

# CHAPTER 47

## Department of Employment and Workforce

(Statutory Authority: 1976 Code § 41-29-110)

### ARTICLE 1 GENERAL PROVISIONS

#### **47-1. Cash value of Certain Remunerations.**

A. The South Carolina unemployment Law, provides in Section 41-27-380, that “Wages means all remuneration paid for personal services, including commissions and bonuses and the cash value of all the remuneration paid in any medium other than cash ... The reasonable cash value of remuneration paid in any medium other than cash ... shall be estimated and determined in accordance with rules prescribed by the Department.”

B. The Department accordingly prescribes that:

1. If board, lodging, bartered services, or any other payment in kind considered as payment for services performed by a worker, is in addition to or in lieu of (rather than a deduction from) money or wages, the Department shall determine or approve the cash value of such payment in kind, and the employer shall use these cash values in computing contributions due under the law.

2. Where cash value of board and lodging furnished a worker is agreed upon in the contract of hire the amount so agreed upon shall, if more than the rate prescribed herein, be deemed to be the value of such board and lodging, subject to review by the Department. Until and unless in a given case the rate for board and lodging is determined by the Department, board and lodging furnished in addition to and in lieu of money wages shall be deemed as follows:

- a. Meal rates as established by the Budget and Control Board.
- b. Lodging rates as determined reasonable by the Department.

3. The cash value of bartered services shall be determined by the applicable prevailing wage published by the United States Department of Labor, state government entities, employment and trade publications, as deemed appropriate by the Department.

4. In the absence of employer records the Department may use prevailing wage information published by the United States Department of Labor, state government entities, employment and trade publications, and similar sources to determine the monetary value of services performed by a worker.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-2. Authorized Representatives of the Department.**

The Department may designate by written authorization any of its employees as its representatives to administer oaths and affirmations, issue subpoenas for the production of books, papers, correspondence, and other memoranda deemed necessary by it as evidence in connection with disputed or contested claims, or in the administration of the South Carolina Employment Security Law.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-3. Definitions.**

- A. Spouse is defined as a legally married husband or wife.
- B. Parent is defined as a father or mother to include a step parent or legal guardian.

C. Child is defined to include any individual for whom the claimant is a legal guardian.

D. Reasonable commuting distance is defined as fifty (50) miles or less from the claimant's new residence address to the claimant's old employment address.

E. Part-time is defined as twenty-nine (29) hours or less of work per week.

F. If the majority of the weeks of work in an individual's base period includes part-time work, the individual shall not be denied unemployment benefits under any provisions of this act relating to availability for work, active search for work, or failure to accept work, solely because the individual is seeking only part-time work. For the purposes of this section, majority is defined as fifty-one percent (51%) or more of the weeks of work during the individual's base period. When seeking part-time work, the individual claiming unemployment benefits must be available for a number of hours per week that are comparable to the individual's part-time work experience from his/her most recent part-time employment.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.

## **ARTICLE 2**

### **GENERAL REGULATIONS**

(Statutory authority: 1976 Code §§ 41-29-110, 41-29-130, and 41-29-230)

#### **47-4. Employer Legal Entity Classification.**

For the purposes of assigning a legal entity classification to an employing unit, the Department will follow the legal entity classification assigned to the employing unit by the Internal Revenue Service. In the event the employing unit has not been formally notified by the Internal Revenue Service of its legal entity classification, the Department will assign a legal entity classification to the employing unit based on the characteristics of the employing unit.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-5. Delinquent Report.**

If on the rate computation date an employing unit failed to submit contribution and wage reports for any period within the last twelve calendar quarters that was inclusive in the rate computation period in which the employer was determined liable under the South Carolina Department of Employment and Workforce Laws, the missing report shall be classified as delinquent for the purpose of experience tax rate calculation and tax rate assignment.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-6. Benefit Ratio for Zero Taxable Wages.**

A. If on the rate computation date the employer has zero benefit charges and zero taxable wages for the rate computation period 2011, the employer will be assigned to tax class twelve.

B. If on the rate computation date the employer has benefit charges but zero taxable wages for the rate computation period 2011, the employer will be assigned to tax class thirteen.

C. If on the rate computation date there are zero taxable wages and zero benefit charges during the rate computation period when computing the 2012 and subsequent tax year's benefit ratio, the employer will be assigned the prior year's tax class. If the employer does not have a prior year tax class, the employer will be assigned tax class twelve.

D. If on the rate computation date the employer has benefit charges and zero taxable wages during the rate computation period when computing the 2012 and subsequent tax year's benefit ratio, the employer will be assigned to the prior year's tax class. If the employer does not have a prior year tax class, the employer will be assigned tax class thirteen.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-7. Interest Surcharge.**

All contributory employers, including governmental entities and non-profit 501(c)(3) employers who have not elected to reimburse the Department under Section 41-31-620, are required to pay the interest surcharge in effect for a tax year. The interest surcharge effective for the applicable tax year will appear on the employer's annual rate notice and quarterly contribution report in combination with the Departmental Administrative Contingency Assessment (DACA). Certain employers are exempt from DACA per Section 41-27-410.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-8. Employer-Employee Relationship.**

The South Carolina Department of Employment and Workforce is not bound by the rulings of other entities when making its determination about whether an employer-employee relationship exists for the purpose of determining liability under the South Carolina Department of Employment and Workforce Laws. The Department may consider in its determinations rules, regulations, opinions, laws, and interpretations published by the United States Department of Labor, Internal Revenue Service, South Carolina Department of Revenue, South Carolina Wage and Hour Division, and State and Federal Court decisions.

Under South Carolina Annotated Section 41-27-230(1)(b), the common law rules govern the determination of an employer-employee relationship. The common law test focuses on whether the employer has the right to control the worker in the performance of his or her work. The Department will examine these factors in determining whether an employer-employee relationship exists:

- a. Whether the employer has the right to control or exercises control over the services performed for the job;
- b. Whether the employer furnishes the equipment;
- c. Whether the method of payment indicates an employment relationship, and
- d. Whether the employer has the right to terminate the employment relationship.

**HISTORY:** Added by State Register Volume 35, Issue No. 6, eff June 24, 2011. Amended State Register Volume 38, Issue No. 6, Doc. No. 4316, eff June 27, 2014.

#### **47-11. Displaying of Informational Posters.**

All employing units having individuals engaged in employment, as defined by Section 41-27-230, shall post and maintain in conspicuous places where workers perform their services such informational posters as are provided by the Department so that the information printed thereon may be read by all workers.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-12. Displaying Coverage Information.**

Every employer (including every employing unit which has elected, with the approval of the DEpartment to become an employer) shall display and maintain such printed posters as the Department may prescribe and furnish. Such posters shall be displayed by the employer in conspicuous places where workers perform their services, but only so long as the employer shall be subject to the law.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-13. Furnishing Printed Information to Workers.**

The posters referred to in regulation 47-12 shall inform the worker to report promptly to the nearest Department office in the event of his or her becoming unemployed and shall give the location of that office.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-14. Records.**

A. Each employing unit shall preserve for five years existing records with respect to individuals in its employ on or after July 1, 1936, indicating the data hereinafter set forth:

1. For each pay period:
  - a. The beginning and ending dates of such period.
  - b. The largest number of workers in employment during each calendar week of such pay period.
2. For each individual employed during such period:
  - a. His name and social security account number.
  - b. Number of hours worked each week, if less than full time.
  - c. His monetary wages (including special payments) paid for employment.
  - d. Reasonable cash value of remuneration paid by the employer in any medium other than cash. (See 47-1).
  - e. The date on which he was hired, rehired, or returned to work after temporary layoff, and the date and reason he was separated from employment.

**B. Records in Regard to Benefits:**

1. In addition to the requirements set forth in regulation 47-14.A, each employer shall keep his payroll records in such form, with respect to each worker that would be possible from an inspection thereof to determine:
  - a. Wages earned, by weeks as described in regulation 47-24.B.
  - b. Whether any week was in fact a week of less than full-time work.
  - c. Time lost, if any, by each such worker, due to his unavailability for work.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-15. Reports and Instructions Relative to Report Form.**

A. Each employing unit shall make such reports as are prescribed by the Department on forms issued by and required to be returned to the Department or its authorized representative.

B. Each employing unit shall comply with instructions pertaining to the contents and due date of any report form issued by the Department. Such instructions shall have the full force and effect of regulations when published.

C. Reports Covering Wages of Individuals in Employment: Except as otherwise provided, each employer shall submit on or before the last day of the first month following the quarter covered by such report, a form report showing each individual in his employment during the preceding quarter. The form shall set forth:

1. The employer's name and account number assigned by the Department.
2. The worker's full name.
3. The worker's social security account number.
4. Total wages paid to the worker during the quarter.
5. Such other information as required by the form.

D. Where employing units have failed to make reports previously required and similar information is now required on a different basis, the Department may allow such delinquent reports to be filed showing only such information as is now necessary; provided however, nothing herein shall be construed as relieving such delinquent employing unit from any penalty or liability for previous failure to file such report at the time previously required.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.**

#### **47-16. Contributions: Interest.**

A. Contributions shall be payable quarterly with respect to wages paid within each calendar quarter.

B. Contributions shall become due on, and shall be paid on or before the last day of the month following the quarter for which they are payable. However, an application may be filed with the Department for extension of the due date of contributions payable and upon approval of such

application the due date for such contributions may be extended not more than fifteen (15) calendar days.

C. Employers who are delinquent in the payment of contributions with respect to any calendar year or portion thereof, may upon application, be authorized to pay the delinquent contributions, with interest on deferred amounts until actually paid, in consecutive installments of such amounts and over such periods and at such times as may be approved by the Department or the Executive Director thereof, provided that the entire unpaid balance shall become due immediately if the employer fails to pay any installment when due.

D. In the event a lien in favor of the Department is filed against an employer, all collection remedies set forth in Title 12, Chapter 54 of the South Carolina 1976 Code would be used to enforce payment of the amount due.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-17. Information to Be Furnished with Respect to Changes in Ownership, Notification of Acquisitions, and Methods for the Transfer of Experience Rating.**

A. Notification to Department of discontinuance of business and changes of ownership for purposes of status determination and experience rating succession.

1. Any employer who discontinues business shall give notice to the Department in writing. This notice shall include the exact date of such discontinuance and shall be submitted promptly and must not be made later than thirty (30) calendar days after the date of discontinuance.

2. Any employer who by any means transfers substantially all (95 per cent or more) of its business or assets thereof to another shall notify the Department in writing. This notice shall be submitted promptly and must not be made later than thirty (30) calendar days after the date of transfer and shall include the date on which the transfer occurred, together with the name and physical and/or mailing address of the employing unit to whom the transfer was made.

3. Any employer who by any means transfers a portion of its business to another shall notify the Department in writing. This notice shall be submitted promptly and must not be made later than thirty (30) calendar days after the date of transfer and shall include the date on which the transfer occurred, together with the name and physical and/or mailing address of the employing unit to whom the transfer was made. The Department shall be informed as to the nature and extent of each such partial transfer with particular reference to the description or identification of the part of the business transferred, together with a notation as to the proportion of the total business thus transferred.

4. Each employing unit which by any means acquires all or a portion of the business, or assets thereof, of any employer, or which has acquired its own business, or all of the assets thereof, from another, which at the time of such acquisition was an employer subject to the Act, shall notify the Department in writing promptly and must not be made later than thirty (30) calendar days after such acquisition occurred. This notice shall be in such form as to include:

- a. From whom acquired.
- b. The exact date of acquisition.
- c. The portion of the business or assets of the predecessor acquired by the successor.
- d. Whether acquirer is an individual, partnership, corporation, or a derivative thereof. If a partnership, the name, address and legal domicile of each partner must appear.

5. In the event of any change of form of organization between, to or from a corporation to a partnership or individual ownership; from partnership to corporation or individual ownership; or from individual ownership to partnership or corporation, notice of such change and the date thereof shall be made to the Department by the successor organization within thirty (30) calendar days after such change.

6. The employer, if a corporation, shall notify the Department of any change of name, forfeiture, or cancellations of charter, reincorporation, merger or consolidation, or any other change in corporate entity promptly and must not be made later than thirty (30) calendar days after such action.

7. The employer, if a partnership, shall notify the Department of any change in the partnership by reason of any person ceasing to be or becoming a partner, and shall report the name of any such person and the date that he or she ceased to be or became a partner not later than thirty (30) calendar days after such occurrence.

8. Employers shall promptly notify the Department in the event of consolidation, dissolution, receivership, insolvency, bankruptcy, composition, assignment for the benefit of creditors, or similar proceedings not later than thirty (30) calendar days after such proceeding.

B. Total Transfer of Experience Rating Where Substantially All (95 per cent or more) of a Business, or the Assets Thereof, Have Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A.2 and A.4 of this regulation and shall furnish such additional information as may thereafter be requested by the Department.

2. The acquiring employer may expedite the total transfer to it of the experience of the transferring employer by making application therefore by letter or on such forms as the Department may furnish. Such application should be filed with the Department promptly and in no case later than thirty (30) calendar days after the succession occurred.

3. The Department shall upon its own initiative transfer the experience of the transferring employer to the acquiring employer whenever the Department ascertains that there has been a transfer of substantially all of a business, or assets thereof, inasmuch as a total transfer of the experience rating under such a condition is required by law.

C. Partial Transfer of Experience Rating Where a Portion of a Business Has Been Transferred to Another Employer.

1. Both the transferring employer and the acquiring employer shall comply with paragraphs A.3 and A.4 of this regulation and shall furnish such additional information as may thereafter be requested by the Department.

2. The transferring employer may request by letter or by such forms as the Department may furnish that the portion of its experience rating which is attributable solely to the portion of the business acquired by the acquiring employer be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) calendar days after the succession occurred.

a. The acquiring employer may request by letter or by such forms as the Department may furnish that the portion of the experience of the transferring employer which is attributable solely to the portion of the business acquired be transferred to the acquiring employer. Such request should be filed promptly and must not be made later than thirty (30) calendar days after the succession occurred.

3. Upon receiving the request from both the transferring and acquiring employers for the transfer of the portion of the experience of the transferring employer attributable solely to the portion of the business acquired by the acquiring employer, the Department shall require that the transferring employer supply the Department with the applicable percentage(s), and if necessary, any taxable wages that are to be used in determining the part of the experience to be transferred.

4. The Benefit Experience Record shall be transferred from the predecessor to the successor as follows:

a. The payroll (taxable wages) for the quarters used in the rate computation period(s).

b. The benefits charged to the predecessor's experience rating for the quarters used in the rate computation period(s).

5. In the event that a separate subsidiary experience rating account has been maintained by the Department with respect to the distinct and severable portion of the business transferred for the entire period of the operation of such portion, Sub-Items C.3 and C.4, above, will not apply. The benefits charged and total payroll (taxable wages) appearing on such subsidiary account, together with those Items entered on that account from the preceding June 30<sup>th</sup> up to the date of the partial transfer of business will be transferred from the experience rating of the predecessor (transferring) employer to the experience rating of the acquiring employer. Attention is directed to Sections 41-31-100 through 41-31-120 of the South Carolina unemployment Law as to the conditions under

which total or partial transfer of experience rating can take place and as to the provisions for rate computations upon such transfer. The law directs that no partial transfer of experience may be made unless requests are submitted to the Department by both the transferring and the acquiring employers.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

**Editor's Note**

Attention is directed to §§ 41-31-100 through 41-31-120 of the South Carolina Unemployment Compensation Act as to the conditions under which total or partial transfer of experience rating reserve accounts can take place and as to the provisions for rate computation upon such transfer.

The law directs that no partial transfer of an experience rating reserve account may be made unless request is entered therefor by both the transferring and the acquiring employers.

**47-18. Workers to Procure Social Security Account Numbers.**

A. Each employer shall ascertain the Social Security Account Number of each worker employed by him in employment.

B. Each worker who is engaged in employment for an employer, but who does not have a Federal Social Security Account Number shall file an application therefore not later than one week after the effective date of this regulation, or not later than one week after the first day on which he is engaged in employment for an employer, whichever occurs later. It shall be the duty of employers to procure the appropriate forms of application for Social Security Account Numbers and to furnish such application forms to each worker in their employ who does not have a Federal Social Security Account Number.

C. If an employer has in his employ a worker who does not have a Federal Social Security Account Number and who has failed to file an application therefore within the period prescribed in Paragraph B of this regulation, such employer shall, not later than two weeks after the effective date of this regulation, or not later than two weeks after the first day in which such employer employed such worker, whichever occurs later, file an application for a Federal Social Security Account Number for such worker. A worker who is engaged in employment for an employer and who does not have a Federal Social Security Account Number, shall not be relieved from his duty to file an application for a Federal Social Security Account Number by reason of his employer's having filed an application for him.

D. Applications for Social Security Account Numbers shall be filed and the numbers obtained in accord and compliance with the procedures of the Social Security Administration appertaining thereto.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

**47-19. Separation Notices.**

A. Notice of Filing:

1. A copy of each initial or additional claim filed by a worker will be mailed by his local office to his last employer regardless as to whether the latter is liable or non-labile under the Act.

2. The employer will fill in the information called for on the back of the copy of the initial claim form received by him and return the same to the address of the office shown thereon so as to reach such office no later than the due date established in South Carolina Code Section 41-35-615.

3. A liable employer other than the last separating employer may be sent a form UCB-214, Request to Employer for Separation Information. This form requests separation information concerning the former worker. The employer shall furnish separation information on Form UCB-214 so that it will reach the office of the Department not later than ten (10) calendar days from the date such form is mailed to him by the Department.

4. A failure to respond in a timely fashion as set forth in A2 and A3 may result in the separation information not being considered in rendering an initial determination on the claim.

B. Mass Separations:

1. The term "mass separation" means a separation (permanently, or for an indefinite period), of ten or more workers employed in a single establishment at or about the same time and for the same reason; provided however, that the term "mass separation" shall not apply to separations for regular vacation periods as defined in the Act and approved by the Department.

2. In cases of mass separations the employer, shall, for each individual affected, file with the office nearest the worker's place of employment, or with such office nearest employee's residence. Form UCB-113, setting forth such information as is required thereby; such form shall be filed not later than ten (10) calendar days, exclusive of Sundays and holidays, after such separation.

C. Notice of Unemployment Due to a Labor Dispute:

1. In all cases of unemployment due to a labor dispute the employer shall follow the procedure set forth in 47-21(D).

D. In all cases of initial claims, additional claims or requests for reinstatement of benefits, where a claimant has been separated from the employ of a non-liable employer, the last covered (liable) employer by whom the claimant was employed will be requested to furnish information relative to the separation of the claimant from employment with such covered (liable) employer or as to any offer of work made to the claimant by such covered (liable) employer in accordance with 47-23 of these regulations subsequent to the separation of the claimant from the employ of such covered (liable) employer. Separation information must be maintained by employers in accordance with 47-14 (A)(2)(e) of these regulations.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

### **47-20. Types of Unemployment.**

A. "Non-Job-Attached Unemployment" means the unemployment of any individual in any week during which he performs no services and with respect to which no wages or wages totaling less than his weekly benefit amount are payable to him. Claims for such benefits will be filed directly with the local Department office by the individual and not an employer. The claimant will register for work with the Department office and seek full time employment while pursuing such claim for benefits.

B. "Job-Attached Unemployment" means the unemployment of any individual who, during any week, earns less than his weekly benefit amount, is employed by a regular employer, and works less than his normal customary full-time weekly hours because of a lack of full-time work. Any claim for benefits made under this definition will be initiated by the employer and a continuing employer-employee relationship is understood. In connection with any claim for benefits for job-attached unemployment, the claimant shall declare the amount of his earnings [from any source] for the seven day period for which he claims job-attached benefits.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

### **47-21. Filing Claims for Benefits and Registration for Work.**

A. Non-Job-Attached Unemployment Claim:

1. Individual Claims:

a. Initial Claims: Any individual may file a request for a determination of his status as an insured worker in order to establish a benefit year for the purpose of claiming benefits or waiting week credit for non-job-attached unemployment. Such request shall be filed at the Department office nearest the place of his most recent employer or residence, and shall set forth that (1) he is unemployed and (2) he is available for work. Such request, for the purpose of these Regulations, shall be known as an Initial Claim (Form UCB-101). Further, the claimant will be required to register for work with the local Department office and be available for services.

b. Continued Claims: In order to establish eligibility for benefits or waiting period credit for succeeding weeks of non-job-attached unemployment during any continuous period of non-job-attached unemployment, the claimant shall continue to file as prescribed by the Department. When so directed, claimants will be required to report, in person, to the local office where they are filing their claim. The claimant will set forth:

- i. That he has not worked or earned wages except as reported,
- ii. That he has not refused any work offered to him, and
- iii. That he is able and available to accept work and is looking for full-time employment.

2. Mass Claims:



a. Initial Claims: The filing by an employer on Form UCB-113, in accordance with 47-19.B.1, initiates the request for the determination of status as an insured worker for each individual for whom such a form is submitted.

b. Continued Claims: In order to establish eligibility for benefits or waiting period credit for succeeding weeks of non-job-attached unemployment during any continuous period of non-job-attached unemployment, the claimant shall continue to file as prescribed by the Department. When so directed, claimants will be required to report, in person, to the local office where they are filing their claim. The claimant will set forth:

- i. That he has not worked or earned wages except as reported.
- ii. That he has not refused any work offered to him, and
- iii. That he is able and available to accept work and is looking for full-time employment.

B. Job-Attached Unemployment Claim:

1. Initial Claims: For each job-attached worker for whom a current benefit year has not been previously established and who has one payroll week furnished by his employer with work that constitutes less than the maximum weekly benefit amount during such week, the employer shall promptly prepare Form UCB-114, Low Earnings Report and Claim-Partial Unemployment. The employer may submit this report in a paper format or by any other computer or electronic means the Department may offer. All information requested on the form or filing medium must be supplied. The employer shall obtain the signature and address of the workers and forward report to the nearest local Department office, if the paper form is used. Computer or electronic methods of filing should be sent to the Benefits Department at the Central Office in Columbia. The completed, signed Form UCB-114 (or electronic equivalent) shall be credited as a waiting week, if the claimant earned less than such weekly benefit amount during the week covered by the low earnings report.

2. Notification of Eligibility: When a worker is found to be eligible for benefits under a claim filed therefore, the Department shall notify the employer and the claimant of the weekly benefit amount the claimant will receive if unemployed and otherwise eligible for benefits. Such notice shall state the date on which the benefit year of the claimant will end. The attention of the employer shall be called to the fact that the amount shown is applicable only to claims for any week within the benefit year shown and that the employer is required by regulations to continue to file weekly with the Department a low earnings report (Form UCB-114 or electronic equivalent) after obtaining the signature of the worker until the unemployment of the claimant ceases or until otherwise notified by the Department.

3. Notification of Ineligibility: When a worker is found to be ineligible because of insufficient base period wages for benefits under a claim filed therefore, the Department will notify the claimant by so noting on the copy of the determination, which shall be mailed to him.

4. Continued claims: For any worker for whom a current benefit year has been established and of whose weekly benefit amount the employer has been advised, the employer shall file a low earnings report (or electronic equivalent) for any week during which the worker earns wages but because of lack of full-time work is working less than his normal or customary full-time hours and is earning less than his weekly benefit amount. The employer shall promptly have the worker sign this report and complete the information as called for thereon, being sure that the worker reports earnings with all other employers or employing units. The form shall then be promptly forwarded to the nearest Department office or the Central Office, whichever is appropriate. For any week or weeks of job-attached unemployment the employer may file Form UCB-114 (or electronic equivalent) provided the claimant is still attached to such employer and such week of unemployment was due to the inability of the employer to furnish such claimant full-time employment during such week.

5. For any worker for whom a job-attached (form UCB-114 or electronic equivalent) claim is filed by an employer with the reason to maintain the employer-employee relationship, the filing employer shall be considered the bona fide and liable employer for charges resulting from such claim.

C. Reporting As Instructed:

1. When so directed by a representative of the Department, the claimant must report in person to the office at which he registered for work and is filing his claim for benefits.

D. Labor Disputes:

1. In cases of unemployment due to a labor dispute, the employer shall file with the Department office nearest the workers' place of employment a notice setting forth the existence of such dispute and the approximate number of workers affected. Such notice shall be filed within two (2) calendar days after the commencement and at the end of the such dispute a notice shall be filed within two (2) calendar days setting forth the end of such dispute.

2. Immediately upon notice by the employer, or upon information received from any other source that unemployment exists because of a labor dispute at any plant or establishment within the area served by it, the local Department office shall notify the special examiner designated by the Department in accord with Section 41-35-630.

3. Upon receipt of notice or information that unemployment exists because of a dispute at any plant or establishment within the area served by it, the local Department office shall obtain brief statements from the employer concerned and from the union, labor organization, or other representative recognized as representing the workers involved. These statements shall include a summary of the facts, a synopsis of the issues involved between the employer and the workers, a listing of the classes, groups, types of workers involved, names of the workers ordinarily attached to the department or establishment where such unemployment exists, together with their addresses and social security numbers, and report the date on which the dispute commenced and the date it concluded if already terminated. The local Department office shall specifically ask any union, labor organization or other representative recognized as representing the union involved to confirm or to deny the existence of a labor dispute. If there is no recognized representative of the workers, the local Department office shall so notify the special examiner.

4. The list of names as set forth above shall constitute a request for determination of status as an insured worker for each individual affected thereby. A special examiner designated by the Department, according to Section 41-35-120, shall make a determination as to whether or not such unemployment exists because of a labor dispute, and for seven (7) calendar days thereafter from the first day of unemployment.

5. The filing of the list of names provided for in Sub-Items 3 and 4 of this regulation shall not deny any worker the right to file his claim for benefits in the usual manner and to have the same passed upon as otherwise provided by law.

6. In order to establish waiting week credit or continued eligibility for benefits for succeeding weeks of unemployment during any period of unemployment, an affected individual shall report when so directed by a representative of the Commission and file a continued claim for benefits as prescribed.

7. In case an apparent difference develops as to the facts in the case, the special examiner shall set a hearing, after giving due notice thereof, to determine the facts.

a. In case there is no recognized representation of the workers, or if a recognized representative does not act, the special examiner shall give notice that information has been received indicating that the unemployment existing at such establishment is due to a labor dispute which disqualified otherwise eligible workers for benefits. Any information to the contrary should be presented to the special examiner within five (5) calendar days, or in the absence of any such information, the special examiner shall make a formal determination to this effect.

8. In giving either of the notices required in the preceding paragraph, the special examiner shall advise the local Commission office, the employer concerned, and the representative of the workers involved of the time and place of hearing. If there is no recognized representative of the workers or if the organized representative will not act, the special examiner shall notify the local Department office and the employer of the time and place of hearing. Similar notices shall be prepared and posted by the local Department office in conspicuous places that are accessible to the workers involved. If the special examiner shall determine the same to be necessary he shall advertise the notice in a newspaper generally circulated in the community where such labor dispute is in progress. The notice shall also be furnished directly to the claimants in those cases where individual claims are filed.

9. After a hearing or without a hearing if none is required by this regulation, the special examiner shall issue an initial determination as to whether or not unemployment exists or existed because of a labor dispute. In the event the ruling is that unemployment is due to a labor dispute the special examiner shall determine the duration thereof and shall specify the application of the disqualification

provision of Section 41-35-120(d) with respect to the claims of individuals affected by Sub-Items 3, 4 and 5 of this regulation.

a. Should the special examiner determine that unemployment does exist because of a labor dispute still in progress, supplementary determinations shall be issued as may be required by any material change in the facts or a cessation of the dispute. Sub-Items 3, 8 and 9 of this regulation shall also be applicable to such supplemental determination.

E. Effective Dates of Claims:

1. Every new claim, additional claim, or reinstatement filed to establish or reestablish a claim for unemployment compensation must have an effective date. This will be the date from which benefits may be claimed. The effective date of claims shall be the Sunday prior to the date the claim was filed. Transitional claims will be effective the day after the prior benefit year-ends.

2. Delay Excused for Cause: A representative of the Department, for reasons found to constitute good cause for any individual's failure to file a claim timely, may backdate a claim to the appropriate effective date.

F. General Provisions:

1. If a claim is received by mail and in the opinion of the Department the reporting of the claimant to the nearest Department office or point of itinerant service is not impractical, the claimant shall so report in filing all succeeding claims.

2. Change of Address: Each claimant, upon changing his address, shall immediately notify the Department office at which he has last registered of such change of address, giving both the old and the new addresses.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

## **47-22. Method of Paying Benefits.**

Benefits shall be paid by the Department from its Benefit Payment Account as the Department may prescribe.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

## **47-23. Offers of Work.**

A. Section 41-35-120(5) directs that a claimant may be disqualified from the receipt of benefits should he fail without good cause to apply for available suitable work, when so directed by the employment office or the Department; or should he refuse to accept available suitable work when offered him by the employment office or the employer; or should he decline to return to his customary self-employment (if any) when so directed by the department.

1. Pursuant to the requirements of Section 41-35-120(5)(b), in determining whether work is suitable for an individual, the Department must consider, based on a standard of reasonableness, as it relates to the particular individual concerned, the degree of risk involved to his health, safety, morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

a. In considering the prior earnings of a claimant and the length of unemployment:

i. Available suitable work within the first eight (8) weeks of eligibility for unemployment insurance benefits includes employment that pays ninety percent (90%) of the wage earned from the claimant's most recent bona fide employer. A claimant who refuses to accept work that pays at least ninety percent (90%) of the wage earned from the claimant's most recent bona fide employer has refused to accept available suitable work.

ii. Available suitable work once a claimant collects more than eight (8) weeks of unemployment insurance benefits includes employment that pays seventy-five percent (75%) of the wage earned from the claimant's most recent bona fide employer. A claimant who refuses to accept work that pays at least seventy-five percent of the wage earned from the claimant's most recent bona fide employer after collecting more than eight (8) weeks of unemployment insurance benefits has refused to accept available suitable work.

b. However, a claimant is not required to accept work if the reduction in the wage as described in A.1.a. is less than minimum wage.

2. No provisions of 47–23 will circumvent the requirements of Section 41–35–120(5)(c).

B. A written offer of work made directly by an employer shall set out the nature of the work offered, the probable wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of employment, the time and place the claimant should report, and the name of the person to whom he is to report. No disqualification will be imposed by reason of the failure of a claimant without good cause to accept a direct offer of available suitable work unless the employer submits a copy of such an offer to the Department together with a certification that it was either received and refused by the claimant, or that it was directed by registered or certified mail to the last known address of the claimant and that no response was made by the claimant. Provided, however, that no direct offer of available suitable work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.

C. An oral offer of available suitable work may be made directly by an employer, but before a claimant shall be disqualified to receive benefits by reason of his failure to accept, without good cause, available suitable work so offered, a sworn statement shall be submitted by the employer to the Department setting forth that the offer of work was made directly to the claimant, the nature of work offered, the wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of the employment, the time and place the claimant should have reported for duty, and any reason given by the claimant for his refusal to accept the work. Provided, however, that no direct offer of work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.

D. A claimant who tests positive for drugs after being given a drug test as a condition of employment by a prospective employer shall be deemed disqualified to receive benefits by reason of his failure to accept a suitable offer of work. Also deemed disqualified is:

1. An insured worker who fails to provide a specimen pursuant to a request from the prospective employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

2. An insured worker who provides a blood, hair, or urine specimen during a drug test administered on behalf of the prospective employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

a. The sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel;

b. The test was performed by a laboratory certified by the USDHHS/SAMSHA, the College of American Pathologists or the State Law Enforcement Division; and

c. An initial test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted method approved by the USDHHS/SAMSHA;

For purposes of this item, “unlawfully” means without a prescription.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011; State Register Volume 36, Issue No. 6, eff June 22, 2012; State Register Volume 39, Issue No. 6, Doc. No. 4474, eff June 26, 2015.**

## **47–24. “Week” Defined.**

A. Week of Non-Job Attached Unemployment:

1. Except as otherwise provided in Item 2 of this Regulation, a week of non-job attached unemployment with respect to any individual shall consist of the calendar week of unemployment beginning with the Sunday prior to the day such individual files such request.

2. A week of unemployment of an individual affected by a mass separation, or by a strike, lockout, or other labor dispute with respect to which a notice is filed by the employer as provided in Sub-Item 47-21.A.2 and Item 47-21.D, shall consist of the calendar week of unemployment beginning with the Sunday prior to the mass separation, strike, lockout, or other labor dispute, and thereafter, the

calendar week of unemployment following any week of unemployment provided the individual files as required by Sub-Items 47-21.A.2.b and 47-21.D.6.

**B. Week of Job Attached Unemployment:**

A week of job-attached unemployment of an individual shall consist of the calendar week of unemployment beginning with the Sunday of the week for which his employer is filing or his pay period week. With respect to an unemployed individual whose wages are not paid on a weekly basis, a week of unemployment shall consist of a calendar week, provided that the Department may, upon its own initiative or upon application, prescribe to any individual or group of individuals such other 7-consecutive-day period as it may find appropriate, provided that notice of job attached-unemployment is given to the Department office or Benefit Department as is required in Item 47-21.B.

**C. Week of Disqualification:**

With respect to a period of disqualification under Section 41-35-120 as amended, "Week" means a calendar week or pay period week as defined in Items 47-24.A and 47-24.B.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

**47-25. Wages Payable in Quarter.**

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

B. The terms "wages earned for employment" and "wages payable" in connection with any particular period shall be deemed to mean wages paid within that period in accordance with Section 41-27-380.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

**47-26. Payment of Benefits to a Deceased Claimant.**

A. Pursuant to the authority of Section 41-35-30 of the South Carolina Employment Security Law and in order to provide for the payment of benefits in those cases where the claimant has filed a valid claim and has compensation payable to him for weeks of unemployment and who dies prior to receiving such compensation, the Department adopts the following regulation:

1. If there is an executor or administrator appointed within sixty (60) days, payment must be made to said executor or administrator.
2. If there is no executor or administrator appointed within sixty (60) days, payment may be made upon written application as hereinafter set out:
  - a. To the surviving wife or husband; and if there be none
  - b. To the minor children; and if there be none
  - c. To the adult children; and if there be none
  - d. To parents of the deceased; and if there be none
  - e. To any person or persons who were dependent upon the deceased; and if there be no person within the foregoing classification, said payment to the deceased shall lapse and revert into the unemployment trust fund.
3. In the event payment is made to minor children as provided in Sub-Item A.2.b of this Regulation, the payments may be made to any responsible adult with whom minor children are making their home, upon a written pledge to use said payment for the benefit of the said minors, will be considered proper and legal payment to the said minor children without the requirement of formal appointment of a guardian.

B. Written application for payment of such benefits must be made within six months after the death of the decedent, provided that the Department upon good cause shown may extend the time for filing application.

C. Such application must be made in the form of an affidavit, in which the affiant sets forth his relationship to the deceased, and the reasons he is eligible for precedence.

D. Such affidavit should be supported by a copy of the death certificate of the deceased claimant, and an affidavit of an uninterested party that he knows or is informed and believes that the information given by the first affiant is true and correct.

E. The burden of initiating a claim for compensation due and payable to a deceased claimant and of proving identity and the right to payment shall rest upon the individual making such application.

F. All benefits issued directly to the deceased shall be returned to the Department for cancellation before any funds shall be paid in lieu of such benefits. Provided, however, that where such benefits cannot be obtained that an explanation to the satisfaction of the Department is in order.

G. Upon the return of such benefits for cancellation in satisfaction of the requirements of those regulations, payment may be made to the proper party with notation thereon of claimant's name and Social Security Number.

H. Payments made in accordance with this regulation shall for all purposes be deemed to have been made to all persons equitably entitled thereto.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-27. Notice of Benefit Payments.**

When benefit payments that are to be charged against said employer's account begin to any claimant, the employers shall be automatically notified.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-28. Military Service.**

A. This regulation shall apply only to those individuals who have volunteered or enlisted or who have been called into any branch of military service or any organization affiliated with the defense of the United States or the State of South Carolina.

B. The first benefit year following the termination of his military service shall be the one year period beginning the Sunday prior to the day of making a request for determination of insured status.

C. With respect to the benefit year as defined in Paragraph B hereof, the base period for such individual shall be the first four of the last five completed calendar quarters immediately prior to the filing of the claim or the last four of the last five completed calendar quarters if the individual does not qualify monetarily under the traditional base period. Military wages shall be assigned based on the requirements of Unemployment Compensation for Ex-Service members (UCX), Title XV of the Social Security Act.

D. Any individual, as provided for above, shall be ineligible for benefits for any week with respect to which or a part of which he has received or is seeking unemployment benefits under another unemployment compensation law of the United States.

E. All other provisions of the South Carolina unemployment Law not inconsistent with the above and foregoing provisions shall apply to the payment of claims for benefits filed hereunder.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.**

#### **47-29. Payment of Benefits to Interstate Claimants and the Combination of Wage Credits.**

A. The following regulations shall govern the Department of Employment and Workforce, in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

1. Definitions, as used in this regulation, unless the context clearly requires otherwise:

a. "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.

b. "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable States in which claimant is not residing. The term "interstate claimant" shall not include an individual who customarily commutes from a residence in an agent

state to work in a liable state unless the Department finds that this exclusion would create undue hardship on such claimants in specified areas.

c. "State" includes the District of Columbia, Puerto Rico, and the Virgin Islands.

d. "Agent state" means any state in which an individual files a claim for benefits from another state.

e. "Liable state" means any state against which an individual files, through another state or by other means as provided by the liable state, a claim for benefits.

f. "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

g. "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

#### B. Registration for Work:

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

2. Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

#### C. Benefit Rights of Interstate Claimants:

1. If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purpose of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

2. The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed.

#### D. Claim for Benefits:

1. When it is determined by the Agent state that a South Carolina Interstate claim is in order, the initial claim for benefits shall be filed by interstate claimants via the Remote Interstate Claims Unit. The Agent state shall provide to the claimant the telephone number or filing procedures as defined in the online Interstate Handbook. When acting as the Agent state, the Department shall take Interstate claims on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan or refer to the appropriate liable state as described in the on-line Interstate Handbook. Claims shall be filed in accordance with the type of week in use in the liable state.

2. South Carolina Continued Claims shall be filed via the Interactive Voice Response System. The Department shall provide a mail packet to the claimant with the telephone number and/or any other filing means as provided by the Department.

a. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances, which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

b. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim, which is filed within the time limit applicable to such claims under the law of the Agent state.

#### E. Determinations of Claims:

1. The Agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

2. The Agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The Agent state shall not refuse to take an interstate claim.

3. When acting as the liable state, the Department shall conduct its own investigation as to the eligibility of the claimant and issue adjudication.

F. Appellate Procedure:

With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the Agent state.

G. Extension of Interstate Benefit Payments to Include Claims Taken In and For Canada. This regulation shall apply in all its provisions to claims taken in and for Canada.

H. Wage-Combining.

1. The Department subscribes to the Interstate Plan for Combining Wages (Basic Plan and Extended Plan) in accordance with Section 41-29-140, Code of Laws of South Carolina, 1976, for the administrative cooperation with other participating states for the payment of combined wage claims to interstate claimants.

a. The Basic Wage-Combining Plan is adopted to establish a system whereby an unemployed worker not eligible for benefits in any one state may, through combining of wages in more than one participating state, become eligible for benefits.

b. The Extended Wage-Combining Plan is adopted to establish a system whereby an unemployed worker having sufficient base-period wages to qualify for less than maximum annual unemployment insurance benefits in one or more participating states and insufficient base-period wages to qualify for benefits in one or more other participating states, may increase the benefits to which he is entitled by combining wages in one of the states in which he has sufficient base-period wages with base-period wages in all states in each of which he has insufficient wages.

2. The Plan for Combining Wages shall be administered in accordance with uniform Interstate Benefit Payment Procedures for combining wages.

I. Termination of Combining Wages:

Combining of wages terminates upon the termination of the benefit year in the paying state or at such time as re-determination of benefit rights becomes necessary under the law of the paying state.

J. Relation to Interstate Benefit Payment Procedures:

Whenever this Plan applies, it shall supersede any inconsistent provisions of the Interstate Benefit Payment Plan and the Regulations there under.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

## **47-30. Meaning of Terms.**

Unless the context provides otherwise, terms used in rules, regulations, interpretations, forms and other official pronouncements issued by the Department shall, with respect to all terms which are defined in the Act, be construed in the sense in which they are therein defined.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

## **47-31. Public Employment Office.**

The term "public employment office" as used in the South Carolina Employment Security Law with respect to the payment of benefits and as used in each rule, regulation, instruction, procedure or other matter promulgated by the Department pursuant to the South Carolina Employment Security Law shall be construed to mean a free public employment office operated by the state or the United States Employment Service.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**



### **47-32. Time for Filing of Continued Claims (Non-Job Attached).**

A. Claimants for unemployment compensation benefits shall be required to report and file claims weekly in a timely manner and in accordance with such procedures as the Department may adopt unless the Department shall prescribe for the bi-weekly filing of claims, as set out below. A week claimed is considered timely if received within fourteen (14) calendar days of the claim week ending date. The claims representative in the Department office may accept any late filing of a continued weekly claim for good cause shown.

B. The Department may at any time direct that claimants for unemployment compensation benefits shall be required to report and file claims bi-weekly in such manner and in accordance with such procedure as the Department may adopt. The following provisions shall apply during any period with respect to which the Department directed the bi-weekly filing of claims.

1. All bi-weekly claims filed on the date specified for claimant's reporting shall be deemed to have been taken for the period of unemployment covered by the claim.
2. Delay may be excused for cause in accordance with the provisions of Sub-Item 47-21.E.2 for not exceeding fourteen (14) calendar days following the date specified for the claimant's reporting.
3. The provisions of Sub-Items 47-21.A.2 and C.1 are also amended to allow bi-weekly reporting.
4. Any claimant who returns to work on or before his next scheduled bi-weekly personal reporting date may file with the local office, by mail, a report of "Return to Work," and such report shall be deemed a continued claim for the intervening preceding week or weeks.
5. All portions of Department regulations in conflict with the provisions of this regulation are hereby suspended.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

### **47-33. Employer Elections to Cover Multi-state Workers.**

A. Relation to Subscribing States:

1. The following regulation, adopted under Section 41-27-550 of the Employment Security Law, shall govern the Department of Employment and Workforce in its administrative cooperation with other States subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the arrangement". Definitions: As used in this regulation, unless the context clearly indicates otherwise:

- a. "Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, Canada, or, with respect to the Federal Government, the coverage of any Federal unemployment compensation law;
- b. "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;
- c. "Agency" means any officer, board, department, or other authority charged with the administration of the Employment Security Law of a participating jurisdiction;
- d. "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and "interested agency" means the agency of such jurisdiction;
- e. "Services 'customarily performed' by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

B. Submission and Approval of Coverage Elections Under the Interstate Reciprocal Coverage Agreement:

1. Any employing unit may file an election on a form provided by the Department to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction.

- a. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which any part of the individual's services are performed;

b. The individual has his residence; or

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

2. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose Employment Security Law the individual(s) in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency, may before taking such action, require from the electing employment unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

3. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the employing unit of its action and of its reasons therefore.

4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

5. In case any such election is approved only in part, or is disapproved by some agencies, the electing employing unit may withdraw its election within ten calendar days after being notified of such action.

#### C. Effective Period of Elections:

1. Commencement: An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

#### 2. Termination:

a. The application of an election to any individual under this regulation shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

b. Except as provided in Sub-Item 1, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

c. Whenever an election under this regulation ceases to apply to any individual under Sub-Items 1 or 2, the electing unit shall notify the affected individual accordingly.

#### D. Reports and Notices by the Electing Unit:

1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

2. Whenever an individual covered by an election under this regulation is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose Employment Security Law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or

where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

E. Approval of Reciprocal Coverage Elections:

The Department of Employment and Workforce hereby delegates to its Deputy Executive Director for Unemployment Insurance, authority to approve or disapprove reciprocal coverage elections in accordance with this regulation.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-34. Notice of Benefit Determination and Appeal Rights.**

Each notice of benefit determination, which is required to be furnished, shall in addition to stating the decision and its reasons include a notice specifying the parties appeal rights. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the determination and the period within which an appeal may be taken.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-35. Benefits Payable Under Title XV of the Social Security Act, as amended.**

A. Pursuant to Section 41-29-140, S. C. Code—1976, as amended, the Department has entered into an Agreement with the Secretary of Labor to act as agent of the United States in the administration of Title XV of the Social Security Act, as amended, which provides for the payment of unemployment compensation benefits to Federal employees (UCFE—Unemployment Compensation for Federal Employees) and ex-service members (UCX—Unemployment Compensation for Ex-Service members); to cooperate with the Secretary and with other state agencies in making such payments; and to pay compensation under Title XV to individuals entitled thereto in the same amount, on the same terms, and subject to the same conditions as compensation would be payable to such individuals under the state Unemployment Compensation Law, if such individuals' federal service and federal wages had been included as employment and wages under the South Carolina Law.

B. Distribution of Cost of Benefit Payments under state and Federal Programs. A UC, UCFE, or UCX claimant who has exhausted his benefits in a previous benefit year and has been held ineligible under Section 41-35-50, South Carolina Code—1976, as amended, will not be eligible for benefits in a subsequent benefit year under any program until the conditions of Section 41-35-50 have been satisfied. Benefits paid to a UC, UCFE, or UCX claimant who is ineligible for benefits under Section 41-35-50 and subsequently earns wages in employment will be charged as follows:

1. If an otherwise eligible state UC claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a state covered employer, his claim will be paid and charged to the covered employer's account.

2. If an otherwise eligible state UC claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a Federal agency, his claim will be paid and charged to the State UC Trust Fund. (No employer's experience rating account will be charged.)

3. If an otherwise eligible UCFE or UCX claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount in Federal employment or from a state covered employer as defined in Section 41-27-210, his claim will be paid and benefits will be charged to the base period Federal employers' account.

4. If an otherwise eligible joint UC-UCFE or joint UC-UCX claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a state covered employer, the state portion of the claim will be charged to the last (bona-fide) employer's account and the Federal portion will be charged to the base period Federal employer.

5. If an otherwise eligible joint UC-UCFE or joint UC-UCX claimant (ineligible under Section 41-35-50) earns as much as eight times his weekly benefit amount from a Federal agency, the state portion will be charged to the State UC Trust Fund (no employer's account will be charged) and the Federal portion will be charged to the base period Federal employers' account.

6. If the normal base period of the UCX claim contains UCFE Federal wages and UCX military wages, the UCX portion of the claim will be charged to the appropriate branch of service account and the Federal portion will be charged to the base period Federal employer.

7. The amount of benefits to be paid to a joint UC-UCFE or joint UC-UCX claimant, wherein wages are reported, for a week of unemployment as defined in regulation 47–20, shall be computed on the basis of the joint maximum weekly benefit amount. The charge to the state portion of the claim will be charged to the last (bona-fide) employer’s account and the Federal portion will be charged to the base period Federal program based on the applicable portion of base period wages.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47–36. Review of Rulings with Respect to the Status, Liability, and Rate Contributions of an Employer or Employing Unit.**

A. At the request of an employing unit or employer or a field deputy, the Unemployment Insurance Tax Director or his designee shall make an administrative determination with respect to the status, liability, and rate of contributions applicable thereto, provided that such request is made within thirty (30) calendar days of the date of mailing of a proposed audit report, a liability notice, or a rate notice.

B. An administrative determination by the Unemployment Insurance Tax Director or his designee concerning the status, liability, or rate of contributions of an employing unit or employer (whether issued initially or in accordance with paragraph A, supra), will be reviewed by the Department upon the appeal of such employing unit or employer, PROVIDED:

1. The appeal be made in writing by an officer/owner of the business or an attorney and mailed or delivered to the Department not more than thirty (30) calendar days after the date of mailing of such administrative determination, and

2. The appeal contains a clear and concise statement of the reasons therefore.

C. The Department shall designate a hearing officer employed by it to conduct a hearing at a place convenient for the employing unit or employer concerned at which testimony shall be taken and evidence received in the matter.

1. Notice of the hearing shall be mailed by the hearing officer or deputy to the employing unit or employer, directed to its last known address, at least seven (7) calendar days prior to the date of the hearing. The notice shall state the time set for the hearing, together with a brief statement of the question or questions to be determined.

2. The hearing shall be conducted under the same procedure as that provided for the hearing of appeals of claims for benefits. Testimony will be recorded and exhibits will be received into evidence in the same manner. A record shall be prepared consisting of the pertinent ruling or rulings of the Unemployment Insurance Tax Director or his designee, the motion for review by the Department, a transcription of the testimony, and the documentary evidence and exhibits. This record will be reviewed by the hearing officer who will issue a decision.

3. An appeal of this decision may be made to the Appellate Panel, provided that it be made in writing by an officer/owner of the business or an attorney and mailed or delivered to the Department not more than thirty (30) calendar days after the date of mailing of such administrative ruling and contains a clear and concise statement of the reasons therefore.

D. The Appellate Panel shall give notice of at least seven (7) calendar days of a hearing to be held at its offices in Columbia for the purpose of receiving the oral or written arguments in the case. No further testimony or evidence will be received at this hearing and the Appellate Panel shall make its determination on the basis of the record submitted to it by the Appeals Hearing Officer. A written decision will be issued by the Appellate Panel setting forth its findings of fact and conclusions of law in affirmation, modification, or reversal of the administrative ruling or rulings presented for review.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47–39. Joint Account.**

A. Two or more “employers” as defined in Section 41–27–200, South Carolina Code of Laws, 1976, as amended, in the same or a related trade, occupation, profession, or enterprise, or having a common financial interest, hereinafter referred to as an “Employer Group,” may enter into an agreement with the Department to establish a joint experience rating account as provided in Section 41–31–20; subject

to the provisions of Article 1 of Chapter 31 of Title 41 of the 1976 Code—Rates of Contribution; shall be treated as a separate employer account and subject to the following provisions:

1. A joint account may not be established for a period of less than five (5) years beginning with the first day of the calendar year in which such application for the establishment of such account is approved by the Department.

2. The contribution rate for an “employer group” shall be computed as of June 30 or December 31 based upon the date of approval by the Department. Approvals between January 1 and June 30 will be computed as of June 30; approvals between July 1 and December 31 will be computed as of December 31. This rate will be applicable for the subsequent tax year. Such computation shall be based upon the aggregate experience rating of all the members of the group for the applicable rate computation time period.

3. No “employer” may become a member of an “employer group” until such employer has satisfied the provision of Section 41–31–40 ( twelve (12) months of accomplished liability ).

4. Separate accounts shall be maintained for each employer in an “employer group” for identification, with such separate accounts being combined only for the purpose of establishing a joint experience rate.

5. No “employer group” shall have a reduced contribution rate when an execution for unpaid contributions is outstanding against one or more members of the “employer group.”

6. If a member of an “employer group” acquires the business of an employer, the experience of the predecessor employer shall be transferred to the separate account of the acquiring employer. The provision of Section 41–31–100 or Section 41–31–110 as applicable shall apply to the “employer group” in accord with Sub-Item thereof.

7. All members of an “employer group” shall remain members until the dissolution thereof. This provision shall also apply to a successor who acquires the business of a member of an “employer group,” provided however, if for any reason the business of a member of an “employer group” is discontinued, or if the liability of a member is terminated in accord with Chapter 37 of Title 41 of the 1976 Code, the experience in the account of the discontinued business shall remain a part of the experience of the “employer group” until the next rate computation.

8. An “employer group” may be dissolved and the joint account distributed in accord with Section 41–31–120 on the next regular computation date:

a. by 50 per cent or more of the employers in the “employer group” each of which has at least five (5) percent of the total wages on the date of the dissolution.

b. Each member of the “employer group” thus dissolved will be considered for the purposes of Section 41–31–120 as the successor to his own business and the employer group will be treated as the predecessor.

c. In the event the experience of any member of the “employer group” was retained as a part of the experience of the “employer group” upon the discontinuance of business or termination of liability in accord with Chapter 37 of Title 41 of the 1976 Code, the experience account of such an employer upon dissolution of the group:

i. will be inactivated if the employer ceased to do business;

ii. will be canceled if the employer terminated liability.

9. Each member of an “employer group” will be responsible for keeping the records and filing the reports required by the Department with respect to individuals in its employment. Every member of the “employer group” shall be liable individually or collectively for all past due penalties, contributions, and interest of any member and shall be subject to the provisions of Article 3 of Chapter 31 of Title 41 of the 1976 Code.

10. Benefits paid, chargeable to a member of an “employer group” shall be used in computing the experience rate of the “employer group;” however, only the employer to whom benefits are chargeable shall have the right of appeal in accord with the appeals provisions in Article 5 of Chapter 35 of Title 41 of the 1976 Code.

11. No provision in Section 41-31-20 or in this regulation issued pursuant thereto shall be construed as giving any member of an "employer group" any authority over the operation of another member with respect to the administration of the joint "employer group" account.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-40. Establishment of Joint Account for Parent Employer and One or More Subsidiary Legal Entities Rendering No Employment.**

Any parent "employer" which has common control over one or more subsidiary legal entities, furnishes all personnel services for such legal entities, has control over all employees, and pays the wages of all employees performing services for such subsidiary legal entities shall file combined contribution and wage reports quarterly with the Department and shall have one combined experience rating account inasmuch as such subsidiaries would not be liable by virtue of being an "employing unit" as defined in Section 41-27-220.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-41. Bonding Requirements for Certain Nonprofit Organizations.**

Any nonprofit organization or group of organizations which has become liable for payments of benefits in lieu of contributions and which does not possess title to real property and improvements within South Carolina valued in excess of two million dollars shall be required to post a surety bond, money deposit, or other securities with the Department to insure the payments in lieu of contributions. Such surety shall be filed with the State Treasurer in accordance with the requirements of that office. A determination relative to the value of real property and improvements of a nonprofit organization or group of organizations will be based on written information supplied by said organization certifying to the value. Such information or evidence shall be in the form of an audited financial statement or in other form acceptable to the Department.

The nonprofit organization or group of organizations shall be required to: (1) Post a money deposit; (2) Furnish an indemnity bond with a surety company authorized to do business within the State of South Carolina; or (3) In lieu of an indemnity bond, furnish U.S. Government bonds, obligations of the U.S. Government or obligations fully guaranteed both as to principal and interest by the U.S. Government; obligations of the Federal Intermediate Credit banks, Federal Home Loan banks, Federal National Mortgage Associations and banks for cooperatives and Federal Land banks; obligations of the State of South Carolina or any political subdivision thereof.

The amount of the surety bond, money deposit, securities, or other security shall be computed on the total wages paid by a nonprofit organization or group of organizations multiplied by the tax rate assigned to tax class 20. Total wages paid means wages as defined in Section 41-27-380 of the law for the four completed calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the surety bond, cash deposit, securities, or other security shall be as determined by the Department.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47-42. Child Support Intercept of Unemployment Benefits.**

A. The Department may require an individual filing a new claim for unemployment compensation to disclose, at the time of filing such claim, whether or not the individual owes child support obligations as defined under Item G. In addition and pursuant to an agreement between the Department and the state or local child support enforcement agency, the state or local child support enforcement agency shall notify the Department if a particular individual who has filed a new or continued claim for unemployment compensation at the time of filing such claim owes child support obligations, or if the state or local child support agency advises the Department that the individual owes child support obligations and the individual is determined to be eligible for unemployment compensation, the Department shall notify the state or local child support enforcement agency

enforcing such obligations that the individual has been determined to be eligible for unemployment compensation.

B. The Department shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under Item G.

1. the amount specified by the individual to the Department to be deducted and withheld under this Item, if neither (2) nor (3) is applicable,

2. the amount if any determined pursuant to an agreement submitted to the Department under Section 454(20)(B)(1) of the Social Security Act by the state or local child support enforcement agency, unless is applicable, or

3. any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process as that term is defined in Section 462(e) of the Social Security Act properly served upon the Department.

C. Any amount deducted and withheld under Item B shall be paid by the Department to the appropriate state or local child support enforcement agency.

D. Any amount deducted and withheld under Item B shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

E. For purposes of Items A through D, the term 'unemployment compensation' means any compensation payable under the South Carolina Employment Security Law including amounts payable by the Department pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

F. This regulation applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the Department under this Item which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

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

H. The term 'state or local child support enforcement agency' as used in this regulation means any agency of this state or a political subdivision thereof operating pursuant to a plan described in Item G.

I. The deductions provided for in this regulation are not an assignment, pledge or encumbrance of any right to benefits which are or may become due or payable for the purposes of Section 41-39-20, South Carolina Code of Laws, 1976.

J. This regulation shall become effective on October 1, 1982.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-43. Exclusion of Claims for Extended Benefits in Determining the Rate of Insured Unemployment.**

A. The term "Rate of insured unemployment" for purposes of Section 41-35-330, South Carolina Code of Laws, 1976, amended, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular state compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the Department on the basis of its reports to the U. S. Secretary of Labor, by

2. The average monthly employment covered under Chapters 27 through 41 of Title 41 of the South Carolina Code of Laws, 1976, as amended, of the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

#### **47-44. Limitation on Trade Readjustment Allowances.**

Notwithstanding any other provisions of Chapters 27 through 41 of Title 41, South Carolina Code of Laws, 1976, as amended, if the benefit year of any individual ends within an extended benefit period,

the remaining balance of extended benefits that such individual would but for this regulation be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-45. Prohibition Against the Disqualification From Trade Readjustment Allowances When Enrolled for Approved Training.**

A. Notwithstanding any other provisions of Chapter 35 of Title 41 of the South Carolina Code of Laws, 1976, as amended, no otherwise eligible individual shall be denied benefits for any week because he is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of the provisions of this law or any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work.

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

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-48. Suitable Work Requirements for Extended Benefits.**

For the purposes of Section 41-35-420(2)(d), South Carolina Code of Laws, 1976, as amended, the term "suitable work" means any work which is within the individual's capabilities to perform if the individual cannot furnish satisfactory evidence to the Department that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work contained in Section 41-35-120, South Carolina Code of Laws, 1976, as amended, without regard to the definition specified by this regulation.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.

#### **47-49. Pension Reductions From Unemployment Benefits.**

A. Section 414 of the Multi-employer Pension Plan Amendments Act of 1980 (PL 96-364) provides for the reduction of unemployment benefits by pension payments on a pro-rata basis and notwithstanding Section 41-27-370, South Carolina Code of Laws, 1976, as amended, that in the event an individual has participated in any pension, retirement or retired pay, annuity or other similar plan of the base period employers by having made contributions to such plan, the weekly benefit amount payable to such individual for such week shall be reduced but not below zero,

1. by the prorated weekly amount of the pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual;
2. by no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer or any other person or organization who is not a base period employer; or
3. by the entire prorated weekly amount of the pension if Item 1 or Item 2 of this regulation does not apply.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.



**ARTICLE 3**  
**APPEALS REGULATIONS**

**47–51. Appeals to the Appeal Tribunal.**

**A. The Presentation of Appeals.**

1. The party appealing from any determination of a claims adjudicator or special examiner shall file electronically, by fax, by mail, or otherwise deliver to the Department a Notice of Appeal, setting forth the grounds for the appeal. Copies of the Notice of Appeal shall be mailed or electronically delivered to the other interested parties.

2. Upon the scheduling of a hearing for an appeal, a Notice of Hearing shall be mailed to all interested parties to the appealed claim at least seven (7) calendar days prior to the date of hearing, specifying the place and time of hearing, and the hearing official.

**B. Disqualification of Members of Appeal Tribunals.**

No person shall serve on an Appeal Tribunal in the hearing of any appeal in which he is interested. Challenges to the interest of any person serving on an Appeal Tribunal may be heard and decided by the Appeal Tribunal or its designee.

**C. Hearing of Appeals.**

1. All Appeal Tribunal hearings shall be de novo in nature and conducted in such manner as to ascertain the substantial rights of the parties. The Appeal Tribunal shall include in the record and consider as evidence all Department records material to the appeal. Any party to the appeal may present relevant testimony. The Appeal Tribunal shall examine a party and his witnesses, and may examine the witnesses of any opposing party. The Appeal Tribunal, with or without notice to any of the parties, may take additional evidence at the hearing as it deems necessary. After a hearing and prior to rendering a decision, the Appeal Tribunal, with notice to the interested parties as provided for in Appeal Regulation 47–51, A.2, may call parties and witnesses to appear before it for the taking of additional evidence as it deems necessary.

2. The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate the facts involved in writing. Agreed upon stipulations shall be included in the record. The Appeal Tribunal may decide the appeal on the basis of such stipulations, or, in its discretion, may set the appeal for a hearing and take further evidence or arguments, as it deems necessary to determine the appealed claim.

3. Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the South Carolina Rules of Evidence.

**D. Adjournments of Hearings.**

1. The Appeal Tribunal shall use its best judgment as to when adjournments of a hearing shall be granted, in order to secure all necessary evidence and to ensure fairness to all parties.

2. If the appealing party fails to appear at the hearing, the Appeal Tribunal may dismiss the appeal or issue a decision on the basis of the Department records.

**E. The Determination of Appeals.**

1. Following the conclusion of an appeal hearing, the Appeal Tribunal shall, within thirty (30) days, issue a written decision detailing the findings of fact and conclusions of law. The Appeal Tribunal shall set forth its findings of fact, its decision, and the reasons therefor.

a. In addition to the issues raised by the appealed determination the Appeal Tribunal may consider all issues affecting claimant's rights to benefits from the beginning of the period covered by the determination to the date of the hearing.

b. The Appeal Tribunal may pass upon any offer of work complying with Regulation 41–23, separation, or question of availability arising between the filing of an appeal and the Appeal Tribunal hearing in those cases in which the Department has issued no determinations with respect to such subsequent issues.

c. The Appeal Tribunal may pass upon any issue framed prior to the filing of the appeal or the determination from which the appeal is taken, and with respect to which no determination has been issued by the Department.

d. The Appeal Tribunal at a hearing may receive and consider appeals from determinations issued subsequent to the determination and appeal giving rise to the hearing, provided such appeals are timely.

e. Sub-Items (a)(b)(c)(d) supra apply only when the parties are identical or present at the Appeal Tribunal hearing or are properly notified of the issue or issues.

2. Copies of all decisions and the reasons therefore shall be mailed to all parties to the appeal.

F. Notice of Rights to Appeal from Appeal Tribunal Decisions.

Each Appeal Tribunal decision sent to the parties to an appeal shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the manner and time period for filing an appeal from the decision.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011; State Register Volume 41, Issue No. 5, Doc. No. 4691, eff May 26, 2017.**

## **47–52. Appeals to the Appellate Panel.**

A. The Presentation of Application for Leave to Appeal to the Appellate Panel.

1. The Party appealing from the decision of an Appeal Tribunal shall file online, by fax, by mail, or otherwise deliver to the Department, a Notice of Appeal, setting forth the grounds for the appeal as set forth in Chapter 35 of Title 41 of the South Carolina Code of Laws, 1976, as amended. Copies of the Notice of Appeal shall be mailed or electronically delivered to the other interested parties of the appeal.

2. The Appellate Panel may decide an Appeal, filed under Regulation 47–52, A.1, without hearing, or may notify the interested parties to appear before it at a specified time and place for oral argument. Notices of such oral argument shall be mailed to the interested parties to the decision of the Appeal Tribunal at least seven (7) calendar days before the date of the hearing.

3. If leave to appeal to the Appellate Panel is granted, the Appellate Panel may schedule a hearing. Notice of hearing on the form provided shall be mailed at least seven (7) calendar days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.

B. Hearing of Appeals.

1. Except as provided in Appeal Regulation 47–52, D for the hearing of appeals removed to the Appellate Panel from an Appeal Tribunal, all appeals to the Appellate Panel shall be heard solely upon the evidence in the record before the Appeal Tribunal.

2. In the hearing of an appeal upon the record, the Appellate Panel may limit the parties to oral argument, or may permit the filing of written argument, or both.

C. The Review of Decisions of Appeal Tribunals by the Appellate Panel on Its Own Motion.

1. Within ten (10) calendar days following a decision by an Appeal Tribunal, the Appellate Panel on its own motion may remove any decision to its own jurisdiction for review and may affirm, modify, or set aside such decision on the basis of the evidence previously submitted in such case, or may direct the taking of additional evidence.

2. The Appellate Panel shall in such cases allow the parties an opportunity to present their views before it with seven (7) calendar days notice thereof to all parties interested.

3. Where the Appellate Panel directs the taking of additional evidence, it shall be taken in the manner prescribed for the conduct of hearings on appeals before the Appeal Tribunal, including seven (7) calendar days notice to the parties interested. Upon the completion of the taking of evidence and testimony pursuant to the direction of the Appellate Panel, a new decision shall be issued or the case shall be returned to the Appellate Panel for its consideration and decision.

D. The Hearing by the Appellate Panel on Appeals Ordered Removed to It from an Appeal Tribunal.

1. Any appeal before an Appeal Tribunal, ordered by the Appellate Panel to be removed to itself prior to hearing by the Appeal Tribunal, shall be presented, heard, and decided by the Appellate Panel in the manner prescribed in Regulation 47–51, C.1, 2, and 3, for the hearing of appeals before the Appeal Tribunal.

2. Any appeals heard by an Appeal Tribunal may, prior to a decision by the Tribunal, be ordered by the Appellate Panel to be removed to itself and shall then be presented, heard and decided by the Appellate Panel in the manner prescribed in Appeal Regulation 47–52, C.2 and 3.

#### E. The Decisions of the Appellate Panel.

1. The quorum of the Appellate Panel shall be two (2) members. No meeting of the Panel shall be scheduled when it is anticipated that fewer than two (2) members will be present, and no hearing shall be held nor decision released by the Panel in which fewer than two (2) members participate.

2. If a decision of the Appellate Panel is not unanimous, the decision of the majority shall control. In the event only two (2) members are able to vote on a case, but are unable to agree on a final decision, the decision of the Tribunal shall stand affirmed.

3. The Appellate Panel shall, as soon as possible, announce its findings and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Appellate Panel who heard the appeal. It shall set forth with respect to the matters appealed, the findings of fact of the Appellate Panel, its decision, and the reasons for such decision. Copies of all decisions and the reasons therefore shall be mailed by the Appellate Panel to the interested parties.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011; State Register Volume 41, Issue No. 5, Doc. No. 4692, eff May 26, 2017.

### **47–53. Issuance of Subpoenas.**

A. Subpoenas to compel the attendance of witnesses and the production of records for any hearing of an appeal shall be issued by the Department or its authorized representative or an Appeal Tribunal.

B. Subpoenas for witnesses shall be issued only for the witnesses shown to be necessary in the application.

C. Witnesses subpoenaed for any hearing before an Appeal Tribunal shall be paid witness and mileage fees by the Department in accordance with the schedule allowed witnesses in the Court of Common Pleas of the County in which the hearing is held.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

### **47–54. Orders for Supplying Information from the Records of the Agency.**

A. Orders for supplying information from the records of the Department to a claimant or his duly authorized representative, to the extent necessary for the proper presentation of a claim, shall issue only upon application therefore, which shall state, as nearly as possible, the nature of the information desired, and its relevancy to the claim.

B. In all cases where an order to supply a claimant or his duly authorized representative with information from the records is issued, the party shall be furnished such information.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

### **47–55. Representation before Appeal Tribunal and the Appellate Panel.**

A. Any individual may appear for himself in any proceeding before an Appeal Tribunal or the Appellate Panel. Any partnership may be represented by any of the partners. An association may be represented by any of the members of such association. A corporation may be represented only by an attorney at law licensed to practice in South Carolina, except that any employee or agent of a corporation may give factual information to the Appellate Panel or the Appeal Tribunal. Representatives of labor unions, employee or employer organizations, may appear and give factual information or data which will be pertinent or helpful to the determination of the issues before the Appellate Panel or the Appeal Tribunal.

B. The Appellate Panel or the Appeal Tribunal, in its discretion, may refuse to allow any person to represent others in any proceeding before it who it finds is guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of South Carolina Law, or the Rules, Regulations, and/or instructions of either the Tribunal or the Appellate Panel.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47–56. Inspection of the Decisions of the Appeal Tribunals and the Appellate Panel.**

A. Originals of all decisions of the Appeal Tribunal and the Appellate Panel shall be kept on file at the office of the South Carolina Department of Employment and Workforce, Columbia, South Carolina, and shall be subject to inspection by the parties thereto, or their duly authorized representatives, subject to the provisions of Sections 41–29–150 and 41–29–170 of South Carolina Law.

B. Copies of the complete file of decisions of Appeal Tribunal and the Appellate Panel shall be open to the public for inspection, but such copies shall not reveal the identity of the parties.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

#### **47–57. Appeal to the Courts.**

A. Any party to the appeal before the Appellate Panel who has exhausted his remedies before the Department may, within such time as specified in South Carolina law, Section 41–35–750, file a petition with the court designated by this section for a review of the decision of the Appellate Panel.

B. The party filing the petition for the review shall serve a copy of the petition upon the Department by delivering a copy to the Legal Department of the Department of Employment and Workforce at its central office in Columbia, South Carolina.

**HISTORY:** Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 35, Issue No. 6, eff June 24, 2011.

### **ARTICLE 4**

### **UNEMPLOYMENT INSURANCE**

#### **47–100. Cause Other Than Misconduct.**

Under South Carolina Code Annotated Section 41–35–120(2)(b), if a claimant is discharged for cause other than misconduct, the claimant is partially disqualified from unemployment insurance benefits. “Cause other than misconduct” is conduct that demonstrates a level of fault of the employee but does not rise to the level of deliberate disregard for the standards of behavior which the employer has the right to expect of his or her employee. Fault includes those acts or omissions of employees over which an employee exercised reasonable control and which violate reasonable requirements of the job.

**HISTORY:** Added by State Register Volume 38, Issue No. 2, eff February 28, 2014.

#### **47–101. Substandard Performance Due to Inefficiency, Inability, or Incapacity.**

Under South Carolina Code Section 41–35–120(2), a discharge resulting from substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification of unemployment insurance benefits. “Substandard performance due to inefficiency, inability or incapacity” describes a claimant’s failure to perform to the satisfaction of the employer where such failure was beyond the claimant’s control, had no harmful intent or was a good faith error in judgment or discretion.

**HISTORY:** Added by State Register Volume 38, Issue No. 2, eff February 28, 2014.

#### **47–103. Waiver of Non-Fraudulent or No-Fault Overpayment.**

Pursuant to South Carolina Code Annotated Section 41–41–40(B)(2), the Department may waive repayment of overpayments if the overpayment was not due to fraud, misrepresentation, or willful disclosure, was received without fault on the part of the claimant, and recovery of the overpayment would be contrary to equity and good conscience.

##### **1. WAIVER**

- a. When an overpayment determination is issued, a claimant may request a waiver.
- b. A request for waiver by an individual shall be in writing and set forth the grounds for waiver.
- c. The Department's denial of a request for waiver of the repayment of an overpayment is an appealable decision.
- d. When a waiver of an overpayment has become final, it shall not be re-determined in the absence of fraud, misrepresentation, or willful nondisclosure by the claimant relating to the waiver.

## 2. FAULT

In determining whether fault exists, the following factors must be considered:

- a. whether a statement or representation was made by the individual in connection with a claim for benefits that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate;
- b. whether the individual failed or caused another to fail to disclose a material fact, in connection with a claim for benefits that resulted in the overpayment, and whether the individual knew or should have known that the fact was material; and
- c. whether the individual knew or could have been expected to know that the individual was not entitled to the benefit payment.

In the event of an affirmative finding on any of the FAULT factors outlined above, the overpayment shall not be waived and further determination of any factors will not be necessary.

## 3. EQUITY AND GOOD CONSCIENCE

In determining whether recovery of an overpayment is against equity and good conscience for the purpose of deciding whether the overpayment of benefits shall be waived, the Department shall consider the following non-exclusive factors:

- a. The extent to which recovery of the overpayment would create an extraordinary financial hardship on the claimant. Extraordinary financial hardship as used herein means the claimant would be unable to provide himself or his immediate family with minimal necessities (e.g., food, shelter, basic utilities) as a result of the Department recovering the overpayment;
- b. The nature and cause of the overpayment, including whether Department error contributed to causing the overpayment;
- c. Whether the claimant had notice that if a decision to pay benefits was reversed, an overpayment would be created;
- d. Whether the claimant detrimentally changed his/her position in reliance upon receipt of benefits; and
- e. Any other relevant factor that relates to fairness and good conscience.

**HISTORY:** Added by State Register Volume 38, Issue No. 2, eff February 28, 2014.

## **47-104. Work Search.**

A. Section 41-35-110(3) provides that a claimant is eligible to receive benefits with respect to a week only if the Department finds the claimant engaged in an active search for work. Absent good cause, an active search for work during a week must include at least two (2) job searches conducted through the South Carolina Works Online System (SCWOS), so that the search can be electronically verified.

B. The Department may waive the requirement to perform at least two (2) weekly job searches through SCWOS for good cause. Good cause includes, but is not limited to, verifiable electronic access and/or language barriers, and is determined by the Department on a case by case basis.

**HISTORY:** Added by State Register Volume 41, Issue No. 5, Doc. No. 4693, eff May 26, 2017.

## **ARTICLE 5 UNEMPLOYMENT TRUST FUND**

## **47-500. Definitions.**

- (1) "Department" means the South Carolina Department of Employment and Workforce.

(2) “Fund adequacy target” means an average high-cost multiple of one. See S.C. Code Ann. § 41-31-45(A)(5).

(3) “Solvency surcharge” is a surcharge imposed on contributory employers in each year the unemployment trust fund is solvent but the trust fund reserve does not meet the fund adequacy target.

(4) “Fiscal year” begins on July first of each year and ends on June thirtieth of the succeeding year.

(5) “Tax year” begins on January first of each year and ends on December thirty-first of each year.

(6) “Trust fund reserve” means the unemployment compensation fund, excluding distributions from the federal government, pursuant to 42 U.S.C. 1103, commonly referred to as the Reed Act. See S.C. Code Ann. § 41-31-45 (A)(6) and § 41-33-10.

(7) “Cap” is the greater amount of either: (1) the actual benefits paid in the prior fiscal year or (2) the projected benefits for the next tax year.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4475, eff June 26, 2015.

### **47-501. Unemployment Trust Fund Solvency.**

Pursuant to South Carolina Code Annotated Section 41-31-45(C) and Section 41-31-50(1)(b), the Department must annually calculate the income necessary to pay benefits and reach the fund adequacy target for the unemployment trust fund. The Department determines the total income needed as follows:

(1) Projected benefits will be determined for the next tax year in consultation with the United States Department of Labor and with annual data provided by the Congressional Budget Office, subject to subsection (2).

(2) The income needed to pay benefits and return the unemployment trust fund to the fund adequacy target may also include a solvency surcharge. A solvency surcharge shall be in effect for each tax year that the trust fund reserve is less than the fund adequacy target, as of June 30<sup>th</sup>, subject to 47-501(2)(a). The aggregate amount of the solvency surcharge will be determined for each tax year to be the amount calculated to return the unemployment trust fund to the fund adequacy target within five years subject to the following:

(a) When actual benefits paid in the prior fiscal year are greater than the actual tax collections received in the prior fiscal year, then the cap, as defined in 47-500(7), is triggered. For the purpose of this section, tax collections shall exclude all penalties, interests, contingency surcharges, and recording fees. Once the cap is triggered then:

(i) If projected benefits for the next year are less than the cap, then the solvency surcharge shall be the difference between the cap and the projected benefits.

(ii) If projected benefits for the next tax year are equal to the cap, then no additional solvency surcharge will be added for the next tax year.

(3) The aggregate amount of the solvency surcharge for the trust fund rebuild that began with tax year 2016 will be determined for each tax year to be the amount calculated to return the unemployment trust fund to the fund adequacy target within five years. Once the fund adequacy target has been met pursuant to this item, future fund adequacy targets shall be met pursuant to item (4).

(4) After the fund adequacy target has been reached pursuant to item (3) or after the cap has been triggered, as described in 47-501(2), and in the prior fiscal year, actual benefits paid were less than actual tax collections, then tax rates for the next tax year will be set based on returning the unemployment trust fund to the fund adequacy target within the next four years.

(5) If the balance of the unemployment trust fund, as of the end of the most recently completed fiscal year, is greater than the fund adequacy target, then the Department may use the surplus amount to reduce taxes in the next tax year.

(6) Notwithstanding the provisions of 47-501(2), once the fund adequacy target has been met, in subsequent tax years, the solvency surcharge shall be set in the event the unemployment trust fund balance does not meet the fund adequacy target, as of the end of the most recently completed fiscal year, as shown in the following table:

Percentage the unemployment trust fund balance is below the fund adequacy target	Rebuilding period
More than 0.0000%, but less than 2.5000%	One year
2.5000% or more, but less than 5.0000%	Two years
5.0000% or more, but less than 7.5000%	Three years
7.5000% or more	Four years

(7) In a fiscal year in which the fund adequacy target is reached, the Department will determine tax rates for the following tax year without a solvency surcharge and pursuant to South Carolina Code Annotated Section 41-31-50.

**HISTORY: Added by State Register Volume 39, Issue No. 6, Doc. No. 4475, eff June 26, 2015. Amended by State Register Volume 40, Issue No. 6, Doc. No. 4645, eff June 24, 2016.**