

**STATE OF LOUISIANA
WORKFORCE COMMISSION**

**REVISED RULES FOR
Appealed Claims for Board of Review and for
The Administration of the Employment Security Law
Prescribed and Adopted by the
ADMINISTRATOR
under
R.S. 23:1471-23:1750.10**

Current through December 11, 2014

Table of Contents

Part IV. Employment Security.....	4
Subpart 1. Board of Review.....	4
Chapter 1. General Provisions	4
§101. Office and Officers of the Board of Review.....	4
§103. Time and Place of Meeting of the Board.....	4
§105. Quorum	4
§107. Computation of Time—Saturdays, Sundays and Holidays	4
§109. Appeals to the Appeals Tribunal and Board of Review	4
§111. Notice of Hearing.....	5
§113. Postponements, Continuances, Reopenings, and Rehearings.....	5
§115. Conduct of Hearing before Administrative Law Judge	7
§117. Authority to Separate Witnesses (Placing Witnesses under the Rule)	7
§119. Additional Testimony	7
§121. Stipulation of Facts	7
§123. Decision of Administrative Law Judge.....	7
§125. Appeals to Board.....	7
§127. Notification of Appeal	8
§129. Decision of the Board	8

§131. Issuance of Subpoenas	8
§133. Representation before the Administrative Law Judge and Board	8
§135. Disqualification of Representative.....	8
§137. Availability of Rules	9
Chapter 3. Employment Security Law	9
§301. Authority	9
§303. Training of Administrative Law Judges	9
§305. Posting of Cards, Statements and Material Relating to the Louisiana Employment Security Law, R.S. 23:1471-1713 as Amended.....	9
§307. Contributions, Interest, Mailing Date of Contributions and Contribution Reports ..	9
§311. Instructions on Reports	10
§313. Records	10
§315. Reserved.....	11
§317. Employer Registration When Required	11
§319. Identification of Workers	11
§321. Reserved.....	11
§323. Separation Notices	11
§324. Reply to Notice of Eligibility.....	12
§325. Definitions of Week	12
§327. Types of Unemployment.....	13
§329. Registration for Work and Claims for Benefits for Total and Part-Total Unemployment.....	13
§331. Registration for Work and Claims for Benefits for Partial Unemployment	14
§335. Witness Fees in Appeal Hearing.....	15
§337. Payment of Benefits and Change of Address	15
§339. Interstate Claims	15
§341. Regulations for Interstate Charging	15
§343. Employer Elections to Cover Multi-State Workers	16
§345. Recognition of Heirs of Deceased Benefit Claimants	17
§347. Transfer of Experience-Rating Record to Successor Where Segregable and Identifiable Part or Portion of the Business Is Acquired	18
§349. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid under Shipping Articles	19
§351. Benefit Determination Notice	19
§353. Disclosure of Information Pursuant to R.S. 23:905.....	19

§355. Services to Claimants.....	20
§357. Terms and Conditions Not Applicable to Claims for Payment of Extended Compensation	20
§359. Approved Training Definition	21
§361. Types of Employment.....	21
§363. Proof of Unemployment by a Principal Officer or Controlling Stockholder, or Relative thereof, of a Corporation, Partnership or Proprietorship	21
§364. Reciprocal Offset	22
§367. Assignment of Rates for Corporate Groups.....	22
§368. Disqualification for Benefits Pursuant to R.S. 23:1601(8)(a).....	22
§369. Waiver of Overpayment Recovery	23
§371. Overpayment Recovery	24
§373. Medical Services Performed by Physician or Professional Corporation	25
§375. Determining Whether Workers are Employees or Independent Contractors	25
§377. Electronic Filing of Wage and Tax Reports Required; Payment of Unemployment Contributions by Electronic Funds Transfer, Paper Check, ACH, or Other Method Approved by the Executive Director	26

Title 40
LABOR AND EMPLOYMENT
Part IV. Employment Security
Subpart 1. Board of Review

Chapter 1. General Provisions

§101. Office and Officers of the Board of Review

A. The Office of the Board of Review, hereinafter referred to as "the board," shall be domiciled in the Office of Regulatory Services Administrative Office Building in Baton Rouge, Louisiana.

B. The board shall elect a chairman, vice-chairman and secretary, from its membership, all of whom shall serve at the pleasure of the majority of the board. The chairman shall not be denied any right of membership.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991).

§103. Time and Place of Meeting of the Board

A. All meetings of the board shall be called by the chairman or by a majority of the board. The chairman shall notify the members of the board of any meeting in writing at least three days in advance, unless such notice is waived by the members. All meetings shall be held at the office of the board, or at any place within the state designated in the call.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991).

§105. Quorum

A. Except as otherwise expressly provided in these rules, two members of the board shall constitute a quorum, until January 1, 1989, at which time three members will constitute a quorum, as per Act R.S. 23:1652 of the 1988 Regular Session of Louisiana Legislature. In the absence of the chairman, the vice-chairman shall act as chairman.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991).

§107. Computation of Time—Saturdays, Sundays and Holidays

A. Whenever these rules prescribe a time for the performance of any act, Saturdays, Sundays and legal holidays (half holiday is considered a legal holiday) in the state of Louisiana shall count as any other days, except that when the time prescribed for the performance of an act expired on a Saturday, Sunday or a legal holiday in Louisiana, such time shall extend to and include the next succeeding day that is not a Saturday, Sunday or such legal holiday, provided that, when the time for performing any act is prescribed by statute, nothing in these rules shall be deemed to be a limitation or extension of the statutory time fixed.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991).

§109. Appeals to the Appeals Tribunal and Board of Review

A. The party appealing from the agency's initial determination shall file a written appeal, setting forth information required therein within 15 days after date notification was given or was mailed to his last known address.

B. It is hereby further provided that any communication written by claimant or employer to the Louisiana Workforce Commission or the board disputing the determination or appeal decision may be accepted as an appeal,

provided said written communication is received by any office of the Louisiana Workforce Commission or by the board within 15 days after notification, was given or was mailed to his last known address.

C. Legal holidays and days on which the Louisiana Workforce Commission is closed shall not serve to extend the delay periods specified in R.S. 23:1629 and R.S. 23:1630.

D. Proof of the timeliness of mailing a request for appeal shall be shown only by the date indicated on the electronic transmission, by a legible official United States postmark, or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. In the event that the date of the electronic transmission or postmark is absent, illegible, or manifestly incorrect, the date that the request is received in the Appeals Tribunal or Board of Review office shall determine whether the appeal was timely filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:485 (June 1989), amended by the Department of Employment and Training, Board of Review, LR 17:36 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2312 (August 2013), repromulgated LR 39:3101 (November 2013).

§111. Notice of Hearing

A. A notice of hearing shall be mailed to all parties to the appeal at least seven days prior to the date of the hearing, specifying the place, date and time of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1631.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:36 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 40:374 (February 2014).

§113. Postponements, Continuances, Reopenings, and Rehearings

A. Continuances or Postponements

1. A scheduled hearing may be postponed or continued by the administrative law judge for good cause, either upon his own motion or upon a showing of good cause by written request of a party, submitted to the administrative law judge whose name and address appear on the notice of hearing. Written notice of the time and place of a postponed or continued hearing shall be given to the parties or their named representatives.

2. The administrative law judge shall provide written denial to any party whose written request for postponement or continuance is received after his decision has been mailed. The requesting party shall also be provided written notice of his right either to file written request of a reopening of hearing before the administrative law judge within seven days from the date of mailing of the decision on the claim or to file further appeal to the Board of Review under §109 and §125. The untimely request for postponement or continuance shall not itself be treated as an appeal of the decision to the Board of Review. An appeal may also be timely filed by a party before the Board of Review under §109 and §125 after a written response to the request for reopening is issued by the administrative law judge.

3. Any such request of a party and response of the administrative law judge shall be incorporated in the case file.

B. Non-Appearance of Appellant. If the appellant, who is the party who files the appeal before the Appeals Tribunal, fails to appear or fails to be available to participate in a telephone hearing within 15 minutes after the scheduled hearing time, the administrative law judge shall order the appellant in default and issue a dismissal of appeal. In such event, the agency determination shall become the final decision. Written notice of default of the appellant and dismissal of the appeal shall be mailed to the parties. The appellant either may file a written request for reopening before the administrative law judge, with a showing of good cause, within seven days of the date of mailing of the dismissal decision or may file an appeal before the board of review under §109 and §125. If such appellant is denied a reopening by the administrative law judge, any such request shall be forwarded to the board of review as an appeal as of the date of the written request for reopening. If it is determined by the administrative law judge on reopening or by the board of review on appeal that the appellant has shown good cause for his nonappearance, the dismissal shall be vacated and a new hearing on the merits shall be scheduled.

C. Non-Appearance or Late Appearance of Appellee. If the appellee, who is the party whose agency determination is being appealed by another party before the appeals tribunal, fails to appear at the scheduled hearing

time of an in-person hearing, or fails to be available to receive the telephone call to participate in a scheduled telephone hearing at the scheduled hearing time, the administrative law judge shall proceed to conduct the hearing and issue a decision on the merits based upon the administrative record and any evidence and testimony presented by the appellant. The appellee may either file a written request for reopening before the administrative law judge, with a showing of good cause, within seven days of the date of mailing of the decision or may file an appeal before the board of review under §109 and §125. If such appellee is denied a reopening by the administrative law judge, any such request shall be forwarded to the board of review as an appeal as of the date of the written request for reopening. If it is determined by the administrative law judge on reopening or by the board of review on appeal that the appellee has shown good cause for his non-appearance, the decision shall be vacated, and a new hearing on the merits shall be scheduled.

D. Good Cause for Reopening or Rehearing

1. The administrative law judge or the board of review shall make a determination of good cause for failure to appear only if the written request for reopening or the appeal filed by the party contains a statement of the reason(s) for his failure to act in a timely manner and reasonably justifies a finding of good cause to excuse such failure.

2. To determine whether good cause has been shown in a request for reopening or in an appeal to excuse the failure of a party to appear, the administrative law judge and the board of review shall consider any relevant factors, including, but not limited to:

- a. reasonably prudent behavior;
- b. untimely receipt of notice;
- c. administrative error;
- d. reasons beyond control or avoidance;
- e. reasons unforeseen;
- f. timely effort to request continuance;
- g. physical incapacities;
- h. degree of untimeliness; or
- i. prejudice to parties.

3. Failure to provide timely notice of change or correction of address shall not establish good cause for failure to appear, unless the party satisfactorily demonstrates his reasonable belief in his request or appeal that such notice was not needed or had been provided.

4. The basis of any determination by the administrative law judge or the board of review relating to good cause must be provided in the written response or decision. The fulfillment of each of the above factors is not required in any such response or decision for the establishment of good cause for failure to appear.

5. A written request for reopening before the administrative law judge may be filed within seven days of the date of mailing of his decision or an appeal to the board of review may be filed under §109 and §125 by any party for admission of additional evidence upon the showing of good cause that any such evidence is newly discovered or was unavailable or unknown at the time of the hearing.

E. Terminology. The term party or parties, as used in these rules, shall mean the claimant and the employer or any legal or designated representative thereof, including the administrator in those appeals in which he is specified as a party under R.S. 23:1629.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:36 (January 1991), repromulgated by the Department of Labor, Office of Employment Security, Board of Review LR 23:76 (January 1997), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2312 (August 2013), repromulgated LR 39:3102 (November 2013).

§115. Conduct of Hearing before Administrative Law Judge

A. The administrative law judge shall preside over the hearing. All testimony shall be given under oath or affirmation. The administrative law judge shall have the right to question and cross-examine all witnesses. Each party to the appeal, or their representatives, shall have the right to question their own witnesses and to cross-examine the opposing parties and witnesses.

B. Only testimony pertinent to the issue involved in the appeal shall be admitted by the administrative law judge.

C. Technical rules of evidence need not be complied with so long as all parties are given an opportunity to fully present their case.

D. Hearsay testimony is admissible, but may only be considered by the administrative law judge in making his decision to substantiate or corroborate other direct evidence.

E. Expunged criminal records shall not be deemed admissible evidence.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:37 (January 1991).

§117. Authority to Separate Witnesses (Placing Witnesses under the Rule)

A. Either party or the administrative law judge may require that a witness may be excluded from the hearing room. Witnesses who are excluded from the hearing shall be instructed not to discuss the case with anyone except the attorney or representative of the party on whose behalf they have been called. This shall not apply to the parties to the appeal or their attorney or representative.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:37 (January 1991).

§119. Additional Testimony

A. The administrative law judge may take such additional testimony as he deems necessary for a fair determination of the issues upon notice to all parties to the appeal as provided in §111.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:37 (January 1991).

§121. Stipulation of Facts

A. Parties to an appeal, with consent of the administrative law judge, may jointly stipulate the facts, in advance, in writing, or at the hearing. The administrative law judge may decide the appeal on the basis of the stipulation or, if he deems necessary, he may hold a hearing and take further testimony after giving notice as provided in §111.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:37 (January 1991).

§123. Decision of Administrative Law Judge

A. The administrative law judge shall render a decision as soon as reasonably possible on all issues involved. This decision will be in writing and will contain a statement of the facts found, the reasons therefor, and the conclusion reached. Copies of the administrative law judge's decision will be mailed to the parties to the proceeding, as defined in §113.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:486 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:37 (January 1991).

§125. Appeals to Board

A. Any party aggrieved by the decision of the administrative law judge may, within the time and the manner specified in §109, file an application for appeal to the board.

B. Upon receipt thereof, the board may, on the basis of the evidence previously submitted to the administrative law judge, affirm, modify, or reverse the findings and conclusions of the administrative law judge.

C. If the board deems it necessary to take additional evidence or decides to hear oral argument, a hearing shall be fixed and all parties shall be notified thereof as provided in §111.

D. The board may, at its discretion, remand the case to the administrative law judge for the taking of such additional evidence as the board may direct. Notice thereof shall be given as provided in §111.

E. Either party may submit written briefs to the board for its consideration at any time before the case is taken under advisement.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:37 (January 1991).

§127. Notification of Appeal

A. All applications for appeals shall be acknowledged and the opposing party shall be duly notified.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991).

§129. Decision of the Board

A. The board shall, as soon as possible, announce its decision, including its findings of fact and conclusions in support thereof, or it may adopt the decision of the administrative law judge as its own.

B. The decision shall be in writing and shall be signed by the members of the board who considered the appeal. If the decision is not unanimous, the decision of the majority shall control. Dissenting opinions may be filed setting forth the reason for dissent. Copies of the board's decision will be mailed to the parties as defined in §113.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991).

§131. Issuance of Subpoenas

A. Requests for subpoenas must be submitted in writing. They shall contain the name and address of the witness and a statement of what is intended to be proven by his or her testimony. Such request must be received by the administrative law judge or board at least 72 hours prior to the time for which the hearing is scheduled. If a request is timely made but service is not perfected or cannot be perfected in time for the appearance of the witness, this shall be grounds for a postponement.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991).

§133. Representation before the Administrative Law Judge and Board

A. Any individual may appear for himself, and/or may be represented by counsel or other duly authorized agent, in any proceeding before the administrative law judge or board. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991).

§135. Disqualification of Representative

A. The administrative law judge or the board may refuse to allow any person to represent others in any proceeding before them whom they find guilty of contumacy or unethical conduct, or who intentionally and repeatedly fails to observe the pertinent provisions of the Louisiana Employment Security Law, R.S. 23:1471, et seq.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991).

§137. Availability of Rules

A. Copies of these rules shall be made available at all area offices of the Office of Regulatory Services and may be inspected by any interested party. Copies of these rules may be requested from the board by parties having need thereof.

AUTHORITY NOTE: Promulgated in accordance with Act 97 of 1936 as amended.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991).

Chapter 3. Employment Security Law

§301. Authority

A. By virtue of the authority vested in the administrator of the Louisiana Workforce Commission of the state of Louisiana by the Louisiana Employment Security Law, R.S. 23:1471-1713 (Act 97 of 1936), as amended, and in order to establish uniform procedure under said law, the following regulations have been and are adopted and prescribed and all other regulations now in effect are hereby rescinded, but remain in full force and effect relative to all matters arising prior to the effective date of the hereinafter prescribed and adopted regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:487 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:38 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2314 (August 2013).

§303. Training of Administrative Law Judges

A. Prior to participation in any claim resolution, newly hired administrative law judges will participate in web-based and/or in-person training on: agency policy and precedent, benefits analysis, the unemployment insurance system, the appeals process, and the proper methods for conducting hearings and writing decisions according to federal quality standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653 et seq.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance Administration, LR 40:374 (February 2014).

§305. Posting of Cards, Statements and Material Relating to the Louisiana Employment Security Law, R.S. 23:1471-1713 as Amended

A. All employers shall follow the instructions issued them by the administrator relative to the posting and maintaining in prominent locations in their places of business where they may be read by the public and all workers, such cards, statements and materials relating to unemployment compensation as are prescribed by the administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:488 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:39 (January 1991).

§307. Contributions, Interest, Mailing Date of Contributions and Contribution Reports

A. Accrual and Due Date of Contributions. Contributions due on wages paid shall become due and shall be paid on or before the last day of the month following the calendar quarter in which such contributions accrue.

B. Interest. Interest prescribed by law on all overdue contributions shall accrue on or after the day following the due date on any contribution payments up to and including the date of payment.

C. Accrual and Due Date of Contributions by Employers Who Become Subject within the Calendar Year

1. With respect to contributions due on wages paid, the first contribution payment of an employing unit which becomes an employer under the Louisiana Employment Security Law at any time during the calendar year, shall become due on, and shall be paid on or before the last day of the month following the calendar quarter in which such employing unit becomes an employer.

2. The first contribution payment of an employer becoming liable during a calendar year shall include all contributions with respect to wages paid for employment occurring on and after January 1 of the calendar year up to

and including the end of the calendar quarter in which the employing unit becomes an employer. The first contribution payment of an employing unit which (voluntarily) elects with the written approval of the administrator to become an employer shall accrue at the end of the calendar quarter with respect to wages for employment occurring on and after the date on which such election was approved, and shall be due and paid on or before the last day of the calendar month following the calendar quarter during which the conditions of becoming an employer are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:488 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:39 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1834 (July 2013).

§311. Instructions on Reports

A. Each employing unit shall comply with instructions pertaining to the contents and due date of any report issued or required by the administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:488 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:39 (January 1991).

§313. Records

A. Each employing unit shall establish records with respect to employment performed for it as hereinafter indicated and shall preserve such records, including those now existing for a period of not less than five years after the calendar year in which the remuneration with respect to such services was paid.

1. For each worker:

- a. name;
- b. Social Security number;
- c. place in which his services are performed, or if there is no one such place, then his base of operations;
- d. date on which he was hired, rehired, or returned to work after temporary lay-off and date separated from work;
- e. his remuneration paid for employment occurring on or after July 1, 1940, and period from which payable, showing separately:
 - i. cash remuneration, including special payments;
 - ii. reasonable cash value or remuneration in any medium other than cash, including special payments; and
 - iii. special payments, included in §313.A.1.a and b (any payments such as bonuses, gifts, etc.) and the year in which the services for which the payments were made were rendered;
- f. amounts paid him as allowance or reimbursement for traveling or other business expenses, and period for which payable; and
- g. if he is paid:
 - i. on a salary basis, his wage rate, and period covered by such rate;
 - ii. on fixed hourly basis, his hourly rate and customary scheduled hours per week;
 - iii. on fixed daily basis, his daily rate and customary scheduled days per week; or
 - iv. on piece rate or other variable pay basis, method by which his wages are computed.

2. General:

- a. beginning and ending dates of each pay period;
- b. total amount of remuneration paid in any pay period for employment occurring on or after July 1, 1940.

3. Records shall be maintained in such form that it would be possible from and inspection thereof to determine:

- a. earnings by weeks of partial unemployment as defined in §327.B;
- b. whether any week of partial unemployment claimed by an individual is in fact a week of less than full-time work; and
- c. time lost, due to unavailability for work by each worker who may be eligible for partial benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:489 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:40 (January 1991).

§315. Reserved.

§317. Employer Registration When Required

A. Any employing unit who pays wages to a worker within this state, or who pays wages to a worker for work performed in this state, or pays wages to a worker who is domiciled in this state, must, within 30 days of the first payment to a worker in this state or for work performed in this state, register as an employer with the Louisiana Workforce Commission.

B. The employing unit must register regardless of whether it:

1. has registered in another state;
2. files contribution reports in another state;
3. believes it is an employer subject to the Louisiana Employment Security Law;
4. pays contributions in another state; or
5. believes its workers are independent contractors.

C. After the employing unit has registered, the Louisiana Workforce Commission will determine whether the employing unit is an “employer” within the meaning of R.S. 23:1472(11) and whether the individual(s) to whom wages were paid are “employees” within the meaning of R.S. 23:1472(12).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1491 and R.S. 23:1513.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance Administration, LR 40:549 (March 2014).

§319. Identification of Workers

A. Each worker engaged in employment for an employer shall procure a federal Social Security account number and report it to every employer by whom he is employed.

B. Each employer shall ascertain the federal Social Security account number of each worker employed by him in employment subject to the Louisiana Employment Security Law. Each employer shall report the federal Social Security account number card in any report required by the administrator with respect to a worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:489 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:40 (January 1991).

§321. Reserved.

§323. Separation Notices

A. Individual Separation Notices

1. Under Conditions Which May Disqualify. Whenever a worker is separated from his employment permanently or for an indefinite period or for an expected duration of seven or more days, under conditions which may disqualify him for benefits pursuant to the provisions of R.S. 23:1601, his employer shall within three days after such separation give him, or if such delivery is impossible or impracticable, mail to his last known address a separation notice alleging disqualification on which the employer has entered the required information. Within the same period of time, the employer shall send a copy of such separation notice, certified by himself or his duly authorized agent, to the administrator.

B. Mass Separation Notices

1. In the event of a separation of 50 or more individuals by an employer for the same reason and about the same time, the employer shall notify the administrator of such separation. Upon receipt of such notice, the administrator shall make full investigation.

C. Labor Dispute Notices

1. In case of a separation due to a labor dispute, the employer shall within three days after such separation file with the administrator a notice setting forth the existence of such a dispute and the approximate number of workers affected.

2. Upon request by the administrator, such employer shall furnish the names of workers ordinarily attached to the department or the establishment where unemployment is alleged to be caused by a labor dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:489 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:40 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2314 (August 2013).

§324. Reply to Notice of Eligibility

A. When the employer or the employer's agent receives the notice specified by R.S. 23:1624 of a claimant's eligibility for benefits or other notice that an application for benefits has been made; the employer or employer's agent shall, within the time specified in the notice examine the notice against the claimant's record and shall reply to the notice. The reply shall either protest or indicate no known cause to protest a decision granting eligibility or otherwise shall inform the department of any known facts bearing on a determination whether benefits shall be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 39:2314 (August 2013).

§325. Definitions of Week

A. The term:

1. *week*—a *calendar week*;

2. *calendar week*—the seven consecutive days commencing at 12:01 a.m. on Sunday and ending at midnight on Saturday.

B. Week of Total or Part-Total Unemployment

1. A *week of total or part-total unemployment*—the seven-consecutive-day period commencing with the first day of the calendar week in which occurs the day, subsequent to his separating from work, on which an individual registers and files a claim to the Louisiana Workforce Commission, except as otherwise provided in §325.B.2 and 3.

2. A week of total or part-total unemployment for an individual who fails for good cause to register and file a claim for benefits as specified in §325.B.1-3 shall consist of the calendar week in which the individual becomes unemployed, provided that such individual registers with the Louisiana Workforce Commission within a period of seven days after such first day of total or part-total unemployment, or on the next day thereafter on which the itinerant service is available, or by mail within 14 days after the commencement of such unemployment; and thereafter each calendar week immediately following such week, provided the individual claims benefits for each such week in accordance with regulations.

3. A *week of total or part-total unemployment* of any individual affected by a mass separation or labor dispute shall consist of the calendar week in which the individual becomes unemployed, provided that notice thereof is filed by the individual with the administrator within 14 days next following such first day of unemployment; and thereafter each calendar week immediately following such week, provided the individual claims benefits for any such week in accordance with regulations.

C. Week of Partial Unemployment

1. With respect to a partially unemployed individual as defined by §327.B.1 whose wages are paid on a weekly basis, a week of partial unemployment shall consist of a calendar week, provided that the administrator may,

upon his own initiative or upon application, prescribe as to any individual or group of individuals such other seven-consecutive-day period as he may find appropriate under the circumstances.

2. For the purpose of this regulation, an individual shall be deemed to be partially unemployed during not more than four consecutive weeks of total unemployment if such weeks immediately follow a week of partial unemployment and if in such weeks there is a reasonable expectation of his return to employment with such employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:489 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:41 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1835 (July 2013).

§327. Types of Unemployment

A. Total Unemployment. A totally unemployed individual is one who, during any week, performs no services and in which no wages are payable to him.

B. Partial Unemployment

1. A partially unemployed individual is one who, during a particular week, earned less than his weekly benefit amount, was employed by a regular employer, and worked less than his normal customary full-time hours for such regular employer because of lack of full-time work.

2. A regular employer is an employer by whom the individual is employed on a regular basis with a reasonable expectation of continuance in that employment and from whom the individual derives the predominant or substantial part of his earnings.

C. Part-Total Unemployment. A part-total unemployed individual is one who, during any week, earned less than his weekly benefit amount and worked less than his full-time hours under any circumstances other than those prescribed under §327.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:490 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:41 (January 1991).

§329. Registration for Work and Claims for Benefits for Total and Part-Total Unemployment

A. Claims for benefits for total or part-total unemployment shall be made on forms prescribed by the administrator for that purpose. In order to claim benefits or waiting period credits for unemployment, an individual shall:

1. file a claim for benefits.

B. The continued claim for benefits for total or part-total unemployment shall be made on forms prescribed by the administrator. Except as otherwise provided in this Section and §333, to establish eligibility for benefits or waiting credits for weeks of total or part-total unemployment during any continuous period of unemployment, the claimant shall continue to report weekly or biweekly, or at more frequent intervals, if directed by the administrator or his representative, to the Louisiana Workforce Commission, provided the reporting at more frequent intervals places no unreasonable burden on him or does not unreasonably limit his opportunity to establish his rights to benefits. For reasons found to be cause for any individual's failure to report, a continued claim may be accepted from such individual, effective as of the first day of his week of total or part-total unemployment, if such continued claim is filed within seven days following the date specified for his reporting. If the failure of an individual to file such a claim at the time specified is found to be without good cause or if the continued claim is not filed within the above mentioned seven days, the continued claim will be disallowed.

C. An individual who returns to employment under conditions which no longer render him eligible for benefits or waiting period credits may claim benefits in person or by mail for the week or portion of a week immediately preceding his employment, provided the week or portion of a week follows without interruption an initial claim or a week for which benefits or waiting period credits were claimed.

D. The administrator may waive or alter either or both of the requirements of this Section to an individual who:

1. is a paid up union member of a recognized craft union;

2. is partially employed and files a claim for part-total benefits;
3. files a claim for shared-work benefits under a shared-work plan; or
4. is on temporary layoff from his regular work with a definite date of return and holds himself available for reemployment at his last place of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:490 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:41 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1835 (July 2013).

§331. Registration for Work and Claims for Benefits for Partial Unemployment

A. Employer Responsibility in the Initiation of a First Claim for Partial Benefits in a Benefit Year

1. Immediately after the termination of any calendar week in which a worker earned less than 60 percent of his customary full-time weekly wage due to lack of work, his employer shall give such worker a low earnings report form, application for partial benefits, setting forth therein the information required of the employer. If such worker completes and returns the low earnings report form to his employer, such employer shall promptly mail or otherwise transmit such form to the Louisiana Workforce Commission.

2. Upon receipt of the low earning report form, the Louisiana Workforce Commission shall promptly notify such worker named therein of his potential rights to partial benefits and shall notify his employer of such worker's weekly benefit amount and benefit year ending date. Upon receipt thereof, such employer shall record such weekly benefit amount and benefit year ending date upon his payroll records.

B. Employer to Furnish Evidence of Subsequent Weeks of Partial Unemployment. After an employer has been notified of the weekly benefit amount and current benefit year ending date of any worker in his employ, such employer, until otherwise notified, shall immediately after the termination of each calendar week which begins within such benefit year and for which such worker's earnings fall below such weekly benefit amount because of lack of work in such week, furnish each such worker with a copy of the low earnings report form, application for partial benefits, setting forth the information required therein, including the worker's name and Social Security account number, the ending date of such week, the wages earned therein, and a proper certification as to his having worked less than his normal customary full-time hours because of lack of work in such week. If such worker completes and returns such form to his employer, such employer shall promptly mail or otherwise transmit such form to the Louisiana Workforce Commission.

C. Registration and Filing of Claims for Partial Unemployment. A claim for benefits for any individual on the low earnings report form, application for partial benefits, or other form designated by the Louisiana Workforce Commission, mailed by him or his employer in his behalf, or delivered to the Louisiana Workforce Commission shall constitute such individual's notice of unemployment, registration for work, and claim for benefits or waiting period credit, with respect to each such week of partial unemployment covered by the claim provided that such form is executed by such individual and received by the Louisiana Workforce Commission through which the employer has a partial claims agreement within seven days following the week to which the form pertains.

D. Extended Period for Registration and Filing of Claims for Good Cause. Notwithstanding the provisions of §331.C, if the administrator finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time set forth in §331.C was due to failure on the part of the employer to comply with any of the provisions of §331.A, B, and C, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the Louisiana Workforce Commission to discharge its responsibilities promptly in connection with such partial unemployment, the administrator shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment, provided that the period during which such claim may be filed shall not be extended beyond the 13-week period subsequent to the end of the actual or potential benefit year during which such week of partial unemployment occurred.

E. Employer Records in Connection with Partial Unemployment. In addition to the requirements set forth in §313, each employer shall keep his payroll records in such form that it would be possible for an inspection to determine with respect to each worker in his employ who may be eligible for partial benefits:

- 1.a. wages earned, by weeks, described in §327.B;
 - b whether any week was in fact a week of less than full-time work; and
 - c time lost, if any, for each such worker, due to his unavailability for work;

2. this regulation applies only to employers with a partial employer agreement with one or more of the Louisiana Workforce Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:491 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:42 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1836 (July 2013).

§335. Witness Fees in Appeal Hearing

A. A witness attending an appeal hearing in obedience to R.S. 23:1631 shall be reimbursed his necessary traveling expenses in conformity with agency travel regulations. The regulation shall not be construed as allowing witness fees or mileage to any party interested in the appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:492 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:43 (January 1991).

§337. Payment of Benefits and Change of Address

A. Benefit payments shall be made to the claimant by electronic funds transfer to his bank account, by debit card, check, or other electronic means. Supplemental payments may, in the discretion of the administrator, be made by check, automatic clearing house (ACH), or electronic funds transfer after determination of the individual's eligibility for payment.

B. Each claimant, upon changing his address, shall immediately notify the Louisiana Workforce Commission of such change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:492 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:43 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1837 (July 2013).

§339. Interstate Claims

A. Interstate claims will be administered under arrangements entered into by the administrator with the appropriate agencies of other states or of the United States in accordance with R.S. 23:1666 of the Louisiana Employment Security Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:492 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:43 (January 1991).

§341. Regulations for Interstate Charging

A. Louisiana employers shall be charged or noncharged in cases where Louisiana transfers wages earned with Louisiana employers to another state in order that that state pay unemployment compensation benefits.

B. The Louisiana employer will be notified of their potential liability and be given 10 days to protest chargeability. Louisiana will determine if the employer should or should not be charged in accordance with §1553 of the Louisiana Employment Security Law based on information supplied by both claimant and employer. Louisiana will not determine claimant eligibility as this is done by the paying state under their Unemployment Compensation Law. If either claimant or employer disagree with the determination, appeal rights will be given in accordance with Employment Security Law.

C. If the employer fails to respond within the first 10 days or fails to follow through timely with any subsequent appeal, the last decision of the agency will stand, and the employer will have lost all subsequent appeal rights.

D. If it is determined that the employer is to be "noncharged," the benefits paid to claimant will be recouped in accordance with §1553 of the Louisiana Employment Security Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:492 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:43 (January 1991).

§343. Employer Elections to Cover Multi-State Workers

A. The following regulations, adopted under R.S. 23:1665 of the Louisiana Employment Security Law, shall govern Louisiana Workforce Commission in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, herein referred to as *the arrangement*.

B. Definitions, as used in this regulation, unless the context clearly indicates otherwise.

Agency—any officer, board, commission or other authority charged with the administration of the unemployment compensation law of the participating jurisdiction.

Interested Jurisdiction—any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and

a. *interested agency*—the agency of such jurisdiction.

Jurisdiction—any state of the United States, the District of Columbia, Canada, or with respect to the federal government, the coverage of any federal unemployment compensation law.

Participating Jurisdiction—a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

Service Customarily Performed by an Individual in More than One Jurisdiction—services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

C. Submission and Approval of Coverage Elections under the Interstate Reciprocal Coverage Arrangement

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

2. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

- a. any part of the individual's services are performed;
- b. the individual has his residence; or
- c. the employing unit maintains a place of business to which individual's services bear a reasonable election.

3. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

4. If such agency approves the election, it shall forward a copy thereof to the agency of each participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly.

5. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

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

7. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

8. An election thus approved shall take effect, as to the interested agency, only if it is approved by such agency.

9. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

D. Effective Period of Elections

1. Commencement

a. An election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.

b. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer has no liability to pay contributions for the earlier period in question.

2. Termination

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

b. Except as provided in §343.D.2.a, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

c. Whenever an election under this regulation ceases to apply to any individual under §343.D.2.a or b, the electing unit shall notify the affected individual accordingly.

E. Reports and Notices by the Electing Unit

1. The electing unit shall promptly notify each individual affected by its approved election, on the Form RC-2 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

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

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

F. Approval of Reciprocal Coverage Elections. The Louisiana Workforce Commission hereby delegates to its administrator authority to approve or disapprove reciprocal coverage election in accordance with this regulation.

G. Contributions paid in another state shall not be credited to those contributions which are otherwise due and payable in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:492 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:43 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1837 (July 2013).

§345. Recognition of Heirs of Deceased Benefit Claimants

A. The heirs of a deceased benefit claimant may make application by submitting a formal affidavit of heirship, to have paid to them all moneys due the deceased at the time of his death. Affidavits must be submitted by all heirs of full age and majority, or if there be minor heirs, the affidavit must be submitted by their authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:493 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:43 (January 1991).

§347. Transfer of Experience-Rating Record to Successor Where Segregable and Identifiable Part or Portion of the Business Is Acquired

A. The transfer of experience-rating records to employers who acquired a segregable and identifiable portion of a predecessor's business within the meaning of R.S. 23:1539 shall be affected on the following basis.

1. Where the business or unit acquired can be completely segregated and identified during the entire period of its existence, the total payroll and experience-rating record attributable thereto shall be transferred to the successor. In this event the only payroll and experience rating records subject to transfer to the successor are those which are actually segregated and identified.

2.a. If the business or unit acquired cannot be segregated and identified during the entire period of its existence, the predecessor and/or the partial successor will provide to the administrator the percentage of the operation that was transferred to the partial successor. The percentage must be agreed upon by both the predecessor and the partial successor. This percentage may be determined by dividing the taxable payroll attributed to the portion acquired for three complete fiscal years prior to the acquisition or the number of years the predecessor was in operation prior to acquisition up to three years, by the total payroll attributed to the predecessor operation for the same period of time.

b. The percentage will be applied to the predecessor's total taxable payroll and reserve to determine the taxable payroll and reserve that will be transferred to the partial successor.

c. The names and Social Security numbers of the individuals transferred to the successor, including any employees terminated at the time of the acquisition, must be provided to the administrator and agreed upon by both the predecessor and partial successor.

d. If any of the above agreements are not received in writing within 90 days from the date of the partial acquisition, the requirements for partial transfer of payroll records to the partial successor have not been met, and none will be transferred.

3. Determining the Tax Rates for Partial Successors When the Information Is Received on a Timely Basis, within 90 Days from the Date of Acquisition. If the successor was not an employer at the time of acquisition, his rate for the balance of the then current contribution year shall be the same as that assigned to his predecessor for said year. If the successor was an employer prior to the date of acquisition, his rate of contribution for the period from such date to the end of the then current contribution year shall be the same as his rate with respect to the period immediately preceding the date of acquisition.

4. Determining the Tax Rates for Partial Successors When the Information Has Not Been Provided on a Timely Basis within 90 Days from Date of Acquisition

a. If the partial successor was not a subject employer at the time of acquisition, his rate for the balance of the then current contribution year shall be the new employer rate or the predecessor rate, whichever is higher.

b. If the partial successor was an employer prior to date of acquisition, his rate of contribution for the period from such date to the end of the then current contribution year shall be the same as his rate with respect to the period immediately preceding the date of acquisition.

5. If an employer has more than one partial succession in a calendar year, the aforementioned procedure will be applied in each case.

6. Partial successors who have not been assigned a tax rate prior to acquisition will be assigned the new employer tax rate or the predecessor's tax rate, whichever is higher, during the 90-day period subsequent to the partial acquisition. Once the proper tax rate is determined, however, it will be applied retroactively.

7. The agency may perform an audit to determine the percentage of taxable payroll and reserve that will be transferred to the partial successor if the administrator finds it necessary to do so.

8. In determining whether or not the unit, or portion of the business acquired by the successor, is segregable and identifiable, each case should be separately considered and analyzed. If the payroll and experience-rating records of the unit, or portion of the business acquired, can be broken down and segregated to permit the proper crediting of wages, contribution of payments and the charging of benefits, as provided in this regulation, the

requirements of the law shall be considered as having been fully met. The employer will be required to furnish such additional analysis of his payroll records as may be required in order that proper segregation may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:493 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:45 (January 1991).

§349. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid under Shipping Articles

A. Pay Period. For the purpose of this regulation the term "pay period" established by "Shipping Articles" means the period of the voyage or engagement of the crew under "Articles of Agreement" pursuant to Title 46 of the United States Code.

B. Current Reports. Notwithstanding any other provision of other regulations, contribution reports and wage reports with respect to wages earned in any pay period established by Shipping Articles shall be submitted as follows.

1. The total amount of such wages shall be included in the wage report and contribution report for the calendar quarter in which such period terminates together with all other wages paid during such quarter.

2. If the pay period established under shipping articles includes more than one calendar quarter, the beginning dates of such pay period shall be shown opposite the amount of wages reported.

3. For the purpose of obtaining eligibility for and the amount of benefits, the wages so reported shall be prorated among the calendar quarters in which the wages were earned according to the length of employment in each of such quarters.

C. Special Reports. The employer shall, upon request of the administrator, promptly furnish a statement of the wages of a seaman, whenever such statement is necessary in order to determine such seaman's eligibility for and rate of benefits. If such a statement includes wages which have not previously been included in a wage report and have been earned in a pay period extending over more than one calendar quarter, such wages shall be reported and prorated as set forth in §349.B.2 and 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:494 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:45 (January 1991).

§351. Benefit Determination Notice

A. Each notice of benefit determination which the administrator is required to furnish the claimant shall, in addition to stating the decision and its reason, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:494 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:46 (January 1991).

§353. Disclosure of Information Pursuant to R.S. 23:905

A. R.S. 23:905 governs the agency's sharing Louisiana workers' employer and wage information (hereinafter *shared information*) with third-party vendors that facilitate the obtaining of such information by third parties under circumstances where such sharing is permitted by 20 CFR part 603 and not otherwise prohibited by law. A third-party vendor is a person or entity that facilitates the obtaining of shared information as an authorized agent of another person or entity to whom the release of the shared information is permitted by law and by 20 CFR part 603. However, this rule shall not apply to or restrict the sharing of such information, to the extent permitted by law and 20 CFR part 603, directly to the individual or the individual's attorney.

B. All sharing of data pursuant to R.S. 23:905 shall comply with 20 CFR part 603 and any other federal requirements or formal guidance governing such data sharing, including but not by way of limitation the requirement that the terms and conditions of such data sharing arrangements be prescribed in a data-sharing agreement. The agency shall require third party vendors to sign agreements with the agency establishing specific

terms and conditions determined by the agency, in its sole discretion, to be necessary and appropriate to the particular data sharing arrangement with the third-party vendor.

C. Before providing any shared information to a third-party vendor, the agency shall require from the third-party vendor and/or the person or entity on whose behalf the third-party vendor requests shared information (the client) documentation sufficient to verify the third-party vendor's representation of the client. The agency's costs in establishing any such data sharing arrangement shall be paid to the agency as a condition precedent to the implementation of any information sharing arrangement under R.S. 23:905.

D. A release consenting to the disclosure that meets the requirements of 20 CFR Part 603 and signed by each person whose information is requested shall be provided to the agency before any data about that person is shared pursuant to this rule, and the agency's cost in providing said information shall be paid to the agency before the requested information is provided to the third-party vendor. The agency may accept a release that is effectuated electronically to the extent permitted by United States Department of Labor unemployment insurance program letter No. 19-12, or any other subsequent official guidance or requirements promulgated by the United States Department of Labor.

E. Third-party vendors shall reimburse the agency for all costs the agency incurs in defending or resisting subpoenas or other legal demands made upon the third-party vendor or their customers seeking the release of information shared pursuant to R.S. 23:905.

F. The purposes for which shared information may be provided to third-party vendors are limited to lending purposes, tenant screening and insurance underwriting, and such sharing is permitted only if the purpose specified in the release provides a service or benefit the individual expects to receive as a result of signing the release. The use of shared information for marketing or any other purposes is prohibited.

G. As required by 20 CFR Part 603, the agency must conduct, and third-party vendors and their clients must permit, random on-site visits by agency auditors of their compliance with the requirements governing their access to, redisclosure of, and retention and disposal of shared information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:494 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:46 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2314 (August 2013).

§355. Services to Claimants

A. Claims personnel will give each claimant such assistance as is appropriate and practicable in finding suitable work and at their discretion determine when more complete placement and employment services by employment service personnel are necessary and appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:495 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:46 (January 1991).

§357. Terms and Conditions Not Applicable to Claims for Payment of Extended Compensation

A. Section 1600(4) of the Louisiana Employment Security Law, pertaining to a waiting period of one week, is not applicable to claims for extended compensation.

B. All disqualifications for regular benefits apply to extended benefits in the same manner and to the same extent as to regular claims.

C. The forwarding of an extended compensation claim notice to a former employer of an individual does not serve to reopen a previously resolved issue or open to adjudication any issue concerning which an employer failed to furnish information within the time provided by §323 and §324.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:495 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:46 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2315 (August 2013).

§359. Approved Training Definition

Approved Training—training to which an individual has been referred by the administrator of the Louisiana Workforce Commission or his duly authorized representative.

1. Referral to training will be made to vocational training, basic education or other short term vocationally directed academic courses designed to develop a particular skill.

2. Approval of training in such types of courses may also be given, upon application, if the individual has been accepted as a student at a school or course approved by the Louisiana Department of Education, which is designed to make the individual employable or more employable in an occupation that is in demand and there is reasonable expectation that the individual will be employed upon completion, except no approval will be given to any training course taken primarily for credit toward the degree requirements of baccalaureate or advanced degree, and no approval will be given to a training course which will take longer than 104 weeks to complete

3. No training will be approved for an individual unless it is found that the demands for his present skills are minimal and not likely to improve under present circumstances.

a. The individual in training will be required to furnish reports from the training facility concerning his attendance. Unsatisfactory attendance attested to by the training facility shall constitute grounds for terminating application of the provisions of R.S. 23:1602(1) to the individual unless good cause is shown for the unsatisfactory attendance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:495 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:47 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:1838 (July 2013).

§361. Types of Employment

A. For purposes of R.S. 23:1601(1):

Full-Time Employment—employment which requires the individual's presence for the major portion of the normal work-day, week, or month. Full-time employment is that employment which normally provides an individual with the major portion of his earnings.

Interim Employment—employment performed by individuals who are on temporary layoff or are otherwise separated from their full-time regular employment and expect to return to their full-time regular employment within a reasonable time.

Part-Time Employment—employment which requires an individual's presence less than the normal workday, week, or month and is normally used to supplement income from full-time work.

Regular Employment—employment of an individual on a regular basis with a reasonable expectation of continuance in that employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:495 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:47 (January 1991).

§363. Proof of Unemployment by a Principal Officer or Controlling Stockholder, or Relative thereof, of a Corporation, Partnership or Proprietorship

A. For the purpose of R.S. 23:1472(19) an individual who was the principal officer or controlling stockholder of a corporation, partnership or proprietorship or related to him in any degree as set forth in Paragraph (a) thereof, shall be deemed to be "unemployed" if:

1. the corporation, partnership or proprietorship does not appear as an employer in the individual's base period; and

2. he otherwise meets the definition of "unemployed."

B. If the corporation, partnership or proprietorship does not appear in the individual's base period as an employer, he shall be deemed to be unemployed if:

1. the employing unit is no longer in business or acts beyond the control of the controlling stockholder or principal officer occurred to such an extent to fully justify the individual's inability to perform services judged on the same basis as any employer under similar conditions; and

2. the individual otherwise meets the definition of "unemployed."

C. *Principal Officer*—the president, vice president, secretary or treasurer so designated by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:495 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:47 (January 1991).

§364. Reciprocal Offset

A. An appeal of a determination to offset unemployment benefits under R.S. 23:1665.2 shall be limited to the authority of the administrator of the Louisiana Workforce Commission to offset against benefits payable to the claimant and shall be conducted in accordance with R.S. 23:1629 and R.S. 23:1630. All issues concerning the validity of the overpayment shall be directed by the claimant to the requesting state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653 et seq.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance Administration, LR 40:374 (February 2014).

§367. Assignment of Rates for Corporate Groups

A. If the administrator grants an employer the right to be recognized as a corporate group, the rate will be assigned as follows.

B. A new number will be assigned to the parent corporation. The rate for the then current year will be based on the combined experience rating records of all employers that form the corporate group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:496 (June 1989), amended by the Department of Employment and Training, Office of Employment Security, LR 17:47 (January 1991).

§368. Disqualification for Benefits Pursuant to R.S. 23:1601(8)(a)

A. The agency will notify the claimant by mail or other delivery method if the administrator has received information that the claimant has earned unreported wages for the weeks claimed.

1. The claimant shall have seven days from the date of the mailing to respond.

a. The claimant must provide adequate supporting documentation to establish that the unreported wages are incorrect.

b. Adequate documentation may include but is not limited to:

i. proof of incorrect identity;

ii. proof of incorrect date of wages;

iii. check stubs;

iv. time sheets;

v. notice of separation or termination.

2. If the claimant requests notice to be sent by electronic delivery or delivery in another method beside mail, then the claimant shall have seven days from the delivery date of such notice to respond.

3. Acceptable forms of electronic delivery may include but are not limited to:

a. facsimile;

b. e-mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 39:2315 (August 2013).

§369. Waiver of Overpayment Recovery

A. Requirements for Waiver of Recovery of Overpayments

1. A waiver of the overpayment may be granted only if:
 - a. the claimant was without fault in causing the overpayment;
 - b. repayment would be against equity and good conscience; and
 - c. the claimant provided supporting documentation of his inability to pay in full or according to the repayment table in §371.
2. When a claimant appeals an overpayment determination, a written questionnaire shall be provided to claimant for an answer. The claimant shall return the completed questionnaire to the administrator within 15 days of the date of such questionnaire. If the claimant fails to return the completed questionnaire timely, then the waiver shall be denied.
3. In any proceedings, under this rule, the overpaid claimant shall have the burden of proving entitlement to a waiver.

B. Determination of Fault

1. To determine if fault existed on the part of the claimant, the factors considered shall include:
 - a. gave inaccurate information;
 - b. failed to disclose a material fact;
 - c. knew or should have known that he/she is not entitled to the benefits;
 - d. caused the overpayment by an act of omission of information known to the claimant; or
 - e. had a determination of ineligibility due to fraud.
2. An affirmative finding on any one of the above precludes waiver of the overpayment.

C. Equity and Good Conscience Determination

1. In determining whether recovery of the overpayment would be against equity and good conscience, the factors considered shall include:
 - a. financial and other information provided in response to the agency's request, which shall include information about:
 - i. all financial resources available to the claimant and members of the claimant's household;
 - ii. the claimant's living expenses, including, but not by way of limitation, expenses for:
 - (a). food;
 - (b). clothing;
 - (c). rent;
 - (d). debt payment;
 - (e). obligations;
 - (f). accident and health insurance;
 - (g). medical care;
 - (h). taxes;
 - (i). work related transportation; and
 - (j). the support of others for whom the claimant is legally responsible; and
 - iii. any other factors that impact the claimant's ability to cover ordinary living expenses for at least six months;

2. whether the claimant was given notice that a reversal on appeal would result in an overpayment.

D. All notices of determination of overpayment shall include information regarding rights of appeal and waiver provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:1086 (December 1989), repromulgated LR 17:48 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2315 (August 2013).

§371. Overpayment Recovery

A. This Rule prescribes an acceptable repayment schedule for the purpose of collecting overpaid benefits pursuant to R.S. 23:1713.

1. The amount of overpayment is immediately due and payable on demand upon exhaustion of the right to appeal:

- a. a determination of overpayment; and/or
- b. a denial of waiver of overpayment.

2. If an individual is unable to immediately repay the overpayment in full upon demand, a repayment agreement in writing will be negotiated in compliance with the repayment table for overpayments listed below.

Repayment Tables Total for Overpayments			
Total Overpayment Amount is: At Least	But Less Than:	Number of Months to Repay	Minimum Monthly Payment
\$1	\$500	12	\$42
\$501	\$1,000	12	\$84
\$1,001	\$1,500	18	\$84
\$1,501	\$2,000	18	\$112
\$2,001	\$2,500	24	\$105
\$2,501	\$3,000	24	\$125
\$3,001	\$3,500	30	\$117
\$3,501	\$4,000	30	\$134
\$4,001	\$4,500	36	\$125
\$4,501	\$5,000	36	\$139
\$5,001	\$5,500	42	\$131
\$5,501	\$6,000	42	\$143
\$6,001	\$6,500	48	\$136
\$6,501	\$7,000	48	\$146
\$7,001	\$7,500	54	\$139
\$7,501	\$8,000	54	\$149
\$8,001	\$8,500	60	\$142
\$8,501	\$9,000 or greater	60	\$150

B. The initial payment and signed repayment agreement must be received within 30 days from the day that the repayment agreement is mailed to the individual's last known address. Subsequent payments are to be paid in monthly installments which commence no later than 30 days after the initial payment is received, and are due thereafter each month until paid in full.

C. An adjustment of the repayment schedule may be granted at the written request of the claimant only if there has been material change in his or her financial condition.

D. Requests to adjust the repayment schedule will only be granted if warranted by the criteria set forth in §369.C, waiver of overpayment recovery, equity and good conscience determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Employment Security, LR 15:1085 (December 1989), repromulgated LR 17:48 (January 1991), amended by the Workforce Commission, Office of Unemployment Insurance, LR 39:2316 (August 2013), amended by the Workforce Commission, Office of Unemployment Insurance Administration, LR 40:1118 (June 2014).

§373. Medical Services Performed by Physician or Professional Corporation

A. For the purpose of exclusion of medical services rendered by a physician or professional corporation on behalf of a hospital or other medical facility or institution under R.S. 23:1472(12)(H)(XIX), written certification from the Internal Revenue Service of exemption as an independent contractor or a non-profit organization shall be submitted to the administrator by such physician or professional corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Employment Security, LR 17:48 (January 1991).

§375. Determining Whether Workers are Employees or Independent Contractors

A. The totality of the circumstances will be considered in determining whether workers are properly classified as employees or independent contractors, including the following factors regarding control and direction of each individual worker's position under R.S. 23:1472(12)(E)(I).

1. Behavioral Control. Facts that show a right to control or direct how the worker does the task for which the worker is hired. The type and degree of instruction given to the worker shall be considered including, but not limited to:

- a. when and where to do the work;
- b. what tools or equipment to use;
- c. what workers to hire or to assist with the work;
- d. where to purchase supplies and services;
- e. what work must be performed by a specified individual;
- f. what order or sequence to follow in performing the work;
- g. how work results are achieved;
- h. whether the worker is hired and discharged under specific terms of an agreement or at-will;
- i. the extent to which the worker is subjected to pre-employment testing, credentialing, resume verification, background checks, drug testing and/or pre-employment physicals;
- j. the extent to which the job opening was represented as employment; and
- k. training given the worker.

2. Financial Control. Facts that show whether there is a right to control or direct the business aspects of the worker's job including, but not limited to:

- a. the extent to which the worker has unreimbursed business expenses;
- b. the extent of the worker's investment in the tasks beyond the worker's own time;
- c. the extent to which the worker makes services available to the relevant market;
- d. whether payment is made based solely upon time worked or includes other factors;
- e. whether the worker tracks time worked and calculates amounts due; and
- f. the extent to which the worker can realize a profit or loss.

3. Type of Relationship. Facts that show the nature of the parties' relationship including, but not limited to:

- a. written contracts describing the relationship the parties intended to create;
- b. whether the worker is provided employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay;
- c. whether the relationship is of a definite term; and
- d. the extent to which services performed by the worker are similar to duties of employees at the worksite.

4. A prior determination by a taxing authority regarding the relationship.

5. As used in R.S. 23:1472(12)(e), the term *any control or direction* shall include, but not by way of limitation, direction or control exercised at the worksite by any person authorized to direct or control the work performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653 et seq.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance Administration, LR 40:549 (March 2014).

§377. Electronic Filing of Wage and Tax Reports Required; Payment of Unemployment Contributions by Electronic Funds Transfer, Paper Check, ACH, or Other Method Approved by the Executive Director

A. All employers must file quarterly, annual, and amended wage reports electronically for any reports due after January 31, 2014.

B. All employer's agents and professional employer organizations, as defined in R.S. 23:1761, must file quarterly, annual, and amended wage reports electronically for any employer's reports due after January 31, 2014.

C. Contributions must be paid by the following methods:

1. electronic funds transfer (EFT);
2. automated clearing house (ACH);
3. paper check; or
4. any other method of payment approved by the executive director.

D.1. If an employer, agent or professional employer organization elects to pay the contributions due by paper check, it must be accompanied by the appropriate voucher downloaded from the Workforce Commission's portal and mailed only to the address printed on the voucher. Payments made by paper check are not credited to the employer's account until the check is received.

2. The failure to mail the voucher and paper check to the address given on the voucher may result in the imposition of penalties and interest as authorized by R.S. 23:1543.

E. The electronic reporting requirement may be waived by the executive director only upon a showing by the employer, agent or professional employer organization that electronic reporting has created a hardship. All applications for a waiver must be in writing and submitted to the executive director, setting forth detailed reasons the requirement to file electronically creates a hardship.

1. The term *hardship* includes, without limitation:

a. a financial burden or expense which significantly impairs the employer's ability to continue to conduct its business;

b. electronic filing would impose a *hardship* due to a physical disability or geographic barrier;

c. the requirement to file electronically is contrary to equity or good conscience due to the specific circumstances of the employer requesting the waiver.

2. A request for a waiver must be in writing and must be delivered to the administrator after January 1, 2014, but before April 30, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1631.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 40:806 (April 2014).