribed unless there is a further appeal.

8. The rules of evidence shall be relaxed.

9. The ALJ, upon a showing of the necessity, may issue subpoenas at the request of either party, or may subpoena any individual, including a claimant and any records maintained by either party or their agents which the ALJ believes may contain information relevant to the tax protest being heard.

10. The ALJ, at his or her discretion, may elect to continue a hearing for the purpose of securing testimony of a witness or for other purposes.

11. The hearing may be postponed or adjourned for good cause, within the discretion of the ALJ. If, at any time prior to an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, as provided by the Law, it should appear to the ALJ that the record should be perfected or completed, then a hearing may be reopened or reconvened for that purpose.

12. As soon as reasonably possible after the hearing has been concluded the ALJ shall issue his or her written decision, which shall in concise form state the findings of fact, and the conclusions based on such findings. The decision shall be mailed or electronically delivered to the employer and delivered to the Contributions and Status Department of the Agency.

13. There shall appear in bold face type upon the transmittal letter the following language: THIS DECISION SHALL BECOME FINAL UNLESS WITHIN TEN (10) DAYS AFTER DATE OF MAILING OR ELECTRONIC DELIVERY HEREOF THERE SHALL BE AN APPEAL TO THE MDES BOARD OF REVIEW.

14. An appeal to the Board of Review may be taken by either the employer or by the Contributions and Status Department of the Agency.

15. Upon an appeal to the Board of Review, there may be oral argument, or briefs filed, within the discretion of the Agency.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

613.00 Contractors and Sub-contractors Must be Reported.

Whenever and as an employing unit contracts with or has under it any contractor or sub-contractor for any employment which is part of its usual trade, occupation, profession, or business, such employing unit may be required to furnish in writing to the Agency:

(A) name and address of each such contractor or sub-contractor;

(B) date of commencement of the work under such contract;

(C) place or places at which the work is to be performed;

(D) whether such contractor of sub-contractor is registered as an employer under the Employment Security Law; and

(E) if registered, the registration number of the employing unit.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

614.00 Establishment of Employer Contribution Rate during Pendency of Appeal on Liability Questions.

During the period an appeal is pending the agency will take no collection action regarding taxes. First and final notices, as required by sections 71-5-365 and 71-5-367, will be issued and transmitted to the employer and wage information (workers' names, social security numbers and payments to workers) will be required by the Department. Wage information will consist of any payments the Department has determined to be wages paid by the employer even though the appeal is still active. Payment of taxes will be required once liability has been determined, and no further appeal rights exist under the Mississippi Employment Security Law.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 700. FINANCIAL

700.00 Combining Securities.

The agency shall have the discretion to combine all securities/collateral held in separate accounts for the purposes of fulfilling the requirements set forth in Miss. Code Ann. 71-5-455. The securities, once combines, can be pledged against all other similar accounts; provided these separate accounts reside at the same bank.

Source: Miss. Code Ann. §§ 71-5-115 & 71-5-117 (Rev. 2004).

CHAPTER 800. EMPLOYMENT SERVICES

800.00 Mississippi First Initiative (Senate Bill 2662).

The Mississippi Jobs First Bill (SB NO. 2622 of the 2012 Legislative Session and any future corresponding citation in the Mississippi Code of 1972) requires contractors that are awarded bids for public works projects that utilize funds received by State or Local governmental entities resulting from a federally declared disaster or a spill of national significance to register and list job opportunities with the Mississippi Department of Employment Security (MDES). This initiative will ensure that Mississippians have an opportunity to apply for jobs created by a disaster.

NOTE: The following rules (800.01-800.04) concerning the Mississippi Jobs First Bill pertain only to contracts executed after the law went into effect on May 1, 2012. All contracts existing before the effective date are not subject to these provisions.

800.01 Responsibility of State and Local Government.

(A) It is the responsibility of state and local government entities soliciting bids for public works projects that utilize funding resulting from a federally declared disaster or spill of national significance to ensure that all contractors submit, with their bid, a completed employment plan which shall include the following information: the type of jobs involved in the project; the skill level of the jobs involved in the project; wage information on the jobs involved in the project; the number of vacant positions that the contractor needs to fill; how the contractor will recruit low wage and unemployed individuals for job vacancies; other information that may be required by MDES; and proof of registration with MDES for taxation in accordance with provisions of Title 71.

(B) When a contractor's bid is accepted, the state or local government entity shall enter into an agreement with the contractor that requires the contractor to only hire personnel referred from MDES for a period of ten (10) days from when the contract is awarded.

800.02 Contractor Responsibilities.

(A) Contractors that are awarded bids for public works projects that utilize funds received by State and Local Governmental entities resulting from a federally declared disaster or spill of national significance must submit an employment plan that includes the following information: the type of jobs involved in the project; the skill level of the jobs involved in the project; wage information on the jobs involved in the project; the number of vacant positions that the contractor needs to fill; how the contractor will recruit low wage and unemployed individuals for job vacancies; other information that may be required by MDES; and proof of registration with MDES for taxation in accordance with provisions of Title 71 with their bid to the entity requesting the solicitation of services.

(B) When a contractors bid is accepted, the contractor shall enter into an agreement with the entity that accepted the bid that requires the contractor to only hire personnel referred from MDES for a period of ten (10) days from when the contract is awarded. Contractors must place a job order with MDES to receive a list of qualified individuals. The contractor is required to review the applicants submitted by MDES before hiring individuals who were not referred.

MDES shall define the ten (10) days as follows: The time period for the ten (10) days shall begin to run on the first day the job order is opened with MDES. The ten (10) days shall be considered working days and weekends and official state holidays shall not be counted. If the tenth (10th) day shall fall on a weekend or holiday, then the following Monday or the next day that MDES is open for business shall be deemed the tenth (10th) day.

The ten (10) day rule shall apply to any entity charged with hiring personnel under the awarded contract. For example, if the contractor enlists a temporary agency to hire employees for the project, the ten (10) day rule shall apply to the temporary agency, or any subcontractor the contractor may utilize for the project.

NOTE: The contractor is not prohibited from hiring MDES referrals during the ten (10) day time period and may hire employees referred by MDES immediately.

(C) The contractor is required to register his/her business online in the Workforce Investment Network Global System (WINGS) by visiting Wings.mdes.ms.gov. The following information is needed to register:

Register in the Workforce Investment Network Global Systems (WINGS) and create a username and password.

Employer Federal ID #

Company Name

Company (Corporate) Physical address if applicable

Company (Corporate) Mailing address for E-Verify notices (if applicable)

Company telephone number and fax number

Company contact name, title, phone number and email address

In order to create a job order the contractor must provide the WIN Job Center or Call Center Representative with the following information (Call Center information and a complete list of WIN Job Centers can be found on MDES's website: www.mdes.ms.gov):

Job title

Job physical location (Worksite)

Number of openings

Job description Job qualifications (level of education, months of experience, driver's license if required)

Duration of the position (less than 3 days, 4 to 150 days, more than 150 days)

Temporary, permanent position or seasonal position

Full time or Part time

Number of hours to work per week

Days to work and shifts

Referral instructions (how the applicant will apply)

Job Order contact person if different from the Contractor registration contact.

800.03 Role of the MDES WIN Job Center.

MDES will designate sites to assist contractors according to location of the federally declared disaster. After the job order(s) have been finalized and opened for recruitment, the MDES WIN Job Centers will begin the process of referring qualified applicants to the contractor to consider for the vacant positions.

800.04 Reporting Requirement.

In accordance with the act, MDES will provide the Mississippi Legislature with an annual report ending June 30, 2013, and w))ill follow each year thereafter. MDES will develop procedures to track and report relevant information received from contractors. The annual report will detail data received from contractors that were awarded contracts under this act throughout the year.

STATUTORY AUTHORITY

Miss. Code Ann. §§ 71-5-115, -117 & 71-5-117 (Rev. 2004)

HISTORY

EFFECTIVE DATE:

Original effective date not provided.

AMENDED:

July 1, 1993; March 28, 1997; November 15, 1997; March 26, 1999; February 4, 2000; November 17, 2000; April 13, 2001; January 1, 2003 [TR-79 filed July 17, 2003, effective retroactive to January 1, 2003]; February 12, 2004 [TR-80]; July 6, 2004 [TR-78]; December 1, 2007 Secretary of State Document #14802 [compilation as of December 1, 2007]; November 19, 2009 Secretary of State Document #16543; January 26, 2012 Secretary of State Document #18341 [amendment and compilation, Title 20, Part 101]; October 18, 2012 Secretary of State Document #19129 [Chapter 800]; December 2014 [renumbered from 49 000 to match state's numbering system.]; December 17, 2014 Secretary of State Administrative Bulletin #20905; January 18, 2015 Secretary of State Administrative Bulletin #20954

Annotations

NOTES

EDITOR'S NOTE:

20.101.200.0 to 20.101.800.0 MISS ADMIN CODE

CODE OF MISSISSIPPI RULES

Copyright © 2017 Matthew Bender & Company, Inc. a member of the LexisNexis Group All rights reserved.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY DEFINITIONS AND PRECEDENT CASES OF THE MISSISSIPPI SUPREME COURT

CONTENTS

Able and Available 1
Burden of Proof 2
Hearsay 3
Leave of Absence 4
Misconduct 4
General 4
Absenteeism 6
Insubordination 7
Negligence/Isolated Incidents 8
Policy/Rule Violation 9
Unsatisfactory Work Performance 11
Notice 11
Procedural Issues 11
Scope of Review 12
Substantial Evidence 13
Timeliness 14
Voluntary Quit 15
General 15
Belief of Termination 15
Good Cause 16
Job Abandonment 17
Temporary Help Firm Rule 18

TABLE OF AUTHORITIES

CASES

Acy v. Miss. Emp. Sec. Comm'n, 960 So. 2d 592 (Miss. Ct. App. 2007). 5, 9, 10
Allen v. Miss. Emp. Sec. Comm'n, 639 So. 2d 904 (Miss. 1994). 2, 9
Barnett v. Miss. Emp. Sec. Comm'n., 583 So. 2d 193 (Miss. 1991). 6
Booth v. Miss. Emp. Sec. Comm'n, 588 So. 2d 422 (Miss. 1991) 7, 11, 13
Broome v. Miss. Emp. Sec. Comm'n, 921 So. 2d 334 (Miss. 2006). 7, 13
Campbell v. Miss. Emp. Sec. Comm'n, 782 So. 2d 751 (Miss. Ct. App. 2000). 5, 8
City of Corinth, Mississippi v. Cox, 565 So. 2d 1142 (Miss. 1990) 6
Coahoma Cty. v. Miss. Emp. Sec. Comm'n, 761 So. 2d 846 (Miss. 2000). 10
Coleman v. MESC & Natchez Democrat, 662 So. 2d 626 (Miss. 1995) 1, 2, 11, 13, 15
Curtis v. Miss. Emp. Sec. Comm'n, 451 So. 2d 736 (Miss. 1984). 4
Daniels v. Miss. Emp. Sec. Comm'n, 904 So. 2d 1195 (Miss. Ct. App. 2004). 1, 17
Foster v. Miss. Emp. Sec. Comm'n & United Parcel Service, 632 So. 2d 926 (Miss. 1994) 2, 11
Gordon v. Miss. Emp. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004) 5, 8, 10
Henry v. Miss. Dept. Emp. Sec., 962 So. 2d 94 (Miss. Ct. App. 2007) 6
Hoerner Boxes, Inc. v. Miss. Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997). 16
Huckabee v. Miss. Emp. Sec. Comm'n, 735 So. 2d 390 (Miss. 1999) 1, 15
Little v. Miss. Emp. Sec. Comm'n, 754 So.2d 1258 (Miss. 1999). 3, 12, 14
McClinton v. Miss. Dep't of Emp. Sec., 949 So. 2d 805 (Miss. Ct. App. 2006). 2, 8, 12, 14
McNeil v. Miss. Emp. Sec. Comm'n, 875 So. 2d 221 (Miss. Ct. App. 2004). 7
Mickle v. Miss. Emp. Sec. Comm'n, 765 So. 2d 1259 (Miss. 2000). 1
Miss. Dept. Emp. Sec. v. Shields, 42 So. 3d 1204 (Miss. Ct. App. 2010). 17
Miss. Emp. Sec. Comm'n v. Ballard, 252 So. 2d 418 (Miss. 1965). 17
Miss. Emp. Sec. Comm'n v. Bell, 584 So. 2d 1270 (Miss. 1991). 6
Miss. Emp. Sec. Comm'n v. Fortenberry, 193 So. 2d 142 (Miss. 1966) 16
Miss. Emp. Sec. Comm'n v. Lee, 674 So. 2d 512 (Miss. 1996) 17
Miss. Emp. Sec. Comm'n v. Martin, 568 So. 2d 725 (Miss. 1990) 7
Miss. Emp. Sec. Comm'n v. McLane Southern, 583 So. 2d 626 (Miss. 1991) 2, 3, 9, 13
Miss. Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990). 5, 8, 10
Miss. Emp. Sec. Comm'n. v. Pennington, 720 So. 2d 954 (Miss. Ct. App. 1998) 7
Miss. Emp. Sec. Comm'n. v. Percy, 641 So. 2d 1172 (Miss. 1994) 5
Miss. Emp. Sec. Comm'n. v. Phillips, 562 So. 2d 115 (Miss. 1990) 17
Miss. Emp. Sec. Comm'n v. Pulphus, 538 So. 2d 770 (Miss. 1989) 7, 15
Miss. Emp. Sec. Comm'n. v. Rakestraw, 179 So. 2d 830 (Miss. 1965) 17
Miss. Emp. Sec. Comm'n. v. Ratcliff, 754 So. 2d 595 (Miss. Ct. App. 2000) 6
Miss. Emp. Sec. Comm'n v. Woods, 938 So. 2d 359 (Miss. Ct. App. 2006) 4
NCI Building Components v. Berry, 811 So. 2d 321 (Miss. Ct. App. 2001) 17
Ray v. Bivens, MESC & E. I. Dupont Company, 562 So. 2d 119 (Miss. 1990) 11

Shannon Eng. & Const. Inc. v. MESC & Berry, 549 So. 2d 446 (Miss. 1989) 2, 7, 12
Shavers v. Miss. Emp. Sec. Comm'n., 763 So.2d 183 (Miss. Ct. App. 2000). 9
Sherman v. Mississippi Employment Sec. Comm'n, 989 So. 2d 398 (Miss. 2008) 3, 13. 15
SkyHawke Techs., LLC v. MDES, 110 So. 3d 327 (Miss. Ct. App. 2012) 8, 9, 12
Sojourner v. Miss. Emp. Sec. Comm'n, 744 So. 2d 796 (Miss. Ct. App. 1999) 6
South Central Bell Tel. Co. v. MESC, 357 So. 2d 312 (Miss. 1978) 2, 4
Sprouse v. Miss. Emp. Sec. Comm'n, 639 So. 2d 901 (Miss. 1994) 2, 8, 13
Trading Post, Inc. v. Nunnery, 731 So. 2d 1198 (Miss. 1999). 6, 13
Wheeler v. Arriola, 408 So. 2d 1381 (Miss. 1982). 5, 12, 13
Wilkerson v. Mississippi Employment Sec. Comm'n, 630 So. 2d 1000 (Miss. 1994). 12, 14
Williams v. MESC & Anderson-Tully Company, 395 So. 2d 964 (Miss. 1981). 3, 11
Wilson v. MDES, 32 So. 3d 1230 (Miss. Ct. App. 2010). 14

STATUTES

Mississippi Code Annotated § 71-5-513 . . . . . 2, 4, 15, 16
Mississippi Code Annotated § 71-5-511 (l) 17, 18

REGULATIONS

MDES Regulation 305.03 1
MDES Regulation 308.00 . . . . . 4, 5

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY DEFINITIONS AND PRECEDENT CASES OF THE MISSISSIPPI SUPREME COURT

Able and Available

Individuals must be able to work and be available for work to be eligible for unemployment benefits with respect to any week. MDES Regulation 305.03

A terminated employee is afforded protection under the Mississippi Employment Security Law when he is ready, willing, and able to work, but when through no fault of his own, he is unable to do so. Coleman v. Miss. Emp. Sec. Comm'n & Natchez Democrat, 662 So. 2d 626 (Miss. 1995).

A discharged employee need only show that he has been paid wages during a base period for insured work, is unemployed and registered for work, and "is able to work and is available for work" in order to establish entitlement to state unemployment benefits. Coleman 662 So. 2d 626 (Miss. 1995), Huckabee v. Miss. Emp. Sec. Comm'n, 735 So. 2d 390 (Miss. 1999). Mickle v. Miss. Emp. Sec. Comm'n, 765 So. 2d 1259 (Miss. 2000).

Claims involving whether employees are able and available to work must be considered on a case-by-case basis. The test of availability is subjective in nature and must depend in part on the facts and circumstances of each case. Mickle, 765 So. 2d 1259 (Miss. 2000).

A Claimant's mental attitude, that is, whether he wants to go to work or is content to remain idle, is a factor to be considered in determining whether he is able and available to work, for the purpose of entitlement to unemployment compensation benefits. Id.

In the Mississippi Supreme Court Case of Mickle v. Mississippi Employment Security Commission, the Court found that Claimant was not required to submit a medical release before there could be a finding that she was able and available to work to demonstrate entitlement to unemployment compensation benefits, as a new requirement would be created that was not contemplated by statute. Id.

The Claimant in Mickle was entitled to unemployment compensation benefits, despite her failure to produce medical documentation that she had been unconditionally released to return to work, as no medical evidence was presented which indicated that she was not able and available to work, the Claimant stated that there was no reason she could not accept full-time work, and the referee made no finding that Claimant's injury prevented her from working. Inconsistency created by the employer's acknowledgement that the Claimant was

no longer injured and could return to work when it ceased paying workers' compensation with argument that she did not show that she was able to work and available for work for denying unemployment compensation claim was not compatible with the intent of workers' compensation and unemployment compensation statutes. Id.

The test to be used in determining whether the distance to be traveled renders available work "unsuitable," for unemployment compensation purposes, is whether it is unusual or uncommon for employees in a claimant's occupation or in the area in which the claimant resides to drive that distance to work. South Central Bell Telephone Company v. Miss. Emp. Sec. Comm'n, 357 So. 2d 312 (Miss. 1978).

In South Central Bell Telephone Co. v. Miss. Emp. Sec. Comm'n, et. al., 357 So. 2d 312 (1978), South Central Bell closed its office in Cleveland, Mississippi, and twenty-six employees were offered the opportunity to relocate to other offices. South Central Bell, 357 So. 2d at 314. Ten employees declined to transfer and filed unemployment claims. Id. On appeal, the Supreme Court found that distances of 35, 38, and 43 miles from city, in which long-distance telephone operators had been employed, to cities wherein they could have obtained the same type of employment after their positions were phased out, were not so great distances as to render such available work "unsuitable." Id. at 318. Specifically, the Court noted that "[t]here is nothing to support a view that traveling to Greenwood, Clarksdale or Greenville from Cleveland would so substantially increase the degree of risk to health, safety or morals . . . or that the commuting contemplated was so unusual or uncommon as to make the offered work 'unsuitable.'" Id. at 318. Thus, the operators' refusal to accept that work disqualified them from receiving unemployment benefits. S. Cent. Bell Tel. Co. v. Miss. Emp. Sec. Comm'n, 357 So. 2d 312 (Miss. 1978).

Burden of Proof

The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer. Mississippi Code Annotated § 71-5-513.

In unemployment compensation cases, the employer bears the burden to prove by "substantial, clear, and convincing evidence" that former employee's conduct warrants disqualification of benefits. Shannon Engineering and Construction, Inc. v. Miss. Emp. Sec. Comm'n and Berry, 549 So. 2d 446 (Miss. 1989), Miss. Emp. Sec. Comm'n v. McLane Southern, 583 So. 2d 626 (Miss. 1991), Daniel E. Foster v. Miss. Emp. Sec. Comm'n & United Parcel Service, 632 So. 2d 926 (Miss. 1994), Coleman 662 So. 2d 626 (1995), McClinton v. Miss. Dept. of Emp. Sec., 949 So. 2d 805 (Miss. Ct. App. 2006).

A rebuttable presumption exists in favor of the administrative agency, and the challenging party has the burden of proving otherwise. Sprouse v. MESC, 639 So. 2d 901 (Miss. 1994), Allen v. Mississippi Employment Sec. Commission, 639 So. 2d 904 (Miss. 1994).

In the Mississippi Supreme Court case of Little v. Mississippi Employment Security Commission, the Court found that the requirement by an appeals referee that an unemployment compensation claimant offer evidence to rebut the employer's allegation of misconduct, when no evidence of misconduct had been offered, was an improper shifting of the burden of proof. The employer totally failed to appear for the hearing and expressed no interest in even participating in the hearing, and thus claimant was not required to submit evidence to rebut claim of misconduct, as no evidence of misconduct was offered by employer. Little v. Miss. Emp. Sec. Comm'n, 754 So.2d 1258 (Miss. 1999).

Unemployment benefit claimants satisfy their burden of proof of good cause for leaving work, when they voluntarily leave employment rather than violate a statute, which is a question of law. Sherman v. Mississippi Employment Security Commission, 989 So. 2d 398 (Miss. 2008).

Hearsay

In the Mississippi Supreme Court case of Williams v. Mississippi Employment Security Commission & Anderson-Tully Company, the Court found that hearsay testimony to the effect that the claimant refused an offer of suitable work did not constitute substantial evidence sufficient to support the administrative decision denying the claimant unemployment compensation benefits. Williams v. Miss. Emp. Sec. Comm'n & Anderson-Tully Co., 395 So. 2d 964 (Miss. 1981).

In Mississippi Employment Security Commission v. McLane Southern, the Court found that the uncorroborated hearsay testimony presented by the employer was not "substantial evidence" of employee misconduct, such as would disqualify employee from receiving unemployment compensation benefits. McLane Southern, 583 So. 2d 626 (1991).

More recently in the case of McClinton v. Mississsippi Deptartment of Employment Security, the Court ruled that if hearsay, even if not corroborated in the traditional sense, is highly probative because it has strong indicia of reliability, it can at least in many situations be substantial evidence to support an administrative decision. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

Affidavits and other hearsay that constitute more than mere rumor and are not simply idle comments by an absent speaker, but are the kind of evidence that may be found sufficiently reliable to constitute substantial evidence by itself and support an administrative agency adjudication. Id.

The indicia of trustworthiness that allows the evidence to be admitted through a hearsay exception is the equivalent of "corroboration." Id.

Leave of Absence

For unemployment compensation purposes, an employee who voluntarily takes a leave of absence is not "unemployed" for the period of time during which his work is temporarily suspended. S. Cent. Bell Tel. Co., 357 So. 2d 312 (Miss. 1978).

In South Central Bell Telephone Company v. Mississippi Employment Security Commission, the Mississippi Supreme Court ruled that long-distance telephone operators, whose positions were phased out and who were given the option of 1. transferring to other offices, 2. terminating employment, or 3. taking leaves of absence, and who elected to take leaves of absence, were not "unemployed," and, thus, were disqualified from receiving unemployment benefits. Id.

The Mississippi Supreme Court found in the case of Curtis v. Mississippi Employment Security Commission, that where employees lost their jobs by technological advances, and were thereby placed involuntarily in position of choosing termination of employment with lump-sum payment of money, transfer to another job in another office of employer, or technological leave of absence, and transfers offered were to offices either 218 miles from employees' homes, 90 miles from their homes, or 81 miles from their homes, election of a leave of absence was not voluntary, and hence, employees were "unemployed" within the plain meaning of the unemployment compensation statute. Curtis v. Miss. Emp. Sec. Comm'n, 451 So. 2d 736 (Miss. 1984).

In Mississippi Employment Security Commission v. Woods, the Supreme Court found that a claimant's failure to contact his employer for five months while on medical leave, in violation of company policy, did not constitute misconduct because the employer failed to enforce the policy until after it was told by the insurer that the claimant was no longer covered, and the payment for the claimant's treatments would be terminated. Miss. Emp. Sec. Comm'n v. Woods, 938 So. 2d 359 (Miss. Ct. App. 2006).

Misconduct

General

For purposes of Mississippi Code Section 71-5-513, misconduct shall be defined as including but not limited to:

1. The failure to obey orders, rules or instructions, or failure to discharge the duties for which an individual was employed;
    a. An individual shall be found guilty of employee misconduct for the violation of an employer rule only under the following conditions:
        i. the employee knew or should have known of the rule;
        ii. the rule was lawful and reasonably related to the job environment and performance; and
        iii. the rule is fairly and consistently enforced.

2. A substantial disregard of the employer's interests or of the employee's duties and obligations to the employer;

3. Conduct which shows intentional disregard – or if not intentional disregard, utter indifference – of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee; or

4. Carelessness or negligence of such degree or recurrence as to demonstrate wrongful intent.

However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief or the law is not misconduct. Conduct mandated by the law does not include court ordered conduct resulting from claimant's illegal activity; this may be considered misconduct. MDES Regulation 308.00, Wheeler v. Arriola, 408 So. 2d 1381 (1982).

When analyzing misconduct not only the violation in question should be assessed, but all actions or inactions expected of the employee that affect the reasonable interest of the employer. Miss. Emp. Sec. Comm'n. v. Percy, 641 So. 2d 1172 (Miss. 1994).

An employee's termination for cause does not necessarily mandate that unemployment benefits be denied. Gordon v. Miss. Emp. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004).

In Campbell v. Mississippi Employment Security Commission, the Mississippi Court of Appeals found that the Claimant did not engage in misconduct by secretly recording a conference with his employer for his protection as matter of law, so as to preclude his receipt of unemployment compensation. Campbell v. Miss. Emp. Sec. Comm'n, 782 So. 2d 751 (Miss. Ct. App. 2000).

The effort to protect oneself is not conduct evincing such willful and wanton disregard of the employer's interest as found in deliberate violation or disregard of standards of behavior so as to preclude entitlement to unemployment compensation. Id.

Employee's conduct may be harmful to employer's interests and justify the employee's discharge, but it evokes the disqualification for unemployment insurance benefits only if it is wilful, wanton or equally culpable. Acy v. Mississippi Employment Sec. Commission, 960 So. 2d 592 (Miss. Ct. App. 2007).

In Mississippi Employment Security Commission and Jackson Municipal Separate School District v. Deborah V. McGlothin, the Mississippi Supreme Court held that a public school teacher's wearing of a head wrap as an expression of her religion was constitutionally protected religious and cultural expression, and thus the Employment Security Commission had no authority to deny her claim for unemployment compensation benefits, even though wearing the head wrap may have constituted misconduct had it not been constitutionally

protected expression. Miss. Emp. Sec. Comm'n and Jackson Municipal Separate School District v. McGlothin, 556 So. 2d 324 (Miss. 1990).

The State may not deny unemployment benefits on the grounds that an individual has refused to abandon sincerely held religious beliefs. Id.

In City of Corinth, Mississippi v. Earnest E. Cox, a city fire fighter who pled nolo contendere to the charge of the sale of cocaine was guilty of misconduct connected with his employment that disqualified him from receiving unemployment compensation benefits. City of Corinth, Miss. v. Cox, 565 So. 2d 1142 (Miss. 1990).

If the misbehavior causing termination is within the capacity and control of the employee; it is a serious disregard of work-related duties and constitutes misconduct. *See* Henry v. Miss. Dept. of Emp. Sec., 962 So. 2d 94 (Miss. Ct. App. 2007) (security guard's disregard of duties justified termination for misconduct); Sojourner v. Miss. Emp. Sec. Comm'n., 744 So. 2d 796 (Miss. Ct. App. 1999) (security guard's failure to follow policy prohibiting remaining on property after shift hours constituted misconduct); Miss. Emp. Sec. Comm'n. v. Ratcliff, 754 So. 2d 595 (Miss. Ct. App. 2000) (failure to disclose most recent previous employer on job application violated employer's policy and was misconduct).

Absenteeism

An employee's unreasonable failure to notify the employer of reasons for absence may constitute misconduct if the employer has a policy requiring such notification. Barnett v. Miss. Emp. Sec. Comm'n, 583 So. 2d 193 (Miss. 1991).

In the case of Mississippi Employment Security Commission v. Bettie G. Bell, the Mississippi Supreme Court stated that an employer has the right to expect an employee to report for work as scheduled on a regular and timely basis and give proper notification when absent. However, in this case, the Court found that an employee terminated for absenteeism after 13 years of satisfactory employment was entitled to benefits because her absences were due to child care problems rather than disregard of her employer's interests. Miss. Emp. Sec. Comm'n v. Bell, 584 So. 2d 1270 (Miss. 1991).

In the case of Trading Post, Inc. v. Nunnery, the Mississippi Supreme Court held that the claimant's absence from work did not constitute "misconduct," and thus, the claimant was not disqualified from receiving benefits, where the referee and the Employment Security Commission Board of Review found that the denial of permission to be absent was not clearly conveyed to the claimant. Trading Post, Inc. v. Nunnery, 731 So. 2d 1198 (Miss. 1999).

In Booth v. Mississippi Employment Security Commission, the Court found that evidence supported the employee's disqualification from receipt of unemployment compensation benefits for misconduct based on excessive absenteeism during a 90-day probationary period following his reinstatement from an earlier dismissal pursuant to an agreement which required that he not be absent during probationary period, and based on his threats of bodily harm to supervisors and his unauthorized use of employer's vehicle while his license was suspended. Booth v. Miss. Emp. Sec. Comm'n, 588 So. 2d 422 (Miss. 1991).

The Court found in Broome v. Miss. Emp. Sec. Comm'n, that a college employee hired to perform housekeeping tasks was terminated for misconduct, thus supporting denial of unemployment benefits, where the employment record reflected a pattern of excessive absenteeism, the employee had received warnings, the employee was on notice of the protocol to follow if he was to be absent from work, the employee failed to comply with protocol when he missed work due to his arrest, and the employee deceived the college as to the reason for his absence. Broome v. Miss. Emp. Sec. Comm'n, 921 So. 2d 334 (Miss. 2006).

Absence from work due to treatment for alcoholism constitutes "misconduct" so as to disqualify an employee from unemployment compensation benefits. Miss. Emp. Sec. Comm'n v. Martin, 568 So. 2d 725 (Miss. 1990).

A lack of transportation to and from work is a personal matter to be resolved by the employee. Miss. Emp. Sec. Comm'n v. Pulphus, 538 So. 2d 770 (Miss. 1989). Generally, absenteeism due to a lack of transportation is considered misconduct connected with the work.

In Mississippi Employment Security Commission v. Pennington, 720 So. 2d 954 (Miss. Ct. App.1998) the Court of Appeals also held that an employee's three consecutive absences constituted misconduct.

In McNeil v. Mississippi Employment Security Comm'n, 875 So. 2d 221(Miss. Ct. App. 2004), the Court of Appeals held that violation of an employee's "no fault" absenteeism policy constituted misconduct.

Insubordination

The definition of "insubordination" as a constant or continuing intentional refusal to obey direct or implied order, reasonable in nature, and given by and with proper authority, should be extended to unemployment cases and is included within the scope of "misconduct." Shannon Engineering, 549 So. 2d 446 (1989).

In Shannon Engineering, the Court found that the Employer failed to meet its burden to show that employee's actions constituted insubordination or any other type of misconduct and, thus, the employee was entitled to unemployment benefits upon discharge. Ample evidence

supported the employee's contention that he was merely standing up for his rights because he believed the employer was trying to take advantage of him. Id.

Insubordination may be grounds for discharge of a public school teacher. Miss. Emp. Sec. Comm'n and Jackson Municipal Separate School District v. McGlothin, 556 So. 2d 324 (1990).

A single incident of insubordination is usually insufficient to disqualify a claimant from eligibility for unemployment compensation. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

In McClinton, the Mississippi Court of Appeals found that substantial evidence supported the finding that a former employee was terminated for misconduct due to insubordination, as grounds for denial of application for unemployment benefits. The employee, an x-ray technician, had attempted to have a student x-ray technician ejected from the hospital after explicitly being told not to do so. The employee continually refused to comply with the hospital policy allowing for exceptions during an emergency to the requirement that requests for information be input in a computer data base, and the employee was unable to adapt his personal conduct to the demands of his supervisors that he get along with his coworkers. Id.

In Gordon v. Mississippi Employment Security Commission, the Court of Appeals ruled that a Claimant's single incident of cursing his supervisor did not rise to the level of insubordination sufficient to constitute misconduct, as grounds to deny application for unemployment benefits. Gordon v. Miss. Emp. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004).

In Campbell, the employer failed to produce evidence that the claimant refused to obey a reasonable order given by and with proper authority, so as to support a finding of misconduct on the mistaken presumption that the employer had the authority and right to ask whether the claimant had recorded their meeting, and to expect an answer, particularly where the claimant testified that the recordation was made as a matter of protection. Campbell, 782 So. 2d 751 (Miss. Ct. App. 2000).

Negligence/Isolated Incidents

Ordinary negligence in isolated incidents, and good faith errors in judgment or discretion are not considered disqualifying misconduct within the meaning of the unemployment compensation statute. SkyHawke Techs., LLC v. Miss. Dept. of Emp. Sec., 110 So. 3d 327 (Miss. Ct. App. 2012).

The Mississippi Supreme Court found in Sprouse v. Mississippi Employment Security Commission, that an employee's act in backing a forklift over the foot of a co-worker following his reprimand for similar behavior at one time in the past was not "misconduct" disqualifying him from receiving unemployment benefits, where there was no indication whatsoever that the employee's

negligence would import wanton disregard of his employer's interests in mind of a reasonable person and, at worst, the acts were inadvertences or isolated instances of ordinary negligence. Sprouse, 639 So. 2d 901 (Miss. 1994).

In Allen v. Mississippi Employment Security Commission, the Court ruled that an employee's acts of "grinding parts undersize," failing to send parts to proper station, and improperly placing parts on a rack were inadvertences or isolated instances of ordinary negligence, and not misconduct such as would disqualify him from unemployment benefits, absent evidence of wrongful intent or evil design. Allen, 639 So. 2d 904 (Miss. 1994).

In McLane Southern, the Court found that the fact that an employee had been involved in an isolated fight with a fellow employee at the workplace, standing alone, was not "misconduct" such as would disqualify an employee from receiving unemployment compensation benefits, especially where the employee was not the aggressor, and merely acted in self-defense. McLane Southern, 583 So. 2d 626 (Miss. 1991).

The Mississippi Court of Appeals ruled in Acy v. Mississippi Department of Employment Security, that even if a store employee's conduct of cursing in the presence of a customer was a violation of the employer's policies and procedures, thus justifying her termination, the employee's actions did not amount to misconduct disqualifying her from receipt of unemployment compensation benefits. The found that an isolated incident of misconduct by the employee did not generally disqualify the employee from receiving the benefit of unemployment compensation. Acy, 960 So. 2d 592 (Miss. Ct. App. 2007).

In Shavers v. Mississippi Department of Employment Security, the Court of Appeals held that the Claimant's repeated failure to clean silk screening equipment in accordance with the employer's instructions was misconduct, and was not due to the claimant's inability or incapacity to perform her duties, so the claimant was thus ineligible for unemployment compensation benefits following her termination. Shavers v. Miss. Dept. Emp. Sec., 763 So.2d 183 (Miss. Ct. App. 2000).

Policy/Rule Violation

The Mississippi Court of Appeals ruled that in SkyHawke v. Mississippi Department of Employment Security, the Agency did not abuse its discretion in finding that the claimant's act of sending vulgar text messages to his co-worker was an isolated incident of poor judgment and not misconduct, and therefore, he was not disqualified from receiving unemployment compensation. The claimant testified that he was unaware of any policy against the use of foul language, and foul language was often used by many employees without repercussion. The Court found that the record showed that the employer's policy against the use of foul language was not consistently enforced, as it was the co-worker's use

of an obscenity that precipitated employee's remarks. SkyHawke, 110 So. 3d 327 (Miss. Ct. App. 2012).

In Gordon, the Court of Appeals ruled that the evidence did not support a finding that the claimant was terminated for misconduct arising from a violation of the hospital employer's policy regarding the handling of dirty linen and cursing his supervisor, as grounds for denying application for unemployment compensation. In this case, there was no evidence showing that the claimant received training in the handling of dirty linen, that he ever received a copy of the infection control manual detailing the procedure for handling linen, or that he was fired for cursing. The Court found that the claimant was fired after a single incident, despite the supervisor's testimony that the employee would not be fired for a single violation of moving dirty linen through the clean linen area. Gordon, 864 So. 2d 1013 (Miss. Ct. App. 2004).

In McGlothin, the Mississippi Supreme Court held that public schools have authority to promulgate and enforce a reasonable dress code for faculty, staff, and students, provided only that it does not infringe on the rights otherwise protected, and even then, schools may enforce such a code when undergirded by some compelling governmental interest reasonably related to their educational mission, so far as the least restrictive means reasonably available be employed. Miss. Emp. Sec. Comm'n and Jackson Mun. Sep. Sch. Dist. v. McGlothin, 556 So. 2d 324 (Miss. 1990).

The Mississippi Supreme Court ruled in Coahoma County. v. Mississippi Employment Security Commission that the claimant's failure to report a co-employee for covering up a monitoring camera in the county jail did not rise to the level of misconduct necessary to disqualify her from receiving unemployment benefits. The Court found that there was evidence that the monitoring rule was not fairly and consistently enforced, and the claimant had not been informed that failure to detect an incident such as this would result in immediate termination for such first offense. Coahoma Cty. v. Miss. Emp. Sec. Comm'n, 761 So. 2d 846 (Miss. 2000).

In Acy, the Court of Appeals stated that even if the store employee's conduct of cursing in the presence of a customer was a violation of the employer's policies and procedures, thus justifying her termination, the employee's actions did not amount to misconduct disqualifying her from receipt of unemployment compensation benefits. The Court found that an isolated incident of misconduct by the employee did not generally disqualify the employee from receiving the benefit of unemployment compensation. Acy, 960 So. 2d 592 (Miss. Ct. App. 2007).

Unsatisfactory Work Performance

In Ray v. Bivens, the Mississippi Supreme Court found that the evidence supported the Agency's decision denying unemployment benefits to a worker, on grounds that his dismissal for allegedly sleeping on several occasions during his shift as an environmental technician in the water treatment area of a factory was a discharge for misconduct disqualifying the worker from unemployment benefits. Ray v. Bivens, Miss. Emp. Sec. Comm'm & E. I. Dupont Co., 562 So. 2d 119 (Miss. 1990).

In Foster, the Mississippi Supreme Court held that a former employee's conduct in backing delivery trucks into stationary objects on five occasions in six months did not rise to level of employee misconduct precluding unemployment compensation benefits. Foster, 632 So. 2d 926 (Miss. 1994).

Mere ineptitude cannot disqualify terminated employee from receiving unemployment compensation benefits. Id.

Notice

An administrative board must afford minimum procedural due process under the Fourteenth Amendment of the United States Constitution and under the Mississippi Constitution, consisting of notice and opportunity to be heard in cases in which the right or interest requiring constitutional protection is involved. Booth, 588 So. 2d 422 (Miss. 1991).

In the Williams case, the Mississippi Supreme Court found that the claimant was entitled to notice prior to the administrative decision to reconsider the reversal of her disqualification from benefits. Williams, 395 So. 2d 964 (Miss. 1981).

There is no constitutional requirement for notice to the attorney for unemployment compensation claimant of the employer's administrative appeal from a referee decision as long as notice to the claimant is "reasonably calculated" to apprise the claimant of the necessary information. Booth, 588 So. 2d 422 (Miss. 1991).

Procedural Issues

The procedure in an unemployment compensation case is governed by the regulations prescribed by the Mississippi Employment Security Commission. Booth, 588 So. 2d 422 (Miss. 1991).

In Coleman, the Mississippi Supreme Court Court said that, pursuant to statute, the claimant was exempted from court costs in pursuing his appeal in his unemployment compensation case. Coleman, 662 So. 2d 626 (1995).

Administrative agency hearings are not limited to strict rules of evidence. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

While the rules of evidence are relaxed in administrative settings, ideas of fundamental fairness should still prevail. SkyHawke Techs., LLC v. Miss. Dept. of Emp. Sec., 110 So. 3d 327 (Miss. Ct. App. 2012).

In cases where substantial evidence supportive of an administrative agency's fact-finding exists and relevant law was properly applied to facts, appellate courts are without the authority to disturb the agency's conclusion. Shannon Engineering, 549 So. 2d 446 (Miss. 1989).

In Little v. Mississippi Employment Security Commission, the Supreme Court found that the requirement by the appeals referee that the unemployment compensation claimant offer evidence to rebut the employer's allegation of misconduct, when no evidence of misconduct had been offered, was an improper shifting of the burden of proof. The employer totally failed to appear for the hearing and expressed no interest in even participating in the hearing, and thus the claimant was not required to submit evidence to rebut the claim of misconduct, as no evidence of misconduct was offered by employer. Little, 754 So.2d 1258 (1999).

In SkyHawke, the Court of Appeals held that the trial court did not act improperly by reviewing the record for fraud, and did not impermissibly require that employer prove fraud to succeed in its appeal of Department of Employment Security's award of unemployment benefits to discharged claimant, when, following statutory direction, the court ruled that it did not find any evidence of fraud and that the findings were supported by evidence. SkyHawke, 110 So. 3d 327 (Miss. Ct. App. 2012).

The Court of Appeals also found that the administrative law judge's (ALJ) exclusion of the employee handbook in the unemployment compensation hearing did not affect a substantial right of the employer, and thus, exclusion did not amount to error. Although the employer contended that had the handbook been admitted into evidence, the ALJ would have found that the employee was terminated for sexual harassment, justifying a denial of unemployment benefits, the ALJ allowed testimony on the employer's sexual harassment policy, curing any possible prejudice from exclusion of the handbook itself. Id.

If an administrative agency exercises power that is not expressly granted or necessarily implied, the agency's decision is void. Wilkerson v. Mississippi Employment Sec. Comm'n, 630 So. 2d 1000 (Miss. 1994).

Scope of Review

An Order of Board of Review based on facts is conclusive upon a lower court if it is supported by substantial evidence and there is no fraud, and the scope of review requires

determination of sufficiency of evidentiary basis of the decision. Wheeler, 408 So. 2d 1381 (1982).

The Supreme Court gives great deference to an administrative agency's findings and decisions. Trading Post, Inc., 731 So. 2d 1198 (Miss. 1999).

The Agency's conclusion must remain undisturbed unless the agency's order is not supported by substantial evidence; is arbitrary or capricious; is beyond scope or power granted to agency; or violates one's constitutional rights. Sprouse, 639 So. 2d 901 (1994), McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

Where an administrative agency errs as a matter of law, courts of competent jurisdiction should not hesitate to intervene. Sherman, 989 So. 2d 398 (Miss. 2008).

The Supreme Court must not reweigh facts of a case or insert its judgment for that of the agency in reviewing the agency's decision. Sprouse, 639 So. 2d 901 (Miss. 1994).

The Supreme Court's scope of review in an unemployment compensation case is limited to the findings of the Board of Review, and an order by the Board on the facts is conclusive if supported by substantial evidence; hence, judicial review is limited to questions of law. Coleman, 662 So. 2d 626 (1995).

Substantial Evidence

The findings of fact of the Board of Review are conclusive if supported by substantial evidence and without fraud; appellate court must not reweigh the facts of the case or insert its judgment for that of the agency. Broome, 921 So. 2d 334 (Miss. 2006).

The Supreme Court should review the record of the Board of Review to determine whether as a matter of law, the Board's fact-finding in an unemployment compensation case is supported by substantial evidence. If the evidence is sufficient, the Supreme Court should determine whether, as matter of law, the employee's actions constituted misconduct disqualifying him from receipt of unemployment compensation. Booth, 588 So. 2d 422 (Miss. 1991).

The Mississippi Supreme Court found in McLane Southern, that the uncorroborated hearsay testimony presented by the employer was not "substantial evidence" of employee misconduct, such as would disqualify the employee from receiving unemployment compensation benefits. McLane Southern, 583 So. 2d 626 (Miss.1991).

If hearsay, even if not corroborated in the traditional sense, is highly probative because it has strong indicia of reliability, it can at least in many situations be substantial evidence to support an administrative decision. McClinton, 949 So. 2d 805 (Miss. Ct. App. 2006).

Affidavits and other hearsay that constitute more than mere rumor and are not simply idle comments by an absent speaker, but are the kind of evidence that may be found sufficiently reliable to constitute substantial evidence by itself and support an administrative agency adjudication. Id.

In Little v. Mississippi Employment Security Commission, the Supreme Court of Mississippi found that there was no substantive evidence to support denial of unemployment compensation benefits based on the claimant's alleged misconduct where the employer totally failed to appear for hearing and expressed no interest in even participating in the hearing. Little, 754 So.2d 1258 (Miss. 1999).

Timeliness

The State unemployment compensation scheme does not give the Commission the power to modify a statute governing time in which to appeal a decision absent either a written rule relaxing the standard or the showing of good cause for an extension of time. Wilkerson, 630 So. 2d 1000 (Miss. 1994).

An employee or employer has fourteen days from the time that the notification of unemployment compensation is mailed to appeal to the Board of Review; time begins to run on notification of a claim only if the notification is by means other than mail to a party's last known address. Id.

The fourteen day period for an employer to file an appeal of an initial determination of unemployment benefits is strictly construed. Wilson v. MDES, 32 So. 3d 1230 (Miss. Ct. App. 2010).

The Agency is not authorized to accept an employer's appeal of a claims examiner's finding of eligibility for unemployment compensation after the fourteen-day appeal period has expired. Id.

Voluntary Quit

General

Mississippi Code Annotated Section 71-5-513 (A)(1)(a) provides for disqualifying persons from benefits otherwise eligible for such acts as leaving work voluntarily without good cause.

Mississippi Code Annotated Section 71-5-513 (A)(1)(a) also states that "marital, filial and domestic circumstances and obligations" shall not be deemed good cause for voluntarily leaving employment.

A terminated employee is afforded protection under the Mississippi Employment Security Law when he is ready, willing and able to work, but when through no fault of his own, he is unable to do so. An employee who quits his job also may be entitled to unemployment compensation benefits. Coleman, 662 So. 2d 626 (1995).

In Coleman, the Mississippi Supreme Court found that an employee who submitted his letter of intent to resign effective March 31, but who was terminated by the employer on March 22, was entitled to unemployment compensation benefits. The ruled that the case was a "firing case," not a "quitting case." Id.

Unemployment benefit claimants satisfy their burden of proof of good cause for leaving work when they voluntarily leave employment rather than violate a statute, which is a question of law. Sherman, 989 So. 2d 398 (Miss. 2008).

Belief of Termination

An employee who leaves work under the reasonable belief that she has been fired has not voluntarily terminated her employment, and thus, the employee is not disqualified from receiving unemployment compensation. Barbara Huckabee v. Miss. Emp. Sec. Comm'n, 735 So. 2d 390 (Miss. 1999).

The reasonableness of an unemployment compensation claimant's belief that she has been discharged turns on the surrounding facts and circumstances. Id.

In Huckabee, the Supreme Court of Mississippi found that substantial evidence failed to support the Board of Review's finding that a claimant voluntarily quit employment without good cause. In this case, the claimant informed her supervisor that she would have to find another job if the working conditions did not improve but assured the supervisor that she

would stay as long as possible. The claimant alleged that the supervisor stated that she would have to find someone else, and when the claimant asked the supervisor if she was trying to get rid of the claimant, the supervisor giggled, threw up her hands, and stated "I'm hiring somebody else." Id.

Good Cause

Regarding the issue of good cause, the applicable statute provides that a claimant has the burden of proving good cause for quitting his/her employment. Miss. Code Ann. Section 71-5-513(A)(1)(c) (Rev. 2007).

It will be the employee's, and not the employer's, duty to prove that the reason for the separation from employment amounted to good cause. Further, the question of whether the claimant voluntarily quit or was terminated is a question of fact to be determined by the ALJ and Board of Review. Miss. Emp. Sec. Comm'n. v. Fortenberry, 193 So. 2d 142, 143 (Miss. 1966).

"[M]arital, filial and domestic circumstances and obligations shall not be deemed good cause" for voluntarily leaving employment; however, "[p]regnancy shall not be deemed to be a marital, filial or domestic circumstance." Miss. Code Ann. Section 71-5-513(A)(3)(a) (Revised 2000).

Mississippi Employment Security Commission v. Pulphus, 538 So.2d 770 (Miss. 1989)(lack of transportation to and from work is personal circumstance to be resolved by the worker; and thus, not good cause for quitting).

In Pulphus, supra, the Court stated that even though the Employer may have incidentally caused the lack of transportation problem, lack of transportation to and from work was a personal matter, to be resolved by the employee. In this case, Ms. Pulphus apparently traveled approximately 60 miles round trip to work. Shortly prior to Christmas in 1986, the Employer, Harlow Furniture, closed its plant and laid off its employees. However, subsequently the Employer recalled Ms. Pulphus to work, but not the co-workers with whom she rode. Ms. Pulphus apparently worked at the plant a few times, but then quit due to transportation problems. In affirming the Commission's decision disqualifying her from receiving benefits, the Court stated that the Employer was under no obligation to recall Ms. Pulphus's co-workers with whom she rode; and absent an Employer obligation, the Employer was under no obligation to insure transportation of its employees.

Sexual harassment in the workplace constitutes good cause for voluntarily leaving employment in context of unemployment compensation benefit claims. Hoerner Boxes, Inc. v. Miss. Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997).

If an employee is sexually harassed to such degree that an ordinary prudent employee would leave the ranks of the employed for that of the unemployed, then the employee should not be denied unemployment compensation benefits. Id.

In Sherman, the Court ruled that a former employee who quit her job as a desk clerk at a motel because she refused to engage in price-gouging following a hurricane had good cause for voluntarily leaving her employment, and thus, she was entitled to unemployment benefits. Sherman, 989 So. 2d 398 (Miss. 2008).

Additional case law: Mississippi Employment Security Commission v. Ballard, 252 Miss. 418, 174 So.2d 367 (Miss. 1965)(hardship caused by lack of transportation is not a condition of eligibility); Mississippi Employment Security Commission v. Phillips, 562 So. 2d 115 (Miss. 1990)(claimant failed to establish that job was a risk to his health or safety); Mississippi Employment Security Commission et al vs. Lee, 674 So.2d 512 (Miss. 1996)(quitting work because of disciplinary demotion is not good cause); Mississippi Employment Security Commission vs. Rakestraw, 179 So.2d 830 (Miss.1965)(quitting work in a moment of pique is not good cause); Daniels v. Mississippi Employment Security Commission, 904 So. 2d 1195 (Miss. Ct App 2004)(employer's refusal to pay claimant time and one-half pay for working Thanksgiving Day, was not good cause for quitting).

Job Abandonment

NCI Building Components v. Berry, 811 So. 2d 321 (Miss Ct. App. 2001). In Berry, the issue was whether Mr. Berry voluntarily quit or was discharged. The facts indicated that Mr. Berry had been disciplined for excessive absenteeism. Subsequently, his supervisor allowed him to take a couple of days off, but he was nevertheless required to call in those absences according to company policy. Mr. Berry did not call in; and the policy called for termination after three successive absences without calling in. On the day following these two absences, Mr. Berry came into the office to pick up his paycheck. He was scheduled to work the night shift. Mr. Berry then spoke to the personnel administrator about two items of business that were apparently somewhat contentious. Mr. Berry then asserted that he was terminated. The supervisor denied he was terminated, stating that he did not have the authority to do so. Mr. Berry apparently did not return to work after that.

In Berry, supra, based on these facts, the Court held that the evidence was that work was still available to Mr. Berry; and the evidence supported the Department's determination that Mr. Berry voluntarily quit. The Court further held that he did not take reasonable steps to protect his job by discussing his employment with his supervisors further. He also did not return to work thereafter.

Also see: Mississippi Department of Employment Security v. Shields, 42 So. 3d 1204 (Miss. Ct. App. 2010)(employee on leave of absence due to pregnancy was found to have abandoned her job, and not terminated, when she failed to return to work the day after her leave of absence ended, when she also did not request an additional leave of absence)(case reverses Circuit Court and also discusses Circuit Court's abuse of discretion).

Temporary Help Firm Rule

Miss. Code Ann. Section 71-5-511(I) of the law provides that a temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected to the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

Code of Mississippi Rules > AGENCY 20. LABOR > SUB-AGENCY 201. STATE WORKFORCE INVESTMENT BOARD > CHAPTER 001. PART 201:

MISSISSIPPI WORKS FUND RULES & REGULATIONS

This document reflects changes received through May 5, 2017

CONTENTS

PART 201 CHAPTER 1. STATUTORY AUTHORITY **1**

Rule 1.1 Statutory Authority. 1
Rule 1.2 Rules Committee. 1

PART 201 CHAPTER 2 MS WORKS FUND PROJECTS **2**

Introduction. 2
Rule 2.1 Job Creation Projects. 2
Rule 2.2 JCP Eligible Projects. 2
Rule 2.3 JCP Eligible Applicants. 3
Rule 2.4 JCP Allowable Use of Funds. 3
Rule 2.5 JCP Unallowable Use of Funds. 4
Rule 2.6 JCP Application Process. 4
Rule 2.7 JCP Sub Grant Agreement. 5
Rule 2.8 JCP Disbursement and Reimbursement of Funds. 5
Rule 2.9 Work Ready Projects. 5
Rule 2.10 WRP Eligible Projects. 5
Rule 2.11 WRP Eligible Applicants. 6
Rule 2.12 WRP Allowable Use of Funds. 6
Rule 2.13 WRP Unallowable Use of Funds. 7
Rule 2.14 WRP Application Process. 8
Rule 2.15 WRP Sub Grant Agreement. 8
Rule 2.16 WRP Disbursement and Reimbursement. 8

PART 201 CHAPTER 3. PERFORMANCE METRICS **9**

Rule 3.1 Required Performance Metrics for Job Ready Projects. 9
Rule 3.2 Required Performance Metrics for Work Ready Projects. 9

PART 201 CHAPTER 4. RECONCILIATION & REPORTING **10**

Rule 4.1 Reconciliation of Performance and Financial Measures. 10
Rule 4.2 Required Reports. 10
Rule 4.3 Reporting Schedule. 10

PART 201 CHAPTER 1. STATUTORY AUTHORITY

Rule 1.1 Statutory Authority.

The MS Works Fund was created through MS Works Funds created in Mississippi Code Annotated § 71-5-353.

The rules for the MS Works Fund are promulgated in accordance with Senate Bill 2808, which empowers and requires the State Workforce Development Board (the Board) to:

A. Establish a Rules Committee that in consultation with the full board shall be designated as the body with the sole authority to promulgate rules and regulation for distribution of MS Works Funds created in Mississippi Code Annotated §71-5-353; and to

B. Create and implement performance metrics for the MS Works Fund to determine added value to the local and state economy.

Source: Miss. Code Ann. §71-5-353 §37-153-7

Rule 1.2 Rules Committee.

The Rules Committee shall consist of State Workforce Development Board members:

A. The Executive Director of the Mississippi Development Authority;

B. The Executive Director of the Mississippi Department of Employment Security;

C. The Executive Director of the Mississippi Community College Board;

D. The Chair of the Mississippi Association of Community and Junior Colleges;

E. The Chair of the State Workforce Development Board;

F. A representative from the workforce areas selected by the Mississippi Association of Workforce Areas, Inc.;

G. A business representative currently serving on the board, selected by the Chairman of the State Workforce Development Board; and

H. Two (2) legislators, who shall serve in a nonvoting capacity, one (1) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate and one (1) of whom shall be appointed by the Speaker of the House of Representatives from the membership of the Mississippi House of Representatives.

Source: Miss. Code Ann. §§71-5-353 & 37-153-7

PART 201 CHAPTER 2 MS WORKS FUND PROJECTS

Introduction.

The Rules Committee has approved funding for two types of projects:

Job Creation Projects (JCP); and Work Ready Projects (WRP). The Mississippi public community college system and its partners shall be the primary entities to facilitate the training associated with both types of projects. Eligible applicants are community and junior colleges, state institutions of higher learning, Workforce Investment Network job centers, and other training providers, as approved (referred to in this document as Training Providers).

Applications are accepted year-round, as funds are available. Training Providers must apply on behalf of the Benefitting Business through the Mississippi Development Authority (MDA) and complete the MS Works Fund proposal package to include:

A. Business Description

B. Project Description

C. Detailed Job and Wage Information

D. Consent to Release Employment Data (UI Wage Record)

E. Certification

F. Vendor Registration

Rule 2.1 Job Creation Projects.

Job Creation Projects (JCP) must result in net new jobs and meet retention requirements.

Source: Miss. Code Ann. §71-5-353

Rule 2.2 JCP Eligible Projects.

Eligible projects for JCP must meet the critical training needs of a specific Benefitting Business to train new employees in skills necessary for the operation of the business, or to support subsidized On-the-Job training for new employees. MS Works Fund grants should be used to maximize existing training resources available through the Workforce Enhancement Training Funds, the Workforce Innovation and Opportunity Act and other sources. The Training Provider must demonstrate that the Benefitting Business is not eligible for, or has exhausted funding through, these or other existing programs.

A. The Benefitting Business should be targeted towards, but not limited to, high growth target industry sector, as identified by MDA;

B. The Benefitting Business shall create at least 10 net new full-time permanent jobs within two years of completion of training under the MS Works grant;

C. Retention of trained employees is extremely important.MDA will not commit funds towards training for any job that is known to be short-term (a year or less). Furthermore, MDA will not commit future funds toward training for a Benefitting Business that has a poor history of job retention.

Source: Miss. Code Ann. §71-5-353

Rule 2.3 JCP Eligible Applicants.

The applicable Training Provider will apply on behalf of a Benefitting Business, as indicated below, to receive training funds.

A. Existing - For-profit businesses that have been in operation for a minimum of one year prior to the application date, are expanding the number of full-time employees at the Mississippi location, are current on all federal and state tax obligations, and are financially viable are eligible to apply.

B. New - For-profit businesses that have been recruited to the state by MDA or in consultation with MDA, are current on all federal and state tax obligations, and are financially viable.

Source: Miss. Code Ann. §71-5-353

Rule 2.4 JCP Allowable Use of Funds.

MS Works Funds may only be used for immediate training needs for the net new jobs created and retained. Not more than five hundred thousand dollars ($ 500,000) may be awarded annually for the training needs of any one employer. Eligible projects must meet critical training needs of a specific business (Benefitting Business) to train new or existing employees in skills necessary for the operation of the business. When applicable, MS Works funds should be aligned with the WIOA state plan.

A. The MS Works Fund grants shall be available for, but not limited to high growth industry sectors as designated by MDA.

B. These funds shall place a special emphasis and priority on skill, aptitude, and physical assessments such as ACT WorkKeys) and Job PASS. When possible, MS Works Funds shall be used to increase the number of certificated employees in the state.

C. Educational training including, but not limited to: workplace literacy, basic skills, soft skills, and English as a second language

D. Subsidized On-the-Job training for new employees

E. Priority for training shall be given to improving the skills of unemployed and underemployed individuals

F. Training in operational strategies to improve efficiency of business operations connected to an expansion

G. Training Providers may request administrative cost recovery and MDA may approve on a case by case basis. Administrative costs will be capped at 5 percent but the negotiated amount will be approved based on the justifiable costs associated with each project.

MDA will take wage rates into consideration when making a determination on the amount of grant funds to make available to the Benefitting Business. Higher wage rates are a factor in MDA's recruitment of industries and as such will be a factor in the determination of how MS Works Funds will be allocated.

Source: Miss. Code Ann. §71-5-353

Rule 2.5 JCP Unallowable Use of Funds.

Funds approved for JCP projects may not be used to pay training costs of a company that relocates the company's worksite from one community in Mississippi to another. In no case shall MS Works Funds be used to supplant workforce funds available from any other source, including but not limited to local, state, or federal sources that are available for workforce training and development. Applicants must disclose other funds sought or awarded for workforce training.

MS Works Fund grants may not be used to provide the following:

A. Proprietary management training packages such as: VitalEdu, AchieveGlobal, Plexus, Zig Ziglar, Phi Theta Kappa Leadership, Stephen Covey and similar packages;

B. Training to a gaming enterprise; and

C. Training for service sector businesses.

Source: Miss. Code Ann. §71-5-353

Rule 2.6 JCP Application Process.

The applicable Training Provider, in partnership with the Benefitting Business, must submit electronic copies of the application according to the appropriate format.

A. The application must be complete, with all information supplied;

B. The application must clearly describe the training to be delivered, state the training objectives, and describe how the funds will be used to meet the objectives;

C. The application must document that the training is needed and that other resources are not available to meet the need; and

D. Any additional criteria required by MDA.

Source: Miss. Code Ann. §71-5-353

Rule 2.7 JCP Sub Grant Agreement.

Upon approval of the application by the MDA, Training Providers must enter into a sub grant agreement with the MDA to facilitate training related to the JCP activity.

Source: Miss. Code Ann. §71-5-353

Rule 2.8 JCP Disbursement and Reimbursement of Funds.

All funds deposited into the Mississippi Department of Employment Security (MDES) MS Works Fund shall be disbursed exclusively by the Executive Director of the MDES, in accordance with the rules and regulations promulgated by the State Workforce Development Board Rules Committee. The MDES upon approval by the MDA will make all disbursements to the Training Provider.

The Training Provider will be reimbursed upon completion of a participant's training. Reimbursement requests may be submitted no more frequently than on a monthly basis.

Source: Miss. Code Ann. §71-5-353

Rule 2.9 Work Ready Projects.

Work Ready Projects must result in a trained and work ready applicant pool. Training must comply with the Workforce Innovation and Opportunity (WIOA) plan and meet targeted sector, credential, middle skill job requirements. When possible, MS Works Funds shall be used to increase the number of certificated employees in the state.

Source: Miss. Code Ann. §71-5-353

Rule 2.10 WRP Eligible Projects.

Eligible projects for WRP must either:

A. Meet the critical training needs of a specific Benefitting Business to train existing employees in skills necessary for the retention of jobs, or

B. Support implementation of the WIOA state plan to result in a trained and work-ready applicant pool, with a special emphasis and priority on certificate-based skill, aptitude, and physical assessments such as ACT WorkKeys) and Job PASS applicable to middle skill jobs.

For projects under Part B above, MDA shall make grants to the appropriate Training Provider after consultation with the State Workforce Development Board to ensure that the project adheres to the WIOA state plan. MS Works Fund grants should be used to maximize existing training resources available through the Workforce Enhancement Training Funds, the Workforce Innovation and Opportunity Act and other sources. For retention projects, the Training Provider must demonstrate that the Benefitting Business is not eligible for, or has exhausted funding through, these or other existing programs.

Source: Miss. Code Ann. §71-5-353

Rule 2.11 WRP Eligible Applicants.

Applications for WRPs for the purpose of building a quantifiable and certifiable applicant pool must be submitted by a Training Provider. Applications for WRPs for retention purposes must be submitted in partnership with a Benefitting Business.

A. Training Providers -community and junior colleges, state institutions of higher learning, Local Workforce Development Board, and other training providers, as approved.

B. WRP Benefitting Business - For-profit businesses that have been in operation for a minimum of one year prior to the application date, are current on all federal and state tax obligations, and are facing market conditions that require skills upgrades to prevent layoffs.

Private non-profit entities and public agencies (excluding Training Providers) cannot receive training assistance through a WRP.

Source: Miss. Code Ann. §71-5-353

Rule 2.12 WRP Allowable Use of Funds.

MS Works Funds for WRP may not account for more than twenty-five percent of the total allocation in any one year. Eligible projects must meet critical training needs of specific Benefitting Business to train existing employees in skills necessary for the retention of jobs, or result in a trained and work-ready applicant pool with a special emphasis and priority on certificate-based training applicable to middle skill jobs. MS Works funds should be aligned with the WIOA state plan.

A. The MS Works Fund grants shall be targeted towards, but not limited to, high growth industry sectors as designated by MDA.

B. These funds shall place a special emphasis and priority on skill, aptitude, and physical assessments such as ACT WorkKeys) and Job PASS.

C. Educational training including, but not limited to: workplace literacy, basic skills, soft skills, and English as a second language

D. Training in operational strategies to improve efficiency of business operations

E. Priority for training not related to retention projects shall be given to improving the skills of unemployed and underemployed individuals

F. MS Works Training Grants may be used for Lean Manufacturing training and customized training, only to match the contribution to the cost of such training made by the company or group of companies, and may be subject to the 25% cap on retention related projects.

G. Training Providers may request administrative cost recovery and MDA may approve on a case by case basis. Administrative costs will be capped at 5 percent but the negotiated amount will be approved based on the justifiable costs associated with each project.

MDA will take wage rates of the Benefitting Business into consideration when making a determination on the amount of grant funds to make available for retention.

Source: Miss. Code Ann. §71-5-353

Rule 2.13 WRP Unallowable Use of Funds.

In no case shall MS Works Funds be used to supplant workforce funds available from any other source, including but not limited to local, state, or federal sources that are available for workforce training and development.

Funds approved for WRP may not be used to pay training costs for a company that relocates the company's worksite from one community in Mississippi to another.

Trainee wages are not allowable expenditures. In addition, the purchase of proprietary or production equipment is not an allowable expenditure.

MS Works Fund grants may not be used to provide the following:

A. Proprietary management training packages such as: VitalEdu, AchieveGlobal, Plexus, Zig Ziglar, Phi Theta Kappa Leadership, Stephen Covey and similar packages;

B. Training to a gaming enterprise; and

C. Training for service sector businesses.

Source: Miss. Code Ann. §71-5-353

Rule 2.14 WRP Application Process.

The applicable Training Provider, in partnership with a Benefitting Business if applicable, must submit electronic copies of the application according to the appropriate format.

A. The application must be complete, with all information supplied;

B. The application must clearly describe the training to be delivered, state the training objectives, and describe how the funds will be used to meet the objectives;

C. The application must document that the training is needed and that other resources are not available to meet the need; and

D. Any additional criteria required by MDA.

Source: Miss. Code Ann. §71-5-353

Rule 2.15 WRP Sub Grant Agreement.

Upon approval of the application by the MDA, Training Providers must enter into a sub grant agreement with the MDA to facilitate training related to the WRP activity.

Source: Miss. Code Ann. §71-5-353

Rule 2.16 WRP Disbursement and Reimbursement.

All funds deposited into the Mississippi Department of Employment Security (MDES) MS Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the State Workforce Development Board Rules Committee. The MDES upon approval by the MDA will make disbursements.

The Training Provider will be reimbursed upon completion of a participant's training. Reimbursement requests may be submitted no more frequently than on a monthly basis.

Source: Miss. Code Ann. §71-5-353

PART 201 CHAPTER 3. PERFORMANCE METRICS

The Mississippi State Workforce Development Board has created performance metrics for the MS Works Fund to determine the added value to the local and state economy and the contribution to the future growth of the state economy.

Rule 3.1 Required Performance Metrics for Job Ready Projects.

The State Longitudinal Data System (SLDS) will be used to calculate performance. Performance metrics for Job Ready Projects will at a minimum include:

A. Jobs Created

B. Jobs Retained

C. Wages / Personal Income

D. National Career Readiness Certificates and other Job Preparedness Certifications Granted (geo-located)

E. Private training funds committed

Source: Miss. Code Ann. §71-5-353

Rule 3.2 Required Performance Metrics for Work Ready Projects.

The State Longitudinal Data System (SLDS) will be used to calculate performance. Performance metrics for Work Ready Projects will at a minimum include:

A. Training Enrollments

B. Training Completion

C. National Career Readiness Certificates and other Job Preparedness Certifications Granted (geo-located)

D. Entered Employment

E. Wages Earned

The Training Providers will be required to input data associated with each JCP and WRP activity using appropriate mechanisms to incorporate that data into SLDS.

Source: Miss. Code Ann. §71-5-353

PART 201 CHAPTER 4. RECONCILIATION & REPORTING

Rule 4.1 Reconciliation of Performance and Financial Measures.

The State Longitudinal Data System (SLDS) will be used to generate quarterly performances and annual performance reports. Specific reporting requirements will be included in sub grant agreements between MDA and the Training Provider which will describe the process for collecting, transmitting, validating, and reporting data in compliance with SLDS Governing Board rules and regulations on training expenditures and participant results.

For training provided by the community and junior colleges, the MCCB assumes responsibility for demographic data validation. MDA assumes responsibility for financial validation. Upon validation of demographics and financial reports by the appropriate parties, MCCB will make the submission to SLDS. The community and junior college training provider assumes responsibility for collecting accurate data as required and submitting the data to MCCB by the designated deadline.

Source: Miss. Code Ann. §71-5-353

Rule 4.2 Required Reports.

The MDES in conjunction with MDA will generate quarterly and annual financial reports by project and in the aggregate. Financial reports will include:

A. Collections

B. Expenditures

C. Obligations

D. Plan versus Actual

A report on the performance of the fund shall be made to the Governor, Lieutenant Governor, and Speaker of the House of Representatives annually, throughout the life of the fund.

Source: Miss. Code Ann. §71-5-353

Rule 4.3 Reporting Schedule.

Quarterly financial reports will be submitted for review and approval to the MDA and the SWIB 45 days after the end of each quarter. Annual financial reports will be submitted to MDA and the SWIB 45 days after the end of the calendar year.

Source: Miss. Code Ann. §71-5-353

STATUTORY AUTHORITY:
Miss. Code Ann. §71-5-353

HISTORY
EFFECTIVE DATE:
September 9, 2016 Secretary of State Administrative Bulletin #22156

CODE OF MISSISSIPPI RULES
Copyright © 2017 Matthew Bender & Company, Inc. a member of the LexisNexis Group All rights reserved.