

# AN ACT

To amend sections 4141.01, 4141.11, 4141.131, 4141.24, 4141.242, 4141.25, 4141.26, 4141.28, 4141.282, 4141.283, 4141.29, 4141.301, 4141.31, 4141.312, and 4141.99, to enact sections 4141.292 and 4141.48, and to repeal section 4141.311 of the Revised Code to conform state law to federal requirements in the establishment of civil and criminal penalties for manipulating payroll and business transfer information to obtain lower contribution rates and in the treatment of Indian tribes as employers, to establish a state disaster unemployment benefit payment to pay the first week of an individual's unemployment caused by a major disaster, to make changes involving the appeal process for claims under the unemployment compensation law, and to make various changes in the administration of the unemployment compensation law.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 4141.01, 4141.11, 4141.131, 4141.24, 4141.242, 4141.25, 4141.26, 4141.28, 4141.282, 4141.283, 4141.29, 4141.301, 4141.31, 4141.312, and 4141.99 be amended and sections 4141.292 and 4141.48 of the Revised Code be enacted to read as follows:

Sec. 4141.01. As used in this chapter, unless the context otherwise requires:

(A)(1) "Employer" means the state, its instrumentalities, its political subdivisions and their instrumentalities, Indian tribes, and any individual or type of organization including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1971, or in the case of

political subdivisions or their instrumentalities, subsequent to December 31, 1973:

(a) Had in employment at least one individual, or in the case of a nonprofit organization, subsequent to December 31, 1973, had not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day; or

(b) Except for a nonprofit organization, had paid for service in employment wages of fifteen hundred dollars or more in any calendar quarter in either the current or preceding calendar year; or

(c) Had paid, subsequent to December 31, 1977, for employment in domestic service in a local college club, or local chapter of a college fraternity or sorority, cash remuneration of one thousand dollars or more in any calendar quarter in the current calendar year or the preceding calendar year, or had paid subsequent to December 31, 1977, for employment in domestic service in a private home cash remuneration of one thousand dollars in any calendar quarter in the current calendar year or the preceding calendar year:

(i) For the purposes of divisions (A)(1)(a) and (b) of this section, there shall not be taken into account any wages paid to, or employment of, an individual performing domestic service as described in this division.

(ii) An employer under this division shall not be an employer with respect to wages paid for any services other than domestic service unless the employer is also found to be an employer under division (A)(1)(a), (b), or (d) of this section.

(d) As a farm operator or a crew leader subsequent to December 31, 1977, had in employment individuals in agricultural labor; and

(i) During any calendar quarter in the current calendar year or the preceding calendar year, paid cash remuneration of twenty thousand dollars or more for the agricultural labor; or

(ii) Had at least ten individuals in employment in agricultural labor, not including agricultural workers who are aliens admitted to the United States to perform agricultural labor pursuant to sections ~~214(e)~~ 1184(c) and ~~101(a)(15)(H)~~ 1101(a)(15)(H) of the "Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each of the twenty different calendar weeks, in either the current or preceding calendar year whether or not the same individual was in employment in each day; or

(e) Is not otherwise an employer as defined under division (A)(1)(a) or (b) of this section; and

(i) For which, within either the current or preceding calendar year, service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, is or was performed with respect to which such employer is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(ii) Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is required, pursuant to such act to be an employer under this chapter; or

(iii) Who became an employer by election under division (A)(4) or (5) of this section and for the duration of such election; or

(f) In the case of the state, its instrumentalities, its political subdivisions, and their instrumentalities, and Indian tribes, had in employment, as defined in ~~division~~ divisions (B)(2)(a) and (B)(2)(1) of this section, at least one individual;

(g) For the purposes of division (A)(1)(a) of this section, if any week includes both the thirty-first day of December and the first day of January, the days of that week before the first day of January shall be considered one calendar week and the days beginning the first day of January another week.

(2) Each individual employed to perform or to assist in performing the work of any agent or employee of an employer is employed by such employer for all the purposes of this chapter, whether such individual was hired or paid directly by such employer or by such agent or employee, provided the employer had actual or constructive knowledge of the work. All individuals performing services for an employer of any person in this state who maintains two or more establishments within this state are employed by a single employer for the purposes of this chapter.

(3) An employer subject to this chapter within any calendar year is subject to this chapter during the whole of such year and during the next succeeding calendar year.

(4) An employer not otherwise subject to this chapter who files with the director of job and family services a written election to become an employer subject to this chapter for not less than two calendar years shall, with the written approval of such election by the director, become an employer subject to this chapter to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject to this chapter as of the first day of January of any calendar year subsequent to such two calendar years only if at least thirty days prior to such first day of January the employer has filed with the director a written notice to that effect.

(5) Any employer for whom services that do not constitute employment

are performed may file with the director a written election that all such services performed by individuals in the employer's employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter, for not less than two calendar years. Upon written approval of the election by the director, 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 employment subject to this chapter as of the first day of January of any calendar year subsequent to such two calendar years only if at least thirty days prior to such first day of January such employer has filed with the director a written notice to that effect.

(B)(1) "Employment" means service performed by an individual for remuneration under any contract of hire, written or oral, express or implied, including service performed in interstate commerce and service performed by an officer of a corporation, without regard to whether such service is executive, managerial, or manual in nature, and without regard to whether such officer is a stockholder or a member of the board of directors of the corporation, unless it is shown to the satisfaction of the director that such individual has been and will continue to be free from direction or control over the performance of such service, both under a contract of service and in fact. The director shall adopt rules to define "direction or control."

(2) "Employment" includes:

(a) Service performed after December 31, 1977, by an individual in the employ of the state or any of its instrumentalities, or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions and without regard to divisions (A)(1)(a) and (b) of this section, provided that such service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 3306(c)(7) and is not excluded under division (B)(3) of this section; or the services of employees covered by voluntary election, as provided under divisions (A)(4) and (5) of this section;

(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization which is excluded from the term "employment" as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 3306(c)(8) of that act and is not excluded under division (B)(3) of this section;

(c) Domestic service performed after December 31, 1977, for an

employer, as provided in division (A)(1)(c) of this section;

(d) Agricultural labor performed after December 31, 1977, for a farm operator or a crew leader, as provided in division (A)(1)(d) of this section;

(e) Service not covered under division (B)(1) of this section which is performed after December 31, 1971:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, laundry, or dry-cleaning services, for the individual's employer or principal;

(ii) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and in the transmission to the salesperson's employer or principal except for sideline sales activities on behalf of some other person of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale, or supplies for use in their business operations, provided that for the purposes of division (B)(2)(e)(ii) of this section, the services shall be deemed employment if the contract of service contemplates that substantially all of the services are to be performed personally by the individual and that 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 the services are not in the nature of a single transaction that is not a part of a continuing relationship with the person for whom the services are performed.

(f) An individual's entire service performed within or both within and without the state if:

(i) The service is localized in this state.

(ii) The service is not localized in any state, but some of the service is performed in this state and either the base of operations, or if there is no base of operations then the place from which such service is directed or controlled, is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(g) Service not covered under division (B)(2)(f)(ii) of this section 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, the Virgin Islands, Canada, or of the United States, if the individual performing such service is a resident of this state and the director approves the election of the employer for whom such services are performed; or, if the individual is not a resident of this state but the place

from which the service is directed or controlled is in this state, the entire services of such individual shall be deemed to be employment subject to this chapter, provided service is deemed to be localized within this state if the service is performed entirely within this state or if the service is performed both within and without this state but the service performed without this state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(h) Service of an individual who is a citizen of the United States, performed outside the United States except in Canada after December 31, 1971, or the Virgin Islands, after December 31, 1971, and before the first day of January of the year following that in which the United States secretary of labor approves the Virgin Islands law for the first time, in the employ of an American employer, other than service which is "employment" under divisions (B)(2)(f) and (g) of this section or similar provisions of another state's law, if:

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

(ii) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) of this section is met but the employer has elected coverage in this state or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under this chapter.

(i) For the purposes of division (B)(2)(h) of this section, the term "American employer" means an employer who is an individual who is a resident of the United States; or a partnership, if two-thirds or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state, provided the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(j) Notwithstanding any other provisions of divisions (B)(1) and (2) of this section, service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, 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 service, except for domestic service in a private home not covered under division (A)(1)(c) of this section, which, as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is required to be covered under this chapter.

(k) Construction services performed by any individual under a construction contract, as defined in section 4141.39 of the Revised Code, if the director determines that the employer for whom services are performed has the right to direct or control the performance of the services and that the individuals who perform the services receive remuneration for the services performed. The director shall presume that the employer for whom services are performed has the right to direct or control the performance of the services if ten or more of the following criteria apply:

(i) The employer directs or controls the manner or method by which instructions are given to the individual performing services;

(ii) The employer requires particular training for the individual performing services;

(iii) Services performed by the individual are integrated into the regular functioning of the employer;

(iv) The employer requires that services be provided by a particular individual;

(v) The employer hires, supervises, or pays the wages of the individual performing services;

(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full-time work;

(vii) The employer requires the individual to perform services during established hours;

(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;

(ix) The employer requires the individual to perform services on the employer's premises;

(x) The employer requires the individual performing services to follow the order of work established by the employer;

(xi) The employer requires the individual performing services to make oral or written reports of progress;

(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;

(xiii) The employer pays expenses for the individual performing services;

(xiv) The employer furnishes the tools and materials for use by the individual to perform services;

(xv) The individual performing services has not invested in the facilities used to perform services;

(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;

(xvii) The individual performing services is not performing services for more than two employers simultaneously;

(xviii) The individual performing services does not make the services available to the general public;

(xix) The employer has a right to discharge the individual performing services;

(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.

(1) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183, (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division (B)(3) of this section.

(3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services are not required to be included under division (B)(2)(j) of this section:

(a) Service performed after December 31, 1977, in agricultural labor, except as provided in division (A)(1)(d) of this section;

(b) Domestic service performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority except as provided in division (A)(1)(c) of this section;

(c) Service performed after December 31, 1977, for this state or a political subdivision as described in division (B)(2)(a) of this section when performed:

(i) As a publicly elected official;

(ii) As a member of a legislative body, or a member of the judiciary;

(iii) As a military member of the Ohio national guard;

(iv) As an employee, not in the classified service as defined in section 124.11 of the Revised Code, 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 law, is designated as a major nontenured policymaking or advisory position, not in the classified service of the state, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(d) In the employ of any governmental unit or instrumentality of the United States;

(e) Service performed after December 31, 1971:

(i) Service in the employ of an educational institution or institution of higher education, including those operated by the state or a political subdivision, if such service is performed by a student who is enrolled and is regularly attending classes at the educational institution or institution of higher education; or

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

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

(g) Service performed for one or more principals by an individual who is compensated on a commission basis, who in the performance of the work is master of the individual's own time and efforts, and whose remuneration is wholly dependent on the amount of effort the individual chooses to expend, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 31, 1971:

(i) By an individual for an employer as an insurance agent or as an insurance solicitor, if all this service is performed for remuneration solely by way of commission;

(ii) As a home worker performing work, according to specifications furnished by the employer for whom the services are performed, on materials or goods furnished by such employer which are required to be returned to the employer or to a person designated for that purpose.

(h) Service performed after December 31, 1971:

(i) In the employ of a church or convention or association of churches, or in 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;

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

(iii) 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;

(i) Service performed after June 30, 1939, with respect to which unemployment compensation is payable under the "Railroad Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351;

(j) Service performed by an individual in the employ of any organization exempt from income tax under section 501 of the "Internal Revenue Code of 1954," if the remuneration for such service does not exceed fifty dollars in any calendar quarter, or if such service is in connection with the collection of dues or premiums for a fraternal beneficial society, order, or association and is performed away from the home office or is ritualistic service in connection with any such society, order, or association;

(k) Casual labor not in the course of an employer's trade or business; incidental service performed by an officer, appraiser, or member of a finance committee of a bank, building and loan association, savings and loan association, or savings association when the remuneration for such incidental service exclusive of the amount paid or allotted for directors' fees does not exceed sixty dollars per calendar quarter is casual labor;

(l) Service performed in the employ of a voluntary employees' beneficial association providing for the payment of life, sickness, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if admission to a membership in such association is limited to individuals who are officers or employees of a municipal or public corporation, of a political subdivision of the state, or of the United States and no part of the net earnings of such association inures, other than through such payments, to the benefit of any private shareholder or individual;

(m) Service performed by an individual in the employ of a foreign government, including service as a consular or other officer or employee or of a nondiplomatic representative;

(n) Service performed in the employ of an instrumentality wholly owned by a foreign government if the service is of a character similar to that performed in foreign countries by employees of the United States or of an instrumentality thereof and if the director finds that the secretary of state of the United States has certified to the secretary of the treasury of the United States that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States and of instrumentalities thereof;

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

(p) 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 service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;

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

(r) Service performed in the employ of the United States or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that congress permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, this chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, provided that if this state is not certified for any year by the proper agency of the United States under section 3304 of the "Internal Revenue Code of 1954," the payments required of such instrumentalities with respect to such year shall be refunded by the director from the fund in the same manner and within the same period as is provided in division (E) of section 4141.09 of the Revised Code with respect to contributions erroneously collected;

(s) Service performed by an individual as a member of a band or

orchestra, provided such service does not represent the principal occupation of such individual, and which service is not subject to or required to be covered for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. ~~Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, or a political subdivision or its instrumentalities, as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training.~~

(t) Service performed in the employ of a day camp whose camping season does not exceed twelve weeks in any calendar year, and which service is not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 31, 1971:

(i) In the employ of a hospital, if the service is performed by a patient of the hospital, as defined in division (W) of this section;

(ii) For a prison or other correctional institution by an inmate of the prison or correctional institution;

(iii) Service performed after December 31, 1977, by an inmate of a custodial institution operated by the state, a political subdivision, or a nonprofit organization.

(u) Service that is performed by a nonresident alien individual for the period the individual temporarily is present in the United States as a nonimmigrant under division (F), (J), (M), or (Q) of section 101(a)(15) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded under section 3306(c)(19) of the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311.

(v) Notwithstanding any other provisions of division (B)(3) of this section, services that are excluded under divisions (B)(3)(g), (j), (k), and (l) of this section shall not be excluded from employment when performed for a nonprofit organization, as defined in division (X) of this section, or for this state or its instrumentalities, or for a political subdivision or its instrumentalities or for Indian tribes;

(w) Service that is performed by an individual working as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

(x) Service performed for an elementary or secondary school that is operated primarily for religious purposes, that is described in subsection

501(c)(3) and exempt from federal income taxation under subsection 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501;

(y) Service performed by a person committed to a penal institution.

(z) Service performed for an Indian tribe as described in division (B)(2)(l) of this section when performed in any of the following manners:

(i) As a publicly elected official;

(ii) As a member of an Indian tribal council;

(iii) As a member of a legislative or judiciary body;

(iv) In a position which, pursuant to Indian tribal law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours of time per week;

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

(aa) Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, a political subdivision or its instrumentalities, or an Indian tribe as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision, thereof, by an individual receiving the work-relief or work-training.

(4) If the services performed during one half or more of any pay period by an employee for the person employing that employee constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing that employee do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in division (B)(4) of this section, "pay period" means a period, of not more than thirty-one consecutive days, for which payment of remuneration is ordinarily made to the employee by the person employing that employee. Division (B)(4) of this section does not apply to services performed in a pay period by an employee for the person employing that employee, if any of such service is excepted by division (B)(3)(o) of this section.

(C) "Benefits" means money payments payable to an individual who has established benefit rights, as provided in this chapter, for loss of remuneration due to the individual's unemployment.

(D) "Benefit rights" means the weekly benefit amount and the maximum benefit amount that may become payable to an individual within the individual's benefit year as determined by the director.

(E) "Claim for benefits" means a claim for waiting period or benefits for

a designated week.

(F) "Additional claim" means the first claim for benefits filed following any separation from employment during a benefit year; "continued claim" means any claim other than the first claim for benefits and other than an additional claim.

(G)(1) "Wages" means remuneration paid to an employee by each of the employee's employers with respect to employment; except that wages shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise, which in any calendar year is in excess of eight thousand two hundred fifty dollars on and after January 1, 1992; eight thousand five hundred dollars on and after January 1, 1993; eight thousand seven hundred fifty dollars on and after January 1, 1994; and nine thousand dollars on and after January 1, 1995. Remuneration in excess of such amounts shall be deemed wages subject to contribution to the same extent that such remuneration is defined as wages under the "Federal Unemployment Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The remuneration paid an employee by an employer with respect to employment in another state, upon which contributions were required and paid by such employer under the unemployment compensation act of such other state, shall be included as a part of remuneration in computing the amount specified in this division.

(2) Notwithstanding division (G)(1) of this section, if, as of the computation date for any calendar year, the director determines that the level of the unemployment compensation fund is sixty per cent or more below the minimum safe level as defined in section 4141.25 of the Revised Code, then, effective the first day of January of the following calendar year, wages subject to this chapter shall not include that part of remuneration paid during any calendar year to an individual by an employer or such employer's predecessor in interest in the same business or enterprise which is in excess of nine thousand dollars. The increase in the dollar amount of wages subject to this chapter under this division shall remain in effect from the date of the director's determination pursuant to division (G)(2) of this section and thereafter notwithstanding the fact that the level in the fund may subsequently become less than sixty per cent below the minimum safe level.

(H)(1) "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash, except that in the case of agricultural or domestic service, "remuneration" includes only cash remuneration. Gratuities customarily received by an individual in the course of the

individual's employment from persons other than the individual's employer and which are accounted for by such individual to the individual's employer are taxable wages.

The reasonable cash value of compensation paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director, provided that "remuneration" does not include:

(a) Payments as provided in divisions (b)(2) to (b)(16) of section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, as amended;

(b) The payment by an employer, without deduction from the remuneration of the individual in the employer's employ, of the tax imposed upon an individual in the employer's employ under section 3101 of the "Internal Revenue Code of 1954," with respect to services performed after October 1, 1941.

(2) "Cash remuneration" means all remuneration paid in cash, including commissions and bonuses, but not including the cash value of all compensation in any medium other than cash.

(I) "Interested party" means the director and any party to whom notice of a determination of an application for benefit rights or a claim for benefits is required to be given under section 4141.28 of the Revised Code.

(J) "Annual payroll" means the total amount of wages subject to contributions during a twelve-month period ending with the last day of the second calendar quarter of any calendar year.

(K) "Average annual payroll" means the average of the last three annual payrolls of an employer, provided that if, as of any computation date, the employer has had less than three annual payrolls in such three-year period, such average shall be based on the annual payrolls which the employer has had as of such date.

(L)(1) "Contributions" means the money payments to the state unemployment compensation fund required of employers by section 4141.25 of the Revised Code and of the state and any of its political subdivisions electing to pay contributions under section 4141.242 of the Revised Code. Employers paying contributions shall be described as "contributory employers."

(2) "Payments in lieu of contributions" means the money payments to the state unemployment compensation fund required of reimbursing employers under sections 4141.241 and 4141.242 of the Revised Code.

(M) An individual is "totally unemployed" in any week during which the individual performs no services and with respect to such week no remuneration is payable to the individual.

(N) An individual is "partially unemployed" in any week if, due to involuntary loss of work, the total remuneration payable to the individual for such week is less than the individual's weekly benefit amount.

(O) "Week" means the calendar week ending at midnight Saturday unless an equivalent week of seven consecutive calendar days is prescribed by the director.

(1) "Qualifying week" means any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to this chapter. A calendar week with respect to which an individual earns remuneration but for which payment was not made within the base period, when necessary to qualify for benefit rights, may be considered to be a qualifying week. The number of qualifying weeks which may be established in a calendar quarter shall not exceed the number of calendar weeks in the quarter.

(2) "Average weekly wage" means the amount obtained by dividing an individual's total remuneration for all qualifying weeks during the base period by the number of such qualifying weeks, provided that if the computation results in an amount that is not a multiple of one dollar, such amount shall be rounded to the next lower multiple of one dollar.

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

(Q)(1) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except as provided in division (Q)(2) of this section.

(2) If an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period shall be the four most recently completed calendar quarters preceding the first day of the individual's benefit year. Such base period shall be known as the "alternate base period." If information as to weeks and wages for the most recent quarter of the alternate base period is not available to the director from the regular quarterly reports of wage information, which are systematically accessible, the director may, consistent with the provisions of section 4141.28 of the Revised Code, base the determination of eligibility for benefits on the affidavit of the claimant with respect to weeks and wages for that calendar quarter. The claimant shall furnish payroll documentation, where available, in support of the affidavit. The determination based upon the alternate base period as it relates to the claimant's benefit rights, shall be amended when the quarterly report of wage information from the employer is timely received and that information causes a change in the determination. As provided in division (B) of section 4141.28 of the Revised Code, any

benefits paid and charged to an employer's account, based upon a claimant's affidavit, shall be adjusted effective as of the beginning of the claimant's benefit year. No calendar quarter in a base period or alternate base period shall be used to establish a subsequent benefit year.

(3) The "base period" of a combined wage claim, as described in division (H) of section 4141.43 of the Revised Code, shall be the base period prescribed by the law of the state in which the claim is allowed.

(4) For purposes of determining the weeks that comprise a completed calendar quarter under this division, only those weeks ending at midnight Saturday within the calendar quarter shall be utilized.

(R)(1) "Benefit year" with respect to an individual means the fifty-two week period beginning with the first day of that week with respect to which the individual first files a valid application for determination of benefit rights, and thereafter the fifty-two week period beginning with the first day of that week with respect to which the individual next files a valid application for determination of benefit rights after the termination of the individual's last preceding benefit year, except that the application shall not be considered valid unless the individual has had employment in six weeks that is subject to this chapter or the unemployment compensation act of another state, or the United States, and has, since the beginning of the individual's previous benefit year, in the employment earned three times the average weekly wage determined for the previous benefit year. The "benefit year" of a combined wage claim, as described in division (H) of section 4141.43 of the Revised Code, shall be the benefit year prescribed by the law of the state in which the claim is allowed. Any application for determination of benefit rights made in accordance with section 4141.28 of the Revised Code is valid if the individual filing such application is unemployed, has been employed by an employer or employers subject to this chapter in at least twenty qualifying weeks within the individual's base period, and has earned or been paid remuneration at an average weekly wage of not less than twenty-seven and one-half per cent of the statewide average weekly wage for such weeks. For purposes of determining whether an individual has had sufficient employment since the beginning of the individual's previous benefit year to file a valid application, "employment" means the performance of services for which remuneration is payable.

(2) Effective for benefit years beginning on and after December 26, 2004, any application for determination of benefit rights made in accordance with section 4141.28 of the Revised Code is valid if the individual satisfies the criteria described in division (R)(1) of this section, and if the reason for the individual's separation from employment is not disqualifying pursuant to

division (D)(2) of section 4141.29 or section 4141.291 of the Revised Code. A disqualification imposed pursuant to division (D)(2) of section 4141.29 or section 4141.291 of the Revised Code must be removed as provided in those sections as a requirement of establishing a valid application for benefit years beginning on and after December 26, 2004.

(3) The statewide average weekly wage shall be calculated by the director once a year based on the twelve-month period ending the thirtieth day of June, as set forth in division (B)(3) of section 4141.30 of the Revised Code, rounded down to the nearest dollar. Increases or decreases in the amount of remuneration required to have been earned or paid in order for individuals to have filed valid applications shall become effective on Sunday of the calendar week in which the first day of January occurs that follows the twelve-month period ending the thirtieth day of June upon which the calculation of the statewide average weekly wage was based.

(4) As used in this division, an individual is "unemployed" if, with respect to the calendar week in which such application is filed, the individual is "partially unemployed" or "totally unemployed" as defined in this section or if, prior to filing the application, the individual was separated from the individual's most recent work for any reason which terminated the individual's employee-employer relationship, or was laid off indefinitely or for a definite period of seven or more days.

(S) "Calendar quarter" means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December, or the equivalent thereof as the director prescribes by rule.

(T) "Computation date" means the first day of the third calendar quarter of any calendar year.

(U) "Contribution period" means the calendar year beginning on the first day of January of any year.

(V) "Agricultural labor," for the purpose of this division, means any service performed prior to January 1, 1972, which was agricultural labor as defined in this division prior to that date, and service performed after December 31, 1971:

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

(2) 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 hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 U.S.C. 1141j, as amended, 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;

(4) 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 the operator produced more than one half of the commodity with respect to which such service is performed;

(5) In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in division (V)(4) of this section, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(6) Divisions (V)(4) and (5) of this section shall not be deemed to be applicable with respect to service performed:

(a) 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; or

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

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

(W) "Hospital" means an institution which has been registered or licensed by the Ohio department of health as a hospital.

(X) "Nonprofit organization" means an organization, or group of organizations, described in section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under section 501(a) of that code.

(Y) "Institution of higher education" means a public or nonprofit educational institution, including an educational institution operated by an Indian tribe, which:

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

(2) Is legally authorized in this state or by the Indian tribe to provide a program of education beyond high school; and

(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 post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation.

For the purposes of this division, all colleges and universities in this state are institutions of higher education.

(Z) For the purposes of this chapter, "states" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(AA) "Alien" means, for the purposes of division (A)(1)(d) of this section, an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a)(15)(H) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101.

(BB)(1) "Crew leader" means an individual who furnishes individuals to perform agricultural labor for any other employer or farm operator, and:

(a) Pays, either on the individual's own behalf or on behalf of the other employer or farm operator, the individuals so furnished by the individual for the service in agricultural labor performed by them;

(b) Has not entered into a written agreement with the other employer or farm operator under which the agricultural worker is designated as in the employ of the other employer or farm operator.

(2) For the purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other employer or farm operator shall be treated as an employee of the crew leader if:

(a) The crew leader holds a valid certificate of registration under the "Farm Labor Contractor Registration Act of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or

(b) Substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(c) If the individual is not in the employment of the other employer or farm operator within the meaning of division (B)(1) of this section.

(3) For the purposes of this division, any individual who is furnished by a crew leader to perform service in agricultural labor for any other employer

or farm operator and who is not treated as in the employment of the crew leader under division (BB)(2) of this section shall be treated as the employee of the other employer or farm operator and not of the crew leader. The other employer or farm operator shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on the crew leader's own behalf or on behalf of the other employer or farm operator, for the service in agricultural labor performed for the other employer or farm operator.

(CC) "Educational institution" means an institution other than an institution of higher education as defined in division (Y) of this section, including an educational institution operated by an Indian tribe, which:

(1) Offers participants, trainees, or students an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of an instructor or teacher; and

(2) Is approved, chartered, or issued a permit to operate as a school by the state board of education ~~or~~, other government agency, or Indian tribe that is authorized within the state to approve, charter, or issue a permit for the operation of a school.

For the purposes of this division, the courses of study or training which the institution offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

Sec. 4141.11. There is hereby created in the state treasury the unemployment compensation special administrative fund. The fund shall consist of all interest collected on delinquent contributions pursuant to this chapter, all fines and forfeitures collected under this chapter, and all court costs and interest paid or collected in connection with the repayment of fraudulently obtained benefits pursuant to section 4141.35 of the Revised Code. All interest earned on the money in the fund shall be retained in the fund and shall not be credited or transferred to any other fund or account, except as provided in division (B) of this section. All moneys which are deposited or paid into this fund may be used by:

(A) The director of job and family services with the approval of the unemployment compensation advisory council whenever it appears that such use is necessary for:

(1) The proper administration of this chapter and no federal funds are available for the specific purpose for which the expenditure is to be made, provided the moneys are not substituted for appropriations from federal funds, which in the absence of such moneys would be available;

(2) The proper administration of this chapter for which purpose

appropriations from federal funds have been requested and approved but not received, provided the fund would be reimbursed upon receipt of the federal appropriation;

(3) To the extent possible, the repayment to the unemployment compensation administration fund of moneys found by the proper agency of the United States to have been lost or expended for purposes other than, or an amount in excess of, those found necessary by the proper agency of the United States for the administration of this chapter.

(B) The director or the director's deputy whenever it appears that such use is necessary for the payment of refunds or adjustments of interest, fines, forfeitures, or court costs erroneously collected and paid into this fund pursuant to this chapter.

(C) The director, to pay state disaster unemployment benefits pursuant to section 4141.292 of the Revised Code. The director need not have prior approval from the council to make these payments.

(D) The director, to pay any costs attributable to the director that are associated with the sale of real property under section 4141.131 of the Revised Code. The director need not have prior approval from the council to make these payments.

Whenever the balance in the unemployment compensation special administrative fund is considered to be excessive by the council, the director shall request the director of budget and management to transfer to the unemployment compensation fund the amount considered to be excessive. Any balance in the unemployment compensation special administrative fund shall not lapse at any time, but shall be continuously available to the director of jobs and family services or to the council for expenditures consistent with this chapter.

Sec. 4141.131. (A) The director of job and family services may enter into contracts for the sale of real property no longer needed by the director for the operations of the director under this title. Any costs attributable to the director that are associated with the sale of real property under this section shall be paid out of the unemployment compensation special administrative fund established pursuant to section 4141.11 of the Revised Code. The director shall submit a report summarizing the use of that fund for the purpose of this section at least annually to the unemployment compensation advisory council as prescribed by the council.

(B)(1) Earnest moneys from the sale of real property pursuant to division (A) of this section shall be deposited into the department of job and family services building consolidation fund, which is hereby created in the state treasury. The balance of the purchase price shall be deposited into the

department of job and family services building enhancement fund, which is hereby created in the state treasury. The building enhancement fund shall retain its own interest. Upon completion of the sale and the request of the director, the treasurer of state shall transfer the earnest moneys in the building consolidation fund into the building enhancement fund. The director shall use the interest earned on the moneys in the building enhancement fund only in accordance with division (C) of this section.

(2) The director shall deposit sufficient moneys from the sale of real property pursuant to division (A) of this section into the unemployment compensation special administrative fund to reimburse the fund for all costs associated with the sale of that real property.

(C) The director shall use the moneys in the building enhancement fund from the sale of real property pursuant to division (A) of this section, less the costs of the sale as specified in division (B)(2) of this section, in accordance with the provisions and requirements of the "Social Security Act," 49 Stat. 626 (1935), 52 U.S.C. 502(a) and 1103(c)(2), and the instructions of the United States department of labor, to improve buildings owned by or under the control of the director. If the director determines that there are no buildings for which money in the building enhancement fund may be used, the money shall be returned to the United States department of labor.

(D) The auditor of state, with the assistance of the attorney general, shall prepare a deed to the real property being sold upon notice from the director that a contract for the sale of that property has been executed in accordance with this section. The deed shall state the consideration and any conditions placed upon the sale. The deed shall be executed by the governor in the name of the state, countersigned by the secretary of state, sealed with the great seal of the state, presented in the office of the auditor of state for recording, and delivered to the buyer upon payment of the balance of the purchase price.

The buyer shall present the deed for recording in the county recorder's office of the county in which the real property is located.

Sec. 4141.24. (A)(1) The director of job and family services shall maintain a separate account for each employer and, except as otherwise provided in division (B) of section 4141.25 of the Revised Code respecting mutualized contributions, shall credit such employer's account with all the contributions, or payments in lieu of contributions, which the employer has paid on the employer's own behalf.

(2) If, as of the computation date, a contributory employer's account shows a negative balance computed as provided in division (A)(3) of section

4141.25 of the Revised Code, less any contributions due and unpaid on such date, which negative balance is in excess of the limitations imposed by divisions (A)(2)(a), (b), and (c) of this section and if the employer's account is otherwise eligible for the transfer, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess eligible for transfer shall be permanently transferred from the account of such employer and charged to the mutualized account provided in division (B) of section 4141.25 of the Revised Code.

(a) If as of any computation date, a contributory employer's account shows a negative balance in excess of ten per cent of the employer's average annual payroll, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess shall be transferred from the account as provided in this division. No contributory employer's account may have any excess transferred pursuant to division (A)(2)(a) of this section, unless the employer's account has shown a positive balance for at least two consecutive computation dates prior to the computation date with respect to which the transfer is proposed. Each time a transfer is made pursuant to division (A)(2)(a) of this section, the employer's account is ineligible for any additional transfers under that division, until the account shows a positive balance for at least two consecutive computation dates subsequent to the computation date of which the most recent transfer occurs pursuant to division (A)(2)(a), (b), or (c) of this section.

(b) If at the next computation date after the computation date at which a transfer from the account occurs pursuant to division (A)(2)(a) of this section, a contributory employer's account shows a negative balance in excess of fifteen per cent of the employer's average annual payroll, then before the employer's contribution rate is computed for the next succeeding contribution period an amount equal to the amount of the excess shall be permanently transferred from the account as provided in this division.

(c) If at the next computation date subsequent to the computation date at which a transfer from a contributory employer's account occurs pursuant to division (A)(2)(b) of this section, the employer's account shows a negative balance in excess of twenty per cent of the employer's average annual payroll, then before the employer's contribution rate is computed for the next succeeding contribution period, an amount equal to the amount of the excess shall be permanently transferred from the account as provided in this division.

(d) If no transfer occurs pursuant to division (A)(2)(b) or (c) of this

section, the employer's account is ineligible for any additional transfers under division (A)(2) of this section until the account requalifies for a transfer pursuant to division (A)(2)(a) of this section.

(B) Any employer may make voluntary payments in addition to the contributions required under this chapter, in accordance with rules established by the director. Such payments shall be included in the employer's account as of the computation date, provided they are received by the director by the thirty-first day of December following such computation date. Such voluntary payment, when accepted from an employer, will not be refunded in whole or in part. In determining whether an employer's account has a positive balance on two consecutive computation dates and is eligible for transfers under division (A)(2) of this section, the director shall exclude any voluntary payments made subsequent to the last transfer made under division (A)(2) of this section.

(C) All contributions to the fund shall be pooled and available to pay benefits to any individual entitled to benefits irrespective of the source of such contributions.

(D)(1) For the purposes of this section and sections 4141.241 and 4141.242 of the Revised Code, an employer's account shall be charged only for benefits based on remuneration paid by such employer. Benefits paid to an eligible individual shall be charged against the account of each employer within the claimant's base period in the proportion to which wages attributable to each employer of the claimant bears to the claimant's total base period wages. Charges to the account of a base period employer with whom the claimant is employed part-time at the time the claimant's application for a determination of benefits rights is filed shall be charged to the mutualized account when all of the following conditions are met:

(a) The claimant also worked part-time for the employer during the base period of the claim.

(b) The claimant is unemployed due to loss of other employment.

(c) The employer is not a reimbursing employer under section 4141.241 or 4141.242 of the Revised Code.

(2) Notwithstanding division (D)(1) of this section, charges to the account of any employer, including any reimbursing employer, shall be charged to the mutualized account if it finally is determined by a court on appeal that the employer's account is not chargeable for the benefits.

(3) Any benefits paid to a claimant under section 4141.28 of the Revised Code prior to a final determination of the claimant's right to the benefits shall be charged to the employer's account as provided in division (D)(1) of this section, provided that if there is no final determination of the claim by

the subsequent thirtieth day of June, the employer's account shall be credited with the total amount of benefits that has been paid prior to that date, based on the determination that has not become final. The total amount credited to the employer's account shall be charged to a suspense account, which shall be maintained as a separate bookkeeping account and administered as a part of this section, and shall not be used in determining the account balance of the employer for the purpose of computing the employer's contribution rate under section 4141.25 of the Revised Code.

If it is finally determined that the claimant is entitled to all or a part of the benefits in dispute, the suspense account shall be credited and the appropriate employer's account charged with the benefits. If it is finally determined that the claimant is not entitled to all or any portion of the benefits in dispute, the benefits shall be credited to the suspense account and a corresponding charge made to the mutualized account established in division (B) of section 4141.25 of the Revised Code, provided that, except as otherwise provided in this section, if benefits are chargeable to an employer or group of employers who is required or elects to make payments to the fund in lieu of contributions under section 4141.241 of the Revised Code, the benefits shall be charged to the employer's account in the manner provided in division (D)(1) of this section and division (B) of section 4141.241 of the Revised Code, and no part of the benefits may be charged to the suspense account provided in this division.

To the extent that benefits that have been paid to a claimant and charged to the employer's account are found not to be due the claimant and are recovered by the director as provided in section 4141.35 of the Revised Code, they shall be credited to the employer's account.

(4) The director shall notify each employer at least once each month of the benefits charged to the employer's account since the last preceding notice; except that for the purposes of sections 4141.241 and 4141.242 of the Revised Code which provides the billing of employers on a payment in lieu of a contribution basis, the director may prescribe a quarterly or less frequent notice of benefits charged to the employer's account. Such notice will show a summary of the amount of benefits paid which were charged to the employer's account. This notice shall not be deemed a determination of the claimant's eligibility for benefits. Any employer so notified, however, may file within fifteen days after the mailing date of the notice, an exception to charges appearing on the notice on the grounds that such charges are not in accordance with this section. The director shall promptly examine the exception to such charges and shall notify the employer of the director's decision thereon, which decision shall become final unless appealed to the

unemployment compensation review commission in the manner provided in section 4141.26 of the Revised Code. For the purposes of this division, an exception is considered timely filed when it has been received as provided in division (D)(1) of section 4141.281 of the Revised Code.

(E) The director shall terminate and close the account of any contributory employer who has been subject to this chapter if the enterprise for which the account was established is no longer in operation and it has had no payroll and its account has not been chargeable with benefits for a period of five consecutive years. The amount of any positive balance, computed as provided in division (A)(3) of section 4141.25 of the Revised Code, in an account closed and terminated as provided in this section shall be credited to the mutualized account as provided in division (B)(2)(b) of section 4141.25 of the Revised Code. The amount of any negative balance, computed as provided in division (A)(3) of section 4141.25 of the Revised Code, in an account closed and terminated as provided in this section shall be charged to the mutualized account as provided in division (B)(1)(b) of section 4141.25 of the Revised Code. The amount of any positive balance or negative balance, credited or charged to the mutualized account after the termination and closing of an employer's account, shall not thereafter be considered in determining the contribution rate of such employer. The closing of an employer's account as provided in this division shall not relieve such employer from liability for any unpaid contributions or payment in lieu of contributions which are due for periods prior to such closing.

If the director finds that a contributory employer's business is closed solely because of the entrance of one or more of the owners, officers, or partners, or the majority stockholder, into the armed forces of the United States, or any of its allies, or of the United Nations after July 1, 1950, such employer's account shall not be terminated and if the business is resumed within two years after the discharge or release of such persons from active duty in the armed forces, the employer's experience shall be deemed to have been continuous throughout such period. The reserve ratio of any such employer shall be the total contributions paid by such employer minus all benefits, including benefits paid to any individual during the period such employer was in the armed forces, based upon wages paid by the employer prior to the employer's entrance into the armed forces divided by the average of the employer's annual payrolls for the three most recent years during the whole of which the employer has been in business.

(F) If an employer transfers ~~the employer's business or otherwise reorganizes such business~~, all of its trade or business to another employer or

person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter. If

If an employer or person acquires substantially all of the assets in a trade or business of another employer, or a clearly segregable and identifiable portion of an employer's enterprise, and immediately after the acquisition employs in the employer's trade or business substantially the same individuals who immediately prior to the acquisition were employed in the trade or business or in the separate unit of such trade or business of such predecessor employer, then, upon the director's approval of a properly completed application to the director signed by the predecessor employer and the acquiring employer for successorship, the employer or person acquiring such enterprise is the trade or business, or portion thereof, shall be the successor in interest. In the case of a transfer of a portion of an employer's enterprise, only that part of the experience with unemployment compensation and payrolls that is directly attributable to the segregated and identifiable part shall be transferred and used in computing the contribution rate of the successor employer on the next computation date. The director by rule may prescribe procedures for effecting transfers of experience as provided for in this section.

(G) For the purposes of this section, two or more employers who are parties to or the subject of a merger, consolidation, or other form of reorganization effecting a change in legal identity or form are deemed to be a single Notwithstanding sections 4141.09, 4141.23, 4141.24, 4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised Code, both of the following apply regarding assignment of rates and transfers of experience:

(1) If an employer if the director finds that immediately after such change the employing enterprises of the predecessor employers are continued solely through a single transfers its trade or business, or a portion thereof, to another employer as successor thereto, and immediately after such change such successor is owned or controlled by and, at the time of the transfer, both employers are under substantially the same interests as the predecessor employers, and the successor has assumed liability for all contributions required of the predecessor employers, and the consideration of such two or more employers as a single employer for the purposes of this section would not be inequitable common ownership, management, or control, then the unemployment experience attributable to the transferred trade or business, or portion thereof, shall be transferred to the employer to whom the business is so transferred. The director shall recalculate the rates

of both employers and those rates shall be effective immediately upon the date of the transfer of the trade or business.

(2) Whenever a person is not an employer under this chapter at the time the person acquires the trade or business of an employer, the unemployment experience of the acquired trade or business shall not be transferred to the person if the director finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, that person shall be assigned the applicable new employer rate under division (A)(1) of section 4141.25 of the Revised Code.

(H) The director shall establish procedures to identify the transfer or acquisition of a trade or business for purposes of this section and shall adopt rules prescribing procedures for effecting transfers of experience as described in this section.

(I) No rate of contribution less than two and seven-tenths per cent shall be permitted a contributory employer succeeding to the experience of another contributory employer pursuant to this section for any period subsequent to such succession, except in accordance with rules prescribed by the director, which rules shall be consistent with federal requirements for additional credit allowance in section 3303 of the "Internal Revenue Code of 1954" and consistent with this chapter, except that such rules may establish a computation date for any such period different from the computation date generally prescribed by this chapter, and may define "calendar year" as meaning a twelve-consecutive-month period ending on the same day of the year as that on which such computation date occurs.

~~(H)~~(J) The director may prescribe rules for the establishment, maintenance, and dissolution of common contribution rates for two or more contributory employers, and in accordance with such rules and upon application by two or more employers shall establish such common rate to be computed by merging the several contribution rate factors of such employers for the purpose of establishing a common contribution rate applicable to all such employers.

Sec. 4141.242. (A) On or after January 1, 1978, the state, its instrumentalities, its political subdivisions and their instrumentalities, and any subdivision thereof as defined in division (H) of this section and described in this section as public entities, and Indian tribes as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), shall pay to the director of job and family services for deposit in the unemployment compensation fund an amount in lieu of contributions equal to the full amount of regular benefits, and the amount of extended benefits chargeable under the terms of

section 4141.301 of the Revised Code, from that fund that is attributable to service in the employ of the public entity or Indian tribe, under the same terms and conditions as required of nonprofit organizations electing reimbursing status under section 4141.241 of the Revised Code; unless the public entity or Indian tribe elects to pay contributions under section 4141.25 of the Revised Code, under the following conditions:

(1) Any public entity or Indian tribe may elect, after December 31, 1977, to become liable for contribution payments, as set forth in section 4141.25 of the Revised Code, for a period of not less than two calendar years by filing with the director a written notice of its election.

(2) The effective date of the election to pay contributions shall be the first day of the first calendar quarter after the election is approved by the director and which is at least thirty days after the election notice was received.

(B) No surety bond shall be required of any reimbursing public entity or Indian tribe, as is required of nonprofit organizations under division (C) of section 4141.241 of the Revised Code. Any public entity or Indian tribe, either reimbursing or contributory, shall, if it becomes delinquent in the payment of reimbursements, contributions, forfeiture, or interest, be subject to the same terms and the same collection procedures as are set forth for reimbursing employers under division (B) of section 4141.241 of the Revised Code; and as set forth for contributory employers under this chapter except as provided under division (D) of this section.

(C) The state of Ohio account and the accounts and subaccounts of its instrumentalities, as defined in divisions (H)(1)(a) and (b) of this section, shall be administered by the director of administrative services, in coordination with the director of job and family services in accordance with the terms and conditions of this chapter, regarding the determination and payment of benefits attributable to service with the state or its instrumentalities. In this capacity, the director of administrative services shall maintain any necessary accounts and subaccounts for the various agencies and departments of the state and, through the director of budget and management, apportion among the various state entities, and collect, the costs of unemployment benefits, as billed by the director of job and family services, except that any of the individual agencies and departments for which such accounts and subaccounts are maintained may, with the concurrence of the director of administrative services and the director of job and family services, be designated to receive billings directly from the director of job and family services and make payment in response to such billings directly to the director of job and family services. Any moneys paid

directly under this division and collected by the director of administrative services shall be forwarded to the director of job and family services for deposit in the fund established by division (A) of section 4141.09 of the Revised Code, and shall be credited to the accounts of the state and its instrumentalities.

(D) The accounts of the various local subdivisions, ~~and~~ their instrumentalities, and Indian tribes shall be administered by appropriate officials, as designated to the director of job and family services when the accounts are established.

(E) Two or more reimbursing public entities or Indian tribes may file a joint application to the director of job and family services for the establishment of a group account, for the purpose of sharing the cost of benefits attributable to service with the public entities or Indian tribes, under the conditions provided for nonprofit organizations under division (D) of section 4141.241 of the Revised Code.

(F) Two or more public entities or Indian tribes that have elected to pay contributions may apply for a common rate under division ~~(H)~~(J) of section 4141.24 of the Revised Code. Clear authority, resolution, or ordinance for combining must be presented with the application requesting the common rate status. Applications must be filed by the first day of October of any year, to be effective for the following calendar year.

(G) A public entity or Indian tribe, either reimbursing or one electing to pay contributions, shall be liable for the full amount of any regular benefits paid that are attributable to service in the employ of the public entity or Indian tribe during the base period of a benefit claim, and any extended benefits paid based on service as provided in divisions (G)(1)(b) and (1)(c) of section 4141.301 of the Revised Code. Where a public entity or Indian tribe has changed from a reimbursing status to a contributory status, during the base period of the benefit claim, then the benefit charges attributable to service with the reimbursement account shall be charged to the reimbursement account; and, the charges attributable to the contributory account shall be charged to that account. The same rule shall be applicable to situations where a contributory public entity or Indian tribe has changed to a reimbursing status during the base period of a benefit claim.

(H)(1) For the purposes of establishing employer status and accounts for the state and its instrumentalities, its political subdivisions and their instrumentalities, a separate account shall be established and maintained for:

(a) The state, including therein the legislative and executive branches, as defined in Articles II and III of the Ohio Constitution, and the Ohio supreme court;

- (b) Each separate instrumentality of the state;
- (c) Each political subdivision of the state, including therein the legislative, executive, and judicial functions performed for the subdivision;
- (d) Each separate instrumentality of the political subdivision;
- (e) Any jointly owned instrumentality of more than one of the public entities described in this division, or any jointly owned instrumentality of any such public entities and one or more other states or political subdivisions thereof.

(2) For the purposes of this chapter, the separate accounts, established by this division, shall be described as "public entity accounts."

(I) An Indian tribe may elect to make payments in lieu of contributions as allowed with respect to governmental entities under this section. An Indian tribe may make a separate election for itself and each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe. The director shall immediately notify the United States internal revenue service and the United States department of labor if an Indian tribe fails to make payments required under this section and fails to pay any forfeitures, interest, or penalties due within ninety days of receiving a delinquency notice in accordance with rules prescribed by the director.

(J) The director of job and family services, in accordance with any rules that the director may prescribe, shall notify each public entity and Indian tribe of any determination which the director may make of its status as an employer and of the effective date of any election which it makes and of any termination of the election. Any determinations are subject to reconsideration, appeal, and review in accordance with sections 4141.26 and 4141.28 of the Revised Code.

Sec. 4141.25. (A) The director of job and family services shall determine as of each computation date the contribution rate of each contributing employer subject to this chapter for the next succeeding contribution period. The director shall determine a standard rate of contribution or an experience rate for each contributing employer. Once a rate of contribution has been established under this section for a contribution period, except as provided in division (D) of section 4141.26 of the Revised Code, that rate shall remain effective throughout such contribution period. The rate of contribution shall be determined in accordance with the following requirements:

- (1) An employer whose experience does not meet the terms of division (A)(2) of this section shall be assigned a standard rate of contribution. Effective for contribution periods beginning on and after January 1, 1998, an employer's standard rate of contribution shall be a rate of two and

seven-tenths per cent, except that the rate for employers engaged in the construction industry shall be the average contribution rate computed for the construction industry or a rate of two and seven-tenths per cent, whichever is greater. The standard rate set forth in this division shall be applicable to a nonprofit organization whose election to make payments in lieu of contributions is voluntarily terminated or canceled by the director under section 4141.241 of the Revised Code, and thereafter pays contributions as required by this section. If such nonprofit organization had been a contributory employer prior to its election to make payments in lieu of contributions, then any prior balance in the contributory account shall become part of the reactivated account.

As used in division (A) of this section, "the average contribution rate computed for the construction industry" means the most recent annual average rate attributable to the construction industry as prescribed by the director.

(2) A contributing employer subject to this chapter shall qualify for an experience rate only if there have been four consecutive quarters, ending on the thirtieth day of June immediately prior to the computation date, throughout which the employer's account was chargeable with benefits. Upon meeting the qualifying requirements provided in division (A)(2) of this section, the director shall calculate the total credits to each employer's account consisting of the contributions other than mutualized contributions including all contributions paid prior to the computation date for all past periods plus:

(a) The contributions owing on the computation date that are paid within thirty days after the computation date, and credited to the employer's account;

(b) All voluntary contributions paid by an employer pursuant to division (B) of section 4141.24 of the Revised Code.

(3) The director also shall determine the benefits which are chargeable to each employer's account and which were paid prior to the computation date with respect to weeks of unemployment ending prior to the computation date. The director then shall determine the positive or negative balance of each employer's account by calculating the excess of such contributions and interest over the benefits chargeable, or the excess of such benefits over such contributions and interest. Any resulting negative balance then shall be subject to adjustment as provided in division (A)(2) of section 4141.24 of the Revised Code after which the positive or negative balance shall be expressed in terms of a percentage of the employer's average annual payroll. If the total standing to the credit of an employer's account exceeds

the total charges, as provided in this division, the employer has a positive balance and if such charges exceed such credits the employer has a negative balance. Each employer's contribution rate shall then be determined in accordance with the following schedule:

Contribution Rate Schedule

| If, as of the computation date<br>the contribution rate balance of<br>an employer's account as a<br>percentage of the employer's<br>average annual payroll is | The employer's<br>contribution rate for<br>the next succeeding<br>contribution period<br>shall be |
|---|---|
| (a) A negative balance of:  |   |
| 20.0% or more   | 6.5%  |
| 19.0% but less than 20.0%   | 6.4%  |
| 17.0% but less than 19.0%   | 6.3%  |
| 15.0% but less than 17.0%   | 6.2%  |
| 13.0% but less than 15.0%   | 6.1%  |
| 11.0% but less than 13.0%   | 6.0%  |
| 9.0% but less than 11.0%  | 5.9%  |
| 5.0% but less than 9.0%   | 5.7%  |
| 4.0% but less than 5.0%   | 5.5%  |
| 3.0% but less than 4.0%   | 5.3%  |
| 2.0% but less than 3.0%   | 5.1%  |
| 1.0% but less than 2.0%   | 4.9%  |
| more than 0.0% but less than<br>1.0%  | 4.8%  |
| (b) A 0.0% or a positive<br>balance of less than 1.0%   | 4.7%  |
| (c) A positive balance of:  |   |
| 1.0% or more, but less than 1.5%  | 4.6%  |
| 1.5% or more, but less than 2.0%  | 4.5%  |
| 2.0% or more, but less than 2.5%  | 4.3%  |
| 2.5% or more, but less than 3.0%  | 4.0%  |
| 3.0% or more, but less than 3.5%  | 3.8%  |
| 3.5% or more, but less than 4.0%  | 3.5%  |
| 4.0% or more, but less than 4.5%  | 3.3%  |
| 4.5% or more, but less than 5.0%  | 3.0%  |
| 5.0% or more, but less than 5.5%  | 2.8%  |
| 5.5% or more, but less than 6.0%  | 2.5%  |
| 6.0% or more, but less than 6.5%  | 2.2%  |
| 6.5% or more, but less than 7.0%  | 2.0%  |

|                                    |      |
|------------------------------------|------|
| 7.0% or more, but less than 7.5%   | 1.8% |
| 7.5% or more, but less than 8.0%   | 1.6% |
| 8.0% or more, but less than 8.5%   | 1.4% |
| 8.5% or more, but less than 9.0%   | 1.3% |
| 9.0% or more, but less than 9.5%   | 1.1% |
| 9.5% or more, but less than 10.0%  | 1.0% |
| 10.0% or more, but less than 10.5% | .9%  |
| 10.5% or more, but less than 11.0% | .7%  |
| 11.0% or more, but less than 11.5% | .6%  |
| 11.5% or more, but less than 12.0% | .5%  |
| 12.0% or more, but less than 12.5% | .4%  |
| 12.5% or more, but less than 13.0% | .3%  |
| 13.0% or more, but less than 14.0% | .2%  |
| 14.0% or more                      | .1%  |

(d) The contribution rates shall be as specified in divisions (a), (b), and (c) of the contribution rate schedule except that notwithstanding the amendments made to division (a) of the contribution rate schedule in this section, if, as of the computation date: for 1991, the negative balance is 5.0% or more, the contribution rate shall be 5.7%; for 1992, if the negative balance is 11.0% or more, the contribution rate shall be 6.0%; and for 1993, if the negative balance is 17.0% or more, the contribution rate shall be 6.3%. Thereafter, the contribution rates shall be as specified in the contribution rate schedule.

(B)(1) The director shall establish and maintain a separate account to be known as the "mutualized account." As of each computation date there shall be charged to this account:

(a) As provided in division (A)(2) of section 4141.24 of the Revised Code, an amount equal to the sum of that portion of the negative balances of employer accounts which exceeds the applicable limitations as such balances are computed under division (A) of this section as of such date;

(b) An amount equal to the sum of the negative balances remaining in employer accounts which have been closed during the year immediately

preceding such computation date pursuant to division (E) of section 4141.24 of the Revised Code;

(c) An amount equal to the sum of all benefits improperly paid preceding such computation date which are not recovered but which are not charged to an employer's account, or which after being charged, are credited back to an employer's account;

(d) An amount equal to the sum of any other benefits paid preceding such computation date which, under this chapter, are not chargeable to an employer's account;

(e) An amount equal to the sum of any refunds made during the year immediately preceding such computation date of erroneously collected mutualized contributions required by this division which were previously credited to this account;

(f) An amount equal to the sum of any repayments made to the federal government during the year immediately preceding such computation date of amounts which may have been advanced by it to the unemployment compensation fund under section 1201 of the "Social Security Act," 49 Stat. 648 (1935), 42 U.S.C. 301;

(g) Any amounts appropriated by the general assembly out of funds paid by the federal government, under section 903 of the "Social Security Act," to the account of this state in the federal unemployment trust fund.

(2) As of every computation date there shall be credited to the mutualized account provided for in this division:

(a) The proceeds of the mutualized contributions as provided in this division;

(b) Any positive balances remaining in employer accounts which are closed as provided in division (E) of section 4141.24 of the Revised Code;

(c) Any benefits improperly paid which are recovered but which cannot be credited to an employer's account;

(d) All amounts which may be paid by the federal government under section 903 of the "Social Security Act" to the account of this state in the federal unemployment trust fund;

(e) Amounts advanced by the federal government to the account of this state in the federal unemployment trust fund under section 1201 of the "Social Security Act" to the extent such advances have been repaid to or recovered by the federal government;

(f) Interest credited to the Ohio unemployment trust fund as deposited with the secretary of the treasury of the United States.

(3) Annually, as of the computation date, the director shall determine the total credits and charges made to the mutualized account during the

preceding twelve months and the overall condition of the account. The director shall issue an annual statement containing this information and such other information as the director deems pertinent, including a report that the sum of the balances in the mutualized account, employers' accounts, and any subsidiary accounts equal the balance in the state's unemployment trust fund maintained under section 904 of the "Social Security Act."

(4) As used in this division:

(a) "Fund as of the computation date" means as of any computation date, the aggregate amount of the unemployment compensation fund, including all contributions owing on the computation date that are paid within thirty days thereafter, all payments in lieu of contributions that are paid within sixty days after the computation date, all reimbursements of the federal share of extended benefits described in section 4141.301 of the Revised Code that are owing on the computation date, and all interest earned by the fund and received on or before the computation date from the federal government.

(b) "Minimum safe level" means an amount equal to two standard deviations above the average of the adjusted annual average unemployment compensation benefit payment from 1970 to the most recent calendar year prior to the computation date, as determined by the director pursuant to division (B)(4)(b) of this section. To determine the adjusted annual payment of unemployment compensation benefits, the director first shall multiply the number of weeks compensated during each calendar year beginning with 1970 by the most recent annual average weekly unemployment compensation benefit payment and then compute the average and standard deviation of the resultant products.

(c) "Annual average weekly unemployment compensation benefit payment" means the amount resulting from dividing the unemployment compensation benefits paid from the benefit account maintained within the unemployment compensation fund pursuant to section 4141.09 of the Revised Code, by the number of weeks compensated during the same time period.

(5) If, as of any computation date, the charges to the mutualized account during the entire period subsequent to the computation date, July 1, 1966, made in accordance with division (B)(1) of this section, exceed the credits to such account including mutualized contributions during such period, made in accordance with division (B)(2) of this section, the amount of such excess charges shall be recovered during the next contribution period. To recover such amount, the director shall compute the percentage ratio of such excess charges to the average annual payroll of all employers eligible for an

experience rate under division (A) of this section. The percentage so determined shall be computed to the nearest tenth of one per cent and shall be an additional contribution rate to be applied to the wages paid by each employer whose rate is computed under the provisions of division (A) of this section in the contribution period next following such computation date, but such percentage shall not exceed five-tenths of one per cent; however, when there are any excess charges in the mutualized account, as computed in this division, then the mutualized contribution rate shall not be less than one-tenth of one per cent.

(6) If the fund as of the computation date is above or below minimum safe level, the contribution rates provided for in each classification in division (A)(3) of this section for the next contribution period shall be adjusted as follows:

(a) If the fund is thirty per cent or more above minimum safe level, the contribution rates provided in division (A)(3) of this section shall be decreased two-tenths of one per cent.

(b) If the fund is more than fifteen per cent but less than thirty per cent above minimum safe level, the contribution rates provided in division (A)(3) of this section shall be decreased one-tenth of one per cent.

(c) If the fund is more than fifteen per cent but less than thirty per cent below minimum safe level, the contribution rates of all employers shall be increased twenty-five one-thousandths of one per cent plus a per cent increase calculated and rounded pursuant to division (B)(6)(g) of this section.

(d) If the fund is more than thirty per cent but less than forty-five per cent below minimum safe level, the contribution rates of all employers shall be increased seventy-five one-thousandths of one per cent plus a per cent increase calculated and rounded pursuant to division (B)(6)(g) of this section.

(e) If the fund is more than forty-five per cent but less than sixty per cent below minimum safe level, the contribution rates of all employers shall be increased one-eighth of one per cent plus a per cent increase calculated and rounded pursuant to division (B)(6)(g) of this section.

(f) If the fund is sixty per cent or more below minimum safe level, the contribution rates of all employers shall be increased two-tenths of one per cent plus a per cent increase calculated and rounded pursuant to division (B)(6)(g) of this section.

(g) The additional per cent increase in contribution rates required by divisions (B)(6)(c), (d), (e), and (f) of this section that is payable by each individual employer shall be calculated in the following manner. The flat

rate increase required by a particular division shall be multiplied by three and the product divided by the average experienced-rated contribution rate for all employers as determined by the director for the most recent calendar year. The resulting quotient shall be multiplied by an individual employer's contribution rate determined pursuant to division (A)(3) of this section. The resulting product shall be rounded to the nearest tenth of one per cent, added to the flat rate increase required by division (B)(6)(c), (d), (e), or (f) of this section, as appropriate, and the total shall be rounded to the nearest tenth of one per cent. As used in division (B)(6)(g) of this section, the "average experienced-rated contribution rate" means the most recent annual average contribution rate reported by the director contained in report RS 203.2 less the mutualized and minimum safe level contribution rates included in such rate.

(h) If any of the increased contribution rates of division (B)(6)(c), (d), (e), or (f) of this section are imposed, the rate shall remain in effect for the calendar year in which it is imposed and for each calendar year thereafter until the director determines as of the computation date for calendar year 1991 and as of the computation date for any calendar year thereafter pursuant to this section, that the level of the unemployment compensation fund equals or exceeds the minimum safe level as defined in division (B)(4)(b) of this section. Nothing in division (B)(6)(h) of this section shall be construed as restricting the imposition of the increased contribution rates provided in divisions (B)(6)(c), (d), (e), and (f) of this section if the fund falls below the percentage of the minimum safe level as specified in those divisions.

(7) The additional contributions required by division (B)(5) of this section shall be credited to the mutualized account. The additional contributions required by division (B)(6) of this section shall be credited fifty per cent to individual employer accounts and fifty per cent to the mutualized account.

(C) If an employer makes a payment of contributions which is less than the full amount required by ~~divisions (A) and (B) of this section~~ and sections 4141.23, 4141.24, 4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised Code, such partial payment shall be applied first against the mutualized contributions required under ~~division (B) of this section, including the additional contributions required under division (B)(6) of this section~~ chapter. Any remaining partial payment shall be credited to the employer's individual account.

(D) Whenever there are any increases in contributions resulting from an increase in wages subject to contributions as defined in division (G) of

section 4141.01 of the Revised Code, or from an increase in the mutualized rate of contributions provided in division (B) of this section, or from a revision of the contribution rate schedule provided in division (A) of this section, except for that portion of the increase attributable to a change in the positive or negative balance in an employer's account, which increases become effective after a contract for the construction of real property, as defined in section 5701.02 of the Revised Code, has been entered into, the contractee upon written notice by a prime contractor shall reimburse the contractor for all increased contributions paid by the prime contractor or by subcontractors upon wages for services performed under the contract. Upon reimbursement by the contractee to the prime contractor, the prime contractor shall reimburse each subcontractor for the increased contributions.

(E) Effective only for the contribution period beginning on January 1, 1996, and ending on December 31, 1996, mutualized contributions collected or received by the director pursuant to division (B)(5) of this section and amounts credited to the mutualized account pursuant to division (B)(7) of this section shall be deposited into or credited to the unemployment compensation benefit reserve fund that is created under division (F) of this section, except that amounts collected, received, or credited in excess of two hundred million dollars shall be deposited into or credited to the unemployment trust fund established pursuant to section 4141.09 of the Revised Code.

(F) The state unemployment compensation benefit reserve fund is hereby created as a trust fund in the custody of the treasurer of state and shall not be part of the state treasury. The fund shall consist of all moneys collected or received as mutualized contributions pursuant to division (B)(5) of this section and amounts credited to the mutualized account pursuant to division (B)(7) of this section as provided by division (E) of this section. All moneys in the fund shall be used solely to pay unemployment compensation benefits in the event that funds are no longer available for that purpose from the unemployment trust fund established pursuant to section 4141.09 of the Revised Code.

(G) The balance in the unemployment compensation benefit reserve fund remaining at the end of the contribution period beginning January 1, 2000, and any mutualized contribution amounts for the contribution period beginning on January 1, 1996, that may be received after December 31, 2000, shall be deposited into the unemployment trust fund established pursuant to section 4141.09 of the Revised Code. Income earned on moneys in the state unemployment compensation benefit reserve fund shall be

available for use by the director only for the purposes described in division (I) of this section, and shall not be used for any other purpose.

(H) The unemployment compensation benefit reserve fund balance shall be added to the unemployment trust fund balance in determining the minimum safe level tax to be imposed pursuant to division (B) of this section and shall be included in the mutualized account balance for the purpose of determining the mutualized contribution rate pursuant to division (B)(5) of this section.

(I) All income earned on moneys in the unemployment compensation benefit reserve fund from the investment of the fund by the treasurer of state shall accrue to the department of job and family services automation administration fund, which is hereby established in the state treasury. Moneys within the automation administration fund shall be used to meet the costs related to automation of the department and the administrative costs related to collecting and accounting for unemployment compensation benefit reserve fund revenue. Any funds remaining in the automation administration fund upon completion of the department's automation projects that are funded by that fund shall be deposited into the unemployment trust fund established pursuant to section 4141.09 of the Revised Code.

(J) The director shall prepare and submit monthly reports to the unemployment compensation advisory commission with respect to the status of efforts to collect and account for unemployment compensation benefit reserve fund revenue and the costs related to collecting and accounting for that revenue. The director shall obtain approval from the unemployment compensation advisory commission for expenditure of funds from the department of job and family services automation administration fund. Funds may be approved for expenditure for purposes set forth in division (I) of this section only to the extent that federal or other funds are not available.

Sec. 4141.26. (A) As soon as practicable after the first day of September but not later than the first day of December of each year, the director of job and family services shall notify each employer of the employer's contribution rate as determined for the next ensuing contribution period pursuant to section 4141.25 of the Revised Code provided the employer has furnished the director, by the first day of September following the computation date, with the wage information for all past periods necessary for the computation of the contribution rate.

~~(B)(1) In the case of contribution rates applicable to contribution periods beginning on or before December 31, 1992, if the employer has not furnished the necessary wage information, the employer's contribution rate~~

~~for such contribution period shall be the maximum rate provided in such section, except that, if the employer files the necessary wage information by the end of the thirtieth day following the issuance of the maximum rate notice, the employer's rate then shall be computed as provided in section 4141.25 of the Revised Code.~~

~~(2) In the case of contribution rates applicable to contribution periods beginning on or after January 1, 1993, and before January 1, 1995, if the employer has not furnished the necessary wage information, the employer's contribution rate for such contribution period shall not be computed as provided in section 4141.25 of the Revised Code, but instead shall be assigned at the maximum rate provided in that section, with the following exceptions:~~

~~(a) If the employer files the necessary wage information by December thirty first of the year immediately preceding the contribution period for which the rate is to be effective, the employer's rate then shall be computed as provided in division (A) of section 4141.25 of the Revised Code.~~

~~(b) The director may waive the maximum contribution rate assigned pursuant to division (B)(2) of this section if the employer meets all of the following conditions within thirty days after the director mails the notice of the maximum contribution rate assigned pursuant to division (B)(2) of this section:~~

~~(i) Provides to the director a written request for waiver of the maximum contribution rate, clearly demonstrating that failure to timely furnish the wage information as required by division (A) of this section was a result of circumstances beyond the control of the employer or the employer's agent, except that negligence on the part of the employer shall not be considered beyond the control of the employer or the employer's agent;~~

~~(ii) Furnishes to the director all of the wage information as required by division (A) of this section and all quarterly reports due pursuant to section 4141.20 of the Revised Code;~~

~~(iii) Pays in full all contributions, payments in lieu of contributions, interest, forfeiture, and fines for each quarter for which such payments are due.~~

~~(3) In the case of contribution rates applicable to contribution periods beginning on or after January 1, 1995, if the If an employer has not timely furnished the necessary wage information as required by division (A) of this section, the employer's contribution rate for such contribution period shall not be computed as provided in section 4141.25 of the Revised Code, but instead the employer shall be assigned a contribution rate equal to one hundred twenty-five per cent of the maximum rate provided in that section,~~

with the following exceptions:

~~(a)(1)~~ If the employer files the necessary wage information by the thirty-first day of December of the year immediately preceding the contribution period for which the rate is to be effective, the employer's rate shall be computed as provided in division (A) of section 4141.25 of the Revised Code;

~~(b)~~ The director may waive the contribution rate assigned pursuant to division (B)(3) of this section if the employer meets all of the following conditions within thirty days after the director mails to the employer the notice of the contribution rate assigned pursuant to division (B)(3) of this section:

~~(i)~~ Provides to the director a written request for waiver of the contribution rate, clearly demonstrating that the failure to timely furnish the wage information as required by division (A) of this section was a result of circumstances beyond the control of the employer or the employer's agent, except that negligence on the part of the employer shall not be considered to be beyond the control of the employer or the employer's agent;

~~(ii)~~ Furnishes to the director all of the wage information as required by division (A) of this section and all quarterly reports due pursuant to section 4141.20 of the Revised Code;

~~(iii)~~ Pays in full all contributions, payments in lieu of contributions, interest, forfeiture, and fines for each quarter for which such payments are due.

~~(e)(2)~~ The director shall revise the contribution rate of an employer who has not timely furnished the necessary wage information as required by division (A) of this section, who has been assigned a contribution rate pursuant to division (B)(3) of this section, and who does not meet the requirements of division (B)(3)(a) or ~~(b)(1)~~ of this section, if the employer furnishes the necessary wage information to the director within ~~thirty-six~~ eighteen months following the thirty-first day of December of the year immediately preceding the contribution period for which the rate is to be effective. The revised rate under division (B)(3)~~(e)(2)~~ of this section shall be equal to one hundred twenty per cent of the contribution rate that would have resulted if the employer had timely furnished the necessary wage information under division (A) of this section.

~~(4)~~ The director shall deny an employer's request for a waiver of the requirement that the employer's contribution rate be the maximum rate under division (B)(2)(b) of this section, or be the rate assigned under division (B)(3)(b) of this section, or for a revision of the employer's rate as provided in division (B)(3)~~(e)(2)~~ of this section if the director finds that the

employer's failure to timely file the necessary wage information was due to an attempt to evade payment.

(5) The director shall round the contribution rates the director determines under ~~this~~ division (B) of this section to the nearest tenth of one per cent.

(C) If, as a result of the computation pursuant to division (B) of this section, the employer's account shows a negative balance in excess of the applicable limitations, in that computation, the excess above applicable limitations shall not be transferred from the account as provided in division (A)(2) of section 4141.24 of the Revised Code.

(D) The rate determined pursuant to this section and section 4141.25 of the Revised Code shall become binding upon the employer unless:

(1) The employer makes a voluntary contribution as provided in division (B) of section 4141.24 of the Revised Code, whereupon the director shall issue the employer a revised contribution rate notice if the contribution changes the employer's rate; or

(2) Within thirty days after the mailing of notice of the employer's rate or a revision of it to the employer's last known address or, in the absence of mailing of such notice, within thirty days after the delivery of such notice, the employer files an application with the director for reconsideration of the director's determination of such rate setting forth reasons for such request. The director shall promptly examine the application for reconsideration and shall notify the employer of the director's reconsidered decision, which shall become final unless, within thirty days after the mailing of such notice by certified mail, return receipt requested, the employer files an application for review of such decision with the unemployment compensation review commission. The commission shall promptly examine the application for review of the director's decision and shall grant such employer an opportunity for a fair hearing. The proceeding at the hearing before the commission shall be recorded in the means and manner prescribed by the commission. For the purposes of this division, the review is considered timely filed when it has been received as provided in division (D)(1) of section 4141.281 of the Revised Code.

The employer and the director shall be promptly notified of the commission's decision, which shall become final unless, within thirty days after the mailing of notice of it to the employer's last known address by certified mail, return receipt requested, or, in the absence of mailing, within thirty days after delivery of such notice, an appeal is taken by the employer or the director to the court of common pleas of Franklin county. Such appeal shall be taken by the employer or the director by filing a notice of appeal

with the clerk of such court and with the commission. Such notice of appeal shall set forth the decision appealed and the errors in it complained of. Proof of the filing of such notice with the commission shall be filed with the clerk of such court.

The commission, upon written demand filed by the appellant and within thirty days after the filing of such demand, shall file with the clerk a certified transcript of the record of the proceedings before the commission pertaining to the determination or order complained of, and the appeal shall be heard upon such record certified to the commission. In such appeal, no additional evidence shall be received by the court, but the court may order additional evidence to be taken before the commission, and the commission, after hearing such additional evidence, shall certify such additional evidence to the court or it may modify its determination and file such modified determination, together with the transcript of the additional record, with the court. After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases. The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. An appeal may be taken from the decision of the court of common pleas of Franklin county.

(E) The appeal provisions of division (D) of this section apply to all other determinations and orders of the director affecting the liability of an employer to pay contributions or the amount of such contributions, determinations respecting application for refunds of contributions, determinations respecting applications for classification of employment as seasonal under section 4141.33 of the Revised Code, and exceptions to charges of benefits to an employer's account as provided in division (D) of section 4141.24 of the Revised Code.

(F) The validity of any general order or rule of the director adopted pursuant to this chapter or of any final order or action of the unemployment compensation review commission respecting any such general order or rule may be determined by the court of common pleas of Franklin county, and such general order, rule, or action may be sustained or set aside by the court on an appeal to it which may be taken by any person affected by the order,

rule, or action in the manner provided by law. Such appeal to the court of common pleas of Franklin county shall be filed within thirty days after the date such general order, rule, or action was publicly released by the director or the commission. Either party to such action may appeal from the court of common pleas of Franklin county as in ordinary civil cases.

(G) Notwithstanding any determination made in pursuance of sections 4141.23 to 4141.26 of the Revised Code, no individual who files a claim for benefits shall be denied the right to a fair hearing as provided in section 4141.281 of the Revised Code, or the right to have a claim determined on the merits of it.

(H)(1) Notwithstanding division (D) of this section, if the director finds that an omission or error in the director's records or employer reporting caused the director to issue an erroneous determination or order affecting contribution rates, the liability of an employer to pay contributions or the amount of such contributions, determinations respecting applications for refunds of contributions, determinations respecting applications for classification of seasonal status under section 4141.33 of the Revised Code, or exceptions to charges of benefits to an employer's account as provided in division (D) of section 4141.24 of the Revised Code, the director may issue a corrected determination or order correcting the erroneous determination or order, except as provided in division (H)(2) of this section.

(2) The director may not issue a corrected determination or order correcting an erroneous determination or order if both of the following apply:

(a) The erroneous determination or order was caused solely by an omission or error of the director;

(b) A correction of the erroneous determination or order would adversely affect the employer or any of the employers that were parties in interest to the erroneous determination or order.

A corrected determination or order issued under this division takes precedence over and renders void the erroneous determination or order and is appealable as provided in division (D) of this section.

Sec. 4141.28.

## BENEFITS

### (A) FILINGS

Applications for determination of benefit rights and claims for benefits shall be filed with the director of job and family services. Such applications and claims also may be filed with an employee of another state or federal agency charged with the duty of accepting applications and claims for unemployment benefits or with an employee of the unemployment insurance

commission of Canada.

When an unemployed individual files an application for determination of benefit rights, the director shall furnish the individual with an explanation of the individual's appeal rights. The explanation shall describe clearly the different levels of appeal and explain where and when each appeal must be filed.

**(B) APPLICATION FOR DETERMINATION OF BENEFIT RIGHTS**

In filing an application, an individual shall furnish the director with the name and address of the individual's most recent separating employer and the individual's statement of the reason for separation from the employer. The director shall promptly notify the individual's most recent separating employer of the filing and request the reason for the individual's unemployment, unless that notice is not necessary under conditions the director establishes by rule. The director may request from the individual or any employer information necessary for the determination of the individual's right to benefits. The employer shall provide the information requested within ten working days after the request is sent. If necessary to ensure prompt determination and payment of benefits, the director shall base the determination on the information that is available.

An individual filing an application for determination of benefit rights shall disclose, at the time of filing, whether or not the individual owes child support obligations.

**(C) MASS LAYOFFS**

An employer who lays off or separates within any seven-day period fifty or more individuals because of lack of work shall furnish notice to the director of the dates of layoff or separation and the approximate number of individuals being laid off or separated. The notice shall be furnished at least three working days prior to the date of the first day of such layoff or separation. In addition, at the time of the layoff or separation the employer shall furnish to the individual and to the director information necessary to determine the individual's eligibility for unemployment compensation.

**(D) DETERMINATION OF BENEFIT RIGHTS**

The director shall promptly examine any application for determination of benefit rights. On the basis of the information available to the director under this chapter, the director shall determine whether or not the application is valid, and if valid, the date on which the benefit year shall commence and the weekly benefit amount. The director shall promptly notify the applicant, employers in the applicant's base period, and any other interested parties of the determination and the reasons for it. In addition, the determination issued to the claimant shall include the total amount of

benefits payable. The determination issued to each chargeable base period employer shall include the total amount of benefits that may be charged to the employer's account.

(E) CLAIM FOR BENEFITS

The director shall examine the first claim and any additional claim for benefits. On the basis of the information available, the director shall determine whether the claimant's most recent separation and, to the extent necessary, prior separations from work, allow the claimant to qualify for benefits. Written notice of the determination granting or denying benefits shall be sent to the claimant, the most recent separating employer, and any other employer involved in the determination, except that written notice is not required to be sent to the claimant if the reason for separation is lack of work and the claim is allowed.

If the director identifies an eligibility issue, the director shall send notice to the claimant of the issue identified and specify the week or weeks involved. The claimant has a minimum of five business days after the notice is sent to respond to the information included in the notice, and after the time allowed as determined by the director, the director shall make a determination. The claimant's response may include a request for a fact-finding interview when the eligibility issue is raised by an informant or source other than the claimant, or when the eligibility issue, if determined adversely, disqualifies the claimant for the duration of the claimant's period of unemployment.

When the determination of a continued claim for benefits results in a disallowed claim, the director shall notify the claimant of the disallowance and the reasons for it.

(F) ELIGIBILITY NOTICE

Any base period or subsequent employer of a claimant who has knowledge of specific facts affecting the claimant's right to receive benefits for any week may notify the director in writing of those facts. The director shall prescribe a form for such eligibility notice, but failure to use the form shall not preclude the director's examination of any notice.

To be considered valid, an eligibility notice must: contain in writing, a statement that identifies either a source who has firsthand knowledge of the information or an informant who can identify the source; provide specific and detailed information that may potentially disqualify the claimant; provide the name and address of the source or the informant; and appear to the director to be reliable and credible.

An eligibility notice is timely filed if received or postmarked prior to or within forty-five calendar days after the end of the week with respect to

which a claim for benefits is filed by the claimant. An employer who timely files a valid eligibility notice shall be an interested party to the claim for benefits which is the subject of the notice.

The director shall consider the information contained in the eligibility notice, together with other available information. After giving the claimant notice and an opportunity to respond, the director shall make a determination and inform the notifying employer, the claimant, and other interested parties of the determination.

(G) CORRECTED DETERMINATION

If the director finds within the fifty-two calendar weeks beginning with the Sunday of the week during which an application for benefit rights was filed or within the benefit year that a determination made by the director was erroneous due to an error in an employer's report or any typographical or clerical error in the director's determination, or as shown by correct remuneration information received by the director, the director shall issue a corrected determination to all interested parties. The corrected determination shall take precedence over and void the prior determination of the director. The director shall not issue a corrected determination when the commission or a court has jurisdiction with respect to that determination.

(H) EFFECT OF COMMISSION DECISIONS

In making determinations, the director shall follow decisions of the unemployment compensation review commission which have become final with respect to claimants similarly situated.

(I) PROMPT PAYMENTS

If benefits are allowed by the director, a hearing officer, the commission, or a court, the director shall pay benefits promptly, notwithstanding any further appeal, provided that if benefits are denied on appeal, of which the parties have notice and an opportunity to be heard, the director shall withhold payment of benefits pending a decision on any further appeal.

Sec. 4141.282.

APPEAL TO COURT

(A) THIRTY-DAY DEADLINE FOR APPEAL

Any interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties, may appeal the decision of the commission to the court of common pleas.

(B) WHERE TO FILE THE APPEAL

An appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last

employed or, if an employer, is a resident or has a principal place of business in this state. If an appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state, then an appellant shall file the appeal with the court of common pleas of Franklin county.

(C) PERFECTING THE APPEAL

The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.

(D) INTERESTED PARTIES

The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

(E) SERVICE OF THE NOTICE OF APPEAL

Upon filing the notice of appeal with the clerk of the court, the clerk shall serve a copy of the notice of appeal upon all appellees, including the director.

(F) DUTIES OF THE COMMISSION

~~The~~ (1) Except as specified in division (F)(2) of this section, the commission, within forty-five days after a notice of appeal is filed or within an extended period ordered by the court, shall file with the clerk a certified transcript of the record of the proceedings at issue before the commission. The commission also shall provide a copy of the transcript to the appellant's attorney or to the appellant, if the appellant is not represented by counsel, and to any appellee who requests a copy.

(2) If the commission cannot file the certified transcript of the record of proceedings within forty-five days after a notice of appeal is filed, or within an extended period ordered by the court, then the court shall remand the matter to the commission for additional proceedings in order to complete the record on appeal. The additional proceedings may include a new hearing before the commission or a designated hearing officer.

(G) COURT BRIEFING SCHEDULES

The court shall provide for the filing of briefs by the parties, whether by local rule, scheduling order, or otherwise.

(H) REVIEW BY THE COURT OF COMMON PLEAS

The court shall hear the appeal ~~upon receipt of~~ on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of

the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

**(I) FAILURE TO FILE APPEAL WITHIN THIRTY DAYS**

If an appeal is filed after the thirty-day appeal period, the court of common pleas shall conduct a hearing to determine whether the appeal was timely filed under division (D)(9) of section 4141.281 of the Revised Code. At the hearing, additional evidence may be introduced and oral arguments may be presented regarding the timeliness of the filing of the appeal.

If the court of common pleas determines that the appeal was filed within the time allowed, the court shall after that make its decision on the merits of the appeal. The determination on timeliness by the court of common pleas may be appealed to the court of appeals as in civil cases, and such appeal shall be consolidated with any appeal from the decision by the court of common pleas on the merits of the appeal.

Sec. 4141.283. (A) Whenever the director of job and family services has reason to believe that the unemployment of twenty-five or more individuals relates to a labor dispute, the director, within five calendar days after their claims are filed, shall schedule a hearing concerning the reason for unemployment. Notice of the hearing shall be sent to all interested parties, including the duly authorized representative of the parties. The hearing date shall be scheduled so as to provide at least ten days' prior notice of the time and date of the hearing. A similar hearing, in such cases, may be scheduled when there is a dispute as to the duration or ending date of the labor dispute.

(B) The director shall appoint a hearing officer to conduct the hearing of the case under division (A) of this section. The hearing officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but shall take any steps that are reasonable and necessary to obtain the facts and determine whether the claimants are entitled to benefits under the law. The failure of any interested party to appear at the hearing shall not preclude a decision based upon all the facts available to the hearing officer. The proceeding at the hearing shall be recorded by mechanical means or by other means prescribed by the director. The record need not be transcribed unless an application for appeal is filed on the decision and the chairperson of the unemployment compensation review commission requests a transcript of the hearing within fourteen days after the application for appeal is received by the commission. The director shall prescribe rules concerning the conduct of the hearings and all related matters and appoint an attorney to direct the operation of this function.

(C) The director shall issue the hearing officer's decisions and reasons

therefor on the case within ten calendar days after the hearing. The hearing officer's decision issued by the director is final unless an application for appeal is filed with the commission within twenty-one days after the decision was mailed to all interested parties. The director, within the twenty-one-day appeal period, may remove and vacate the decision and issue a revised determination and appeal date.

(D) Upon receipt of the application for appeal, the full commission shall review the director's decision, and then schedule a further hearing on the case, disallow the application without further hearing, or modify or reverse the director's decision. The commission shall review the director's decision within fourteen days after receipt of the decision or the receipt of a transcript requested under division (B) of this section, whichever is later.

(1) When a further hearing is granted, the commission shall make the director's decision and record of the case, as certified by the director, a part of the record and shall consider the director's decision and record in arriving at a decision on the case. The commission's decision affirming, modifying, or reversing the director's decision, following the further appeal, shall be mailed to all interested parties within fourteen days after the hearing.

(2) A decision to disallow a further appeal or to modify or reverse the director's decision shall be mailed to all interested parties within fourteen days after the commission makes the decision. A disallowance is deemed an affirmation of the director's decision.

(3) The time limits specified in this section may be extended by agreement of all interested parties or for cause beyond the control of the director or the commission.

(E) ~~An~~ Except as otherwise specified in this division, an appeal of the commission's decision issued under division (D) of this section may be taken to the court of common pleas as provided in section 4141.282 of the Revised Code. Notwithstanding division (B) of section 4141.282 of the Revised Code:

(1) If the operations of an employer involved in a labor dispute under this section are located in only one county, then appeal of the commission's decision under division (D) of this section shall be taken to the court of common pleas of the county where the employer's operations are located.

(2) If the operations of an employer involved in a labor dispute under this section are located in more than one county, then appeal of the commission's decision under division (D) of this section shall be taken to the court of common pleas of the county where the largest number of the claimants worked for the employer.

(F) A labor dispute decision involving fewer than twenty-five

individuals shall be determined under section 4141.28 of the Revised Code, and the commission shall determine any appeal from the decision pursuant to section 4141.281 of the Revised Code and within the time limits provided in division (D) of this section.

Sec. 4141.29. Each eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in this chapter.

(A) No individual is entitled to a waiting period or benefits for any week unless the individual:

(1) Has filed a valid application for determination of benefit rights in accordance with section 4141.28 of the Revised Code;

(2) Has made a claim for benefits in accordance with section 4141.28 of the Revised Code;

(3) Has registered at an employment office or other registration place maintained or designated by the director of job and family services. Registration shall be made in accordance with the time limits, frequency, and manner prescribed by the director.

(4)(a)(i) Is able to work and available for suitable work and, except as provided in division (A)(4)(a)(ii) of this section, is actively seeking suitable work either in a locality in which the individual has earned wages subject to this chapter during the individual's base period, or if the individual leaves that locality, then in a locality where suitable work normally is performed.

(ii) The director may waive the requirement that a claimant be actively seeking work when the director finds that ~~either of the following is true:~~

~~(I) The individual's unemployment is directly attributable to a major disaster declared by the president of the United States pursuant to the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C. 5121, and the employer whose operation was adversely affected by the disaster, requests a waiver from the director for the individual to be exempt from the requirement to actively seek suitable work;~~

~~(II) The individual has been laid off and the employer who laid the individual off has notified the director within ten days after the layoff, that work is expected to be available for the individual within a specified number of days not to exceed forty-five calendar days following the last day the individual worked. In the event the individual is not recalled within the specified period, this waiver shall cease to be operative with respect to that layoff.~~

(b) The individual shall be instructed as to the efforts that the individual must make in the search for suitable work, except where the active search

for work requirement has been waived under division (A)(4)(a) of this section, and shall keep a record of where and when the individual has sought work in complying with those instructions and, upon request, shall produce that record for examination by the director.

(c) An individual who is attending a training course approved by the director meets the requirement of this division, if attendance was recommended by the director and the individual is regularly attending the course and is making satisfactory progress. An individual also meets the requirements of this division if the individual is participating and advancing in a training program, as defined in division (P) of section 5709.61 of the Revised Code, and if an enterprise, defined in division (B) of section 5709.61 of the Revised Code, is paying all or part of the cost of the individual's participation in the training program with the intention of hiring the individual for employment as a new employee, as defined in division (L) of section 5709.61 of the Revised Code, for at least ninety days after the individual's completion of the training program.

(d) An individual who becomes unemployed while attending a regularly established school and whose base period qualifying weeks were earned in whole or in part while attending that school, meets the availability and active search for work requirements of division (A)(4)(a) of this section if the individual regularly attends the school during weeks with respect to which the individual claims unemployment benefits and makes self available on any shift of hours for suitable employment with the individual's most recent employer or any other employer in the individual's base period, or for any other suitable employment to which the individual is directed, under this chapter.

(e) The director shall adopt any rules that the director deems necessary for the administration of division (A)(4) of this section.

(f) Notwithstanding any other provisions of this section, no otherwise eligible individual shall be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 2296, nor shall that 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 week in training of provisions in this chapter, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

For the purposes of division (A)(4)(f) of this section, "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 the purposes of the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 2101, and wages for such work at not less than eighty per cent of the individual's average weekly wage as determined for the purposes of that federal act.

(5) Is unable to obtain suitable work. An individual who is provided temporary work assignments by the individual's employer under agreed terms and conditions of employment, and who is required pursuant to those terms and conditions to inquire with the individual's employer for available work assignments upon the conclusion of each work assignment, is not considered unable to obtain suitable employment if suitable work assignments are available with the employer but the individual fails to contact the employer to inquire about work assignments.

(6) Participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust benefits under this chapter, including compensation payable pursuant to 5 U.S.C.A. Chapter 85, other than extended compensation, and needs reemployment services pursuant to the profiling system established by the director under division (K) of this section, unless the director determines that:

(a) The individual has completed such services; or

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

(B) An individual suffering total or partial unemployment is eligible for benefits for unemployment occurring subsequent to a waiting period of one week and no benefits shall be payable during this required waiting period; ~~except when the unemployment during this waiting period is directly attributable to a major disaster declared by the president of the United States pursuant to the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C. 5121.~~ Not more than one week of waiting period shall be required of any individual in any benefit year in order to establish the individual's eligibility for total or partial unemployment benefits.

(C) The waiting period for total or partial unemployment shall commence on the first day of the first week with respect to which the individual first files a claim for benefits at an employment office or other place of registration maintained or designated by the director or on the first day of the first week with respect to which the individual has otherwise filed a claim for benefits in accordance with the rules of the department of job and family services, provided such claim is allowed by the director.

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(1) For any week with respect to which the director finds that:

(a) The individual's unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which the individual is or was last employed; and for so long as the individual's unemployment is due to such labor dispute. No individual shall be disqualified under this provision if either of the following applies:

(i) The individual's employment was with such employer at any factory, establishment, or premises located in this state, owned or operated by such employer, other than the factory, establishment, or premises at which the labor dispute exists, if it is shown that the individual is not financing, participating in, or directly interested in such labor dispute;

(ii) The individual's employment was with an employer not involved in the labor dispute but whose place of business was located within the same premises as the employer engaged in the dispute, unless the individual's employer is a wholly owned subsidiary of the employer engaged in the dispute, or unless the individual actively participates in or voluntarily stops work because of such dispute. If it is established that the claimant was laid off for an indefinite period and not recalled to work prior to the dispute, or was separated by the employer prior to the dispute for reasons other than the labor dispute, or that the individual obtained a bona fide job with another employer while the dispute was still in progress, such labor dispute shall not render the employee ineligible for benefits.

(b) The individual has been given a disciplinary layoff for misconduct in connection with the individual's work.

(2) For the duration of the individual's unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work, provided division (D)(2) of this section does not apply to the separation of a person under any of the following circumstances:

(i) Separation from employment for the purpose of entering the armed forces of the United States if the individual ~~makes application to enter, or~~ is inducted into the armed forces within ~~thirty~~ one of the following periods:

(I) Thirty days after such separation;

(II) One hundred eighty days after separation if the individual's date of induction is delayed solely at the discretion of the armed forces.

(ii) Separation from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to

accept a separation from employment;

(iii) The individual has left employment to accept a recall from a prior employer or, except as provided in division (D)(2)(a)(iv) of this section, to accept other employment as provided under section 4141.291 of the Revised Code, or left or was separated from employment that was concurrent employment at the time of the most recent separation or within six weeks prior to the most recent separation where the remuneration, hours, or other conditions of such concurrent employment were substantially less favorable than the individual's most recent employment and where such employment, if offered as new work, would be considered not suitable under the provisions of divisions (E) and (F) of this section. Any benefits that would otherwise be chargeable to the account of the employer from whom an individual has left employment or was separated from employment that was concurrent employment under conditions described in division (D)(2)(a)(iii) of this section, shall instead be charged to the mutualized account created by division (B) of section 4141.25 of the Revised Code, except that any benefits chargeable to the account of a reimbursing employer under division (D)(2)(a)(iii) of this section shall be charged to the account of the reimbursing employer and not to the mutualized account, except as provided in division (D)(2) of section 4141.24 of the Revised Code.

(iv) When an individual has been issued a definite layoff date by the individual's employer and before the layoff date, the individual quits to accept other employment, the provisions of division (D)(2)(a)(iii) of this section apply and no disqualification shall be imposed under division (D) of this section. However, if the individual fails to meet the employment and earnings requirements of division (A)(2) of section 4141.291 of the Revised Code, then the individual, pursuant to division (A)(5) of this section, shall be ineligible for benefits for any week of unemployment that occurs prior to the layoff date.

(b) The individual has refused without good cause to accept an offer of suitable work when made by an employer either in person or to the individual's last known address, or has refused or failed to investigate a referral to suitable work when directed to do so by a local employment office of this state or another state, provided that this division shall not cause a disqualification for a waiting week or benefits under the following circumstances:

(i) When work is offered by the individual's employer and the individual is not required to accept the offer pursuant to the terms of the labor-management contract or agreement; or

(ii) When the individual is attending a ~~vocational~~ training course

pursuant to division (A)(4) of this section except, in the event of a refusal to accept an offer of suitable work or a refusal or failure to investigate a referral, benefits thereafter paid to such individual shall not be charged to the account of any employer and, except as provided in division (B)(1)(b) of section 4141.241 of the Revised Code, shall be charged to the mutualized account as provided in division (B) of section 4141.25 of the Revised Code.

(c) Such individual quit work to marry or because of marital, parental, filial, or other domestic obligations.

~~(d) The individual has knowingly made a false statement or representation or knowingly failed to report any material fact with the object of obtaining benefits to which the individual is not entitled.~~

~~(e)~~ The individual became unemployed by reason of commitment to any correctional institution.

~~(f)~~~~(e)~~ The individual became unemployed because of dishonesty in connection with the individual's most recent or any base period work. Remuneration earned in such work shall be excluded from the individual's total base period remuneration and qualifying weeks that otherwise would be credited to the individual for such work in the individual's base period shall not be credited for the purpose of determining the total benefits to which the individual is eligible and the weekly benefit amount to be paid under section 4141.30 of the Revised Code. Such excluded remuneration and noncredited qualifying weeks shall be excluded from the calculation of the maximum amount to be charged, under division (D) of section 4141.24 and section 4141.33 of the Revised Code, against the accounts of the individual's base period employers. In addition, no benefits shall thereafter be paid to the individual based upon such excluded remuneration or noncredited qualifying weeks.

For purposes of division (D)(2)~~(f)~~~~(e)~~ of this section, "dishonesty" means the commission of substantive theft, fraud, or deceitful acts.

(E) No individual otherwise qualified to receive benefits shall lose the right to benefits by reason of a refusal to accept new work if:

(1) As a condition of being so employed the individual would be required to join a company union, or to resign from or refrain from joining any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization.

(2) The position offered is vacant due directly to a strike, lockout, or other labor dispute.

(3) The work is at an unreasonable distance from the individual's residence, having regard to the character of the work the individual has been accustomed to do, and travel to the place of work involves expenses

substantially greater than that required for the individual's former work, unless the expense is provided for.

(4) The remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(F) Subject to the special exceptions contained in division (A)(4)(f) of this section and section 4141.301 of the Revised Code, in determining whether any work is suitable for a claimant in the administration of this chapter, the director, in addition to the determination required under division (E) of this section, shall consider the degree of risk to the claimant's health, safety, and morals, the individual's physical fitness for the work, the individual's prior training and experience, the length of the individual's unemployment, the distance of the available work from the individual's residence, and the individual's prospects for obtaining local work.

(G) The "duration of unemployment" as used in this section means the full period of unemployment next ensuing after a separation from any base period or subsequent work and until an individual has become reemployed in employment subject to this chapter, or the unemployment compensation act of another state, or of the United States, and until such individual has worked six weeks and for those weeks has earned or been paid remuneration equal to six times an average weekly wage of not less than: eighty-five dollars and ten cents per week beginning on June 26, 1990; and beginning on and after January 1, 1992, twenty-seven and one-half per cent of the statewide average weekly wage as computed each first day of January under division (B)(3) of section 4141.30 of the Revised Code, rounded down to the nearest dollar, except for purposes of division (D)(2)(c) of this section, such term means the full period of unemployment next ensuing after a separation from such work and until such individual has become reemployed subject to the terms set forth above, and has earned wages equal to one-half of the individual's average weekly wage or sixty dollars, whichever is less.

(H) If a claimant is disqualified under division (D)(2)(a), (c), or ~~(e)~~(d) of this section or found to be qualified under the exceptions provided in division (D)(2)(a)(i), (iii), or (iv) of this section or division (A)(2) of section 4141.291 of the Revised Code, then benefits that may become payable to such claimant, which are chargeable to the account of the employer from whom the individual was separated under such conditions, shall be charged to the mutualized account provided in section 4141.25 of the Revised Code, provided that no charge shall be made to the mutualized account for benefits chargeable to a reimbursing employer, except as provided in division (D)(2)

of section 4141.24 of the Revised Code. In the case of a reimbursing employer, the director shall refund or credit to the account of the reimbursing employer any over-paid benefits that are recovered under division (B) of section 4141.35 of the Revised Code. Amounts chargeable to other states, the United States, or Canada that are subject to agreements and arrangements that are established pursuant to section 4141.43 of the Revised Code shall be credited or reimbursed according to the agreements and arrangements to which the chargeable amounts are subject.

(I)(1) Benefits based on service in employment as provided in divisions (B)(2)(a) and (b) of section 4141.01 of the Revised Code 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; except that after December 31, 1977:

(a) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education, as defined in division (Y) of section 4141.01 of the Revised Code; or for an educational institution as defined in division (CC) of section 4141.01 of the Revised Code, shall not be paid to any individual for any week of unemployment that begins during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of those academic years or terms and has a contract or a reasonable assurance that the individual will perform services in any such capacity for any such institution in the second of those academic years or terms.

(b) Benefits based on service for an educational institution or an institution of higher education in other than an instructional, research, or principal administrative capacity, shall not be paid to any individual for any week of unemployment which begins during the period between two successive academic years or terms of the employing educational institution or institution of higher education, provided the individual performed those services for the educational institution or institution of higher education during the first such academic year or term and, there is a reasonable assurance that such individual will perform those services for any educational institution or institution of higher education in the second of such academic years or terms.

If compensation is denied to any individual for any week under division (I)(1)(b) of this section and the individual was not offered an opportunity to perform those services for an institution of higher education or for an educational institution for the second of such academic years or terms, the

individual is entitled to a retroactive payment of compensation for each week for which the individual timely filed a claim for compensation and for which compensation was denied solely by reason of division (I)(1)(b) of this section. An application for retroactive benefits shall be timely filed if received by the director or the director's deputy within or prior to the end of the fourth full calendar week after the end of the period for which benefits were denied because of reasonable assurance of employment. The provision for the payment of retroactive benefits under division (I)(1)(b) of this section is applicable to weeks of unemployment beginning on and after November 18, 1983. The provisions under division (I)(1)(b) of this section shall be retroactive to September 5, 1982, only if, as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311, the United States secretary of labor determines that retroactivity is required by federal law.

(c) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess, if the individual performs any services described in divisions (I)(1)(a) and (b) of this section in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform any such services in the period immediately following the vacation period or holiday recess.

(d) With respect to any services described in division (I)(1)(a), (b), or (c) of this section, benefits payable on the basis of services in any such capacity shall be denied as specified in division (I)(1)(a), (b), or (c) of this section to any individual who performs such services in an educational institution or institution of higher education while in the employ of an educational service agency. For this purpose, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing services to one or more educational institutions or one or more institutions of higher education.

(e) Any individual employed by a public school district or a county board of mental retardation shall be notified by the thirtieth day of April each year if the individual is not to be reemployed the following academic year.

(2) No disqualification will be imposed, between academic years or terms or during a vacation period or holiday recess under this division, unless the director or the director's deputy has received a statement in writing from the educational institution or institution of higher education

that the claimant has a contract for, or a reasonable assurance of, reemployment for the ensuing academic year or term.

(3) If an individual has employment with an educational institution or an institution of higher education and employment with a noneducational employer, during the base period of the individual's benefit year, then the individual may become eligible for benefits during the between-term, or vacation or holiday recess, disqualification period, based on employment performed for the noneducational employer, provided that the employment is sufficient to qualify the individual for benefit rights separately from the benefit rights based on school employment. The weekly benefit amount and maximum benefits payable during a disqualification period shall be computed based solely on the nonschool employment.

(J) Benefits shall not be paid on the basis of employment performed by an alien, unless the alien had been lawfully admitted to the United States for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was otherwise permanently residing in the United States under color of law at the time the services were performed, under section 212(d)(5) of the "Immigration and Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101:

(1) 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.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence that the individual had not, in fact, been lawfully admitted to the United States.

(K) The director shall establish and utilize a system of profiling all new claimants under this chapter that:

(1) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(2) Refers claimants identified pursuant to division (K)(1) of this section to reemployment services, such as job search assistance services, available under any state or federal law;

(3) Collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimant's subsequent to receiving such services and utilizes such information in making identifications pursuant to division (K)(1) of this section; and

(4) Meets such other requirements as the United States secretary of

labor determines are appropriate.

Sec. 4141.292. An individual suffering total or partial unemployment directly attributable to a major disaster declared by the president of the United States pursuant to the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C. 5121, who is not eligible to be paid unemployment compensation benefits under this chapter or any other state or federal unemployment compensation law for the first week of the individual's unemployment caused by the disaster is eligible to be paid a state disaster unemployment benefit payment for that week.

The director shall compute the state disaster unemployment benefit payment as if the individual was otherwise qualified and claiming weekly unemployment compensation benefits under this chapter. The director shall pay the state disaster unemployment benefit payment from the unemployment compensation special administrative fund created in section 4141.11 of the Revised Code. The director shall maintain appropriate records of payments made under this section and shall submit those records at least annually to the unemployment compensation advisory council as prescribed by the council.

Sec. 4141.301. (A) 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.

Except, that 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) There is a "state 'on' indicator" for this state for a week if the director of job and family services determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under Chapter 4141. of the Revised Code:

(a) Equaled or exceeded one hundred twenty per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and for weeks beginning before September 25, 1982, equaled or exceeded four per cent and for weeks beginning after

September 25, 1982, equaled or exceeded five per cent;

(b) For weeks of unemployment beginning after December 31, 1977, and before September 25, 1982, such rate of insured unemployment:

- (i) Met the criteria set forth in division (A)(2)(a) of this section; or
- (ii) Equaled or exceeded five per cent.

(c) For weeks of unemployment beginning after September 25, 1982, such rate of insured unemployment:

- (i) Met the criteria set forth in division (A)(2)(a) of this section; or
- (ii) Equaled or exceeded six per cent.

(3) A "state 'off' indicator" exists for the state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under Chapter 4141. of the Revised Code:

(a) Was less than one hundred twenty per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or for weeks beginning before September 25, 1982, was less than four per cent and for weeks beginning after September 25, 1982, was less than five per cent;

(b) For weeks of unemployment beginning after December 31, 1977 and before September 25, 1982, such rate of insured unemployment:

- (i) Was less than five per cent; and
- (ii) Met the criteria set forth in division (A)(3)(a) of this section.

(c) For weeks of unemployment beginning after September 25, 1982, such rate of insured unemployment:

- (i) Was less than six per cent; and
- (ii) Met the criteria set forth in division (A)(3)(a) of this section.

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

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

(b) The average monthly employment covered under Chapter 4141. of the Revised Code, for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(5) "Regular benefits" means benefits payable to an individual, as defined in division (C) of section 4141.01 of the Revised Code, or under any other state law, including dependents' allowance and benefits payable to

federal civilian employees and to ex-servicepersons pursuant to the "Act of September 6, 1966," 80 Stat. 585, 5 U.S.C.A. 8501, other than extended benefits, and additional benefits as defined in division (A)(10) of this section.

(6) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicepersons pursuant to the "Act of September 6, 1966," 80 Stat. 585, 5 U.S.C.A. 8501, and additional benefits, payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

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

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

(a) Has received prior to the week, all of the regular benefits that were available to the individual under Chapter 4141. of the Revised Code, or any other state law, including dependents' allowance and benefits payable to federal civilian employees and ex-servicepersons under the "Act of September 6, 1966," 80 Stat. 585, 5 U.S.C.A. 8501, in the individual's current benefit year that includes the week;

(b) Has received, prior to the week, all of the regular benefits that were available to the individual under this chapter or any other state law, including dependents' allowances and regular benefits available to federal civilian employees and ex-servicepersons under the "Act of September 6, 1966," 80 Stat. 585, 5 U.S.C.A. 8501, in the individual's current benefit year that includes the week, after the cancellation of some or all of the individual's wage credits or the total or partial reduction of the individual's right to regular benefits, provided that, for the purposes of divisions (A)(8)(a) and (8)(b) of this section, an individual shall be deemed to have received in the individual's current benefit year all of the regular benefits that were either payable or available to the individual even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to the individual's current benefit year, the individual may subsequently be determined to be entitled to more regular benefits, or

(ii) By reason of section 4141.33 of the Revised Code, or the seasonal employment provisions of another state law, the individual is not entitled to regular benefits with respect to the week of unemployment, although the individual may be entitled to regular benefits with respect to future weeks of

unemployment in either the next season or off season in the individual's current benefit year, and the individual is otherwise an "exhaustee" within the meaning of this section with respect to the right to regular benefits under state law seasonal employment provisions during either the season or off season in which that week of unemployment occurs, or

(iii) Having established a benefit year, no regular benefits are payable to the individual during the year because the individual's wage credits were cancelled or the individual's right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) The individual's benefit year having expired prior to the week, has no, or insufficient, wages or weeks of employment on the basis of which the individual could establish in any state a new benefit year that would include the week, or having established a new benefit year that includes the week, the individual is precluded from receiving regular benefits by reason of a state law which meets the requirements of section 3304 (a)(7) of the "Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301 to 3311; and

(i) Has no right for the week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, and 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 for the week unemployment benefits under the unemployment compensation law of the Virgin Islands, prior to the day after that on which the secretary of labor approves the unemployment compensation law of the Virgin Islands, or of Canada; or if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to benefits under the law for the week.

(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.

(10) "Additional benefits" means benefits totally financed by a state and payable to exhaustees by reason of high unemployment or by reason of other special factors under the provisions of any state law.

(B) Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the director, the provisions of Chapter 4141. of the Revised Code, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits.

(C) Any individual shall be eligible to receive extended benefits with

respect to any week of unemployment in the individual's eligibility period only if the director finds that, with respect to such week:

(1) The individual is an "exhaustee" as defined in division (A)(8) of this section; and

(2) The individual has satisfied the requirements of Chapter 4141. of the Revised Code, 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.

(D) The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be the same as the weekly benefit amount payable to the individual during the individual's applicable benefit year.

(E) The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the lesser of the following amounts:

(1) Fifty per cent of the total amount of regular benefits, including dependents' allowances which were payable to the individual under Chapter 4141. of the Revised Code, in the individual's applicable benefit year;

(2) Thirteen times the individual's weekly benefit amount, including dependents' allowances, which was payable to the individual under Chapter 4141. of the Revised Code, for a week of total unemployment in the applicable benefit year; provided, that in making the computation under divisions (E)(1) and (2) of this section, any amount which is not a multiple of one dollar shall be rounded to the next lower multiple of one dollar.

(F)(1) Except as provided in division (F)(2) of this section, an individual eligible for extended benefits pursuant to an interstate claim filed in any state under the interstate benefit payment plan shall not be paid extended benefits for any week in which an extended benefit period is not in effect in such state.

(2) Division (F)(1) of this section does not apply with respect to the first two weeks for which extended compensation is payable to an individual, as determined without regard to this division, pursuant to an interstate claim filed under the interstate benefit payment plan from the total extended benefit amount payable to that individual in the individual's applicable benefit year.

(3) Notwithstanding any other provisions of this section, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the 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.

(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 a state "off" indicator, the director shall make an appropriate public announcement.

(2) Computations required by division (A)(4) of this section shall be made by the director, in accordance with the regulations prescribed by the United States secretary of labor.

(H)(1)(a) The director shall promptly examine any application for extended benefits filed and, under this section, determine whether the application is to be allowed or disallowed and, if allowed, the weekly and total extended benefits payable and the effective date of the application. The claimant, the claimant's most recent employer, and any other employer in the base period of the claim upon which the extended benefits are based, and who was chargeable for regular benefits based on such claim, shall be notified of such determination.

(b) The determination issued to the most recent or other base period employer shall include the total amount of extended benefits that may be charged to the employer's account. Such potential charge amount shall be an amount equal to one-fourth of the regular benefits chargeable to the employer's account on the regular claim upon which extended benefits are based except that, effective January 1, 1979, the potential charge amount to the state and its instrumentalities ~~and~~, its political subdivisions and their instrumentalities, and Indian tribes shall be an amount equal to one-half of the regular benefits chargeable to their accounts on such claim. If regular benefits were chargeable to the mutualized account, in lieu of an employer's account, then the extended benefits which are based on such prior mutualized benefits shall also be charged to the mutualized account.

(c) As extended benefits are paid to eligible individuals:

(i) One-half of such benefits will be charged to an extended benefit account to which reimbursement payments of one-half of extended benefits, received from the federal government as described in division (J) of this section, will be credited; and

(ii) One-half of the extended benefits shall be charged to the accounts of base period employers and the mutualized account in the same proportion as was provided for on the regular claim; or

(iii) The full amount of extended benefits shall be charged to the

accounts of the state and its instrumentalities, ~~and~~ its political subdivisions and their instrumentalities, and Indian tribes. Employers making payments in lieu of contributions shall be charged in accordance with division (B)(1) of section 4141.241 of the Revised Code.

(d) If the application for extended benefits is disallowed, a determination shall be issued to the claimant, which determination shall set forth the reasons for the disallowance. Determinations issued under this division, whether allowed or disallowed, shall be subject to reconsideration and appeal in accordance with section 4141.281 of the Revised Code.

(2) Any additional or continued claims, as described in division (F) of section 4141.01 of the Revised Code, filed by an individual at the beginning of, or during, the individual's extended benefit period shall be determined under division (E) of section 4141.28 of the Revised Code, and such determination shall be subject to reconsideration and appeal in accordance with section 4141.281 of the Revised Code.

(I) Notwithstanding division (B) of this section, payment of extended benefits under this section shall not be made to any individual for any week of unemployment in the individual's eligibility period during which the individual fails to accept any offer of suitable work, as defined in division (I)(2) of this section, or fails to apply for any suitable work to which the individual was referred by the director, or fails to actively engage in seeking work, as prescribed in division (I)(4) of this section.

(1) If any individual is ineligible for extended benefits for any week by reason of a failure described in this division, the individual shall be ineligible to receive extended benefits beginning with the week in which the failure occurred and continuing until the individual has been employed during each of four subsequent weeks and the total remuneration earned by the individual for this employment is equal to or more than four times the individual's weekly extended benefit amount, and has met all other eligibility requirements of this section, in order to establish entitlement to extended benefits.

(2) For purposes of this section, the term "suitable work" means, with respect to an individual, any work which is within the individual's capabilities, provided that with respect to the position all of the following requirements are met:

(a) It offers the individual gross average weekly remuneration of more than the sum of:

(i) The individual's extended weekly benefit amount; and

(ii) The amount of supplemental unemployment compensation benefits, as defined in section 501(c)(17)(D) of the "Internal Revenue Code of 1954,"

80 Stat. 1515, 26 U.S.C.A. 501, payable to the individual for the week of unemployment.

(b) It pays equal to or more than the higher of:

(i) The minimum wage provided by section 6(a)(1) of the "Fair Labor Standards Act of 1938," 91 Stat. 1245, 29 U.S.C.A. 206, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(c) It is offered to the individual in writing or is listed with the employment office maintained or designated by the director.

(3) Extended benefits shall not be denied under this division to any individual for any week by reason of a failure to accept an offer of, or apply for suitable work if either of the following conditions apply:

(a) The failure would not result in a denial of benefits to a regular benefit claimant under section 4141.29 of the Revised Code to the extent that section 4141.29 of the Revised Code is not inconsistent with division (I)(2) of this section;

(b) The individual furnishes evidence satisfactory to the director that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory, the determination as to whether any work is suitable work with respect to this individual and whether the individual is ineligible or disqualified shall be based upon the meaning of "suitable work" and other provisions in section 4141.29 of the Revised Code.

(4) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during that week; and

(b) The individual provides tangible evidence to the director that the individual has engaged in the effort during that week.

(5) The director shall refer applicants for extended benefits to job openings that meet the requirements of divisions (E) and (F) of section 4141.29 of the Revised Code, and in the case of applicants whose prospects are determined not to be good under division (I)(3)(b) of this section to any suitable work which meets the criteria in divisions (I)(2) and (3)(a) of this section.

(6) Individuals denied extended or regular benefits under division (D)(1)(b) of section 4141.29 of the Revised Code because of being given a disciplinary layoff for misconduct must, after the date of disqualification, work the length of time and earn the amount of remuneration specified in division (I)(1) of this section, and meet all other eligibility requirements of

this section, in order to establish entitlement to extended benefits.

(J) All payments of extended benefits made pursuant to this section shall be paid out of the unemployment compensation fund, provided by section 4141.09 of the Revised Code, and all payments of the federal share of extended benefits that are received as reimbursements under section 204 of the "Federal-State Extended Unemployment Compensation Act of 1970," 84 Stat. 696, 26 U.S.C.A. 3306, shall be deposited in such unemployment compensation fund and shall be credited to the extended benefit account established by division (G) of this section. Any refund of extended benefits, because of prior overpayment of such benefits, may be made from the unemployment compensation fund.

(K) 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," 84 Stat. 696, 26 U.S.C.A. 3306, the director shall take such action consistent with state law, as may be necessary:

(1) To ensure that the provisions are so interpreted and applied as to meet the requirements of the federal act as interpreted by the United States department of labor; and

(2) To secure to this state the full reimbursement of the federal share of extended benefits paid under this section that are reimbursable under the federal act.

Sec. 4141.31. (A) Benefits otherwise payable for any week shall be reduced by the amount of remuneration or other payments a claimant receives with respect to such week as follows:

(1) Remuneration in lieu of notice;

(2) Compensation for wage loss under division (B) of section 4123.56 of the Revised Code or ~~temporary partial disability~~ a similar provision under the workers' compensation law of any state or ~~under a similar law~~ of the United States;

(3) ~~Except as provided in section 4141.312 of the Revised Code, payments~~ Payments in the form of retirement, or pension allowances ~~under a plan wholly financed by an employer which payments are paid either directly by the employer, or indirectly through a trust, annuity, insurance fund, or under an insurance contract whether payable upon retirement, termination, or separation from employment, provided that if the claimant has twenty six weeks or more of employment with a subsequent employer or employers who are not paying the claimant a pension or retirement allowance, then such pension or retirement payments shall not reduce the benefits payable for the week, and provided further that no benefits shall~~

~~thereafter be charged to the account of the employer who is paying the pension, but instead such benefits shall be charged to the mutualized account except as provided in division (B)(1)(b) of section 4141.241 of the Revised Code if the claimant's separation from the employer was disqualifying under division (D)(2)(a) of section 4141.29 of the Revised Code as provided under section 4141.312 of the Revised Code;~~

(4) Remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;

(5) Vacation pay or allowance payable under the terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks.

If payments under this division are paid with respect to a month then the amount of remuneration deemed to be received with respect to any week during such month shall be computed by multiplying such monthly amount by twelve and dividing the product by fifty-two. If there is no designation of the period with respect to which payments to an individual are made under this section then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following the individual's separation or termination from the employment of the employer making the payment until such amount so paid is exhausted.

If benefits for any week, when reduced as provided in this division, result in an amount not a multiple of one dollar, such benefits shall be rounded to the next lower multiple of one dollar.

Any payment allocated by the employer or the director of job and family services to weeks under division (A)(1), (4), or (5) of this section shall be deemed to be remuneration for the purposes of establishing a qualifying week and a benefit year under divisions (O)(1) and (R) of section 4141.01 of the Revised Code.

(B) Benefits payable for any week shall not be reduced by the amount of remuneration a claimant receives with respect to such week in the form of drill or reserve pay received by a member of the Ohio national guard or the armed forces reserve for attendance at a regularly scheduled drill or meeting.

(C) No benefits shall be paid for any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, provided the disqualifications shall not apply if the appropriate agency of such other state or of the United States finally determines that an individual is not entitled to such unemployment benefits.

A law of the United States providing any payment of any type and in any amounts for periods of unemployment due to lack of work shall be considered an unemployment compensation law of the United States.

(D) Notwithstanding any other provision in this chapter, benefits otherwise payable shall not be reduced by payments that were made to an individual on or after August 1, 1991, pursuant to "The National Defense Authorization Act for Fiscal Years 1992 and 1993," Public Law 102-190, 105 Stat. 1394, 1396, 10 U.S.C.A. 1174a, 1175, in the form of voluntary separation incentive payments and special separation pay.

~~Sec. 4141.312. Notwithstanding sections 4141.31 and 4141.311 of the Revised Code, and to the extent that the following provisions are required as a condition for full tax credit against the tax imposed by the "Federal Unemployment Tax Act of 1976," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, then the following conditions shall apply:~~

(A) The amount of benefits payable to a claimant for any week with respect to which the claimant is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is based on the previous work of the individual, shall, ~~to the extent required by such federal act,~~ be reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity or other payment which is reasonably attributable to that week, except that the requirements for this division shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if both of the following apply:

(1) The payment is under a plan maintained or contributed to by a base period employer or chargeable employer.

(2) In the case of a payment under a plan not made under the "Social Security Act," 42 U.S.C. 401 et. seq., or the "Railroad Retirement Act of 1974," 45 U.S.C. 231 et. seq., or the corresponding provisions of prior law, services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment.

(B) The amount of any disability pension, allowance, or payment paid to former members of the armed forces of the United States which is based on the nature and extent of the disability rather than a prior period of employment or service, shall not reduce or be deducted from the weekly benefits payable.

Sec. 4141.48. (A) No person shall acquire the trade or business of an employer, or a portion thereof, solely or primarily for the purpose of obtaining a lower rate of contributions under sections 4141.09, 4141.23,

4141.24, 4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised Code.

(B) In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the director shall use objective factors that may include all of the following:

(1) The cost of acquiring the trade or business;

(2) Whether the person continued the trade or business of the acquired trade or business;

(3) If the trade or business was continued, how long the trade or business was continued;

(4) Whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(C) If a person knowingly violates, attempts to violate, or advises another person in a way that results in a violation of division (A) of this section or any other provision of this chapter related to determining the assignment of a contribution rate, the person is subject to the following penalties:

(1) If the person is an employer, the director shall assign the employer the highest maximum rate or penalty rate assignable under this chapter for the rate year during which the violation or attempted violation occurred and the three rate years immediately following that rate year, except that, if the person's business is already at the highest rate for any of those years, or if the amount of increase in the person's rate would be less than two per cent for that year, then an additional penalty rate of contributions of two per cent of taxable wages shall be imposed for that year.

(2) If the person is not an employer, the director shall assess a fine of five thousand dollars.

(D) The director shall deposit any fine collected under division (C)(2) of this section into the special administrative fund established under section 4141.11 of the Revised Code.

(E) The director shall credit fifty per cent of amounts paid to the director under rates determined pursuant to division (C)(1) of this section to the individual employer's account and fifty per cent to the mutualized account established pursuant to division (B) of section 4141.25 of the Revised Code.

(F) The director shall round the contribution rates the director determines under division (C)(1) of this section to the nearest tenth of one per cent.

(G) For purposes of this section:

(1) "Knowingly" means having actual knowledge of or acting with

deliberate ignorance or reckless disregard for the prohibition involved.

(2) "Person" has the same meaning as under "The Internal Revenue Code of 1986," 100 Stat. 2138, 26 U.S.C. 7701.

(3) "Trade or business" includes the employer's workforce.

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

Sec. 4141.99. (A) Whoever violates section 4141.07 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates section 4141.22 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than one year, or both.

(C) Whoever violates section 4141.38 of the Revised Code shall be fined not more than five hundred dollars.

(D) Whoever violates section 4141.40 of the Revised Code shall be fined not more than five hundred dollars for a first offense; for each subsequent offense such person shall be fined not less than twenty-five nor more than one thousand dollars.

(E) Whoever violates section 4141.046 of the Revised Code is guilty of a misdemeanor of the third degree for a first offense; for each subsequent offense the person is guilty of a misdemeanor of the first degree.

(F) Whoever knowingly transfers employees of a trade or business or advises another person to transfer employees in violation of division (A) of section 4141.48 of the Revised Code is guilty of unemployment tax evasion. In addition to the penalties imposed in division (C) of section 4141.48 of the Revised Code, if the tax avoided by the trade or business is less than ten thousand dollars, the violation is a misdemeanor of the first degree under section 2929.24 of the Revised Code. If the tax avoided is ten thousand dollars or more, the violation is a felony under section 2929.14 of the Revised Code, with increased criminal penalties as follows:

(1) If the tax avoided by the business is ten thousand dollars or more but less than fifty thousand dollars, the violation is a felony of the fifth degree.

(2) If the tax avoided is fifty thousand dollars or more but less than one hundred thousand dollars, the violation is a felony of the fourth degree.

(3) If the tax avoided is one hundred thousand dollars or more, the violation is a felony of the third degree.

(G) For purposes of division (F) of this section, "knowingly," "person," "trade or business," and "violates or attempts to violate" have the same meanings as in section 4141.48 of the Revised Code.

SECTION 2. That existing sections 4141.01, 4141.11, 4141.131, 4141.24,

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4141.242, 4141.25, 4141.26, 4141.28, 4141.282, 4141.283, 4141.29, 4141.301, 4141.31, 4141.312, and 4141.99 and section 4141.311 of the Revised Code are hereby repealed.

SECTION 3. Notwithstanding division (B)(2) of section 4141.26 of the Revised Code as amended by this act, for rate years prior to 2006, the director shall revise the contribution rate of any employer who has not timely furnished the necessary wage information as required by division (A) of that section, who has been assigned a contribution rate pursuant to division (B) of that section, and who does not meet the requirements of division (B)(1) of that section, if the employer furnishes the necessary wage information to the director within thirty-six months following the thirty-first day of December of the year immediately preceding the contribution period for which the rate is to be effective. The revised rate under this section shall be equal to one hundred twenty per cent of the contribution rate that would have resulted if the employer had timely furnished the necessary wage information under division (A) of that section.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_