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CHAPTER 35.

 EMPLOYMENT SECURITY‑‑BENEFITS AND CLAIMS THEREFOR

ARTICLE 1.

 REGULAR BENEFITS

**SECTION 41‑35‑10.** Payment of benefits generally.

Benefits shall become payable from the fund to any individual who is unemployed and eligible for benefits. Except as provided in Section 41‑35‑20 benefits based on service in employment defined in Section 41‑27‑230 (2) and (3) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to Chapters 27 through 41 of this Title. All benefits shall be paid through employment offices, in accordance with such regulations as the Commission may prescribe.

**SECTION 41‑35‑20.** Payment of benefits based on certain services in schools or institutions of higher education.

(1) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education as defined in Section 41‑27‑290 or educational institution as defined in Section 41‑27‑340 must not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual’s contract, if the individual has a contract or a reasonable assurance that the individual will perform services in this capacity for both these academic years or both these terms.

(2) With respect to services performed after December 31, 1977, in any other capacity for an educational institution or institution of higher education, irrespective of whether the institution is a public, private, or nonprofit organization, benefits are not payable on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs these services in the first of those academic years or terms and there is a reasonable assurance that the individual will perform these services in the second of those academic years or terms. However, if compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform these services for the educational institution or institution of higher education for the second of these academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

(3) The provisions of subsections (1) and (2) apply both to employees of the educational institution concerned or to persons employed by a governmental agency or entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions if these persons perform these services in the educational institution.

(4) With respect to any services described in subsections (1) and (2) of this section, benefits are not payable on the basis of services in any such capacities as specified in subsections (1) and (2) of this section to any individual who performed these services in an educational institution or institution of higher education while in the employ of an educational service agency. For purposes of this section, “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing these services to one or more educational institutions.

(5) With respect to any services described in subsections (1), (2), and (4), benefits are not payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs these services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform these services in the period immediately following the vacation period or holiday recess.

(6) In this section “reasonable assurance” means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term.

**SECTION 41‑35‑30.** Payment of benefits in case of death.

When benefits due an individual have been unpaid at the time of death and the estate of such individual has not been administered upon in the probate court within sixty days after the time of death, the Commission may pay such benefit amounts as the deceased may have been entitled to:

(1) To the surviving wife or husband and, if there be none;

(2) To the minor children and, if there be none;

(3) To the adult children and, if there be none;

(4) To the parents of the deceased and, if there be none;

(5) To any person or persons who were dependent upon the deceased.

And, if there be no person within the foregoing classifications the payments due the deceased shall lapse and revert into the unemployment trust fund.

Payment to any responsible adult with whom minor children are making their home, upon a written pledge to use such payment for the benefit of such minors, will be considered proper and legal payment to such minor children without the requirement of formal appointment of a guardian.

**SECTION 41‑35‑40.** Weekly benefit amount.

An insured worker’s weekly benefit amount is fifty percent of his weekly average wage, as defined in Section 41‑27‑140, and the weekly benefit amount, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. However, no insured worker’s weekly benefit amount may be less than twenty dollars nor greater than sixty‑six and two‑thirds percent of the statewide average weekly wage most recently computed before the beginning of the individual’s benefit year.

**SECTION 41‑35‑50.** Maximum potential benefits for year.

The maximum potential benefits of any insured worker in a benefit year are the lesser of:

(1) Twenty‑six times his weekly benefit amount.

(2) One‑third of his wages for insured work paid during his base period.

If the resulting amount is not a multiple of one dollar, the amount must be reduced to the next lower multiple of one dollar, except that no insured worker may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed “insured work” as defined in Section 41‑27‑300 and earned wages in the employ of a single employer in an amount equal to not less than eight times the weekly benefit amount established for the individual in the preceding benefit year.

**SECTION 41‑35‑60.** Weekly benefits for partial unemployment.

Each eligible individual who is unemployed in any week must be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the wages (if any) payable to him with respect to such week which is in excess of one‑fourth of his weekly benefit amount. Such benefit is not a multiple of one dollar must be computed to the next lower multiple of one dollar.

**SECTION 41‑35‑65.** Wages paid for previously uncovered services.

With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this paragraph “previously uncovered services” means services which were not employment as defined in Section 41‑27‑230, and were not services covered pursuant to Section 41‑37‑20 at any time during the one‑year period ending December 31, 1975; and which are:

(1) Agricultural labor as defined in Section 41‑27‑120, or domestic service as defined in Section 41‑27‑230(6); or

(2) Services performed by an employee of this State or a political subdivision thereof, as provided in Section 41‑27‑230(2); or

(3) Services performed by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in Section 41‑27‑230(3); except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

**SECTION 41‑35‑66.** Benefits for participants in sports or athletic events.

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

**SECTION 41‑35‑67.** Benefits to aliens.

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

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

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

**SECTION 41‑35‑100.** Preservation of benefit rights of persons in armed forces.

The Commission shall pass such regulations as may be necessary to preserve the benefit rights of individuals who have volunteered or enlisted or who have been called or drafted into any branch of the military or naval service or any organization affiliated with the defense of the United States or this State. Such regulations shall, with respect to such individuals, supersede any inconsistent provisions of Chapters 27 through 41 of this Title, but so far as practicable shall secure results reasonably similar to those provided in the analogous provisions of such chapters.

**SECTION 41‑35‑110.** Conditions of eligibility for benefits.

An unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that:

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

(2) He has registered for work and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe, except that the Commission may, by regulation, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs; provided, that no such regulation shall conflict with Sections 41‑35‑10 or 41‑35‑30;

(3) He is able to work and is available for work at his usual trade, occupation, or business or in such other trade, occupation, or business as his prior training or experience shows him to be fitted or qualified; is available for such work either at a locality at which he earned wages for insured work during his base period or if the individual has moved to a locality where it may reasonably be expected that work suitable for him under the provisions of Section 41‑35‑120(3)(b) is available; and, in addition to having complied with subsection (2), is himself actively seeking work; provided, however,

(a) Notwithstanding any other provisions of Chapters 27 through 41 of this Title no otherwise eligible individual shall be denied benefits with respect to any week in which he is in training with the approval of the Commission by reason of the application of the provision herein relating to availability for work and an active search for work;

(b) No claimant shall be eligible to receive benefits or waiting period credit if engaged in self‑employment of such a nature as to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over such period of time.

(4) He has been unemployed for a waiting period of one week, but no week shall be counted as a week of unemployment for the purposes of this paragraph

(a) unless it occurs within the benefit year which included the week with respect to which he claims payment of benefits,

(b) if benefits have been paid with respect thereto nor

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 41‑35‑120, except for the requirements of this item (4) and of item (5) of Section 41‑35‑120.

(5) Claimant is separated, through no fault of his own, from his most recent bona fide employer; provided, however, the term “most recent bona fide employer” shall mean the work or employer from which the individual separated regardless of any work subsequent to his separation in which he earned less than eight times his weekly benefit amount.

(6) He participates in reemployment services, such as job search assistance services, if he has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the commission, unless the commission determines that:

(a) the individual has completed such services; or

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

**SECTION 41‑35‑115.** Service as witness or juror not to constitute disqualification for benefits.

Notwithstanding any other provision of law no individual otherwise eligible for benefits shall be denied benefits with respect to any week in which he is required by law to appear in court as a witness or to serve as a juror. However, unemployment benefits received by a person pursuant to Chapters 27 through 41 of this title must be reduced by any per diem received for service as a juror. The commission shall promulgate regulations necessary to implement the provisions of this section.

**SECTION 41‑35‑120.** Disqualification for benefits.

Any insured worker is ineligible for benefits for:

(1) Leaving work voluntarily. ‑ If the Commission finds that he has left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the Commission that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for such services equal to at least eight times the weekly benefit amount of his claim.

(2) Discharge for cause connected with the employment.

(a) If the commission finds that he has been discharged for cause connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the next twenty‑six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the commission in each case according to the seriousness of the cause for discharge. A charge of discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty. “Cause connected with the employment” as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity.

(b) An insured worker is considered to have been discharged for cause pursuant to this item, and is ineligible for benefits if the:

(i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and

(ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

(iii) insured worker provides a blood, hair, or urine specimen during a drug test administered on behalf of the 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; and

(B) the test was performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists or the State Law Enforcement Division; and

(C) any initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse.

(iv) for purposes of this item, ‘unlawfully’ means without a prescription.

(c) If an insured worker makes an admission pursuant to the employer’s policy, which provides that voluntary admissions made before the employer’s request to the employee to submit to testing may protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the:

(A) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer’s request to submit to a test; and

(B) employee makes the admission specifically pursuant to the employer’s policy.

(d) Information, interviews, reports, and drug‑test results, written or otherwise, received by an employer through a drug‑testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including any administrative or judicial appeal.

(3) Failure to accept work.‑‑(a) If the Commission finds that he has failed, without good cause, (i) either to apply for available suitable work, when so directed by the employment office or the Commission, (ii) to accept available suitable work when offered to him by the employment office or an employer, or (iii) to return to his customary self‑employment (if any) when so directed by the Commission, the ineligibility begins with the week the failure occurred and continues until he has secured employment and shows to the satisfaction of the Commission that he has performed services in employment as defined in Chapters 27 through 41 of this title and earned wages for services equal to at least eight times his weekly benefit amount of his claim.

(b) In determining whether or not any work is suitable for an individual, the Commission shall consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(c) Notwithstanding any other provisions of Chapters 27 through 41 of this title, no work is considered suitable and benefits may not be denied under such chapters to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute, (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality, or (iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding any other provisions of Chapters 27 through 41 of this title, no otherwise eligible individual may be denied benefits for any week for failure to apply for, or refusal to accept, suitable work because he is in training with the approval of the Commission.

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

For purposes of this subitem, “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 the 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.

(4) Labor dispute. ‑ For any week in which the Commission finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory, establishment, or other premises at which he was last employed. This paragraph does not apply if it is shown to the satisfaction of the Commission that:

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

(b) He does not belong to a grade or class of workers of which, immediately before he became unemployed by reason of the dispute, there were members employed at the premises at which the dispute exists, any of whom are participating in or directly interested in the dispute.

If in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each department for the purpose of this item (4) is considered to be a separate factory, establishment, or other premises.

(5) Receiving benefits elsewhere. ‑ For any week in which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to unemployment benefits, this disqualification does not apply.

(6) Voluntary retirement. ‑ If the Commission finds that he voluntarily retired from his most recent work with the ineligibility beginning with the effective date of his claim and continuing for the duration of his unemployment and until the individual submits satisfactory evidence of having had new employment and of having earned wages of not less than eight times his weekly benefit amount as defined in Section 41‑35‑40. For the purpose of this section “most recent work” means the work from which the individual retired regardless of any work subsequent to his retirement in which he earned less than eight times his weekly benefit amount.

**SECTION 41‑35‑125.** Benefits for individuals unemployed as a result of domestic abuse.

(A) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the commission finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

(1) reasonably fears future domestic abuse at or en route to the workplace;

(2) needs to relocate to avoid future domestic abuse; or

(3) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(B) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the commission shall require him to provide documentation of domestic abuse including, but not limited to, police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(C) All documentation or evidence of domestic abuse acquired by the commission pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.

**SECTION 41‑35‑126.** Military relocation benefits.

Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the commission finds that the individual has left work voluntarily to relocate because of the transfer of a spouse who has been reassigned from one military assignment to another, provided that the separation from employment occurs within fifteen days of the scheduled relocation date.

**SECTION 41‑35‑130.** Payments which shall not be charged to former employer.

(a) Benefits paid to any claimant for unemployment immediately after the expiration of disqualification for (1) voluntarily leaving his most recent work without good cause, (2) discharge from his most recent work for misconduct or, (3) refusal of suitable work without good cause shall not be charged to the account of any employer.

(b) Benefits paid to any claimant shall not be charged against the account of any employer by reason of the provisions of this subparagraph only if the Commission determines under Section 41‑35‑120 that such individual (1) voluntarily left his most recent employment with that employer without good cause, (2) was discharged from his most recent employment with that employer for misconduct connected with his work, or (3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if, in any such case, such employer furnishes the Commission with such notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as are or may be required by the law and the regulations of the Commission.

(c) If benefits are paid pursuant to a decision which is finally reversed in subsequent proceedings with respect thereto, no employer’s account shall be charged with benefits so paid.

(d) Any benefits paid to any claimant for a week in which he is in training with the approval of the Commission shall not be charged to any employer.

(e) The provisions of paragraphs (a) through (d), all inclusive, hereof with respect to the noncharging of benefits paid shall be applicable only to those employers subject to the payment of contributions.

(f) Benefits paid to a claimant during an extended benefit period as defined in Chapter 35, Article 3, shall not be charged to any employer; provided, however, that any non‑profit organization electing to become liable for payments in lieu of contributions in accord with Section 41‑31‑620 shall be required to reimburse fifty per cent of extended benefits attributable to services performed in its employ and provided, further, that after January 1, 1979, the State or any political subdivision or any instrumentality thereof as defined in Section 41‑27‑230(2)(b) electing to become liable for payment in lieu of contributions in accord with Section 41‑31‑620 shall be required to reimburse all extended benefits attributable to services performed in its employ.

(g) Any nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in Section 41‑31‑620(2) or Section 41‑31‑810 shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to Section 121 of P.L. 94‑566.

(h) Benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 shall not be charged against the account of any employer to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to Section 121 of P.L. 94‑566.

(i) Benefits paid to an individual pursuant to Section 41‑35‑125 must not be charged to the account of a contributing employer.

(j) Benefits paid to an individual pursuant to Section 41‑35‑126 must not be charged to the account of a contributing employer.

**SECTION 41‑35‑140.** Disclosure regarding child support obligations; deductions from benefits due.

(a) The commission may require an individual filing a new claim for unemployment compensation to disclose, at the time of filing the claim, whether or not the individual owes child support obligations as defined under subsection (g), or, pursuant to an agreement between the commission and the state or local child support enforcement agency, the state or local child support enforcement agency must notify the commission whether a particular individual who has filed a new or continued claim for unemployment compensation, at the time of filing the claim, owes child support obligations, or if the state or local child support enforcement agency advises the commission that the individual owes child support obligations and the individual is determined to be eligible for unemployment compensation, the commission must notify the state or local child support enforcement agency enforcing the obligations that the individual has been determined to be eligible for unemployment compensation.

(b) The commission must deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations as defined under subsection (g):

(1) The amount specified by the individual to the commission to be deducted and withheld under this section, if neither (2) nor (3) of this subsection (b) is applicable;

(2) The amount, if any, determined pursuant to an agreement submitted to the commission under Section 454 (20)(B)(i) of the Social Security Act by the state or local child support enforcement agency unless (3) is applicable; or

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

(c) Any amount deducted and withheld under subsection (b) must be paid by the commission to the appropriate state or local child support enforcement agency.

(d) Any amount deducted and withheld under subsection (b) must for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual’s child support obligations.

(e) For purposes of subsections (a) through (d), the term “unemployment compensation” means any compensation payable under this act, including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section 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 commission under this section 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 these provisions 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 these provisions means any agency of this State or a political subdivision of this State operating pursuant to a plan described in subsection (g).

(i) This section is effective for all weeks commencing on or after October 1, 1982.

ARTICLE 3.

 EXTENDED BENEFITS

**SECTION 41‑35‑310.** “Extended benefit period” defined.

“Extended benefit period” means a period which

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

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

(a) The third week after the first week for which there is a state “off” indicator.

(b) The thirteenth consecutive week of such period. No extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

**SECTION 41‑35‑330.** “State ‘on’ indicator” and “State ‘off’ indicator” defined.

(1) There is a “state ‘on’ indicator” for this State for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks the rate of insured unemployment (not seasonally adjusted) under Chapters 27 through 41 of this title:

(a) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen week period ending in each of the preceding two calendar years, and

(b) Equaled or exceeded five percent. With respect to benefits for weeks of unemployment beginning after July 1, 1977, the determination of whether there has been a “state ‘on’ or ‘off’ indicator” for this State beginning or ending any extended benefit period must be made under this section as if

(i) paragraph (1) did not contain subparagraph (a); and

(ii) the word “five” contained in subparagraph (b) thereof were “six” except that, notwithstanding any such provision of this section, any week for which there would otherwise be a “state ‘on’ indicator” for this State must continue to be such a week and shall not be determined to be a week for which there is a “state ‘off’ indicator” for this State.

(2) There is a “state ‘off’ indicator” for this State for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (a) or (b) of paragraph (1) was not satisfied.

(3) This section is applicable for all weeks beginning after September 25, 1982.

**SECTION 41‑35‑340.** “Rate of insured unemployment” defined.

“Rate of insured unemployment”, for purposes of Section 41‑35‑330, 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 commission 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 this title for the first four of the most recent six completed calendar quarters ending before the end of such thirteen‑week period.

**SECTION 41‑35‑350.** “Regular benefits” defined.

“Regular benefits” means benefits payable to an individual under Chapters 27 through 41 of this Title or under any other State law (including benefits payable to Federal civilian employees and to ex‑servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.

**SECTION 41‑35‑360.** “Additional benefits” defined.

“Additional benefits” means benefits totally financed by a state payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. If extended compensation is payable to an individual by this State and additional compensation is payable to him for the same week by another state, he may elect which of the two types of compensation to claim.

**SECTION 41‑35‑370.** “Extended benefits” defined.

“Extended benefits” means benefits (including benefits payable to Federal civilian employees and to ex‑servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

**SECTION 41‑35‑380.** “Eligibility period” defined.

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

**SECTION 41‑35‑390.** “Exhaustee” defined.

“Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:

(1) Has received, prior to such week, all of the regular benefits that were payable to him under Chapters 27 through 41 of this Title or any other State law (including dependents’ allowances and regular benefits payable to Federal civilian employees and ex‑servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week; or

(2) Has received, prior to such week, all of the regular benefits that were available to him under Chapters 27 through 41 of this Title or any other State law (including dependents’ allowances and regular benefits available to Federal civilian employees and ex‑servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week, after the cancellation of some or all of his wage credits or the total or partial reduction of his right to regular benefits;

Provided, that, for the purposes of items (1) and (2), an individual shall be deemed to have received in his current benefit year all of the regular benefits that were payable to him, or available to him, as the case may be, even though (a) as a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his current benefit year, he may subsequently be determined to be entitled to more regular benefits; or (b) by reason of the seasonal provisions promulgated pursuant to Section 41‑35‑90, or the seasonal provisions of another State law, he is not entitled to regular benefits with respect to such week of unemployment (although he may be entitled to regular benefits with respect to future weeks of unemployment in the next season or off season, as the case may be, in his current benefit year), and he is otherwise an exhaustee within the meaning of this section with respect to his right to regular benefits under such State law seasonal provisions during the season or off season in which that week of unemployment occurs; or (c) having established a benefit year, no regular benefits are payable to him during such year because his wage credits were cancelled or his right to regular benefits was totally reduced as the result of the application of a disqualification; or

(3) His benefit year having ended prior to such week, he has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provision in Section 41‑35‑50 which meets the requirement of Section 3304 (a) (7) of the Federal Unemployment Tax Act, or the similar provision in any other State law; and

(4)(a) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, and such other Federal laws as are specified in regulations issued by the U. S. Secretary of Labor; and

(b) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada or the Virgin Islands; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual shall be considered an exhaustee if the other provisions of this definition are met: Provided, however, that the reference in this paragraph to the Virgin Islands shall be inapplicable effective on the day after the date on which the Secretary of Labor approves under Section 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

**SECTION 41‑35‑400.** “State law” defined.

“State law” means the unemployment insurance law of any state, approved by the U.S. Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954.

**SECTION 41‑35‑410.** Application of provisions relating to regular benefits.

Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of Chapters 27 through 41 of this Title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

**SECTION 41‑35‑420.** Eligibility for extended benefits.

(1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commission finds that with respect to such week:

(a) He is an “exhaustee” as defined in Section 41‑35‑390.

(b) He has satisfied the requirements of Chapters 27 through 41 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(c) Except as provided in item (d), an individual shall not be eligible for extended benefits for any week if:

(i) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(ii) No extended benefit period is in effect for such week in such state.

(d) Item (c) of subsection (1) shall not apply with respect to the first two weeks for which extended benefits are payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual with respect to the benefit year.

(2)(a) Notwithstanding the provisions of Sections 41‑35‑410 and 41‑35‑420, effective for weeks beginning after March 31, 1981, an individual is disqualified for receipt of extended benefits if the commission finds that during any week of his eligibility period he has failed either to apply for, or to accept an offer of, suitable work (as defined under item (d) of this subsection), to which he was referred by the commission.

(b) Notwithstanding the provisions of Sections 41‑35‑410 and 41‑35‑420, effective for weeks beginning after March 31, 1981, an individual is disqualified for receipt of extended benefits if the commission finds that during any week of his eligibility period he has failed to furnish evidence that he has actively engaged in a systematic and sustained effort to find work.

(c) Such disqualification begins with the week in which such failure occurred and continues until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times his weekly extended benefit amount.

(d) For the purposes of this subsection, the term “suitable work” means any work which is within the individual’s capabilities to perform if:

(i) The gross average weekly remuneration payable for the work exceeds the sum of the individual’s weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(ii) The wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (without regard to any exemption) or the state or local minimum wage;

(iii) The position was offered to the individual in writing or was listed with the State Employment Service;

(iv) Such work otherwise meets the definition of “suitable work” for regular benefits contained in item (3) of Section 41‑35‑120 to the extent that such criteria of suitability are not inconsistent with the provisions of this item; and

(v) The individual cannot furnish satisfactory evidence to the commission 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 must be made in accordance with the definition of suitable work contained in Section 41‑35‑120 without regard to the definition specified by this item (d).

(3) Notwithstanding any provisions of item (d) of this subsection to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with item (c) of subsection (3) of Section 41‑35‑120.

(4) For the purposes of item (b) of subsection (2), an individual shall be treated as actively engaged in seeking work during any week if:

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

(b) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(5) The Employment Service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in item (d) of subsection (2).

(6) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular or extended benefits under the chapter because he or she voluntarily left work, was discharged for cause, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under the South Carolina Employment Security Law requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

If the disqualification which was imposed did not require the individual to perform service for remuneration subsequent to the date of such disqualification, such individual will be ineligible for extended benefits beginning with the effective date of the request for initiation of an extended benefit claim series and continuing until he has secured employment and shows to the satisfaction of the commission that he has worked in each of at least four different weeks whether or not such weeks are consecutive and earned wages equal to at least four times the weekly benefit amount of his claim.

**SECTION 41‑35‑430.** Weekly extended benefit amount.

The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts.

**SECTION 41‑35‑440.** Total extended benefit amount.

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

(a) Fifty percent of the total amount of regular benefits which were payable to him under Chapters 27 through 41 of this title in his applicable benefit year.

(b) Thirteen times his weekly benefit amount which was payable to him under Chapters 27 through 41 of this title for a week of total unemployment in the applicable benefit year.

(2) Notwithstanding any other provision of Chapters 27 through 41 of this title, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, must 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.

**SECTION 41‑35‑450.** Announcement of “on” and “off” indicators; computation of rate of insured unemployment.

Whenever an extended benefit period is to become effective in this State as a result of a state “on” indicator, or an extended benefit period is to be terminated in this State as a result of a state “off” indicator, the commission must make an appropriate public announcement. Computations required by the provisions of Section 41‑35‑340 must be made by the commission, in accordance with regulations prescribed by the U. S. Secretary of Labor.

ARTICLE 5.

 ALLOWANCE OF CLAIMS

**SECTION 41‑35‑610.** Procedures shall be in accord with Commission regulations; duties of employer.

Requests for determination of insured status, requests for initiation of a claim series in a benefit year, notices of unemployment, certifications for waiting‑week credit and claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the Commission may by regulation prescribe. Each employer shall supply such individuals copies of such printed statements or materials as the Commission may by regulation prescribe. Such statements or materials shall be supplied by the Commission to each employer without cost to him.

**SECTION 41‑35‑620.** Notice of determination of insured status.

(1) Written notice of a determination of insured status shall be furnished to the claimant promptly. Such notice shall include a statement as to whether the claimant is an insured worker, the amount of wages for insured work paid to him by each employer during his base period, and the employers by whom such wages were paid. For an insured worker the notice shall include also his benefit year, his weekly benefit amount, and the maximum amount of benefits that may be paid to him for his unemployment during such year; for a worker who is not insured, the notice shall include the reason for such determination.

(2) The claimant, his most recent employer, and any employer whose account may be affected by adjudication of the claim shall be promptly notified in writing of the initial determination, any amended initial determination, or redetermination and the reasons therefor.

**SECTION 41‑35‑630.** Determination of claim when labor dispute is involved; determinations involving multiple claimants; group appeals.

(1) In any case in which the payment or denial of benefits will be determined by the provisions of item (4) of Section 41‑35‑120 the Commission shall designate a special examiner to make an initial determination with respect thereto. The determination of the examiner may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The Commission may, upon written request by a group of workers or their authorized representative, allow one of a group representing a grade or class of workers similarly situated to file an appeal which shall be known as a “Group Test Appeal” and the decision of the appeal tribunal or the Commission as to the disqualification of the group representative because of the application of item (4) of Section 41‑35‑120 shall be binding as to the entire group.

(2) Whenever a determination involves multiple claimants and difficult issues of fact or law the Commission in its discretion may designate a special examiner to render such determination. The determination of the examiner may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The Commission shall allow any and all claimants affected by the same determination to join in one appeal and the decision of the appeal tribunal or the Commission shall be binding upon all those claimants who are parties to such consolidated appeal.

**SECTION 41‑35‑640.** Reconsideration of determinations.

(1) An initial determination may for good cause be reconsidered. A party entitled to notice of an initial determination may apply for a reconsideration not later than ten days after the determination was mailed to his last known address. Notice of the redetermination must be promptly given in the manner prescribed in this article with respect to notice of an initial determination.

(2) An initial determination shall be reconsidered whenever the Commission finds that an error in computation, or an error of a similar character, has occurred in connection therewith or that wages of the claimant pertinent to the determination, but not considered in connection therewith, have been newly discovered, but no such redetermination shall be made after one year from the date of the original determination. The reconsidered determination shall supersede the original determination. Notice of any such redetermination shall be promptly given, in the manner prescribed in this article with respect to notice of an original determination. Subject to the same limitations and for the same reasons, the Commission may reconsider a determination in any case in which the final decision has been rendered by an appeal tribunal, the Commission or a court and, after notice to and the expiration of the period for appeal by the persons entitled to notice of the final decision, may apply to the body or court which rendered the final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

**SECTION 41‑35‑650.** Notification of denial.

If subsequent to an initial determination or redetermination benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination or redetermination, the claimant shall be promptly notified of the denial and the reasons therefor.

**SECTION 41‑35‑660.** Appeals.

The claimant or any other interested party may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to his last known address. The term “any other interested party” means the claimant’s last or separating employer and any employer whose account may be affected by the adjudication of the claim. If an appeal is filed with respect to a matter other than the weekly benefit amount or maximum amount of benefits payable and the appeal tribunal affirms a determination allowing benefits, the benefits paid before the decision disallowing benefits shall not be recovered from any claimant regardless of any appeal which may subsequently be taken to the extent that these benefits are not charged to the account of any employer.

**SECTION 41‑35‑670.** Benefits shall be paid until determination, redetermination or decision has been modified or reversed.

(1) Notwithstanding any other provision contained in this article, benefits shall be paid in accordance with a determination, redetermination, or the decision of an appeal tribunal, the Commission or a reviewing court upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a determination or redetermination allowing benefits is affirmed by the appeal tribunal, or by the Commission, or if a decision of an appeal tribunal allowing benefits is affirmed by the Commission, such benefits shall be paid promptly regardless of any further appeal which may be taken, and no injunction, supersedeas, stay or other writ or process suspending the payment of the benefits shall be issued by any court.

**SECTION 41‑35‑680.** Decision on appeal.

Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days, shall make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify, or reverse the determination or redetermination within thirty days from the date of the hearing. Each party must be furnished promptly with a copy of the decision, including the reasons for the decision, which must be considered to be the final decision of the commission, unless within ten days after the date of mailing the decision a further appeal is initiated pursuant to Section 41‑35‑710.

**SECTION 41‑35‑690.** Exclusive procedure for appeals.

The procedure herein provided for appeals from any determination or redetermination to the appeal tribunal and for decisions thereon and for appeals therefrom, first to the Commission and thereafter to the courts, shall be the sole and exclusive procedure notwithstanding any other provision of law.

**SECTION 41‑35‑700.** Appeal tribunals.

To hear and decide appeal claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of either a referee, selected in accordance with Section 41‑29‑70, or a body consisting of three members, one of whom shall be a referee, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees. Each of the latter two members shall serve at the pleasure of the Commission and be paid a per diem as fixed in the annual State appropriation act for boards, commissions and committees for each day of active service on such tribunal plus necessary expenses, as likewise fixed in the annual appropriation act. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternate. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

**SECTION 41‑35‑710.** Commission review of appeal tribunal decision.

The Commission may on its own motion affirm, modify or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case or direct the taking of additional evidence or may permit any of the parties to such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties to a decision of an appeal tribunal and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements of Sections 41‑35‑690 and 41‑35‑720. The Commission shall promptly notify the parties to any proceeding of its findings and decision.

**SECTION 41‑35‑720.** Conduct of appealed claims.

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

**SECTION 41‑35‑730.** Fees of subpoenaed witnesses.

Witnesses subpoenaed pursuant to this article shall be allowed fees and mileage at a rate fixed by the Commission, which shall not exceed that allowed witnesses in the court of common pleas in the county in which a hearing is held. Such fees shall be deemed a part of the expense of administering Chapters 27 through 41 of this Title.

**SECTION 41‑35‑740.** Judicial review of commission’s decision.

Any decision of the Commission, in the absence of an appeal therefrom as provided in this article, shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by Chapters 27 through 41 of this Title. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose or, at the Commission’s request, by the Attorney General.

**SECTION 41‑35‑750.** Procedure to obtain review.

Within thirty days from the date of mailing of the commission’s decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the commission’s decision may secure judicial review of the decision by commencing an action in the court of common pleas, either in the county in which the employee resides or the county in which he was last employed, against the commission for the review of its decision, in which action every other party to the proceeding before the commission must be made a defendant. In this action a petition, which need not be verified but which must state the grounds upon which a review is sought, must be served upon a member of the commission or upon a person as the commission may designate within the time specified by this section. Service is deemed complete service on all parties, but there must be left with the person served as many copies of the petition as there are defendants, and the commission promptly shall mail one copy to each defendant. With its answer the commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision. The commission also may certify to the court questions of law involved in any decision by the commission. In a judicial proceeding under this chapter, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the court must be confined to questions of law. These actions, and the questions so certified, must be heard in a summary manner and must be given precedence over all other civil cases except cases arising under the Workers’ Compensation laws of this State. An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules. It is not necessary in a judicial proceeding under this article to enter exceptions to the rulings of the commission, and no bond is required for entering the appeal. Upon the final determination of the judicial proceeding, the commission shall enter an order in accordance with the determination. In no event shall a petition for judicial review act as a supersedeas or stay unless the commission orders a supersedeas or stay.