

**PART II. BUREAU OF EMPLOYMENT SECURITY**

**Subpart** **Chap.**  
**A. UNEMPLOYMENT COMPENSATION ..... 61**

**Subpart A. UNEMPLOYMENT COMPENSATION**

**Chap.** **Sec.**  
**61. ADMINISTRATION ..... 61.1**  
**63. RESPONSIBILITIES OF EMPLOYERS ..... 63.1**  
**65. EMPLOYE PROVISIONS ..... 65.1**  
**67. STATEMENTS OF POLICY ..... 67.1**

**Authority**

The provisions of this Subpart A issued under the Pennsylvania Unemployment Compensation Law (43 P. S. §§ 751—914), unless otherwise noted.

**Source**

The provisions of this Subpart A adopted July 1, 1969, unless otherwise noted.

**CHAPTER 61. ADMINISTRATION**

**GENERAL PROVISIONS**

**Sec.**  
61.1. Definitions.  
61.2. Social security account numbers.  
61.3. Wages.  
61.4. Notification of employe’s rights.  
61.5. Special Administration Fund.  
61.6. Disposal of records.  
61.7. Discrimination in referrals.

**WITNESS FEES AND EXPENSES**

61.11. Persons reimbursable.  
61.12. Reimbursable items.

**DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION**

61.21. Authorization required.  
61.22. Procedure when served with a subpoena.  
61.23. Furnishing of information.  
61.24. Statistical publications.

**GENERAL PROVISIONS****§ 61.1. Definitions.**

Terms which are defined in the law and which are used in this subpart have the same meanings as provided in the law. In addition, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

*Applicant*—An individual applying for employment at an office at the Pennsylvania State Employment Service.

*Board*—The Unemployment Compensation Board of the Commonwealth.

*Bureau*—The Bureau of Employment Security of the Commonwealth.

*Claim*—Either claim for waiting period credit or a claim for compensation, sometimes referred to as a “pay order.”

*Claimant*—An individual applying for compensation under the law, the unemployment compensation law of another state or territory of the United States, or under 5 U.S.C. Chapter 85 (UCFE and UCX programs).

*Contributions*—The money payments required by sections 301 and 301.1 of the law (43 P. S. §§ 781 and 781.1) to be made to the Unemployment Compensation Fund by an employer with respect to employment.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Holiday pay*—Remuneration payable for services performed in the claim week in which a legal holiday occurs for purposes of computing compensation for partial and part-total unemployment.

*Law*—The Pennsylvania Unemployment Compensation Law (43 P. S. §§ 751—914).

*Leaving work*—An employe shall be deemed to have “left work” in the following situations:

(i) If he walked off work or abandoned his position.

(ii) If, having been on temporary short term layoff with a specific date of return, he refused or failed to return to his employment on the specific date or when recalled by the employer before that date.

(iii) If he refused a transfer or a change in conditions of work which he was required to accept under his contract of employment with the employer.

*Partial unemployment*—An individual shall be considered partially unemployed with respect to a week during which he was employed by his regular employer and earned less than his weekly benefit rate plus his partial benefit credit, and was employed less than customary full-time hours due to lack of work.

*Part-total unemployment*—An individual shall be considered to be part-totally unemployed with respect to any week during which he was not employed by his regular employer, earned less than his weekly benefit rate plus his partial benefit credit, and was employed less than his customary full-time hours due to lack of work.

*Payments in lieu of contributions*—The money payments made into the Unemployment Compensation Fund by an employer with respect to employment, under sections 1003, 1104 and 1202 of the law (43 P. S. §§ 893, 904 and 912).

*Total unemployment*—An individual shall be considered totally unemployed with respect to a week during which he performs no services and with respect to which no remuneration is paid or payable to him.

*Trainee*—An individual who applies for or receives training under a training program in which the Bureau is involved.

*Week*—Except as otherwise specifically provided, a week, with respect to an individual who files a claim for total, part-total or partial unemployment, means the calendar week—Sunday through Saturday, except that those individuals who are filing claims for compensation for a period of unemployment which began prior to the effective date of this section shall continue to file claims for weeks of any 7 consecutive days for as long as that period of unemployment continues and they are otherwise eligible. For purposes of this section, if the workday of an individual includes parts of 2 calendar days, the work performed by the individual during the workdays shall be considered to have been performed during the first of the calendar days.

#### Source

The provisions of this § 61.1 amended May 4, 1973, 3 Pa.B. 46. Immediately preceding text appears at serial pages (9270) and (9271).

#### Cross References

This section cited in 34 Pa. Code § 65.1 (relating to definitions).

### § 61.2. Social security account numbers.

(a) An employer shall ascertain the social security account number of his employees.

(b) The employer shall inform an employe who does not have a social security account number of the provisions of Regulation 128 of the Bureau of Internal Revenue. If the employe fails to comply with the requirements of the regulation, the employer shall execute a Form SS-5, Application for Social Security Number, for the employe.

#### Notes of Decisions

##### *Week*

Because a week begins on Sunday and the legal holiday was on Monday, the first day of the week as that term is defined in the Law is not a customary vacation period although it is a customary day off for working people. Therefore, school bus drivers seeking unemployment compensation were not excluded from coverage for a week in which Monday was a holiday and the remainder of the week was snow days under 43 P. S. § 802.1. *North Penn Sch. Dist. v. Unemployment Compensation Board of Review*, 662 A.2d 1161 (Pa. Cmwlth. 1995).

**§ 61.3. Wages.**

(a) *Date of payment.* Wages shall be considered to be paid on the day on which amounts definitely assignable to a payroll period are generally paid by the employer, even though the wages have not actually been reduced to the possession of employees.

(b) *Shipping Articles.* Wages with respect to services performed under Shipping Articles, which are effective for a period of more than 1 month and under which wages are not paid in full at periodic intervals of 1 month or less, shall be considered to be paid in the calendar quarter in which the services of the employee were being performed. The amount of those wages shall be determined on the basis of the ratio of the number of days in a calendar quarter in which service was performed by the employee to the total number of days in which the employee performed services under the Shipping Articles.

(c) *Board and lodging.* The money value of board or lodging constituting wages shall be the reasonable cash value to the employee of the board or lodging, but may not be considered less than the following minimum amounts, unless the employer produces evidence to the satisfaction of the Bureau that the minimum amounts are in excess of the actual value to the employee of his board or lodging:

- (1) Lodging for 1 week, \$2.50.
- (2) Meals for 1 week, \$4.50.
- (3) Meals for 1 day, 75¢.
- (4) One meal, 25¢.

**Notes of Decisions***Date of Payment*

The Unemployment Compensation Board of Review is bound by this regulation and is required to treat wages as paid on the date the employer was supposed to make the payments. Therefore, the Board erred in concluding that the lump sum payment was properly assignable to the second quarter of 1994, rather than to the period from April of 1994 through March of 1995 to an employee on "leave" status when the payment had a direct relation to the personal services rendered with respect to claimant's employment. *Coates v. Unemployment Compensation Board of Review*, 676 A.2d 742 (Pa. Cmwlth. 1996).

The Unemployment Compensation Referee and the Board of Appeals properly applied back wages earned by employees to the quarter in which they earned the wages rather than the quarter when the wages were paid as required by the rationale of *Cugini v. Unemployment Compensation Board of Review*, 512 A.2d 1169 (Pa. 1986). *USX Corporation v. Unemployment Compensation Board of Review*, 551 A.2d 389 (Pa. Cmwlth. 1988).

Subsection (a) provides that "(w)ages shall be deemed to be paid on the day . . . generally paid by the employer, even though the wages have not actually been reduced to the possession" of the employee, controls the attribution of severance pay for purposes of computing claimant base year wages. *Cugini v. Unemployment Compensation Board of Review*, 512 A.2d 1169 (Pa. Cmwlth. 1986).

This section, assigning wages to usual pay date rather than actual date of receipt, pertains to employers' reporting of wages for fund collection purposes and is not relevant to assignment for wages for purposes of determining claimant eligibility for benefits. *Rebo v. Unemployment Compensation Board of Review*, 499 A.2d 732 (Pa. Cmwlth. 1985) appeal granted 518 A.2d 807 (Pa. 1986).

*Generally Paid*

The 1994 employe calendar published by employer and claimant's wage records, indicated that group III employes, such as claimant, received paychecks as a rule on alternate Fridays throughout 1994; thus, claimant was "generally paid" every other Friday. Accordingly, the \$952 payment on March 31, 1994, a Thursday, should have been attributed to April 1, 1994, a Friday; thus, claimant was entitled to unemployment compensation benefits. *Gibson v. Unemployment Compensation Board of Review*, 682 A.2d 422 (Pa. Cmwlth. 1996).

**§ 61.4. Notification of employe's rights.**

(a) Employers shall post and maintain, in places readily accessible to their employes, printed notices or posters informing employes of their potential rights to benefits under section 405 of the law (43 P. S. § 805) and providing general instructions as to what the employe shall do and where the employe shall go to obtain those benefits.

(b) Copies of printed notices or posters may be obtained from the Bureau, upon request, without cost to the employer.

**§ 61.5. Special Administration Fund.**

(a) Contributions, together with interest and penalties thereon, received or collected by the Bureau from employers under the provisions of section 601 of the law (43 P. S. § 841) shall be credited to the Employers' Contribution Account. Interest and penalties credited to the account shall not be deemed to be a part of the Unemployment Compensation Fund, and shall be transferred to the Special Administration Fund at convenient intervals, section 641.1 of the law (43 P. S. § 841.1).

(b) No refund of interest or penalties will be made to an employer from the Unemployment Compensation Fund, and no deduction of interest or penalties erroneously paid will be allowed an employer with respect to future payments of contributions, interest or penalties until an amount of money equal to or in excess of the interest or penalties has been transferred from the Special Administration Fund to the Unemployment Compensation Fund.

(c) Additional amounts of money will be transferred from time to time, in keeping with the provisions of subsection (b), so that the total amount of money thus transferred will, at all times, be equal to or in excess of the sum of the total amounts of interest and penalties erroneously paid and which fall into one of the following categories:

(1) Those refunded subsequent to May 31, 1945.

(2) Those allowed to be deducted by employers with respect to future payments of contributions, interest or penalties subsequent to that date.

(3) Those included in the amounts of checks which have been deposited since that date and which have been returned unhonored, unless the checks have been subsequently redeposited and honored.

(d) Any money transferred under the provisions of subsection (c) and which are in excess of the total amounts of such interest and penalties shall be consid-

ered as a credit in the Unemployment Compensation Fund against future transfer required to be made by the provisions of this section.

**§ 61.6. Disposal of records.**

(a) Under the authority granted by section 209 of the law (43 P. S. § 769), the following categories of records pertaining to contributions and benefit rights shall be subject to disposal according to schedules or directives approved by the Bureau, and shall be issued through the usual media for disseminating official Bureau instructions:

- (1) Records which are not required in the transaction of current business.
- (2) Records which do not have administrative, legal or research value.
- (3) Records which do not have other values for contribution liability or benefits entitlement to warrant further preservation.

(b) Those contributions or benefits records which are established as the result of a specific unemployment compensation program controlled by the Federal government will be disposed of in accordance with agreements entered into with the United States Department of Labor.

(c) Records authorized for disposal under this section shall be destroyed or otherwise disposed of in accordance with current administrative and fiscal policies and with cognizance of obligation of the Bureau to preserve the confidential character of the records.

**§ 61.7. Discrimination in referrals.**

(a) In referring applicants to employment positions, local employment offices of the Department will refrain from an act of discrimination because of the affiliation or nonaffiliation of an applicant with a labor organization.

(b) The term "act of discrimination" may not be construed to include referrals of persons affiliated with a labor organization on the basis of an order so specifying from an employer pursuant to his agreement or understanding, written or otherwise, with representatives of employes affiliated with the labor organization.

**WITNESS FEES AND EXPENSES**

**§ 61.11. Persons reimbursable.**

The payment of fees and expenses to individuals who have served as witnesses in proceedings conducted by the Board of Review or the Bureau will be made subject to the following conditions:

- (1) *Persons not parties-in-interest.*
  - (i) Payment may be made only to individuals who have received a summons or a subpoena issued by the Bureau or the Board of Review in accordance with sections 506 and 304 of the law (43 P. S. §§ 784 and 826), and who are not a party-in-interest to the proceeding.

(ii) In a proceeding relating to compensation rights the claimant and any last or base-year employer of the claimant shall be considered a party-in-interest.

(iii) An employer shall be considered a party-in-interest to a proceeding relating to his status or liability under section 304 of the law (43 P. S. § 784).

(iv) Employes, including corporate officers, of an employer who is a party-in-interest to a proceeding, shall be considered as parties-in-interest to the proceeding.

(2) *Employes of the Department.* Employes of the Department may not be entitled to a payment provided by the provisions of this section, but shall be reimbursed for proper expenses in accordance with the provisions of Departmental rules and regulations governing traveling expenses of employes. The receipt of a summons or a subpoena by an employe of the Department, however, will justify the issuance of whatever authorization for travel as may be required under the travel rules and regulations.

(3) *Commonwealth employes and employes of the Department.* An employe of the Commonwealth who is not an employe of the Department will not be entitled to a payment provided by the provisions of this section, but will be reimbursed for expenses in the same manner as provided for employes of the Department, unless the employe shows to the satisfaction of the comptroller of the Bureau that he is not entitled to State pay for the period of time spent in attendance at a proceeding in response to a summons or a subpoena. In this event the employe is entitled to allowances as provided for other individuals who are not employes of the Commonwealth.

#### Cross References

This section cited in 34 Pa. Code § 61.12 (relating to reimbursable items).

### § 61.12. Reimbursable items.

(a) *Transportation.*

(1) An individual who is entitled to reimbursement under § 61.11 (relating to persons reimbursable) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid mileage at the rate of 7¢ for each mile he actually travels in going to the place from his place of residence and returning, but he will not be reimbursed for a greater number of miles than would be required for traveling by the usually traveled route between those places.

(2) When a proceeding is adjourned, continued or postponed for more than 1 day or is prolonged from 1 week to the next, a witness necessarily present both before and after the interval and who returns to his place of residence during the interim may be paid one additional mileage allowance for each interval.

(b) *Fees.*

- (1) An individual entitled to reimbursement under § 61.11 may be allowed a fee of \$5.00 for each day or part of a day spent in attending or traveling to and from a proceeding.
- (2) When a proceeding is prolonged from 1 day to the next a witness necessarily present on both days who resides more than 50 miles by the usually traveled route from the place the proceeding is held and who remains there overnight may be paid an additional amount equal to the *per diem* witness fee for each night.
- (c) *Time limit for filing claims.* An allowance or fee payable under the provisions of this section shall be paid only if a claim therefor is filed with the Board or the Bureau within 30 days from the date of the proceeding.

### DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

#### § 61.21. Authorization required.

No officer or employe of the Department or the Board or other public employe, except as authorized by the provisions of this chapter, shall produce or disclose to any person or before any tribunal, directly or indirectly, any record or any information acquired from a record pertaining to any employer, applicant, claimant or trainee.

#### § 61.22. Procedure when served with a subpoena.

An officer or employe of the Department or the Board, upon being served with a subpoena or other compulsory process, shall immediately bring the matter to the attention of his superior officer who shall forthwith supply the following information to the legal division of the Department:

- (1) The caption of the case, the names of the parties and other general information.
- (2) The nature of the case, if known.
- (3) The name of the employe served with the subpoena.
- (4) The time and place where the employe is directed to appear.
- (5) What records, if any, the employe is directed to produce.

#### § 61.23. Furnishing of information.

Disclosure of records or information may be authorized by specific instruction of the Department or Board in the following cases:

- (1) To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling and other employment service functions.
- (2) To any properly identified claimant for benefits or payments under a State, territorial or Federal unemployment compensation or re-adjustment allowance law, or training allowance law, or to his authorized representative,

including information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.

(3) To officers and employes of the Department and the Board of Review, and to an officer or employe of an agency of the Federal government or of a State or territorial government, lawfully charged with the administration of a Federal, State or territorial unemployment compensation, readjustment allowance or training allowance law, but only for purposes reasonably necessary for the proper administration of the law.

(4) To an officer or employe of an agency of the Federal government or of a State or territorial government, lawfully charged with the administration of a law providing for old age assistance or other public assistance, work relief, pension, retirement or other benefit payments, but only for purposes reasonably necessary for the proper administration of the law.

(5) To applicants, employers and the public when the information is of a general nature concerning employment opportunities, employment levels and trends, and labor supply and demand, but only if the release or publication does not include information identifiable to individual applicants, employers or employing establishments.

(6) To governmental authorities, such as antidiscrimination and fair employment practice authorities, whose functions will aid the Pennsylvania State Employment Service in carrying out an amplified and more effective placement service, including information relating to fair employment practices.

(7) To individuals, organizations and agencies, or for purposes other than as specified in paragraphs (1)—(6), if a disclosure does not impede the operation of, and is not inconsistent with the purposes of the employment security program, and is authorized in writing in individual cases by the Executive Director.

#### **§ 61.24. Statistical publications.**

Nothing in this chapter may be construed to prohibit the publication of statistical data or other general information, if the publication is not identifiable to individual employers, employes, applicants or claimants.

[Next page is 63-1.]

61-10

(235566) No. 278 Jan. 98

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