

PART II. BUREAU OF EMPLOYMENT SECURITY

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

Subpart A. UNEMPLOYMENT COMPENSATION

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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

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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 services with an employment office.

Application for benefits—The initial request for unemployment compensation filed under section 501(a) of the law (43 P. S. § 821(a)), preliminary to filing claims for compensation. If an application for benefits is valid, as defined in section 4(w) of the law (43 P. S. § 753(w)), the application establishes a benefit year commencing on the effective date of the application.

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

Bureau—The Department.

Claim for compensation—A request for waiting week credit or payment of compensation for a week when the claimant was unemployed, filed under section 501(c) of the law.

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.

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 1202.2 of the law (43 P. S. §§ 893, 904 and 912.2).

Secretary—The Secretary of the Department.

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

UC Office—A Department office established to accept and process applications for benefits and claims for compensation.

UC Tax Review Office—The individual or agency within the Department that administers appeals to the Secretary or the Secretary's designee.

UCTS—The Office of Unemployment Compensation Tax Services, or its successor agency, within the Department.

Week—Except as otherwise specifically provided, a week, with respect to an individual who files a claim for 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; amended February 11, 2011, effective February 12, 2012, 41 Pa.B. 844. Immediately preceding text appears at serial pages (317794) and (328195).

Cross References

This section cited in 34 Pa. Code § 65.139 (relating to definitions).

§ 61.2. Social security account numbers.

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

(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.*

(1) *General rule*—Wages are considered paid on the date when the employer actually pays them.

(2) *Delayed payment of wages*—For purposes of benefits, if payment of wages is delayed, the wages are considered paid on the date when the employer generally pays amounts definitely assignable to a payroll period.

(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 employe 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 employe to the total number of days in which the employe performed services under the Shipping Articles.

(c) *Noncash wages.*

(1) *General rule*—Except as provided in paragraph (2), the money value of remuneration paid in mediums other than cash is the fair market value of the remuneration at the time of payment.

(2) *Meals and lodging*—Meals and lodging are valued at amounts assigned to meals and lodging in the documents referenced in 41 CFR 301-11.6 (relating to where do I find maximum per diem and actual expense rates), for the calendar year in which they are provided and for the location where they are provided, unless the employer is able to produce sufficient, credible evidence that the fair market value of the meals and lodging is less than such values.

Source

The provisions of this § 61.3 amended February 11, 2011, effective February 12, 2011, this section will be in effect as to wages paid on or after January 1, 2012, 41 Pa.B. 844. Immediately preceding text appears at serial pages (328196) and (313903).

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 employe 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 employes 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).

§ 61.3a. Third party sick pay.

(a) *Definitions.* For purposes of this section:

(1) A sick pay payment is any payment on account of sickness or accident disability that is “wages” as provided in the law.

(2) A third party payor is an entity that makes a sick pay payment, is not reimbursed for the payment on a cost plus fee basis, and is not an employer of the recipient.

(3) A funding employer is an entity that finances, directly or indirectly, in whole or in part, a sick pay payment to one or more of its employees by a third party payor.

(b) *Reporting and contribution requirements.*

(1) A funding employer shall report, and pay the contributions due with respect to, a sick pay payment, unless a third party payor is required to do so.

(2) A third party payor shall report, and pay the contributions due with respect to, a sick pay payment it makes, unless within 15 days of payment the third party payor gives written notice to the funding employer for which the recipient most recently performed services, of the name and social security account number of the recipient and the amount of the payment.

(c) *Date of payment.* A sick pay payment is considered paid as provided in subsection (a).

(d) *Enforcement.* A third party payor that is required to report, and pay contributions on, a sick pay payment, is deemed to be an employer for the purpose of application of all provisions in the law relating to its enforcement, and the collection of contributions, interest and penalties.

Source

The provisions of this § 61.3a adopted February 11, 2011, effective February 12, 2011, 41 Pa.B. 844.

§ 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 considered 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 eligible for compensation and expenses.

The payment of fees and expenses to individuals who have served as witnesses in proceedings conducted by the Board or the Department 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 Department or the Board 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) Agents and employees, 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) *Employees of the Department.* Employees 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 employees. The receipt of a summons or a subpoena by an employee 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 employees and employees of the Department.* An employee of the Commonwealth who is not an employee 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 employees of the Department, unless the employee shows to the satisfaction of the Department 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 employee is entitled to allowances as provided for other individuals who are not employees of the Commonwealth.

Source

The provisions of this § 61.11 amended February 11, 2011, effective February 12, 2011, 41 Pa.B. 844. Immediately preceding text appears at serial pages (313904) and (227567).

Cross References

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

§ 61.12. Reimbursable items.

(a) *Compensation and expenses.* An individual who is eligible for reimbursement under § 61.11 (relating to persons eligible for compensation and expenses) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid compensation and expenses by the Department in accordance with 42 Pa.C.S. § 5903(b)—(g) (relating to compensation and expenses of witnesses).

(b) *Time limit for filing claims.* An allowance or fee payable under this section shall be paid only if a claim therefore is filed with the Board or the Department within 30 days from the date of the proceeding.

Source

The provisions of this § 61.12 amended February 11, 2011, effective February 12, 2011, 41 Pa.B. 844. Immediately preceding text appears at (227567) to (227568).

DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION**§§ 61.21—61.24. [Reserved].****Source**

The provisions of these §§ 61.21—61.24 reserved February 11, 2011, effective February 12, 2011, 41 Pa.B. 844. Immediately preceding text appears at serial pages (227568) and (235565).

§ 61.25. Confidentiality of information and fees.**(a) Confidentiality.**

(1) *Definition.* For purposes of this subsection, “unemployment compensation information” means both of the following:

(i) Information in the possession of the Department or the Board pertaining to the administration of the law which reveals the name or any other identifying particular about an employer, employee or claimant or which could foreseeably be combined with publicly available information to reveal any identifying particular.

(ii) Information obtained directly or indirectly from the Department or the Board that is included in subparagraph (i) while in the possession of the Department or the Board.

(2) Rule of confidentiality.

(i) Unemployment compensation information is confidential and may be disclosed only as permitted in this subsection.

(ii) Except as provided in paragraph (5), unemployment compensation information will not be competent evidence and may not be used in any action or proceeding in any court or other tribunal.

(3) *Permissible disclosure.* The Department or the Board may disclose or authorize disclosure of unemployment compensation information only as follows:

(i) To officers and employees of the Department and members and employees of the Board in the administration of the law.

(ii) To a claimant, the last employer of the claimant, a base year employer of a claimant or a representative of any of the foregoing in accordance with paragraph (7), to the extent necessary for the proper determination of the claimant’s application for benefits and claims for compensation.

(iii) To an employer or a representative of an employer in accordance with paragraph (7), to the extent necessary for the proper determination of the employer’s liability for reports and payments under the law and the proper administration of the employer’s account.

(iv) To public employees in the performance of their public duties.

(v) As determined by the Department or the Board to be necessary for the proper administration of the unemployment compensation program.

(vi) As permitted by provisions of the law or as required or permitted by Federal law.

(4) *Redisclosure prohibited.*

(i) Officers and employees of the Department and members and employees of the Board to whom unemployment compensation information is disclosed under paragraph (3)(i) may not disclose the information to any person or before any court or other tribunal, except as authorized by the Department or the Board under paragraph (3).

(ii) Except as provided in paragraph (5), a person, other than an officer or employee of the Department or a member or employee of the Board, to whom unemployment compensation information is disclosed under paragraph (3) or otherwise may not disclose the information to any person or before any court or other tribunal without the prior, written authorization of the Department or the Board. This subparagraph applies to the initial person to whom the information is disclosed and subsequent recipients of the information.

(5) *Exceptions.* Paragraphs (2)(ii) and (4)(ii) do not apply to the following:

(i) A legal proceeding under the law or a statute administered or enforced by the Commonwealth.

(ii) Information disclosed to a claimant, employer or representative under paragraph (3)(ii) or (iii).

(iii) Information filed with the unified judicial system by the Department or the Board in the administration of the law.

(6) *Safeguards.* A person to whom unemployment compensation information is disclosed under paragraph (3) shall implement and maintain all safeguards required by the Department to protect the confidentiality of the information and comply with other terms and conditions specified by the Department in connection with disclosure of the information.

(7) *Representatives.* To receive information under paragraph (3)(ii) or (iii) on behalf of a claimant or an employer, a representative shall present a written authorization from the claimant or employer being represented, except in the following circumstances:

(i) A written authorization is impossible or impracticable to obtain as determined by the Department within its discretion and the representative presents other evidence of consent as required by the Department.

(ii) The representative is an elected official or a member of his staff performing constituent services and the representative presents reasonable evidence of consent.

(iii) The representative is an attorney and the attorney asserts that he is representing the claimant or employer.

(b) *Fees.* Except as provided in section 702 of the law (43 P. S. § 862), the Department or the Board may charge a fee to a person seeking documents or information from the Department or the Board. The fee will be an amount suffi-

cient to compensate the Department or the Board for the costs to process the request and, if the requested documents or information are available, the cost to provide the documents and information. The amount of the fee will be calculated by the Department within its discretion.

Source

The provisions of this 61.25 adopted February 11, 2011, effective February 12, 2011, 41 Pa.B. 844.

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