

1 SENATE BILL 279

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Sue Wilson Beffort

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10 AN ACT

11 RELATING TO UNEMPLOYMENT COMPENSATION; SUSPENDING, FOR ONE
12 YEAR, CERTAIN PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW
13 THAT EXPAND ELIGIBILITY OR ALLOW INCREASED BENEFITS;
14 ESTABLISHING A TEMPORARY SCHEDULE FOR CONTRIBUTIONS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 51-1-4 NMSA 1978 (being Laws 2003,
18 Chapter 47, Section 8, as amended) is amended to read:

19 "51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT
20 GENERALLY.--

21 A. All benefits provided herein are payable from
22 the unemployment compensation fund. All benefits shall be paid
23 in accordance with rules prescribed by the secretary through
24 employment offices or other agencies as the secretary approves
25 by general rule.

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B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to fifty-three and one-half percent of the average weekly wage for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-three and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from

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1 self-employment, payable to the individual with respect to such
2 week that is in excess of one-fifth of the individual's weekly
3 benefit amount. For purposes of this subsection only, "wages"
4 includes all remuneration for services actually performed in a
5 week for which benefits are claimed, vacation pay for a period
6 for which the individual has a definite return-to-work date,
7 wages in lieu of notice and back pay for loss of employment but
8 does not include payments through a court for time spent in
9 jury service;

10 (3) notwithstanding any other provision of
11 this section, an eligible individual who, pursuant to a plan
12 financed in whole or in part by a base-period employer of the
13 individual, is receiving a governmental or other pension,
14 retirement pay, annuity or any other similar periodic payment
15 that is based on the previous work of the individual and who is
16 unemployed with respect to any week ending subsequent to April
17 9, 1981 shall be paid with respect to the week, in accordance
18 with rules prescribed by the secretary, compensation equal to
19 the individual's weekly benefit amount reduced, but not below
20 zero, by the prorated amount of the pension, retirement pay,
21 annuity or other similar periodic payment that exceeds the
22 percentage contributed to the plan by the eligible individual.
23 The maximum benefit amount payable to the eligible individual
24 shall be an amount not more than twenty-six times the
25 individual's reduced weekly benefit amount. If payments

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1 referred to in this section are being received by an individual
2 under the federal Social Security Act, the division shall take
3 into account the individual's contribution and make no
4 reduction in the weekly benefit amount;

5 (4) in the case of a lump-sum payment of a
6 pension, retirement or retired pay, annuity or other similar
7 payment by a base-period employer that is based on the previous
8 work of the individual, the payment shall be allocated, in
9 accordance with rules prescribed by the secretary, and shall
10 reduce the amount of unemployment compensation paid, but not
11 below zero, in accordance with Paragraph (3) of this
12 subsection; and

13 (5) the retroactive payment of a pension,
14 retirement or retired pay, annuity or any other similar
15 periodic payment as provided in Paragraphs (3) and (4) of this
16 subsection attributable to weeks during which an individual has
17 claimed or has been paid unemployment compensation shall be
18 allocated to those weeks and shall reduce the amount of
19 unemployment compensation for those weeks, but not below zero,
20 by an amount equal to the prorated amount of the pension. Any
21 overpayment of unemployment compensation benefits resulting
22 from the application of the provisions of this paragraph shall
23 be recovered from the claimant in accordance with the
24 provisions of Section 51-1-38 NMSA 1978.

25 C. Except in a benefit year that begins after June

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1 30, 2011 and prior to July 1, 2012, an individual otherwise
2 eligible for benefits shall be paid for each week of
3 unemployment, in addition to the amount payable under
4 Subsection B of this section, the sum of twenty-five dollars
5 (\$25.00) for each unemancipated child under the age of
6 eighteen, up to a maximum of four and subject to the maximum
7 stated in Subsection D of this section, of the individual who
8 is in fact dependent upon and wholly or mainly supported by the
9 individual, including:

10 (1) a child in the individual's custody
11 pending the adjudication of a petition filed by the individual
12 for the adoption of the child in a court of competent
13 jurisdiction; or

14 (2) a child for whom the individual, under a
15 decree or order from a court of competent jurisdiction, is
16 required to contribute to the child's support and for whom no
17 other person is receiving allowances under the Unemployment
18 Compensation Law if the child is domiciled within the United
19 States or its territories or possessions, the payment to be
20 withheld and paid pursuant to Section 51-1-37.1 NMSA 1978.

21 D. Dependency benefits shall not exceed fifty
22 percent of the individual's weekly benefit rate. The amount of
23 dependency benefits determined as of the beginning of an
24 individual's benefit year shall not be reduced for the duration
25 of the benefit year, but this provision does not prevent the

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1 transfer of dependents' benefits from one spouse to another in
2 accordance with this subsection. If both the husband and wife
3 receive benefits with respect to a week of unemployment, only
4 one of them is entitled to a dependency allowance with respect
5 to a child. The division shall prescribe standards as to who
6 may receive a dependency allowance when both the husband and
7 wife are eligible to receive unemployment compensation
8 benefits. Dependency benefits shall not be paid unless the
9 individual submits documentation satisfactory to the division
10 establishing the existence of the claimed dependent. If the
11 provisions of this subsection are satisfied, an otherwise
12 eligible individual who has been appointed guardian of a
13 dependent child by a court of competent jurisdiction shall be
14 paid dependency benefits.

15 E. An otherwise eligible individual is entitled
16 during any benefit year to a total amount of benefits equal to
17 whichever is the lesser of twenty-six times the individual's
18 weekly benefit amount, plus any dependency benefit amount
19 pursuant to Subsections C and D of this section, or sixty
20 percent of the individual's wages for insured work paid during
21 the individual's base period.

22 F. A benefit as determined in Subsection B or C of
23 this section, if not a multiple of one dollar (\$1.00), shall be
24 rounded to the next lower multiple of one dollar (\$1.00).

25 G. The secretary may prescribe rules to provide for

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1 the payment of benefits that are due and payable to the legal
2 representative, dependents, relatives or next of kin of
3 claimants since deceased. These rules need not conform with
4 the laws governing successions, and the payment shall be deemed
5 a valid payment to the same extent as if made under a formal
6 administration of the succession of the claimant.

7 H. The division, on its own initiative, may
8 reconsider a monetary determination whenever it is determined
9 that an error in computation or identity has occurred or that
10 wages of the claimant pertinent to such determination but not
11 considered have been newly discovered or that the benefits have
12 been allowed or denied on the basis of misrepresentation of
13 fact, but no redetermination shall be made after one year from
14 the date of the original monetary determination. Notice of a
15 redetermination shall be given to all interested parties and
16 shall be subject to an appeal in the same manner as the
17 original determination. In the event that an appeal involving
18 an original monetary determination is pending at the time a
19 redetermination is issued, the appeal, unless withdrawn, shall
20 be treated as an appeal from redetermination."

21 SECTION 2. Section 51-1-5 NMSA 1978 (being Laws 2003,
22 Chapter 47, Section 9, as amended) is amended to read:

23 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

24 A. An unemployed individual shall be eligible to
25 receive benefits with respect to any week only if the

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1 individual:

2 (1) has made a claim for benefits with respect
3 to such week in accordance with such rules as the secretary may
4 prescribe;

5 (2) has registered for work at, and thereafter
6 continued to report at, an employment office in accordance with
7 such rules as the secretary may prescribe, except that the
8 secretary may, by rule, waive or alter either or both of the
9 requirements of this paragraph as to individuals attached to
10 regular jobs and as to such other types of cases or situations
11 with respect to which the secretary finds that compliance with
12 such requirements would be oppressive or would be inconsistent
13 with the purposes of the Unemployment Compensation Law. No
14 such rule shall conflict with Subsection A of Section 51-1-4
15 NMSA 1978;

16 (3) is able to work and is available for work
17 and is actively seeking permanent full-time work or part-time
18 work in accordance with Subsection I of Section 51-1-42 NMSA
19 1978 and in accordance with the terms, conditions and hours
20 common in the occupation or business in which the individual is
21 seeking work, except that:

22 (a) the secretary may, by rule, waive
23 [~~this~~] the requirement of this paragraph for individuals who
24 are on temporary layoff status from their regular employment
25 with an assurance from their employers that the layoff shall

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1 not exceed four weeks or who have an express offer in writing
2 of substantially full-time work that will begin within a period
3 not exceeding four weeks; and

4 (b) in a benefit year that begins after
5 June 30, 2011 and prior to July 1, 2012, an individual who is
6 engaged in part-time or intermittent employment shall not be
7 eligible for full or partial benefits;

8 (4) has been unemployed for a waiting period
9 of one week. A week shall not be counted as a week of
10 unemployment for the purposes of this paragraph:

11 (a) unless it occurs within the benefit
12 year that includes the week with respect to which the
13 individual claims payment of benefits;

14 (b) if benefits have been paid with
15 respect thereto; and

16 (c) unless the individual was eligible
17 for benefits with respect thereto as provided in this section
18 and Section 51-1-7 NMSA 1978, except for the requirements of
19 this subsection and of Subsection D of Section 51-1-7 NMSA
20 1978;

21 (5) has been paid wages in at least two
22 quarters of the individual's base period;

23 (6) has reported to an office of the division
24 in accordance with the rules of the secretary for the purpose
25 of an examination and review of the individual's availability

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1 for and search for work, for employment counseling, referral
2 and placement and for participation in a job finding or
3 employability training and development program. An individual
4 shall not be denied benefits under this section for any week
5 that the individual is participating in a job finding or
6 employability training and development program; and

7 (7) participates in reemployment services,
8 such as job search assistance services, if the division
9 determines that the individual is likely to exhaust regular
10 benefits and [~~need~~] needs reemployment services pursuant to a
11 profiling system established by the division, unless the
12 division determines that:

13 (a) the individual has completed such
14 services; or

15 (b) there is justifiable cause for the
16 individual's failure to participate in the services.

17 B. A benefit year as provided in Section 51-1-4
18 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
19 established; provided an individual may not receive benefits in
20 a benefit year unless, subsequent to the beginning of the
21 immediately preceding benefit year during which the individual
22 received benefits, the individual performed service in
23 "employment", as defined in Subsection F of Section 51-1-42
24 NMSA 1978, and earned remuneration for such service in an
25 amount equal to at least five times the individual's weekly

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1 benefit amount.

2 C. Benefits based on service in employment defined
3 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
4 51-1-43 NMSA 1978 are to be paid in the same amount, on the
5 same terms and subject to the same conditions as compensation
6 payable on the basis of other services subject to the
7 Unemployment Compensation Law; except that:

8 (1) benefits based on services performed in an
9 instructional, research or principal administrative capacity
10 for an educational institution shall not be paid for any week
11 of unemployment commencing during the period between two
12 successive academic years or terms or, when an agreement
13 provides for a similar period between two regular but not
14 successive terms, during such period or during a period of paid
15 sabbatical leave provided for in the individual's contract, to
16 any individual if the individual performs such services in the
17 first of such academic years or terms and if there is a
18 contract or a reasonable assurance that the individual will
19 perform services in any such capacity for any educational
20 institution in the second of such academic years or terms;

21 (2) benefits based on services performed for
22 an educational institution other than in an instructional,
23 research or principal administrative capacity shall not be paid
24 for any week of unemployment commencing during a period between
25 two successive academic years or terms if the services are

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1 performed in the first of such academic years or terms and
2 there is a reasonable assurance that the individual will
3 perform services for any educational institution in the second
4 of such academic years or terms. If compensation is denied to
5 an individual under this paragraph and the individual was not
6 offered an opportunity to perform such services for the
7 educational institution for the second of such academic years
8 or terms, the individual shall be entitled to a retroactive
9 payment of benefits for each week for which the individual
10 filed a claim and certified for benefits in accordance with the
11 rules of the division and for which benefits were denied solely
12 by reason of this paragraph;

13 (3) benefits shall be denied to any individual
14 for any week that commences during an established and customary
15 vacation period or holiday recess if the individual performs
16 any services described in Paragraphs (1) and (2) of this
17 subsection in the period immediately before such period of
18 vacation or holiday recess and there is a reasonable assurance
19 that the individual will perform any such services in the
20 period immediately following such vacation period or holiday
21 recess;

22 (4) benefits shall not be payable on the basis
23 of services specified in Paragraphs (1) and (2) of this
24 subsection during the periods specified in Paragraphs (1), (2)
25 and (3) of this subsection to any individual who performed such

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1 services in or to or on behalf of an educational institution
2 while in the employ of a state or local governmental
3 educational service agency or other governmental entity or
4 nonprofit organization; and

5 (5) for the purpose of this subsection, to the
6 extent permitted by federal law, "reasonable assurance" means a
7 reasonable expectation of employment in a similar capacity in
8 the second of such academic years or terms based upon a
9 consideration of all relevant factors, including the historical
10 pattern of reemployment in such capacity, a reasonable
11 anticipation that such employment will be available and a
12 reasonable notice or understanding that the individual will be
13 eligible for and offered employment in a similar capacity.

14 D. Paragraphs (1), (2), (3), (4) and (5) of
15 Subsection C of this section shall apply to services performed
16 for all educational institutions, public or private, for profit
17 or nonprofit, which are operated in this state or subject to an
18 agreement for coverage under the Unemployment Compensation Law
19 of this state, unless otherwise exempt by law.

20 E. Notwithstanding any other provisions of this
21 section or Section 51-1-7 NMSA 1978, except in a benefit year
22 that begins after June 30, 2011 and prior to July 1, 2012, no
23 otherwise eligible individual is to be denied benefits for any
24 week because the individual is in training or attending school
25 on a full-time basis with the approval of the division nor is

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1 the individual to be denied benefits by reason of application
2 of provisions in Paragraph (3) of Subsection A of this section
3 or Paragraph (3) of Subsection A of Section 51-1-7 NMSA 1978
4 with respect to any week in which the individual is in training
5 or attending school on a full-time basis with the approval of
6 the division. The secretary shall provide, by rule, standards
7 for approved training and the conditions for approving training
8 for claimants, including any training approved or authorized
9 for approval pursuant to Section 236(a)(1) and (2) of the
10 federal Trade Act of 1974, as amended, or required to be
11 approved as a condition for certification of the state's
12 Unemployment Compensation Law by the United States secretary of
13 labor.

14 F. Notwithstanding any other provisions of this
15 section, benefits shall not be payable on the basis of services
16 performed by an alien unless such alien is an individual who
17 was lawfully admitted for permanent residence at the time the
18 services were performed, was lawfully present for the purposes
19 of performing the services or was permanently residing in the
20 United States under color of law at the time the services were
21 performed, including an alien who was lawfully present in the
22 United States as a result of the application of the provisions
23 of Section 212(d)(5) of the federal Immigration and Nationality
24 Act; provided that:

- 25 (1) any information required of individuals

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1 applying for benefits to determine their eligibility for
2 benefits under this subsection shall be uniformly required from
3 all applicants for benefits; and

4 (2) an individual shall not be denied benefits
5 because of the individual's alien status except upon a
6 preponderance of the evidence.

7 G. Notwithstanding any other provision of this
8 section, benefits shall not be paid to any individual on the
9 basis of any services substantially all of which consist of
10 participating in sports or athletic events or training or
11 preparing to so participate for any week that commences during
12 the period between two successive sport seasons, or similar
13 periods, if the individual performed the services in the first
14 of such seasons, or similar periods, and there is a reasonable
15 assurance that the individual will perform the services in the
16 latter of such seasons or similar periods.

17 H. As used in this subsection, "seasonal ski
18 employee" means an employee who has not worked for a ski area
19 operator for more than six consecutive months of the previous
20 twelve months or nine of the previous twelve months. An
21 employee of a ski area operator who has worked for a ski area
22 operator for six consecutive months of the previous twelve
23 months or nine of the previous twelve months shall not be
24 considered a seasonal ski employee. The following benefit
25 eligibility conditions apply to a seasonal ski employee:

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1 (1) except as provided in Paragraphs (2) and
2 (3) of this subsection, a seasonal ski employee employed by a
3 ski area operator on a regular seasonal basis shall be
4 ineligible for a week of unemployment benefits that commences
5 during a period between two successive ski seasons unless the
6 individual establishes to the satisfaction of the secretary
7 that the individual is available for and is making an active
8 search for permanent full-time work;

9 (2) a seasonal ski employee who has been
10 employed by a ski area operator during two successive ski
11 seasons shall be presumed to be unavailable for permanent new
12 work during a period after the second successive ski season
13 that the individual was employed as a seasonal ski employee;
14 and

15 (3) the presumption described in Paragraph (2)
16 of this subsection shall not arise as to any seasonal ski
17 employee who has been employed by the same ski area operator
18 during two successive ski seasons and has resided continuously
19 for at least twelve successive months and continues to reside
20 in the county in which the ski area facility is located.

21 I. Notwithstanding any other provision of this
22 section, an otherwise eligible individual shall not be denied
23 benefits for any week by reason of the application of Paragraph
24 (3) of Subsection A of this section because the individual is
25 before any court of the United States or any state pursuant to

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1 a lawfully issued summons to appear for jury duty."

2 SECTION 3. Section 51-1-11 NMSA 1978 (being Laws 2003,
3 Chapter 47, Section 11, as amended) is amended to read:

4 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

5 A. The division shall maintain a separate account
6 for each contributing employer and shall credit the
7 contributing employer's account with all contributions paid by
8 that employer under the Unemployment Compensation Law. Nothing
9 in the Unemployment Compensation Law shall be construed to
10 grant an employer or individuals in the employer's service
11 prior claims or rights to the amounts paid by the employer into
12 the fund.

13 B. Benefits paid to an individual shall be charged
14 against the accounts of the individual's base-period employers
15 on a pro rata basis according to the proportion of the
16 individual's total base-period wages received from each
17 employer, except that no benefits paid to a claimant as
18 extended benefits under the provisions of Section 51-1-48 NMSA
19 1978 shall be charged to the account of any base-period
20 employer who is not on a reimbursable basis and who is not a
21 governmental entity and, except as the secretary shall by rule
22 prescribe otherwise, in the case of benefits paid to an
23 individual who:

24 (1) left the employ of a base-period employer
25 who is not on a reimbursable basis voluntarily without good

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1 cause in connection with the individual's employment;

2 (2) was discharged from the employment of a
3 base-period employer who is not on a reimbursable basis for
4 misconduct connected with the individual's employment;

5 (3) is employed part time by a base-period
6 employer who is not on a reimbursable basis and who continues
7 to furnish the individual the same part-time work while the
8 individual is separated from full-time work for a
9 nondisqualifying reason; or

10 (4) received benefits based upon wages earned
11 from a base-period employer who is not on a reimbursable basis
12 while attending approved training or school on a full-time
13 basis under the provisions of Subsection E of Section 51-1-5
14 NMSA 1978.

15 C. The division shall not charge a contributing or
16 reimbursing base-period employer's account with any portion of
17 benefit amounts that the division can bill to or recover from
18 the federal government as either regular or extended benefits.

19 D. The division shall not charge a contributing
20 base-period employer's account with any portion of benefits
21 paid to an individual for dependent allowance or because the
22 individual to whom benefits are paid:

23 (1) separated from employment due to domestic
24 abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA
25 1978;

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1 (2) is enrolled in approved training or is
2 attending school on a full-time basis; or

3 (3) voluntarily left work to relocate because
4 of a spouse, who is in the military service of the United
5 States or the New Mexico national guard, receiving permanent
6 change of station orders, activation orders or unit deployment
7 orders.

8 E. All contributions to the fund shall be pooled
9 and available to pay benefits to any individual entitled
10 thereto, irrespective of the source of the contributions.

11 F. For each calendar year, if, as of the
12 computation date for that year, an employer's account has been
13 chargeable with benefits throughout the preceding thirty-six
14 months, the secretary shall classify the employer in accordance
15 with its actual experience of benefits charged against its
16 accounts. For such an employer, the contribution rate shall be
17 determined pursuant to Subsection I of this section on the
18 basis of the employer's record and the condition of the fund as
19 of the computation date for the calendar year. If, as of the
20 computation date for a calendar year, an employer's account has
21 not been chargeable with benefits throughout the preceding
22 thirty-six months, the contribution rate for that employer for
23 the calendar year shall be two percent, except that:

24 (1) an individual, type of organization or
25 employing unit that acquires all or part of the trade or

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1 business of another employing unit, pursuant to Paragraphs (2)
2 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
3 a rate of contribution less than two percent shall be entitled
4 to the transfer of the reduced rate to the extent permitted
5 under Subsection H of this section;

6 (2) an employer that, at the time of
7 establishing an account, is in business in another state or
8 states and that is not currently doing business in New Mexico
9 may elect, pursuant to Paragraph (3) of this subsection, to
10 receive a beginning contribution rate of two percent or a
11 contribution rate based on the current contribution rate
12 schedule in Paragraph (4) of Subsection I of this section,
13 whichever is lower, if:

14 (a) the employer has been in operation
15 in the other state or states for at least three years
16 immediately preceding the date of becoming a liable employer in
17 New Mexico, throughout which an individual in the employer's
18 employ could have received benefits if eligible; and

19 (b) the employer provides the
20 authenticated account history as defined by rule of the
21 secretary from information accumulated from operations in the
22 other state or all the other states to compute a current New
23 Mexico rate; and

24 (3) the election authorized in Paragraph (2)
25 of this subsection shall be made in writing within thirty days

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1 after receiving notice of New Mexico liability and, if not made
2 timely, a two percent rate will be assigned; if the election is
3 made timely, the employer's account will receive the lesser of
4 the computed rate determined by the condition of the account
5 for the computation date immediately preceding the New Mexico
6 liable date, or two percent; rates for subsequent years will be
7 determined by the condition of the account for the computation
8 date.

9 G. An employer may make voluntary payments in
10 addition to the contributions required under the Unemployment
11 Compensation Law, which shall be credited to the employer's
12 account in accordance with department rule. The voluntary
13 payments shall be included in the employer's account as of the
14 employer's most recent computation date if they are made on or
15 before the following March 1. Voluntary payments when accepted
16 from an employer shall not be refunded in whole or in part.

17 H. In the case of a transfer of an employing
18 enterprise, notwithstanding any other provision of law, the
19 experience history of the transferred enterprise shall be
20 transferred from the predecessor employer to the successor
21 under the following conditions and in accordance with the
22 applicable rules of the secretary:

23 (1) as used in this subsection:

24 (a) "employing enterprise" means a
25 business activity engaged in by a contributing employing unit

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1 in which one or more persons have been employed within the
2 current or the three preceding calendar quarters. An
3 "employing enterprise" includes the employer's work force;

4 (b) "predecessor" means the owner and
5 operator of an employing enterprise immediately prior to the
6 transfer of such enterprise;

7 (c) "successor" means any person that
8 acquires an employing enterprise and continues to operate such
9 business entity;

10 (d) "experience history" means the
11 experience rating record and reserve account, including the
12 actual contributions, benefit charges and payroll experience of
13 the employing enterprise;

14 (e) "common ownership" means that two or
15 more businesses are substantially owned, managed or controlled
16 by the same person or persons;

17 (f) "knowingly" means having actual
18 knowledge of or acting with deliberate ignorance of or reckless
19 disregard for the prohibition involved; and

20 (g) "violates or attempts to violate"
21 includes an intent to evade, a misrepresentation or a willful
22 nondisclosure;

23 (2) except as otherwise provided in this
24 subsection, for the purpose of this subsection, two or more
25 employers who are parties to or the subject of any transaction

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1 involving the transfer of an employing enterprise shall be
2 deemed to be a single employer and the experience history of
3 the employing enterprise shall be transferred to the successor
4 employer if the successor employer has acquired by the
5 transaction all of the business enterprises of the predecessor;
6 provided that:

7 (a) all contributions, interest and
8 penalties due from the predecessor employer have been paid;

9 (b) notice of the transfer has been
10 given in accordance with the rules of the secretary during the
11 calendar year of the transaction transferring the employing
12 enterprise or the date of the actual transfer of control and
13 operation of the employing enterprise;

14 (c) the successor shall notify the
15 division of the acquisition on or before the due date of the
16 successor's first wage and contribution report. If the
17 successor employer fails to notify the division of the
18 acquisition within this time limit, the division, when it
19 receives actual notice, shall effect the transfer of the
20 experience history and applicable rate of contribution
21 retroactively to the date of the acquisition, and the successor
22 shall pay a penalty of fifty dollars (\$50.00); and

23 (d) where the transaction involves only
24 a merger, consolidation or other form of reorganization without
25 a substantial change in the ownership and controlling interest

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1 of the business entity, as determined by the secretary, the
2 limitations on transfers stated in Subparagraphs (a), (b) and
3 (c) of this paragraph shall not apply. A party to a merger,
4 consolidation or other form of reorganization described in this
5 subparagraph shall not be relieved of liability for any
6 contributions, interest or penalties due and owing from the
7 employing enterprise at the time of the merger, consolidation
8 or other form of reorganization;

9 (3) the applicable experience history may be
10 transferred to the successor in the case of a partial transfer
11 of an employing enterprise if the successor has acquired one or
12 more of the several employing enterprises of a predecessor but
13 not all of the employing enterprises of the predecessor and
14 each employing enterprise so acquired was operated by the
15 predecessor as a separate store, factory, shop or other
16 separate employing enterprise and the predecessor, throughout
17 the entire period of the contribution with liability applicable
18 to each enterprise transferred, has maintained and preserved
19 payroll records that, together with records of contribution
20 liability and benefit chargeability, can be separated by the
21 parties from the enterprises retained by the predecessor to the
22 satisfaction of the secretary or the secretary's delegate. A
23 partial experience history transfer will be made only if the
24 successor:

25 (a) notifies the division of the

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1 acquisition, in writing, not later than the due date of the
2 successor's first quarterly wage and contribution report after
3 the effective date of the acquisition;

4 (b) files an application provided by the
5 division that contains the endorsement of the predecessor
6 within thirty days from the delivery or mailing of such
7 application by the division to the successor's last known
8 address; and

9 (c) files with the application a Form
10 ES903A or its equivalent with a schedule of the name and social
11 security number of and the wages paid to and the contributions
12 paid for each employee for the three and one-half year period
13 preceding the computation date as defined in Subparagraph (d)
14 of Paragraph (3) of Subsection I of this section through the
15 date of transfer or such lesser period as the enterprises
16 transferred may have been in operation. The application and
17 Form ES903A shall be supported by the predecessor's permanent
18 employment records, which shall be available for audit by the
19 division. The application and Form ES903A shall be reviewed by
20 the division and, upon approval, the percentage of the
21 predecessor's experience history attributable to the
22 enterprises transferred shall be transferred to the successor.
23 The percentage shall be obtained by dividing the taxable
24 payrolls of the transferred enterprises for such three and one-
25 half year period preceding the date of computation or such

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1 lesser period as the enterprises transferred may have been in
2 operation by the predecessor's entire payroll;

3 (4) if, at the time of a transfer of an
4 employing enterprise in whole or in part, both the predecessor
5 and the successor are under common ownership, then the
6 experience history attributable to the transferred business
7 shall also be transferred to and combined with the experience
8 history attributable to the successor employer. The rates of
9 both employers shall be recalculated and made effective
10 immediately upon the date of the transfer;

11 (5) whenever a person, who is not currently an
12 employer, acquires the trade or business of an employing
13 enterprise, the experience history of the acquired business
14 shall not be transferred to the successor if the secretary or
15 the secretary's designee finds that the successor acquired the
16 business solely or primarily for the purpose of obtaining a
17 lower rate of contributions. Instead, the successor shall be
18 assigned the applicable new employer rate pursuant to this
19 section. In determining whether the business was acquired
20 solely or primarily for the purpose of obtaining a lower rate
21 of contribution, the secretary or the secretary's designee
22 shall consider:

23 (a) the cost of acquiring the business;
24 (b) whether the person continued the
25 business enterprise of the acquired business;

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1 (c) how long such business enterprise
2 was continued; and

3 (d) whether a substantial number of new
4 employees were hired for performance of duties unrelated to
5 those that the business activity conducted prior to
6 acquisition;

7 (6) if, following a transfer of experience
8 history pursuant to this subsection, the department determines
9 that a substantial purpose of the transfer of the employing
10 enterprise was to obtain a reduced liability for contributions,
11 then the experience rating accounts of the employers involved
12 shall be combined into a single account and a single rate
13 assigned to the combined account;

14 (7) the secretary shall adopt such rules as
15 are necessary to interpret and carry out the provisions of this
16 subsection, including rules that:

17 (a) describe how experience history is
18 to be transferred; and

19 (b) establish procedures to identify the
20 type of transfer or acquisition of an employing enterprise; and

21 (8) a person who knowingly violates or
22 attempts to violate a rule adopted pursuant to Paragraph (7) of
23 this subsection, who transfers or acquires, or attempts to
24 transfer or acquire, an employing enterprise for the sole or
25 primary purpose of obtaining a reduced liability for

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1 contributions or who knowingly advises another person to
2 violate a rule adopted pursuant to Paragraph (7) of this
3 subsection or to transfer or acquire an employing enterprise
4 for the sole or primary purpose of obtaining a reduced
5 liability for contributions is guilty of a misdemeanor and
6 shall be punished by a fine of not less than one thousand five
7 hundred dollars (\$1,500) or more than three thousand dollars
8 (\$3,000) or, if an individual, by imprisonment for a definite
9 term not to exceed ninety days or both. In addition, such a
10 person shall be subject to the following civil penalty imposed
11 by the secretary:

12 (a) if the person is an employer, the
13 person shall be assigned the highest contribution rate
14 established by the provisions of this section for the calendar
15 year in which the violation occurs and the three subsequent
16 calendar years; provided that, if the difference between the
17 increased penalty rate and the rate otherwise applicable would
18 be less than two percent of the employer's payroll, the
19 contribution rate shall be increased by two percent of the
20 employer's payroll for the calendar year in which the violation
21 occurs and the three subsequent calendar years; or

22 (b) if the person is not an employer,
23 the secretary may impose a civil penalty not to exceed three
24 thousand dollars (\$3,000).

25 I. For each calendar year, if, as of the

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1 computation date for that year, an employer's account has been
2 chargeable with benefits throughout the preceding thirty-six
3 months, the contribution rate for that employer shall be
4 determined as follows:

5 (1) the total assets in the fund and the total
6 of the last annual payrolls of all employers subject to
7 contributions as of the computation date for each year shall be
8 determined. These annual totals are here called "the fund" and
9 "total payrolls". For each year, the "reserve" of each
10 employer shall be fixed by the excess of the employer's total
11 contributions over total benefit charges computed as a
12 percentage of the employer's average payroll reported for
13 contributions. The determination of each employer's annual
14 rate, computed as of the computation date for each calendar
15 year, shall be made by matching the employer's reserve as shown
16 in the reserve column with the corresponding rate in the rate
17 column of the applicable rate schedule of the table provided in
18 Paragraph (4) [~~or (5)~~] of this subsection;

19 (2) for each calendar year after [2011]
20 2012, except as otherwise provided, each employer's rate shall
21 be the corresponding rate in:

22 (a) Contribution Schedule 0 of the
23 table provided in Paragraph (4) of this subsection if the fund
24 equals at least two and three-tenths percent of the total
25 payrolls;

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1 (b) Contribution Schedule 1 of the
2 table provided in Paragraph (4) of this subsection if the fund
3 equals less than two and three-tenths percent but not less
4 than one and seven-tenths percent of the total payrolls;

5 (c) Contribution Schedule 2 of the
6 table provided in Paragraph (4) of this subsection if the fund
7 equals less than one and seven-tenths percent but not less
8 than one and three-tenths percent of the total payrolls;

9 (d) Contribution Schedule 3 of the
10 table provided in Paragraph (4) of this subsection if the fund
11 equals less than one and three-tenths percent but not less
12 than one percent of the total payrolls;

13 (e) Contribution Schedule 4 of the
14 table provided in Paragraph (4) of this subsection if the fund
15 equals less than one percent but not less than seven-tenths
16 percent of the total payrolls;

17 (f) Contribution Schedule 5 of the
18 table provided in Paragraph (4) of this subsection if the fund
19 equals less than seven-tenths percent but not less than three-
20 tenths percent of the total payrolls; or

21 (g) Contribution Schedule 6 of the
22 table provided in Paragraph (4) of this subsection if the fund
23 equals less than three-tenths percent of the total payrolls;

24 (3) as used in this section:

25 (a) "annual payroll" means the total

1 amount of remuneration from an employer for employment during
2 a twelve-month period ending on a computation date, and
3 "average payroll" means the average of the last three annual
4 payrolls;

5 (b) "base-period wages" means the wages
6 of an individual for insured work during the individual's base
7 period on the basis of which the individual's benefit rights
8 were determined;

9 (c) "base-period employers" means the
10 employers of an individual during the individual's base
11 period; and

12 (d) "computation date" for each
13 calendar year means the close of business on June 30 of the
14 preceding calendar year;

15 (4) table of employer reserves and
16 contribution rate schedules:

17 Employer	Contribution	Contribution	Contribution	Contribution
18 Reserve	Schedule 0	Schedule 1	Schedule 2	Schedule 3
19 10.0% and over	0.03%	0.05%	0.1%	0.6%
20 9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
21 8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
22 7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
23 6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
24 5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
25 4.0%-4.9%	0.80%	1.1%	1.4%	2.4%

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1	3.0%-3.9%	1.20%	1.4%	1.7%	2.7%
2	2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
3	1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
4	0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
5	(-0.1%)-(-0.5%)	3.30%	3.3%	3.6%	3.9%
6	(-0.5%)-(-1.0%)	4.20%	4.2%	4.2%	4.2%
7	(-1.0%)-(-2.0%)	5.00%	5.0%	5.0%	5.0%
8	Under (-2.0%)	5.40%	5.4%	5.4%	5.4%
9	Employer	Contribution	Contribution	Contribution	
10	Reserve	Schedule 4	Schedule 5	Schedule 6	
11	10.0% and over	0.9%	1.2%	2.7%	
12	9.0%-9.9%	1.2%	1.5%	2.7%	
13	8.0%-8.9%	1.5%	1.8%	2.7%	
14	7.0%-7.9%	1.8%	2.1%	2.7%	
15	6.0%-6.9%	2.1%	2.4%	2.7%	
16	5.0%-5.9%	2.4%	2.7%	3.0%	
17	4.0%-4.9%	2.7%	3.0%	3.3%	
18	3.0%-3.9%	3.0%	3.3%	3.6%	
19	2.0%-2.9%	3.3%	3.6%	3.9%	
20	1.0%-1.9%	3.6%	3.9%	4.2%	
21	0.9%-0.0%	3.9%	4.2%	4.5%	
22	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%	
23	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%	
24	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%	
25	Under (-2.0%)	5.4%	5.4%	5.4%;	

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1 [~~(5)~~ from July 1, 2010 through December 31,
2 2010, each employer making contributions pursuant to this
3 subsection shall make a contribution at the rate specified in
4 Contribution Schedule 0; and

5 ~~(6)~~] (5) from January 1, 2011 through
6 [~~December 31~~] June 30, 2011, each employer making
7 contributions pursuant to this subsection shall make a
8 contribution at the rate specified in Contribution Schedule 1;
9 and

10 (6) from July 1, 2011 through December 31,
11 2012, each employer making contributions pursuant to this
12 subsection shall make a contribution at the rate specified in
13 Contribution Schedule 2.

14 J. The division shall promptly notify each
15 employer of the employer's rate of contributions as determined
16 for any calendar year pursuant to this section. Such
17 notification shall include the amount determined as the
18 employer's average payroll, the total of all of the employer's
19 contributions paid on the employer's behalf and credited to
20 the employer's account for all past years and total benefits
21 charged to the employer's account for all such years. Such
22 determination shall become conclusive and binding upon the
23 employer unless, within thirty days after the mailing of
24 notice thereof to the employer's last known address or in the
25 absence of mailing, within thirty days after the delivery of

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1 such notice, the employer files an application for review and
2 redetermination, setting forth the employer's reason therefor.
3 The employer shall be granted an opportunity for a fair
4 hearing in accordance with rules prescribed by the secretary,
5 but an employer shall not have standing, in any proceeding
6 involving the employer's rate of contributions or contribution
7 liability, to contest the chargeability to the employer's
8 account of any benefits paid in accordance with a
9 determination, redetermination or decision pursuant to Section
10 51-1-8 NMSA 1978, except upon the ground that the services on
11 the basis of which such benefits were found to be chargeable
12 did not constitute services performed in employment for the
13 employer and only in the event that the employer was not a
14 party to such determination, redetermination or decision, or
15 to any other proceedings under the Unemployment Compensation
16 Law in which the character of such services was determined.
17 The employer shall be promptly notified of the decision on the
18 employer's application for redetermination, which shall become
19 final unless, within fifteen days after the mailing of notice
20 thereof to the employer's last known address or in the absence
21 of mailing, within fifteen days after the delivery of such
22 notice, further appeal is initiated pursuant to Subsection D
23 of Section 51-1-8 NMSA 1978.

24 K. The division shall provide each contributing
25 employer, within ninety days of the end of each calendar

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1 quarter, a written determination of benefits chargeable to the
2 employer's account. Such determination shall become
3 conclusive and binding upon the employer for all purposes
4 unless, within thirty days after the mailing of the
5 determination to the employer's last known address or in the
6 absence of mailing, within thirty days after the delivery of
7 such determination, the employer files an application for
8 review and redetermination, setting forth the employer's
9 reason therefor. The employer shall be granted an opportunity
10 for a fair hearing in accordance with rules prescribed by the
11 secretary, but an employer shall not have standing in any
12 proceeding involving the employer's contribution liability to
13 contest the chargeability to the employer's account of any
14 benefits paid in accordance with a determination,
15 redetermination or decision pursuant to Section 51-1-8 NMSA
16 1978, except upon the ground that the services on the basis of
17 which such benefits were found to be chargeable did not
18 constitute services performed in employment for the employer
19 and only in the event that the employer was not a party to
20 such determination, redetermination or decision, or to any
21 other proceedings under the Unemployment Compensation Law in
22 which the character of such services was determined. The
23 employer shall be promptly notified of the decision on the
24 employer's application for redetermination, which shall become
25 final unless, within fifteen days after the mailing of notice

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1 thereof to the employer's last known address or in the absence
2 of mailing, within fifteen days after the delivery of such
3 notice, further appeal is initiated pursuant to Subsection D
4 of Section 51-1-8 NMSA 1978.

5 L. The contributions, together with interest and
6 penalties thereon imposed by the Unemployment Compensation
7 Law, shall not be assessed nor shall action to collect the
8 same be commenced more than four years after a report showing
9 the amount of the contributions was due. In the case of a
10 false or fraudulent contribution report with intent to evade
11 contributions or a willful failure to file a report of all
12 contributions due, the contributions, together with interest
13 and penalties thereon, may be assessed or an action to collect
14 such contributions may be begun at any time. Before the
15 expiration of such period of limitation, the employer and the
16 secretary may agree in writing to an extension thereof and the
17 period so agreed on may be extended by subsequent agreements
18 in writing. In any case where the assessment has been made
19 and action to collect has been commenced within four years of
20 the due date of any contribution, interest or penalty,
21 including the filing of a warrant of lien by the secretary
22 pursuant to Section 51-1-36 NMSA 1978, such action shall not
23 be subject to any period of limitation.

24 M. The secretary shall correct any error in the
25 determination of an employer's rate of contribution during the

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1 calendar year to which the erroneous rate applies,
2 notwithstanding that notification of the employer's rate of
3 contribution may have been issued and contributions paid
4 pursuant to the notification. Upon issuance by the division
5 of a corrected rate of contribution, the employer shall have
6 the same rights to review and redetermination as provided in
7 Subsection J of this section.

8 N. Any interest required to be paid on advances to
9 this state's unemployment compensation fund under Title 12 of
10 the Social Security Act shall be paid in a timely manner as
11 required under Section 1202 of Title 12 of the Social Security
12 Act and shall not be paid, directly or indirectly, by the
13 state from amounts in the state's unemployment compensation
14 fund."

15 SECTION 4. Section 51-1-42 NMSA 1978 (being Laws 2003,
16 Chapter 47, Section 12, as amended) is amended to read:

17 "51-1-42. DEFINITIONS.--As used in the Unemployment
18 Compensation Law:

19 A. "base period" means the first four of the last
20 five completed calendar quarters immediately preceding the
21 first day of an individual's benefit year, except that "base
22 period" means, for benefit years beginning ~~[on or after~~
23 ~~January 1, 2005]~~ prior to July 1, 2011 or after June 30, 2012
24 for an individual who does not have sufficient wages in the
25 base period as defined to qualify for benefits pursuant to

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1 Section 51-1-5 NMSA 1978, the individual's base period shall
2 be the last four completed calendar quarters immediately
3 preceding the first day of the individual's benefit year if
4 that period qualifies the individual for benefits pursuant to
5 Section 51-1-5 NMSA 1978; provided that:

6 (1) wages that fall within the base period
7 of claims established pursuant to this subsection are not
8 available for reuse in qualifying for a subsequent benefit
9 year; and

10 (2) in the case of a combined-wage claim
11 pursuant to the arrangement approved by the federal secretary
12 of labor, the base period is that base period applicable under
13 the unemployment compensation law of the paying state;

14 B. "benefits" means the cash unemployment
15 compensation payments payable to an eligible individual
16 pursuant to Section 51-1-4 NMSA 1978 with respect to the
17 individual's weeks of unemployment;

18 C. "contributions" means the money payments
19 required by Section 51-1-9 NMSA 1978 to be made into the fund
20 by an employer on account of having individuals performing
21 services for the employer;

22 D. "employing unit" means any individual or type
23 of organization, including any partnership, association,
24 cooperative, trust, estate, joint-stock company, agricultural
25 enterprise, insurance company or corporation, whether domestic

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1 or foreign, or the receiver, trustee in bankruptcy, trustee or
2 successor thereof, household, fraternity or club, the legal
3 representative of a deceased person or any state or local
4 government entity to the extent required by law to be covered
5 as an employer, that has in its employ one or more individuals
6 performing services for it within this state. An individual
7 performing services for an employing unit that maintains two
8 or more separate establishments within this state shall be
9 deemed to be employed by a single employing unit for all the
10 purposes of the Unemployment Compensation Law. An individual
11 performing services for a contractor, subcontractor or agent
12 that is performing work or services for an employing unit, as
13 described in this subsection, that are within the scope of the
14 employing unit's usual trade, occupation, profession or
15 business, shall be deemed to be in the employ of the employing
16 unit for all purposes of the Unemployment Compensation Law
17 unless the contractor, subcontractor or agent is itself an
18 employer within the provisions of Subsection E of this
19 section;

20 E. "employer" includes:

21 (1) an employing unit that:

22 (a) unless otherwise provided in this
23 section, paid for service in employment as defined in
24 Subsection F of this section wages of four hundred fifty
25 dollars (\$450) or more in any calendar quarter in either the

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1 current or preceding calendar year or had in employment, as
2 defined in Subsection F of this section, for some portion of a
3 day in each of twenty different calendar weeks during either
4 the current or the preceding calendar year, and irrespective
5 of whether the same individual was in employment in each such
6 day, at least one individual;

7 (b) for the purposes of Subparagraph
8 (a) of this paragraph, if any week includes both December 31
9 and January 1, the days of that week up to January 1 shall be
10 deemed one calendar week and the days beginning January 1,
11 another such week; and

12 (c) for purposes of defining an
13 "employer" under Subparagraph (a) of this paragraph, the wages
14 or remuneration paid to individuals performing services in
15 employment in agricultural labor or domestic services as
16 provided in Paragraphs (6) and (7) of Subsection F of this
17 section shall not be taken into account; except that any
18 employing unit determined to be an employer of agricultural
19 labor under Paragraph (6) of Subsection F of this section
20 shall be an employer under Subparagraph (a) of this paragraph
21 so long as the employing unit is paying wages or remuneration
22 for services other than agricultural services;

23 (2) any individual or type of organization
24 that acquired the trade or business or substantially all of
25 the assets thereof, of an employing unit that at the time of

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1 the acquisition was an employer subject to the Unemployment
2 Compensation Law; provided that where such an acquisition
3 takes place, the secretary may postpone activating the
4 separate account pursuant to Subsection A of Section 51-1-11
5 NMSA 1978 until such time as the successor employer has
6 employment as defined in Subsection F of this section;

7 (3) an employing unit that acquired all or
8 part of the organization, trade, business or assets of another
9 employing unit and that, if treated as a single unit with the
10 other employing unit or part thereof, would be an employer
11 under Paragraph (1) of this subsection;

12 (4) an employing unit not an employer by
13 reason of any other paragraph of this subsection:

14 (a) for which, within either the
15 current or preceding calendar year, service is or was
16 performed with respect to which such employing unit is liable
17 for any federal tax against which credit may be taken for
18 contributions required to be paid into a state unemployment
19 fund; or

20 (b) that, as a condition for approval
21 of the Unemployment Compensation Law for full tax credit
22 against the tax imposed by the Federal Unemployment Tax Act,
23 is required, pursuant to that act, to be an "employer" under
24 the Unemployment Compensation Law;

25 (5) an employing unit that, having become an

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1 employer under Paragraph (1), (2), (3) or (4) of this
2 subsection, has not, under Section 51-1-18 NMSA 1978, ceased
3 to be an employer subject to the Unemployment Compensation
4 Law;

5 (6) for the effective period of its election
6 pursuant to Section 51-1-18 NMSA 1978, any other employing
7 unit that has elected to become fully subject to the
8 Unemployment Compensation Law;

9 (7) an employing unit for which any services
10 performed in its employ are deemed to be performed in this
11 state pursuant to an election under an arrangement entered
12 into in accordance with Subsection A of Section 51-1-50 NMSA
13 1978; and

14 (8) an Indian tribe as defined in 26 USCA
15 Section 3306(u) for which service in employment is performed;

16 F. "employment":

17 (1) means any service, including service in
18 interstate commerce, performed for wages or under any contract
19 of hire, written or oral, express or implied;

20 (2) means an individual's entire service,
21 performed within or both within and without this state if:

22 (a) the service is primarily localized
23 in this state with services performed outside the state being
24 only incidental thereto; or

25 (b) the service is not localized in any

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1 state but some of the service is performed in this state and:
2 1) the base of operations or, if there is no base of
3 operations, the place from which such service is directed or
4 controlled, is in this state; or 2) the base of operations or
5 place from which such service is directed or controlled is not
6 in any state in which some part of the service is performed
7 but the individual's residence is in this state;

8 (3) means services performed within this
9 state but not covered under Paragraph (2) of this subsection
10 if contributions or payments in lieu of contributions are not
11 required and paid with respect to such services under an
12 unemployment compensation law of any other state, the federal
13 government or Canada;

14 (4) means services covered by an election
15 pursuant to Section 51-1-18 NMSA 1978 and services covered by
16 an election duly approved by the secretary in accordance with
17 an arrangement pursuant to Paragraph (1) of Subsection A of
18 Section 51-1-50 NMSA 1978 shall be deemed to be employment
19 during the effective period of the election;

20 (5) means services performed by an
21 individual for an employer for wages or other remuneration
22 unless and until it is established by a preponderance of
23 evidence that:

24 (a) the individual has been and will
25 continue to be free from control or direction over the

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1 performance of the services both under the individual's
2 contract of service and in fact;

3 (b) the service is either outside the
4 usual course of business for which the service is performed or
5 that such service is performed outside of all the places of
6 business of the enterprise for which such service is
7 performed; and

8 (c) the individual is customarily
9 engaged in an independently established trade, occupation,
10 profession or business of the same nature as that involved in
11 the contract of service;

12 (6) means service performed after December
13 31, 1977 by an individual in agricultural labor as defined in
14 Subsection Q of this section if:

15 (a) the service is performed for an
16 employing unit that: 1) paid remuneration in cash of twenty
17 thousand dollars (\$20,000) or more to individuals in that
18 employment during any calendar quarter in either the current
19 or the preceding calendar year; or 2) employed in agricultural
20 labor ten or more individuals for some portion of a day in
21 each of twenty different calendar weeks in either the current
22 or preceding calendar year, whether or not the weeks were
23 consecutive, and regardless of whether the individuals were
24 employed at the same time;

25 (b) the service is not performed before

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1 January 1, 1980 by an individual who is an alien admitted to
2 the United States to perform service in agricultural labor
3 pursuant to Sections 214(c) and 101(15)(H) of the federal
4 Immigration and Nationality Act; and

5 (c) for purposes of this paragraph, an
6 individual who is a member of a crew furnished by a crew
7 leader to perform service in agricultural labor for a farm
8 operator or other person shall be treated as an employee of
9 the crew leader: 1) if the crew leader meets the requirements
10 of a crew leader as defined in Subsection L of this section;
11 or 2) substantially all the members of the crew operate or
12 maintain mechanized agricultural equipment that is provided by
13 the crew leader; and 3) the individuals performing the
14 services are not, by written agreement or in fact, within the
15 meaning of Paragraph (5) of this subsection, performing
16 services in employment for the farm operator or other person;

17 (7) means service performed after December
18 31, 1977 by an individual in domestic service in a private
19 home, local college club or local chapter of a college
20 fraternity or sorority for a person or organization that paid
21 cash remuneration of one thousand dollars (\$1,000) in any
22 calendar quarter in the current or preceding calendar year to
23 individuals performing such services;

24 (8) means service performed after December
25 31, 1971 by an individual in the employ of a religious,

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1 charitable, educational or other organization but only if the
2 following conditions are met:

3 (a) the service is excluded from
4 "employment" as defined in the Federal Unemployment Tax Act
5 solely by reason of Section 3306(c)(8) of that act; and

6 (b) the organization meets the
7 requirements of "employer" as provided in Subparagraph (a) of
8 Paragraph (1) of Subsection E of this section;

9 (9) means service of an individual who is a
10 citizen of the United States, performed outside the United
11 States, except in Canada, after December 31, 1971 in the
12 employ of an American employer, other than service that is
13 deemed "employment" under the provisions of Paragraph (2) of
14 this subsection or the parallel provisions of another state's
15 law, if:

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

18 (b) the employer has no place of
19 business in the United States, but: 1) the employer is an
20 individual who is a resident of this state; 2) the employer is
21 a corporation organized under the laws of this state; or 3)
22 the employer is a partnership or a trust and the number of the
23 partners or trustees who are residents of this state is
24 greater than the number who are residents of any one other
25 state; or

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1 (c) none of the criteria of
2 Subparagraphs (a) and (b) of this paragraph are met, but the
3 employer has elected coverage in this state or, the employer
4 having failed to elect coverage in any state, the individual
5 has filed a claim for benefits, based on such service, under
6 the law of this state.

7 "American employer" for the purposes of this paragraph
8 means a person who is: 1) an individual who is a resident of
9 the United States; 2) a partnership if two-thirds or more of
10 the partners are residents of the United States; 3) a trust if
11 all of the trustees are residents of the United States; or 4)
12 a corporation organized under the laws of the United States or
13 of any state. For the purposes of this paragraph, "United
14 States" includes the United States, the District of Columbia,
15 the commonwealth of Puerto Rico and the Virgin Islands;

16 (10) means, notwithstanding any other
17 provisions of this subsection, service with respect to which a
18 tax is required to be paid under any federal law imposing a
19 tax against which credit may be taken for contributions
20 required to be paid into a state unemployment fund or which as
21 a condition for full tax credit against the tax imposed by the
22 Federal Unemployment Tax Act is required to be covered under
23 the Unemployment Compensation Law;

24 (11) means service performed in the employ
25 of an Indian tribe if:

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1 (a) the service is excluded from
2 "employment" as defined in 26 USCA Section 3306(c) solely by
3 reason of 26 USCA Section 3306(c)(7); and

4 (b) the service is not otherwise
5 excluded from employment pursuant to the Unemployment
6 Compensation Law;

7 (12) does not include:

8 (a) service performed in the employ of:
9 1) a church or convention or association of churches; or 2) an
10 organization that is operated primarily for religious purposes
11 and that is operated, supervised, controlled or principally
12 supported by a church or convention or association of
13 churches;

14 (b) service performed by a duly
15 ordained, commissioned or licensed minister of a church in the
16 exercise of such ministry or by a member of a religious order
17 in the exercise of duties required by such order;

18 (c) service performed by an individual
19 in the employ of the individual's son, daughter or spouse, and
20 service performed by a child under the age of majority in the
21 employ of the child's father or mother;

22 (d) service performed in the employ of
23 the United States government or an instrumentality of the
24 United States immune under the constitution of the United
25 States from the contributions imposed by the Unemployment

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1 Compensation Law except that to the extent that the congress
2 of the United States shall permit states to require any
3 instrumentalities of the United States to make payments into
4 an unemployment fund under a state unemployment compensation
5 act, all of the provisions of the Unemployment Compensation
6 Law shall be applicable to such instrumentalities, and to
7 service performed for such instrumentalities in the same
8 manner, to the same extent and on the same terms as to all
9 other employers, employing units, individuals and services;
10 provided that if this state shall not be certified for any
11 year by the secretary of labor of the United States under
12 Section 3304 of the federal Internal Revenue Code of 1986,
13 26 U.S.C. Section 3304, the payments required of such
14 instrumentalities with respect to such year shall be refunded
15 by the department from the fund in the same manner and within
16 the same period as is provided in Subsection D of Section
17 51-1-36 NMSA 1978 with respect to contributions erroneously
18 collected;

19 (e) service performed in a facility
20 conducted for the purpose of carrying out a program of
21 rehabilitation for individuals whose earning capacity is
22 impaired by age or physical or mental deficiency or injury or
23 providing remunerative work for individuals who because of
24 their impaired physical or mental capacity cannot be readily
25 absorbed in the competitive labor market, by an individual

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1 receiving that rehabilitation or remunerative work;

2 (f) service with respect to which
3 unemployment compensation is payable under an unemployment
4 compensation system established by an act of congress;

5 (g) service performed in the employ of
6 a foreign government, including service as a consular or other
7 officer or employee or a nondiplomatic representative;

8 (h) service performed by an individual
9 for a person as an insurance agent or as an insurance
10 solicitor, if all such service performed by the individual for
11 the person is performed for remuneration solely by way of
12 commission;

13 (i) service performed by an individual
14 under the age of eighteen in the delivery or distribution of
15 newspapers or shopping news, not including delivery or
16 distribution to any point for subsequent delivery or
17 distribution;

18 (j) service covered by an election duly
19 approved by the agency charged with the administration of any
20 other state or federal unemployment compensation law, in
21 accordance with an arrangement pursuant to Paragraph (l) of
22 Subsection A of Section 51-1-50 NMSA 1978 during the effective
23 period of the election;

24 (k) service performed, as part of an
25 unemployment work-relief or work-training program assisted or

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1 financed in whole or part by any federal agency or an agency
2 of a state or political subdivision thereof, by an individual
3 receiving the work relief or work training;

4 (l) service performed by an individual
5 who is enrolled at a nonprofit or public educational
6 institution that normally maintains a regular faculty and
7 curriculum and normally has a regularly organized body of
8 students in attendance at the place where its educational
9 activities are carried on as a student in a full-time program,
10 taken for credit at the institution that combines academic
11 instruction with work experience, if the service is an
12 integral part of such program and the institution has so
13 certified to the employer, except that this subparagraph shall
14 not apply to service performed in a program established for or
15 on behalf of an employer or group of employers;

16 (m) service performed in the employ of
17 a hospital, if the service is performed by a patient of the
18 hospital, or services performed by an inmate of a custodial or
19 penal institution for any employer;

20 (n) service performed by real estate
21 salespersons for others when the services are performed for
22 remuneration solely by way of commission;

23 (o) service performed in the employ of
24 a school, college or university if the service is performed by
25 a student who is enrolled and is regularly attending classes

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1 at the school, college or university;

2 (p) service performed by an individual
3 for a fixed or contract fee officiating at a sporting event
4 that is conducted by or under the auspices of a nonprofit or
5 governmental entity if that person is not otherwise an
6 employee of the entity conducting the sporting event;

7 (q) service performed for a private,
8 for-profit person or entity by an individual as a product
9 demonstrator or product merchandiser if the service is
10 performed pursuant to a written contract between that
11 individual and a person or entity whose principal business is
12 obtaining the services of product demonstrators and product
13 merchandisers for third parties, for demonstration and
14 merchandising purposes and the individual: 1) is compensated
15 for each job or the compensation is based on factors related
16 to the work performed; 2) provides the equipment used to
17 perform the service, unless special equipment is required and
18 provided by the manufacturer through an agency; 3) is
19 responsible for completion of a specific job and for any
20 failure to complete the job; 4) pays all expenses, and the
21 opportunity for profit or loss rests solely with the
22 individual; and 5) is responsible for operating costs, fuel,
23 repairs and motor vehicle insurance. For the purpose of this
24 subparagraph, "product demonstrator" means an individual who,
25 on a temporary, part-time basis, demonstrates or gives away

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1 samples of a food or other product as part of an advertising
2 or sales promotion for the product and who is not otherwise
3 employed directly by the manufacturer, distributor or
4 retailer, and "product merchandiser" means an individual who,
5 on a temporary, part-time basis builds or resets a product
6 display and who is not otherwise directly employed by the
7 manufacturer, distributor or retailer; or

8 (r) service performed for a private,
9 for-profit person or entity by an individual as a landman if
10 substantially all remuneration paid in cash or otherwise for
11 the performance of the services is directly related to the
12 completion by the individual of the specific tasks contracted
13 for rather than to the number of hours worked by the
14 individual. For the purposes of this subparagraph, "landman"
15 means a land professional who has been engaged primarily in:
16 1) negotiating for the acquisition or divestiture of mineral
17 rights; 2) negotiating business agreements that provide for
18 the exploration for or development of minerals; 3) determining
19 ownership of minerals through the research of public and
20 private records; and 4) reviewing the status of title, curing
21 title defects and otherwise reducing title risk associated
22 with ownership of minerals; managing rights or obligations
23 derived from ownership of interests and minerals; or utilizing
24 or pooling of interest in minerals; and

25 (13) for the purposes of this subsection, if

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1 the services performed during one-half or more of any pay
2 period by an individual for the person employing the
3 individual constitute employment, all the services of the
4 individual for the period shall be deemed to be employment,
5 but, if the services performed during more than one-half of
6 any such pay period by an individual for the person employing
7 the individual do not constitute employment, then none of the
8 services of the individual for the period shall be deemed to
9 be employment. As used in this paragraph, the term "pay
10 period" means a period, of not more than thirty-one
11 consecutive days, for which a payment of remuneration is
12 ordinarily made to the individual by the person employing the
13 individual. This paragraph shall not be applicable with
14 respect to services performed in a pay period by an individual
15 for the person employing the individual where any of such
16 service is excepted by Subparagraph (f) of Paragraph (12) of
17 this subsection;

18 G. "employment office" means a free public
19 employment office, or branch thereof, operated by this state
20 or maintained as a part of a state-controlled system of public
21 employment offices;

22 H. "fund" means the unemployment compensation fund
23 established by the Unemployment Compensation Law to which all
24 contributions and payments in lieu of contributions required
25 under the Unemployment Compensation Law and from which all

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1 benefits provided under the Unemployment Compensation Law
2 shall be paid;

3 I. "unemployment" means, with respect to an
4 individual, any week during which the individual performs no
5 services and with respect to which no wages are payable to the
6 individual and during which the individual is not engaged in
7 self-employment or receives an award of back pay for loss of
8 employment. The secretary shall prescribe by rule what
9 constitutes part-time and intermittent employment, partial
10 employment and the conditions under which individuals engaged
11 in such employment are eligible for partial unemployment
12 benefits; ~~[but]~~ provided that:

13 (1) no individual who is otherwise eligible
14 shall be deemed ineligible for benefits solely for the reason
15 that the individual seeks, applies for or, except as provided
16 in Paragraph (2) of this subsection, accepts only part-time
17 work, instead of full-time work, if the part-time work is for
18 at least twenty hours per week; and

19 (2) in a benefit year that begins after June
20 30, 2011 and prior to July 1, 2012, an individual who is
21 engaged in part-time or intermittent employment shall not be
22 eligible for full or partial benefits;

23 J. "state", when used in reference to any state
24 other than New Mexico, includes, in addition to the states of
25 the United States, the District of Columbia, the commonwealth

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1 of Puerto Rico and the Virgin Islands;

2 K. "unemployment compensation administration fund"
3 means the fund established by Subsection A of Section 51-1-34
4 NMSA 1978 from which administrative expenses under the
5 Unemployment Compensation Law shall be paid. "Employment
6 security department fund" means the fund established by
7 Subsection B of Section 51-1-34 NMSA 1978 from which certain
8 administrative expenses under the Unemployment Compensation
9 Law shall be paid;

10 L. "crew leader" means a person who:

11 (1) holds a valid certificate of
12 registration as a crew leader or farm labor contractor under
13 the federal Migrant and Seasonal Agricultural Worker
14 Protection Act;

15 (2) furnishes individuals to perform
16 services in agricultural labor for any other person;

17 (3) pays, either on the crew leader's own
18 behalf or on behalf of such other person, the individuals so
19 furnished by the crew leader for service in agricultural
20 labor; and

21 (4) has not entered into a written agreement
22 with the other person for whom the crew leader furnishes
23 individuals in agricultural labor that the individuals will be
24 the employees of the other person;

25 M. "week" means such period of seven consecutive

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1 days, as the secretary may by rule prescribe. The secretary
2 may by rule prescribe that a week shall be deemed to be "in",
3 "within" or "during" the benefit year that includes the
4 greater part of such week;

5 N. "calendar quarter" means the period of three
6 consecutive calendar months ending on March 31, June 30,
7 September 30 or December 31;

8 O. "insured work" means services performed for
9 employers who are covered under the Unemployment Compensation
10 Law;

11 P. "benefit year" with respect to an individual
12 means the one-year period beginning with the first day of the
13 first week of unemployment with respect to which the
14 individual first files a claim for benefits in accordance with
15 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
16 one-year period beginning with the first day of the first week
17 of unemployment with respect to which the individual next
18 files such a claim for benefits after the termination of the
19 individual's last preceding benefit year; provided that at the
20 time of filing such a claim the individual has been paid the
21 wage required under Paragraph (5) of Subsection A of Section
22 51-1-5 NMSA 1978;

23 Q. "agricultural labor" includes all services
24 performed:

25 (1) on a farm, in the employ of a person, in

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1 connection with cultivating the soil or in connection with
2 raising or harvesting an agricultural or horticultural
3 commodity, including the raising, shearing, feeding, caring
4 for, training and management of livestock, bees, poultry and
5 fur-bearing animals and wildlife;

6 (2) in the employ of the owner or tenant or
7 other operator of a farm, in connection with the operation,
8 management, conservation or maintenance of the farm and its
9 tools and equipment, if the major part of the service is
10 performed on a farm;

11 (3) in connection with the operation or
12 maintenance of ditches, canals, reservoirs or waterways used
13 exclusively for supplying and storing water for farming
14 purposes when such ditches, canals, reservoirs or waterways
15 are owned and operated by the farmers using the water stored
16 or carried therein; and

17 (4) in handling, planting, drying, packing,
18 packaging, processing, freezing, grading, storing or delivery
19 to storage or to market or to a carrier for transportation to
20 market any agricultural or horticultural commodity but only if
21 the service is performed as an incident to ordinary farming
22 operations. The provisions of this paragraph shall not be
23 deemed to be applicable with respect to service performed in
24 connection with commercial canning or commercial freezing or
25 in connection with any agricultural or horticultural commodity

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1 after its delivery to a terminal market for distribution for
2 consumption.

3 As used in this subsection, the term "farm" includes
4 stock, dairy, poultry, fruit, fur-bearing animal and truck
5 farms, plantations, ranches, nurseries, greenhouses, ranges
6 and orchards;

7 R. "payments in lieu of contributions" means the
8 money payments made into the fund by an employer pursuant to
9 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or
10 Subsection E of Section 51-1-59 NMSA 1978;

11 S. "department" means the workforce solutions
12 department; and

13 T. "wages" means all remuneration for services,
14 including commissions and bonuses and the cash value of all
15 remuneration in any medium other than cash. The reasonable
16 cash value of remuneration in any medium other than cash shall
17 be established and determined in accordance with rules
18 prescribed by the secretary; provided that the term "wages"
19 shall not include:

20 (1) subsequent to December 31, 1977, that
21 part of the remuneration in excess of the base wage as
22 determined by the secretary for each calendar year. The base
23 wage upon which contribution shall be paid during any calendar
24 year shall be sixty percent of the state's average annual
25 earnings computed by the division by dividing total wages

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1 reported to the division by contributing employers for the
2 second preceding calendar year before the calendar year the
3 computed base wage becomes effective by the average annual
4 employment reported by contributing employers for the same
5 period rounded to the next higher multiple of one hundred
6 dollars (\$100); provided that the base wage so computed for
7 any calendar year shall not be less than seven thousand
8 dollars (\$7,000). Wages paid by an employer to an individual
9 in the employer's employ during any calendar year in excess of
10 the base wage in effect for that calendar year shall be
11 reported to the department but shall be exempt from the
12 payment of contributions unless such wages paid in excess of
13 the base wage become subject to tax under a federal law
14 imposing a tax against which credit may be taken for
15 contributions required to be paid into a state unemployment
16 fund;

17 (2) the amount of any payment with respect
18 to services performed after June 30, 1941 to or on behalf of
19 an individual in the employ of an employing unit under a plan
20 or system established by the employing unit that makes
21 provision for individuals in its employ generally or for a
22 class or classes of individuals, including any amount paid by
23 an employing unit for insurance or annuities, or into a fund,
24 to provide for any payment, on account of:

25 (a) retirement if the payments are made

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1 by an employer to or on behalf of an employee under a
2 simplified employee pension plan that provides for payments by
3 an employer in addition to the salary or other remuneration
4 normally payable to the employee or class of employees and
5 does not include any payments that represent deferred
6 compensation or other reduction of an employee's normal
7 taxable wages or remuneration or any payments made to a third
8 party on behalf of an employee as part of an agreement of
9 deferred remuneration;

10 (b) sickness or accident disability if
11 the payments are received under a workers' compensation or
12 occupational disease disablement law;

13 (c) medical and hospitalization
14 expenses in connection with sickness or accident disability;
15 or

16 (d) death; provided the individual in
17 its employ has not the option to receive, instead of provision
18 for the death benefit, any part of such payment, or, if such
19 death benefit is insured, any part of the premiums or
20 contributions to premiums paid by the individual's employing
21 unit and has not the right under the provisions of the plan or
22 system or policy of insurance providing for the death benefit
23 to assign the benefit, or to receive a cash consideration in
24 lieu of the benefit either upon the individual's withdrawal
25 from the plan or system providing for the benefit or upon

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1 termination of the plan or system or policy of insurance or of
2 the individual's service with the employing unit;

3 (3) remuneration for agricultural labor paid
4 in any medium other than cash;

5 (4) a payment made to, or on behalf of, an
6 employee or an employee's beneficiary under a cafeteria plan
7 within the meaning of Section 125 of the federal Internal
8 Revenue Code of 1986;

9 (5) a payment made, or benefit furnished to
10 or for the benefit of an employee if at the time of the
11 payment or such furnishing it is reasonable to believe that
12 the employee will be able to exclude the payment or benefit
13 from income under Section 129 of the federal Internal Revenue
14 Code of 1986;

15 (6) a payment made by an employer to a
16 survivor or the estate of a former employee after the calendar
17 year in which the employee died;

18 (7) a payment made to, or on behalf of, an
19 employee or the employee's beneficiary under an arrangement to
20 which Section 408(p) of the federal Internal Revenue Code of
21 1986 applies, other than any elective contributions under
22 Paragraph (2)(A)(i) of that section;

23 (8) a payment made to or for the benefit of
24 an employee if at the time of the payment it is reasonable to
25 believe that the employee will be able to exclude the payment

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1 from income under Section 106 of the federal Internal Revenue
2 Code of 1986; or

3 (9) the value of any meals or lodging
4 furnished by or on behalf of the employer if at the time the
5 benefit is provided it is reasonable to believe that the
6 employee will be able to exclude such items from income under
7 Section 119 of the federal Internal Revenue Code of 1986."

8 SECTION 5. APPLICABILITY.--

9 A. The intent of the amendments to the
10 Unemployment Compensation Law in Sections 1, 2 and 4 of this
11 2011 act is to suspend, in any benefit year beginning after
12 June 30, 2011 and prior to July 1, 2012:

13 (1) dependency benefits paid pursuant to
14 Subsections C and D of Section 51-1-4 NMSA 1978;

15 (2) unemployment compensation benefits,
16 including partial benefits, paid to individuals who are
17 engaged in part-time or intermittent employment;

18 (3) unemployment compensation benefits paid
19 to individuals who are in training or attending school on a
20 full-time basis pursuant to Subsection E of Section 51-1-5
21 NMSA 1978; and

22 (4) unemployment compensation benefits paid
23 to individuals who qualify only by using the alternative base
24 period provided for in Subsection A of Section 51-1-42 NMSA
25 1978.

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1 B. The workforce solutions department shall not,
2 by rule or otherwise, take any administrative action that is
3 contrary to the intent expressed in Subsection A of this
4 section.

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