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1974

Iowa
Employment
Security
Law
and
Rules for Administration

Administered by the
IOWA EMPLOYMENT SECURITY COMMISSION

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1974

**IOWA
EMPLOYMENT SECURITY
LAW**

Including Revisions by the
Sixty-fifth General Assembly
and

Rules for Administration

Administered by the
IOWA EMPLOYMENT SECURITY COMMISSION
1000 EAST GRAND
DES MOINES, IOWA 50319

ABE D. CLAYMAN, Chairman
Employer Representative

GEORGE A. LUNDBERG
Labor Representative

COLLEEN P. SHEARER
Public Representative

Chapter 96

EMPLOYMENT SECURITY

SHORT TITLE

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CHAPTER 96

EMPLOYMENT SECURITY

SHORT TITLE

96.1 Name. This chapter shall be known and may be cited as the "Iowa Employment Security Law."

DECLARATION OF STATE PUBLIC POLICY

96.2 Guide for interpretation. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

See: *Moorman v. Commission*, 230 Iowa 123, 296 N. W. 791.
Iowa Pub. Serv. Co. v. Rhode, 230 Iowa 751, 298 N. W. 794.
Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Iowa 66, 6 N. W. 2d 6.
Wolf v. Iowa Emp. Sec. Comm., 244 Iowa 999, 59 N. W. 2d 216.
Stromberg Hatchery v. Iowa Emp. Sec. Comm., 33 N. W. 2d 498.
Moulton v. Iowa Emp. Sec. Comm., 34 N. W. 2d 211.
Burlington Truck Lines v. Iowa Emp. Sec. Comm., 32 N. W. 2d 792.
Tapager v. Birmingham, 75 F. Supp. 375.
Hansen v. Iowa Emp. Sec. Comm., 34 N. W. 2d 203.
Equitable Life Ins. Co. v. Iowa Emp. Sec. Comm., 231 Iowa 889, 2 N. W. 2d 262, 139 A. L. R. 885.
Spence v. Iowa Emp. Sec. Comm., 86 N. W. 2d 154.
Needham Packing Co. v. Iowa Emp. Sec. Comm., 1963, 255 Iowa 437, 123 N. W. 2d 1.

BENEFITS

96.3 How paid and amounts.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 7, paragraph "g" (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment

offices in accordance with such regulations as the commission may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to his weekly benefit amount.

3. *Partial unemployment.* Each eligible individual who is partially unemployed in any week shall be paid with respect to such weekly benefits in an amount equal to his weekly benefit amount less the total amount of wages earned in such week reduced by six dollars.

4. *Determination of benefits.* An individual's weekly benefit amount shall be an amount equal to one twentieth of his total wages in insured work paid during that quarter of his base period in which such total wages were highest, subject to the following limitation: The commission shall determine annually a maximum weekly benefit amount by computing fifty percent of the average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July. Beginning with the first full week in July of 1973, and each year thereafter the maximum weekly benefit amount shall be determined by computing fifty-five percent of the average weekly wage paid to employees in insured work. Such maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the nearest multiple of one dollar.

Such computation shall be made by determining gross wages as paid for insured work by employers in each preceding twelve-month period ending on December 31 and dividing said gross wages by a figure resulting from fifty-two times the average of mid-month employment reported by employers for the same period.

5. *Duration of benefits.* The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the total of the wage credits accrued to his account during his base period, or twenty-six times his weekly benefit amount, whichever is the lesser. The commission shall maintain a separate account for each individual who earns wages in insured work. The commission shall compute wage credits for each individual by crediting his account with one-third of the wages for insured work paid him during his base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in his account which have not been previously charged hereunder, in the same chronological order as the wages on which such wage credits are based were paid.

6. *Part-time workers.*

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full-time hours prevailing in the establishment in which he is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

b. The commission shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

BENEFIT ELIGIBILITY CONDITIONS

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

1. He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe.

2. He has made a claim for benefits in accordance with the provisions of section 96.6, subsection 1.

3. He is able to work, is available for work, and is earnestly and actively seeking work.

4. Prior to any week, in any benefit year, for which he claims benefits he has been totally unemployed for a waiting period of one week (and for the purposes of this subsection, two weeks of partial unemployment shall be deemed to be equivalent to one week of total unemployment). Such weeks of total or partial unemployment or both need not be consecutive. The one week-waiting period shall be waived and become compensable after unemployment during which benefits are payable for five consecutive weeks. No week shall be counted as a week of total unemployment for the purposes of this subsection:

a. If benefits have been paid with respect thereto;

b. Unless the individual was eligible for benefits with respect thereto in all respects except for the requirements of subsections 2 and 5 of this section;

c. Unless it occurs after benefits first could become payable to any individual under this chapter.

5. He has been paid wages for insured work of not less than two hundred dollars in that calendar quarter in his base period in which his wages were the highest, and also he has been paid wages for insured work of not less than one hundred dollars in a calendar quarter in his base period other than the calendar quarter in which his wages were the highest; and provided further if he has drawn benefits in any benefit year, he must during or subsequent to that year, be paid wages in insured work totaling one hundred dollars as a condition to receive benefits in the next benefit year.

See: *Kunkel v. Eastern Iowa Light & Power*, 232 Iowa 649, 5 N. W. 2d 899.
Moulton v. Iowa Emp. Sec. Comm., 34 N. W. 2d 211.
Gatewood v. Iowa Iron Metal Co. & Iowa Emp. Sec. Comm., 1956, 247 Iowa 760, 76 N. W. 2d 201.

6. Benefits based on service in employment, defined in section ninety-six point nineteen (96.19), subsection seven (7), of the Code, shall be payable in the same amount, on the same terms and subject to the same conditions as com-

pensation payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

7. Notwithstanding any other provisions in this subsection, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the commission, nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the commission by reason of the application of the provision in subsection three (3) of this section relating to availability for work, and an active search for work or the provision of subsection three (3) of section ninety-six point five (96.5) of the code relating to failure to apply for or a refusal to accept suitable work.

DISQUALIFICATION FOR BENEFITS

96.5 Causes. An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If he has left his work voluntarily without good cause attributable to his employer, if so found by the commission. But he shall not be disqualified if the commission finds that:

a. He left his employment in good faith for the sole purpose of accepting better employment, which he did accept, and that he remained continuously in said new employment for not less than six weeks. Wages earned with the employer that he has left shall, for the purpose of computing and charging benefits, be deemed wages earned from the employer with whom the individual accepted better employment and benefits shall be charged to the employer with whom he accepted better employment. The commission shall advise the chargeable employer of the name and address of the other employer, the period covered, and the extent of benefits which may be charged to the account of the chargeable employer. In those cases where the new employment is in another state, no employer's account shall be charged with benefits so paid except that employers who are required by law or by their election to reimburse the fund for benefits paid shall be charged with benefits under this paragraph.

b. He has been laid off from his regular employment and has sought temporary employment, and has notified his temporary employer that he expected to return to his regular job when it became available, and the temporary employer employed him under these conditions, and the work-

er did return to his regular employment with his regular employer as soon as it was available.

c. He left his employment for the necessary and sole purpose of taking care of a member of his immediate family who was then injured or ill, and if after said member of his family sufficiently recovered, he immediately returned to and offered his services to his employer, provided, however, that during such period he did not accept any other employment.

d. He left his employment because of illness or injury upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for such absence immediately notified his employer, or his employer consented to such absence, and after recovering from such illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular work or comparable suitable work was not available, if so found by the commission, provided he is otherwise eligible.

e. He left his employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of his family to a place having a different climate, during which time he shall be deemed unavailable for work, and notwithstanding during such absence he secures temporary employment, and returned to his regular employer and offered his services and his regular work or comparable work was not available, provided he is otherwise eligible.

f. He is the principal support of his family, or is a widow, widower, legally separated from his spouse, or a single person, and he left his employing unit for not to exceed ten working days, or such additional time as may be allowed by his employer, for compelling personal reasons (if so found by the commission), and prior to such leaving had informed his employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist he returned to his employer and offered his services and his regular or comparable work was not available, provided he is otherwise eligible; except that during the time he is away from his work because of the continuance of such compelling personal reasons, he shall not be eligible for benefits.

g. In the case where he left his work voluntarily without good cause attributable to his employer under circumstances which did or would disqualify him for benefits, under this subsection he, subsequent to such leaving, worked in and was paid wages for insured work in an amount not less than nine times the claimant's weekly benefit amount, provided he is otherwise eligible, but in the event extended benefits are in effect as provided for by this chapter, then benefits shall not be withheld after twelve consecutive weeks of unemployment from the date he quits, during which time he shall be actively and earnestly seeking employment.

h. "Principal support" shall mean exclusive of the earn-

ings of any child of the wage earner.

See: Iowa Pub. Serv. Co. v. Rhode, 230 Iowa 751, 298 N. W. 794.
 Wolfe v. Iowa Unemp. Comp. Comm., 232 Iowa 1254, 7 N. W. 2d 799.
 Forest Park Sanitarium v. Miller, 233 Iowa 1341, 11 N. W. 2d 582.
 Moulton v. Comm., 239 Iowa 1161, 34 N. W. 2d 211.
 Wolf's v. Iowa Emp. Sec. Comm., 244 Iowa 999, 59 N. W. 2d 216.
 Spence v. Iowa Emp. Sec. Comm., 86 N. W. 2d 154.
 Raffety v. Iowa Emp. Sec. Comm., 247 Iowa 896, 76 N. W. 2d 787.
 McCarthy v. Iowa Emp. Sec. Comm., 247 Iowa 760, 76 N. W. 2d 201.
 Gatewood v. Iowa Iron & Metal Co., 102 N. W. 2d 146.
 Sue McComber v. Iowa Emp. Sec. Comm., 254 Iowa 957, 119 N. W. 2d 792.
 Deere Manufacturing Co. v. Iowa Emp. Sec. Comm. & Crowe, 249 Iowa 1066, 90 N. W. 2d 750.
 Wilson Trailer Co. v. Iowa Emp. Sec. Comm., (1969), 168 N. W. 2d 771.
 Needham Packing Co. v. Iowa Emp. Sec. Comm., (1963), 255 Iowa 437, 123 N. W. 2d 1.

2. *Discharge for misconduct.* If the commission shall find that he has been discharged for misconduct in connection with his employment, he shall forfeit four to nine weeks' benefits.

3. *Failure to accept work.* If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment, if any.

a. In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence, and any other factor which it finds bears a reasonable relation to the purposes of this subsection.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the commission that:

a. He is not participating in or financing or directly in-

interested in the labor dispute which caused the stoppage of work; and

b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

See: Dallas Co. v. Horne, 230 Iowa 1148, 300 N. W. 303.
Johnson v. Comm., 239 Iowa 816, 32 N. W. 2d 786.
Deere Mfg. Co. v. Iowa Emp. Sec. Comm. & Crowe, 249 Iowa 1066; 90 N. W. 2d 750.

5. *Other compensation.* For any week with respect to which he is receiving, has received, or is entitled to receive payment in the form of:

a. Wages in lieu of notice;

b. Compensation for temporary disability under the workmen's compensation law of any state or under a similar law of the United States;

c. Old-age benefits under title II of the Social Security Act (42 USC, chapter 7), as amended, or similar retirement payments under any Act of Congress; provided that the commission shall withhold payments under this chapter if it has reason to believe a claimant is entitled to benefits under title II of the Social Security Act of the United States or any similar payments under any other Act of Congress, until such time as the claimant files with the commission satisfactory evidence that he is not entitled to such benefits;

d. Benefits paid as retirement pay or as private pension.

Provided, that if such remuneration is less than the benefits which would otherwise be due under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs "a," "b," "c," or "d," of this subsection were paid on a retroactive basis for the same period, or any part thereof, the commission shall recover any such excess amount of benefits paid by the commission for such period, and no employer's accounts shall be charged with benefits so paid, provided further, however, that retirement pay or compensation for service-connected disabilities or pensions and compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, shall in no way disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

This Act, being deemed of immediate importance, shall take effect and be in force from and after its publication in

the Lee Town News, a newspaper published in Des Moines, Iowa, and in The Anamosa Eureka, a newspaper published in Anamosa, Iowa.

Approved February 12, 1971.

6. *Benefits from other state.* For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in subsection 13 of section 96.19, and shall be applied as provided in paragraph "c" hereof.

b. Whenever, in connection with any separation or layoff of an individual, his employer makes a payment or payments to him, or becomes obligated to make such payment to him as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within seven calendar days after notification of the filing of his claim, designates by notice in writing to the commission the period to which such payment shall be allocated; provided, that if such designated period is extended by the employer, he may again similarly designate an extended period, by giving notice thereof in writing to the commission not later than the beginning of the extension of such period, with the same effect as if such period of extension were included in the original designation. The amount of any such payment or obligation to make payment, shall be deemed "wages" as defined in subsection 13 section 96.19, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal work day shall be attributed to, or deemed to be payable to him with respect to, the first and each subsequent work day in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal work days, equal or exceed his weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, his benefits shall be reduced by such amount.

CLAIMS FOR BENEFITS

96.6 Filing—determination—appeal.

1. *Filing.* Claims for benefits shall be made in accordance with such regulations as the commission may prescribe.

2. *Initial Determination.* A representative designated by the commission shall promptly notify all interested parties to the claim of the filing thereof, and said parties shall have seven days from the date of mailing the notice of the filing of said claim by ordinary mail to the last known address to protest payment of benefits to said claimant. The representative shall promptly examine the claim and any protest thereto and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, and whether any disqualification shall be imposed, or shall refer such claim or any question involved therein to an appeal tribunal or to the commission, which shall make its determination with respect thereto in accordance with the procedure described in subsection three (3) of this section, except that in any case in which the payment or denial of benefits will be determined by the provisions of section ninety-six point five (96.5), subsection four (4), of the Code, the representative shall promptly transmit his full findings of fact with respect to that subsection to the commission, which, on the basis of the evidence submitted and such additional evidence as it may require, shall affirm, modify, or set aside such findings of fact and transmit to the representative a decision upon the issues involved under that subsection. The representative shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. Unless the claimant or other interested party, after notification, or within ten calendar days after such notification was mailed to his last-known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal tribunal affirms a decision of the representative, or the commission affirms a decision of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's account shall be charged with benefits so paid.

3. *Appeals.* Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within fifteen days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection 5 of this section.

4. *Appeal tribunals.* To hear and decide disputed claims, the commission shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of three members, one of

whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee, as fixed by the commission per day of active service on such tribunal, plus necessary expenses. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

5. *Commission review.* The commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal and by the deputy whose decision has been overruled or modified by an appeal tribunal. The commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the commission shall be heard in accordance with the requirements of subsection 3, by the full membership of the commission, or, in the absence or disqualification of the labor representative or the employer representative on the commission, by the public representative acting alone. The commission shall promptly notify the interested parties of its findings and decision.

6. *Procedure.* The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the commission for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

7. *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary traveling expenses at a rate fixed by the commission, which fees shall be charged to the unemployment compensation administration fund of the commission.

8. *Appeal to courts.* Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission as provided

by this chapter. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the commission or who has been designated by the commission for that purpose, or at the commission's request, by the attorney general.

9. *Court review.* Within twenty days after the decision of the commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk County, Iowa, against the commission for the review of its decision, in which action any other party to the proceeding before the commission shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served on a member of the commission or upon such person as the commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commission shall forthwith mail one such copy to each such defendant. The commission shall within sixty days after notice of appeal has been served on the commission certify and file with said district court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein, or so much thereof as may be agreed upon by the parties to such appeal. Such agreement as to the records, papers, and documents to be certified shall be in writing, signed by the parties to the appeal, and shall be filed with the commission. A copy of such agreement shall be filed with the transcript of the records filed with the district court. With such transcript the commission shall file its answer. The transcript as certified and filed by the commission shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud any finding of fact by the commission, after notice and hearing as herein provided, shall be binding upon the court on appeal, when supported by substantial and competent evidence. The commission may also, in its discretion, certify to such courts, questions of law involved in any decision by it. Such actions, and the question so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state.

10. *Decision on appeal.* Any order or decision of the commission may be modified, reversed, or set aside on one or more of the following grounds and on no other:

- a. If the commission acted without or in excess of its powers.
- b. If the order or decree was procured by fraud.
- c. If the facts found by the commission do not support the order or decree.

d. If there is not sufficient competent evidence in the record to warrant the making of the order or decision.

11. *Judgment or order remanding.* When the district court, on appeal, reverses or sets aside an order or decision of the commission, it may remand the case to the commission for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court.

12. *Appeal.* An appeal may be taken from any final order, judgment, or decree of the district court to the supreme court of Iowa, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases, irrespective of the amount involved. It shall not be necessary in any judicial proceeding under this section, to enter exceptions to the rulings of the commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order.

See: *Equitable Life Ins. Co. v. Iowa Emp. Sec. Comm.*, 231 Ia. 889, 2 N. W. 2d 262.
Woods Bros. v. Iowa Emp. Sec. Comm., 229 Ia. 1171, 296 N. W. 345.
Moorman Mfg. v. Iowa Emp. Security Comm., 230 Ia. 123, 296 N. W. 791.
Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Ia. 666, 6 N. W. 2d 6.
Dallas Fuel v. Horne, 230 Ia. 1148, 300 N. W. 303.
Johnson v. Iowa Emp. Sec. Comm., 32 N. W. 2d 786.
Wolfe v. Iowa Unemp. Comp. Comm., 232 Ia. 1254, 7 N. W. 2d 799.
Moulton v. Iowa Emp. Sec. Comm., 34 N. W. 2d 211.
Spence v. Iowa Emp. Sec. Comm., 86 N. W. 2d 154.
McCarthy v. Iowa Emp. Sec. Comm., 247 Ia. 760, 76 N. W. 2d 201.
Forest Park Sanitarium v. Miller, 233 Iowa 1341, 11 N. W. 2d 582.
Deere Mfg. Co. v. Iowa Emp. Sec. Comm., et al., 249 Iowa 1066, 90 N. W. 2d 750.

CONTRIBUTIONS

96.7 Payment—rates.

1. *Payment.*

- a. On and after July 1, 1936, contributions shall accrue on all taxable wages paid by an employer for insured work.
- b. Such contributions shall become due and be paid to the commission for the fund at such times and in such manner as the commission by regulation prescribes.
- c. In the payment of any contribution the fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.
- d. Contributions required from an employer shall not be deducted in whole or in part from the wages paid to individuals in his employ.

2. *Rate of contribution by employers.* Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

- a. One and eight-tenths percent with respect to employment for the six months period beginning July 1, 1936,

provided that if the total of such contributions at such one and eight-tenths percent rate equals less than nine-tenths of one percent of the annual payroll of any employer for the calendar year 1936, such employer shall pay, at such time as the commission shall prescribe, an additional lump sum contribution with respect to employment for such six months period beginning July 1, 1936, equal to the difference between nine-tenths of one percent of his annual payroll for the calendar year 1936 and the total of his contributions at such one and eight-tenths percent rate for such six months period beginning July 1, 1936, and provided further that in no event shall employers' contributions at such one and eight-tenths percent rate exceed nine-tenths of one percent of his annual payroll for the calendar year 1936;

b. One and eight-tenths percent with respect to employment in the calendar year 1937;

c. Two and seven-tenths percent with respect to employment during the calendar years 1938, 1939, 1940; and

d. Two and seven-tenths percent of wages paid by him during the calendar year 1941, and during each calendar year thereafter, with respect to employment occurring after December 31, 1940, except as may be otherwise prescribed in subsection 3 of this section.

3. *Future rates based on benefit experience.*

a. (1) The commission shall maintain a separate account for each employer and shall credit his account with all contributions which he has paid or which have been paid on his behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits, as determined under section 33 of this Act paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of such individual occurred. Provided, that in any case in which a claimant to whom such benefits are paid is in the employ of a base period employer at the time he is receiving such benefits, and he is receiving the same employment from such employer that he received during his base period, then no charge of benefits paid to such claimant shall be made against the account of such employer.

(3) The amount of regular benefits so charged in any calendar quarter against the account of any employer shall not exceed the amount of such individual's wage credits based on employment with such employer during such quarter. The amount of extended benefits so charged in any calendar quarter against the account of any employer shall not exceed an additional fifty percent of the amount of such individual's wage credits based on employment with such employer during such quarter.

(4) The commission shall by general rule prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment during the same calendar quarter.

(5) Nothing in this chapter shall be construed to grant

any employer or the individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

(6) As soon as practicable after the close of each calendar quarter, and in any event within forty days after the close of such quarter, the commission shall notify each employer of the amount that has been charged to his account for benefits paid during such quarter. This statement to the employer shall show the name of each claimant to whom such benefit payments were made, the claimant's social security number, and the amount of benefits paid to such claimant. Any employer who has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to such claimants may within thirty days after the receipt of such statement appeal to the commission for a hearing to determine the eligibility of the claimant to receive such benefits. The commission may hear the case or may refer the same to an appeal tribunal for hearing. In either case both the employer and the claimant shall receive notice of the time and place of such hearing.

(7) Any employer may at any time make voluntary payments to his account in excess of the other requirements of this chapter, and all such payments shall be considered on any computation date as contributions required under the provisions of this chapter if they are paid by the employer not later than the next March 15 after such computation date.

b. In any case in which the enterprise or business for which contributions have been paid has been sold or otherwise transferred to a subsequent employing unit, or in any case in which one or more employing units have been reorganized or merged into a single employing unit and the successor employer continues to operate such enterprise, such successor employer shall assume the position of the predecessor employer or employers with respect to such predecessors' payrolls, contributions, accounts and contribution rates to the same extent as if there had been no change in the ownership or control of such enterprise or business.

In any case in which a clearly segregable and identifiable part of an enterprise or business for which contributions have been paid has been sold or otherwise transferred to a subsequent employing unit, and such successor employing unit having qualified as an employer as defined under section ninety-six point nineteen (96.19), subsection six (6), paragraph b, of this chapter continues to operate such enterprise or business, such successor shall assume the position of the predecessor employer with respect to such predecessor's payrolls, contributions, accounts and contribution rates which are attributable to the part of the enterprise or business transferred to the same extent as if there has been no change in the ownership or control of such enterprise or business.

The contribution rate to be assigned to the acquiring employer for the period beginning not earlier than the date of the transfer and ending not later than the next following

effective date of contribution rates, shall be the contribution rate applicable to the transferring employer with respect to the period immediately preceding the date of the transfer, provided that the acquiring employer was not, prior to the transfer, a subject employer, and only one transferring employer, or only transferring employers having identical rates, are involved; or a newly computed rate based on the experience of the transferring employer attributable to the part of the business transferred to the acquiring employer combined with the experience of the acquiring employer as of the last computation date.

The contribution rate to be assigned to the acquiring employer for the next following regular rate year, is a contribution rate based on the experience of the acquiring employer and only so much of the experience of the transferring employer as is attributable to the part of the business transferred.

Provided, however, that application for such transfer of partial record is made within sixty days from the date of transfer and meets the approval of the predecessor and the commission, and provided further that such partial record shall include sufficient information for the proper administration of this chapter with respect to payment of unemployment benefits and computation of future rates based on benefit experience.

In determining each employer's rate of contribution for the calendar year 1945, and for each year thereafter, such employer shall be given full credit for the payrolls, contributions, accounts and contribution rates of his predecessor employer or employers to the same extent as if there had been no change in the organization or the ownership of the business. Provided, that in any case in which such sale, transfer, merger or reorganization has taken place in any year after the predecessor employer's rate of contribution (hereafter called rate) has been determined for such year the employer's rate for the remainder of such year, shall, upon his application to the commission be determined in the following manner:

(1) If the successor employer has no rate or if he has a rate and it is the same rate as that of his predecessor employer or employers, their rates being the same rate, his rate shall be that of the predecessor employer or employers.

(2) If the rate or rates of the predecessor employers are not the same rate, and that of the successor employer if he has a rate is not the same rate as that of the predecessor employer then the rate of the successor employer shall be redetermined under the combined experience of the predecessor employer or employers and the successor employers.

c. Each contributing employer's rate of contribution shall be two and seven-tenths percent except as otherwise provided in this chapter. No reduced rate of contribution shall be granted to a contributing employer until there shall have been twelve consecutive calendar quarters immediately preceding the first computation date throughout which his account has been chargeable with benefit payments. Pro-

vided, that with respect to the calendar year commencing January 1, 1972 and each calendar year thereafter, except as provided in paragraphs "d" and "e" of this subsection, a contributing employer who has not been subject to this chapter for a sufficient period of time to meet the twelve-quarter requirement shall qualify for a computed rate of contribution if there shall have been a lesser period throughout which his account has been chargeable, but in no event less than eight consecutive calendar quarters immediately preceding the computation date; provided further, that with respect to the calendar year commencing January 1, 1972 and each calendar year thereafter, except as provided in paragraphs "d" and "e" of this subsection, each contributing employer newly subject to this chapter shall pay contributions at the rate of one and five-tenths percent until the end of the calendar year in which the employer shall have had eight consecutive calendar quarters immediately preceding the computation date throughout which his account has been chargeable with benefit payments, thereafter his contribution rate shall be determined in accordance with paragraphs "d" and "e" of this subsection.

d. The commission shall determine the rate table to be in effect for the calendar year following the rate computation date for such year, by determining the ratio of the current reserve fund ratio to the minimum adequate reserve fund ratio as of the rate computation date.

(1) The current reserve fund ratio shall be computed by dividing the total trust funds available for payment of benefits, on the computation date, by the total wages paid in covered employment during the four calendar quarters ending the June thirtieth immediately preceding the computation date.

(2) The minimum adequate reserve fund ratio shall be computed by multiplying the highest benefit cost rate by one point five.

(3) The highest benefit cost rate shall be the highest of the resulting ratios computed by dividing the total benefit payments during each consecutive twelve-month period, during the fifteen-year period ending on the computation date, by the total wages paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period.

If the current reserve fund ratio, divided by the minimum adequate reserve fund ratio:

| Equals or exceeds | But is less than | The table in effect shall be |
|-------------------|------------------|------------------------------|
| — | 1.5 | 1 |
| 1.5 | 2.0 | 2 |
| 2.0 | 2.5 | 3 |
| 2.5 | 3.0 | 4 |
| 3.0 | — | 5 |

Each employer's rate for each calendar year after December 31, 1971, shall be determined on the basis of his

record and the record of the predecessor owner of such enterprise, if any, up to the computation date for such year. If, on the computation date, the total of all contributions paid to an employer's account for all past periods to and including those for the quarter ending September thirtieth immediately preceding the computation date exceeds the total benefits charged to such account for all past periods to and including those for the quarter ending September thirtieth immediately preceding the computation date, such employer's contribution rate subject to the adjustment hereinafter provided, shall be fixed in accordance with the following effective table. Percentage of excess in said table means the percentage resulting from dividing the excess of contributions paid over benefits charged by the employer's average annual payroll.

| Contribution Rates Shall Be % | If the percentage of excess is: | | | | |
|-------------------------------|---------------------------------|------------|------------|------------|------------|
| | Table 1 | Table 2 | Table 3 | Table 4 | Table 5 |
| 2.7 | 0.0-2.2 | 0.0-1.9 | 0.0-1.6 | 0.0-1.3 | 0.0-1.0 |
| 2.5 | 2.2-2.4 | 1.9-2.1 | 1.6-1.7 | 1.3-1.4 | 1.0-1.1 |
| 2.3 | 2.4-2.6 | 2.1-2.3 | 1.7-1.8 | 1.4-1.5 | 1.1-1.2 |
| 2.1 | 2.6-2.8 | 2.3-2.5 | 1.8-1.9 | 1.5-1.6 | 1.2-1.3 |
| 1.9 | 2.8-3.0 | 2.5-2.7 | 1.9-2.0 | 1.6-1.7 | 1.3-1.4 |
| 1.7 | 3.0-3.2 | 2.7-2.9 | 2.0-2.2 | 1.7-1.8 | 1.4-1.5 |
| 1.5 | 3.2-3.4 | 2.9-3.1 | 2.2-2.4 | 1.8-1.9 | 1.5-1.6 |
| 1.3 | 3.4-3.6 | 3.1-3.3 | 2.4-2.6 | 1.9-2.0 | 1.6-1.7 |
| 1.1 | 3.6-3.9 | 3.3-3.5 | 2.6-2.8 | 2.0-2.2 | 1.7-1.8 |
| 0.9 | 3.9-4.3 | 3.5-3.7 | 2.8-3.1 | 2.2-2.4 | 1.8-1.9 |
| 0.7 | 4.3-4.8 | 3.7-4.1 | 3.1-3.6 | 2.4-2.7 | 1.9-2.0 |
| 0.5 | 4.8-5.5 | 4.1-4.7 | 3.6-4.4 | 2.7-3.2 | 2.0-2.2 |
| 0.3 | 5.5-6.4 | 4.7-5.7 | 4.4-5.5 | 3.2-4.7 | 2.2-2.5 |
| 0.2 | | | | | 2.5-2.9 |
| 0.1 | 6.4-7.5 | 5.7-7.2 | 5.5-7.0 | 4.7-6.7 | 2.9-3.4 |
| 0.075 | | | | | 3.4-4.1 |
| 0.050 | | | | | 4.1-5.1 |
| 0.025 | | | | | 5.1-6.5 |
| 0.0 | 7.5 & over | 7.2 & over | 7.0 & over | 6.7 & over | 6.5 & over |

If, on the computation date, the total of all benefits paid from an employer's account for all past periods to and including those for the quarter ending September thirtieth immediately preceding the computation date, exceeds the total contributions paid to such account for all past periods to and including those for the quarter ending September thirtieth immediately preceding the computation date, such employer's contribution rate shall be:

| Contribution Rate | Percentage of Excess is |
|-------------------|-------------------------|
| 4.0% | 0.5% or more |
| 3.5% | 0.1% but less than 0.5% |
| 3.0% | 0.0% but less than 0.1% |

Provided, that the maximum contribution rate of any employer for the calendar year 1966 shall not be more than three percent, and for the calendar year 1967 shall not be more than three and five-tenths percent. Provided, however, that notwithstanding any other provision of this chapter, any employer which employs individuals in the construction, erection, demolition, alteration or repair of roads and highways, or of bridges, buildings, factories, resi-

dences, earthwork, grading, river work, or any other construction project, and who has not qualified for an experience rating shall pay three percent in the calendar year 1966, three and five-tenths percent in the calendar year 1967, and four point zero percent in the calendar year 1968 and every calendar year thereafter until such time as he has qualified for an experience rating entitling said employer to a lesser rate of contribution. Except that such employer shall not qualify for a lesser rate of contribution until there shall have been twelve consecutive calendar quarters immediately preceding the computation date throughout which his account has been chargeable with benefit payments. Provided further, that in no event shall any employer's contribution rate be more than two and seven-tenths percent of the first ten thousand dollars of wages for insured work paid during any calendar quarter.

On or before the fifth day of December of each calendar year, beginning in 1971, the commission shall make available to employers the table which will apply to the contribution rates in the following calendar year.

e. No employer's rate for the period of twelve months commencing January 1 of any calendar year after December 31, 1937, shall be less than two and seven-tenths percent, unless the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, exceed the total benefits paid from the fund within the last preceding calendar year; and no employer's rate shall be less than one and eight-tenths percent unless such assets at such time were at least twice the total benefits paid from the fund within such last preceding year.

f. Based upon the formula above provided in this section the commission shall fix the rate of contribution for each employer. The commission shall notify the employer of the rate so fixed. An employer may appeal to the commission for a revision of the rate of contribution so fixed within thirty days from the date of the notice to such employer. The commission after such hearing may set aside its former determination or modify it and may grant the employer a new rate of contribution. The commission shall notify the employer of this determination by certified mail. From this determination the employer may appeal to the district court for further hearing. The manner in which such appeal shall be taken and heard shall be in accordance with the provisions of subsections 5 and 6 of this section.

4. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required by the commission pursuant to subsection 7 of section 96.11, the commission shall examine such reports and determine the correct amount of contributions due, and the amount so determined by the commission shall be the contributions payable. If the contributions found due shall be greater than the amount theretofore paid, the excess, together with interest as provided in this chapter, shall be paid by the employer within thirty days after the commission shall have given notice thereof to the employer by certified mail.

b. If the commission discovers from the examination of the reports or otherwise that wages payable for employment, or any part thereof, have not been listed in the reports, or that no reports were filed when due, or that reports have been filed showing contributions due but no contributions in fact have been paid, it may at any time within five years after the time such reports were due, determine the correct amount of contributions payable, together with interest as provided in this chapter. The amount so determined shall be paid within thirty days after the commission shall have given notice thereof to the employer by certified mail.

c. The certificate of the commission to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished, as required under the provisions of this chapter shall be prima facie evidence thereof.

5. *Revision of contributions.* An employer may appeal to the commission for revision of the contributions and interest assessed against such employer at any time within thirty days from the date of the notice of the assessment of such contributions and interest. The commission shall grant a hearing thereon and if, upon such hearing, it shall determine that the amount of contributions payable with interest thereon is incorrect, it shall revise the same according to the law and the facts and adjust the computation of the contributions and interest accordingly. The commission shall notify the employer by certified mail of its findings.

6. Appeals.

a. An appeal may be taken by the employer to the district court of the county in which such employer resides, or in which such employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the wages payable for employment were earned or paid or in Polk county, within sixty days after the date of notice to such employer notifying such employer of his rate of contribution, or of the commission's determination as provided for in subsection 3 of this section or subsection 5 of this section.

b. The appeal shall be taken by the employer filing in the office of the clerk of the district court of such county his petition setting forth the errors complained of in the commission's ruling. The employer shall cause an original notice to be served upon the chairman of the commission in the same manner as provided for in ordinary actions in court. The commission shall within thirty days from the date on which said notice was served on the commission certify and file with the clerk of said court a copy of the records and proceedings upon which the rate of contributions or the assessment of contributions was established.

The plaintiff shall file with the clerk of said court a bond for the use of the defendant, with sureties approved by the clerk, in penalty to be fixed and approved by the clerk of said court. In no case shall the bond be less than fifty dol-

lars conditioned that the plaintiff shall perform the orders of the court.

c. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the employer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

7. *Jeopardy assessments.* If the commission believes that the assessment or collection of contributions payable or benefits reimbursable will be jeopardized by delay, the commission may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with all interest and penalty thereon as provided by this chapter, and demand payment thereof from the employer. If such payment is not made, a distress warrant may be issued or a lien filed against such employer immediately.

The commission shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the contributions involved, and with securities satisfactory to the commission.

See: Hansen v. Iowa Emp. Sec. Comm., 34 N. W. 2d 203.
Burlington Truck Lines v. Iowa Emp. Sec. Comm., 239 Ia. 752, 32 N. W. 2d 792.
Merchants Supply Co. v. Iowa Emp. Security Comm., 235 Ia. 372, 16 N. W. 2d 572.
Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Ia. 666, 6 N. W. 2d 6.
Kaus v. Iowa Emp. Sec. Comm., 230 Ia. 860, 299 N. W. 415.
Dahl Enterprises v. Iowa Emp. Sec. Comm., 249 Ia. 318, 86 N. W. 2d 922.
Fleck v. Iowa Emp. Sec. Comm., 233 Iowa 67, 8 N. W. 2d 703.

8. *Financing benefits paid to state employees.* Any state agency, board, commission, department, or instrumentality thereof, other than state-owned hospitals and institutions of higher education, which, pursuant to section ninety-six point nineteen (96.19), subsection six (6), paragraph 'h', of the Code, provided for in section twenty-two (22) of this Act, is, or becomes, subject to this Act on or after January 1, 1972, shall pay to the commission for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such state agency, board, commission, department, or instrumentality thereof. Such payments shall be made in accordance with the provisions of section ninety-six point seven (96.7), subsection nine (9), paragraph 'b', of the Code, provided for in this section.

9. *Financing benefits paid to employees of nonprofit organizations.* Benefits paid to employees of nonprofit organizations or of any state-owned hospital or institution of higher education shall be financed in accordance with the provisions of this subsection. For the purpose of this subsec-

tion and section ninety-six point nineteen (96.19) of the Code, a nonprofit organization is an organization described in the U. S. Internal Revenue Code, 26 U.S.C. 501 (c) (3), which is exempt from income tax under 26 U.S.C. 501 (a) of such Code.

a. Any state-owned hospital or institution of higher education, which, pursuant to section ninety-six point nineteen (96.19), subsection six (6), paragraph 'h', of the Code, provided for in section twenty-two (22) of this Act, or any nonprofit organization which, pursuant to section ninety-six point nineteen (96.19), subsection six (6), paragraph 'i', of the Code, provided for in section twenty-two (22) of this Act, is, or becomes, subject to this Act on or after January 1, 1972, shall pay contributions under the provisions of subsections one (1), two (2), and three (3) of this section, unless it elects, in accordance with this paragraph, to pay to the commission for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(1) Any nonprofit organization or any state-owned hospital or institution of higher education which is, or becomes, subject to this Act on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years commencing January 1, 1972, provided it files with the commission a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the effective date of this Act, whichever occurs later.

(2) Any nonprofit organization or any state-owned hospital or institution of higher education, which becomes subject to this Act after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years following the date on which such subjectivity begins by filing a written notice of its election with the commission not later than thirty days immediately following the date of the determination of such subjectivity.

(3) Any nonprofit organization or any state-owned hospital or institution of higher education, which makes an election in accordance with subparagraphs one (1) or two (2) of this paragraph shall continue to be liable for payments in lieu of contributions until it files with the commission a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(4) Any nonprofit organization or any state-owned hospital or institution of higher education, which has been paying contributions under this Act for a period on or after January 1, 1972, may change to a reimbursable basis by filing with the commission not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions.

Such election shall not be terminable by the organization for that and the next year.

(5) The commission may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(6) The commission, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of subsections five (5) and six (6) of this section.

b. Payments in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, or at the end of any other period as determined by the commission, the commission shall bill each nonprofit organization which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(2) Payment of any bill rendered shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph four (4) of this paragraph.

(3) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(4) The amount due specified in any bill from the commission shall be conclusive on the organization unless, not later than fifteen days following the date the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the commission setting forth the grounds for such application. The commission shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than sixty days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the district court pursuant to subsection six (6) of this section.

(5) The provisions for collection of contributions under section ninety-six point fourteen (96.14) of the Code shall be applicable to payments in lieu of contributions.

10. *Provision of bond or other security.* In the discretion

of the commission, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to execute and file with the commission a surety bond approved by the commission or it may elect instead to deposit with the commission money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this subsection.

a. The amount of the bond or deposit required by this subsection shall be equal to two and seven-tenths percent of the organization's total taxable wages paid for employment for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the commission.

b. Any bond deposited under this subsection shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commission, at such times as the commission may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commission shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in section ninety-six point fourteen (96.14) of the Code shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

c. Any deposit of money or securities in accordance with this subsection shall be retained by the commission in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commission may deduct from the money deposited under this paragraph by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in section ninety-six point fourteen (96.14) of the Code. The commission shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this paragraph to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commission may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines

that an adjustment is necessary, it shall require the organization to make additional deposit within thirty days of written notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the Code.

11. *Authority to terminate elections.* If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, the commission may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective; provided, that the commission may extend for good cause the applicable filing, deposit, or adjustment period by not more than thirty days.

12. *Allocation of benefit cost.* Each employer that is liable for payments in lieu of contributions shall pay to the commission for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid during each quarter that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payment shall be payable each quarter by the base period employers in inverse chronological order in which the employment of such individual occurred. Provided, that the amount of any such employer's liability in any calendar quarter shall not exceed the amount of such individual's wage credits plus one-half the amount of extended benefits based on employment with such employer during such quarter of the base period.

13. *Group accounts.* Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subsection nine (9), paragraph 'a', of this section or in accordance with section fifteen (15) of this Act, may file a joint application to the commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon its approval of the application, the commission shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than one year and thereafter until terminated at the discretion of the commission or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same

ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The commission shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of such payments.

14. *Nonprofit organization election.* Notwithstanding any provisions in subsection nine (9), of this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by this section of the Code, and, pursuant to subsection nine (9) of this section, elects, within thirty days after the effective date of this Act to make payments in lieu of contributions, shall not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization.

PERIOD, ELECTION, AND TERMINATION OF EMPLOYER'S COVERAGE

96.8 Conditions and requirements.

1. *Period of coverage.* Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

2. *Voluntary termination.* Except as otherwise provided in subsection 3 of this section, an employing unit shall cease to be an employer subject to this chapter, as of the first day of January of any calendar year, if it files with the commission, prior to the fifteenth day of February of such year, a written application for termination of coverage, and the commission finds that such employing unit did not meet any of the qualifying liability requirements as provided under section 96.19, subsection 6, paragraphs "a," "b," "c," "d," "e," "f," or "g," and section 96.19, subsection 6, paragraphs "h" or "i" provided for in section twenty-two (22) of this Act, in the preceding calendar year.

3. *Election by employer.*

a. An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject hereto for not less than two calendar years, shall with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date

stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year, it has filed with the commission a written notice to that effect.

b. Any employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two calendar years, only if prior to the fifteenth day of February of such year such employing unit has filed with the commission a written notice to that effect.

c. Any political subdivision of this state may elect to cover under this Act service performed by employees in all of the hospitals and institutions of higher education operated by such political subdivision. Election is to be made by filing with the commission a notice of such election at least thirty days prior to the effective date of such election. The election may exclude any services described in section ninety-six point nineteen (96.19), subsection seven (7), paragraph "g", subparagraph seven (7) of the Code, provided for in section twenty-seven (27) of this Act. Any political subdivision electing coverage under this paragraph shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in section ninety-six point seven (96.7), subsection nine (9), paragraph "b", of the Code, provided for in section thirteen (13) of this Act. The provisions in section ninety-six point four (96.4) of the Code, provided for in section three (3) of this Act, with respect to benefit rights based on service for state and nonprofit institutions of higher education shall be applicable also to service covered by an election under this section.

The amounts required to be paid in lieu of contributions by any political subdivision under this paragraph shall be billed and payment made as provided in section ninety-six point seven (96.7), subsection nine (9), paragraph "b", of the Code, provided for in section thirteen (13) of this Act, with respect to similar payments by nonprofit organizations.

An election under this section may be terminated, by filing with the commission written notice not later than thirty days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

4. *Transfer or discontinuance of business.*

a. In any case in which the enterprise or business of a subject employer has been sold or otherwise transferred to a subsequent employing unit or reorganized or merged into a single employing unit under the provisions of section 96.7, subsection 3, paragraph "b," the account of the transferring employer shall terminate as of the date on which such transfer, reorganization or merger was completed.

b. In any case in which the enterprise or business of a subject employer has been discontinued otherwise than by sale or transfer to a subsequent employing unit and such employer has had no employment for a period of one year, the commission may, on its own motion, terminate said account.

See: *Spagnola v. State*, 237 Ia. 645, 23 N. W. 2d 433.

UNEMPLOYMENT COMPENSATION FUND

96.9 Control, management, and use.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this chapter. This fund shall consist of:

- a. All contributions collected under this chapter,
- b. Interest earned upon any moneys in the fund,
- c. Any property or securities acquired through the use of moneys belonging to the fund,
- d. All earnings of such property or securities, and
- e. All money credited to this state's account in the unemployment trust fund pursuant to section nine hundred three 903 of the Social Security Act. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the commission. The state comptroller shall issue warrants upon the fund pursuant to the order of the commission and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

- a. A clearing account.
- b. An unemployment trust fund account.
- c. A benefit account. All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the commission, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing ac-

count upon warrants issued by the comptroller under the direction of the commission. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the trust fund deposited with the secretary of the treasury of the United States under the provisions of this subsection 2 of this section for any calendar year shall be allocated and credited to and become a part of each employer's reserve account, said allocation to be made in the following manner: For the calendar year 1950 and each calendar year thereafter, the commission shall add and credit to each employer's reserve account the percentage of the total interest paid upon the aggregate of the reserve accounts of all of the employers in the state in said year that each such employer's individual reserve account bears to said aggregate reserve account. Said interest shall be credited and applied in the same manner as a voluntary contribution made by each such employer.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the commission deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon war-

rants drawn by the comptroller pursuant to the order of the commission for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the comptroller for the payment of benefits and refunds shall bear the signature of the comptroller. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July first and ending on the next June thirtieth to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act during the same twelve-month period and the twenty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such twenty-five twelve-month periods.

b. Amounts credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such a twelve-month

period earlier than the twenty-fourth preceding such period.

c. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the commission.

7. *Transfer to railroad account.* Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, to the railroad

unemployment insurance account, established and maintained pursuant to section 10 of the Railroad Unemployment Insurance Act, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "a" of the Railroad Unemployment Insurance Act, and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "a" of the Railroad Unemployment Insurance Act pursuant to the provisions of this chapter during the period July 1, 1939 to December 31, 1939, inclusive.

8. *Cancellation of warrants.* The state comptroller, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the state comptroller at the discretion of and certification by the commission.

EMPLOYMENT SECURITY COMMISSION

96.10 The commission and divisions.

1. *Commission created.* There is hereby created a commission to be known as the Iowa employment security commission. The commission shall consist of three members who shall devote their entire time to the duties of their office; one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. During his term of membership on the commission no member shall serve as an officer or committee member of any political party organization, and not more than two members of the commission shall be members of the same political party. Each of the three members of the commission shall be appointed by the governor immediately after the effective date of this chapter, subject to approval by a two-thirds vote of the members of the senate, and shall serve for a term of six years, or until his successor is appointed and qualified, except that

a. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor

was appointed shall be appointed for the remainder of such term, and

b. The terms of the members first appointed after the date of enactment of this chapter shall expire, as designated by the governor at the time of appointment, one member on June 30, 1939, and one member on June 30, 1941, and one member on June 30, 1943, or in each of the foregoing instances until his successor is appointed and qualified.

The governor may at any time, after notice and hearing, remove any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in the performance of his duties as a member of the commission. Before entering upon the discharge of his official duties, each member of the commission shall take and subscribe to an oath of office, which shall be filed in the office of the secretary of state. Any vacancy occurring for any cause in the membership of this commission shall be filled for the unexpired term by appointment by the governor subject to approval by a two-thirds vote of the members of the senate at the next regular session of the legislature. Each member of the commission shall be entitled to receive as compensation for his services the sum of five thousand dollars per year, payable monthly. In addition to the compensation hereinbefore prescribed, each member of the commission shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of his official duties. For the purposes of this chapter the first meeting in July shall be designated the annual meeting. Two members of the commission shall constitute a quorum for the transaction of business. At its first meeting, and at each annual meeting held thereafter, the commission shall organize by the election of a chairman and vice-chairman from its own number, each of whom, except those first elected, shall serve for a term of one year and until his successor is elected. The commission shall adopt and use an official seal for the authentication of its orders and records. The commission shall establish and maintain its principal place of business in the city of Des Moines.

2. *Divisions.* The commission shall have power to establish and maintain such divisions under it as it deems necessary for the purposes of this chapter.

ADMINISTRATION

96.11 Powers, rules and personnel.

1. *Duties and powers of commission.* It shall be the duty of the commission to administer this chapter; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon compliance with chapter 17A. Not later than the fifteenth day of December of each year, the commission

shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* General and special rules may be adopted, amended, or rescinded by the commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission. Each employer shall post and maintain printed statements of all regulations in places readily accessible to individuals in his service, and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations relating to the filing of claims for benefits. Such printed statements shall be supplied by the commission to each employer without cost to him.

3. *Publication.* The commission shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, its annual reports to the governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

4. *Personnel.* Subject to other provisions of this chapter, the commission is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The commission shall classify its positions and shall establish salary schedules and minimum personnel standards for the positions so classified. All positions shall be filled by persons selected and appointed on the basis of competency and fitness for the position to be filled. The commission shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any elective public office. The commission shall establish and enforce fair and reasonable regulations for appointments, promotions and demotions based upon ratings of efficiency and fitness and for terminations for cause. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder.

5. *Advisory councils.* The commission may appoint a state advisory council and local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be

regarded as representatives because of their vocation, employment, or affiliations, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

6. *Employment stabilization.* The commission with the advice and aid of such advisory councils as it may appoint, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

7. *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this chapter. Information thus obtained shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned for not longer than ninety days, or both.

8. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairman of an appeal tribunal and any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

9. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state

within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, or appeal tribunal, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission or an appeal tribunal, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power to do so, in obedience to a subpoena, shall be punished by a fine of not more than two hundred dollars or by imprisonment, for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

10. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission, or an appeal tribunal, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

11. *State-federal co-operation.* In the administration of this chapter, the commission shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relates to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section thirty-three (33) of this Act which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the commission shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits

paid under this chapter that are reimbursable under the federal Act.

The commission shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under title three (III) of the Social Security Act for the purpose of assisting in administration of this chapter.

The commission may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The commission may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the commission shall pay the commission such compensation therefor as the commission determines to be fair and reasonable.

12. *Destruction of Records.* The Iowa employment security commission may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the commission and are deemed by the Iowa employment security commission and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the Iowa employment security commission in consultation with the state records commission and such order shall be spread on the minutes of the Iowa employment security commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund.

See: Wood Bros. v. Iowa Emp. Sec. Comm., 229 Ia. 1171, 206 N. W. 345
Couch v. Iowa Emp. Sec. Comm., 228 Ia. 790, 293 N. W. 482.

EMPLOYMENT SERVICE

96.12 State employment service.

1. *Duties of commission.* The employment security commission shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended, and known as the Wagner-Peyser Act

(48 Stat. L. 113; 29 USC § 49). All duties and powers conferred upon any other department, agency, or officer of this state relating to the establishment, maintenance, and operation of free employment offices shall be vested in the commission. The provisions of the said Act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said Act, and this state will observe and comply with the requirements thereof. The commission is hereby designated and constituted the agency of this state for the purpose of said Wagner-Peyser Act. If this chapter shall become inoperative for the reason prescribed in section 96.21, the Iowa state employment division shall not be affected thereby, but such division shall, upon the happening of such contingency, be deemed to be a division of the bureau of labor of the state of Iowa, with the same force and effect as if this chapter had not been passed, and that all funds and property made available to the Iowa state employment service division under this chapter shall under such contingency become, and shall be declared to be, the funds and property of the Iowa state employment service of the bureau of labor of Iowa. The commission may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of employment service facilities. The railroad retirement board shall compensate the commission for such services or facilities in the amount determined by the commission to be fair and reasonable.

2. *Financing.* For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an employment security law, with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment security administration fund.

EMPLOYMENT SECURITY ADMINISTRATION FUND

96.13 Control and use.

1. *Special fund.* There is hereby created in the state treasury a special fund to be known as the "Employment Security Administration Fund". All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund, except money received pursuant to subsection 4 of section 96.9 of this chapter, which are received from the federal government or any agency thereof or which are appropriated by the state for the purposes described in section 96.12 shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter. This fund shall consist of all moneys appropriated by this state, and all moneys received from the United States, or any agency thereof, in-

cluding the department of labor, the railroad retirement board, the United States employment service, established under the Wagner-Peyser Act, or from any other source for such purpose. Moneys received from the railroad retirement board, or any other agency, as compensation for services or facilities supplied to said board or agency shall be paid to the commission, and the commission shall allocate said moneys to the employment security administration fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for special funds in the state treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commission for expenditure consistent with this chapter. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the employment security administration fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 96.9, shall be paid from the moneys in the employment security administration fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to paragraph "c" of subsection 4 of section 96.9 of this chapter shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in said subsection 4 of section 96.9.

2. *Replenishment of lost funds.* If any moneys received after June 30, 1941, from the social security board under Title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the social security board, because of any action or contingency, to have been lost or been expended for purposes other than or in amounts in excess of, those found necessary by the social security board for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in subsection 1 of this section. Upon receipt of notice of such a finding by the social security board, the commission shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

3. *Special employment security contingency fund.* There

is hereby created in the state treasury a special fund to be known as the special employment security contingency fund. All interest, fines, and penalties, regardless of when the same become payable, collected from employers under the provisions of section 96.14 subsequent to July 1, 1970, shall be paid into this fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for federal funds which would in the absence of said moneys be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent said moneys from being used as a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Said fund may be used for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds, received for or in the employment security administration fund. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state in the form of grants from the federal government for administrative expenses which because of any action or contingency have been expended for purposes other than, or in excess of, those necessary for the proper administration of the employment security law. All moneys in the special employment security contingency fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the state treasury.

The treasurer of state shall be the custodian of said funds and shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the special employment security contingency fund in an amount and with such sureties as shall be fixed and approved by the governor. The premiums for such bonds shall be paid from the moneys in the special employment security contingency fund. All sums recovered on such bond for losses sustained by the special employment security contingency fund shall be deposited in the fund. Refunds of interest and penalties collected on or after July 1, 1970, pursuant to this chapter shall be paid only from this fund.

Balances to the credit of the special employment security contingency fund shall not lapse at any time but shall continuously be available to the commission for expenditures consistent herewith. However, if on July 1 of any year the balance in the special employment security contingency fund exceeds fifty thousand dollars by ten thousand dollars or more, the treasurer of state shall promptly transfer the entire amount over fifty thousand dollars to the unemployment compensation fund established in section 96.9 unless the commission determines that such transfer should not be made because of immediate obligations to be met from the fund. (C39, §1551.19; C46, 50, 54, 58, 62, 66, §96.13; 63 GA, Ch 1055, § [1])

COLLECTION OF CONTRIBUTIONS

96.14 Priority-refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules and regulations of the commission, shall pay to the commission in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one per cent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of his employees for any period in the manner and within the time required by this chapter and the rules and regulations of the commission or any extension of such time, shall pay to the commission a penalty in a sum equal to two percent of the contributions required to be paid by such employer for each month or part thereof, for failure to file such report, provided that the total of such penalties shall not exceed ten percent of the amount of such contributions. If the commission finds that any such report is insufficient, it shall notify the employer in writing to file a sufficient report. If such employer shall fail to file a sufficient report within thirty days after the mailing of such notice to him, he shall, in addition to any amount otherwise payable by him under the provisions of this chapter, pay to the commission, a penalty equal to two percent of the contributions for such period unpaid by him at the time of the mailing of each notice, for each month or part thereof of such failure to file a sufficient report, provided that the total penalties shall not exceed ten percent of the amount of such contribution.

If the commission finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules and regulations of the commission, with intent to defraud the commission, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

However, in the event an employer is not required to make a contribution, the penalties for failure to file a report when due, or an insufficient report when due, shall be an amount equal to two percent (2%) of the contributions which would have been required to be paid had the employer's rate been one percent (1%) of his taxable payroll, for each month or part thereof for failure to file such report, provided that the total of such penalties shall not exceed ten percent (10%) of the contribution so determined. After December 31, 1971, no penalty or penalties shall be less than ten dollars (\$10.00).

The commission may cancel any interest or penalties if it is shown to the satisfaction of the commission that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules and regulations of the commission.

3. *Lien of contributions—collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer.

The lien aforesaid shall attach at the time the contributions become due and payable and shall continue until the liability for such amount is satisfied.

In order to preserve the aforesaid lien against subsequent mortgages, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commission shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in his office a book to be known as "index of unemployment contribution liens", so ruled as to show in appropriate columns the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The commission shall pay a recording fee as provided in section 335.14, for the recording of such lien, or for the satisfaction thereof.

Upon the payment of contributions as to which the commission has filed notice with a county recorder, the commission shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in his office and indicate said fact on the index aforesaid.

The commission shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all contributions as soon as practicable after the same become delinquent, except that no property of the employer shall be exempt from the payment of said contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section

to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workmen's compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the commission shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The commission is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the chairman of the commission of this state, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 "a" of that Act (11 U.S.C., § 104 "b", as amended.)

5. *Refunds, compromises and settlements.* In any case in which the commission finds that an employer has paid contributions or interest thereon, which have been erroneously paid, and who has filed an application for adjustment thereof, the commission shall make such adjustment, compromise, settlement, and make such refund of erroneous payments as it finds just and equitable in the premises. Refunds so made shall be charged to the fund to which the erroneous collections have been credited, and shall be paid

to the claimant without interest. Any claim for such refund shall be made within three years from the date of payment. For like cause, adjustments, compromises or refunds may be made by the commission on its own initiative. In any case in which the commission finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the commission may institute a proceeding in the district court in the county in which the enterprise against which such tax is levied is located, requesting authority to compromise such contribution. Notice of the filing of such application shall be given to the interested parties as the court may prescribe. The court upon such hearing shall have power to authorize the commission to compromise and settle its claim for such contribution and shall fix the amount to be received by the commission in full settlement of such claim and shall authorize the release of the commission's lien for such contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice—form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

“And unless you appear thereto and defend in the district court of Iowa in and for . . . county at the courthouse in . . . , Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief prayed in plaintiff's petition.”

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

- a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of two dollars, and
b. By mailing to the defendant, and to each of the defen-

dants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at his last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident—form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

“To . . . (Here insert the name of each defendant and his residence or last known place of abode as definitely as known.)

“You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . day of . . . , 19 . . . with the secretary of state of the state of Iowa.

“Dated at . . . , Iowa, this . . . day of . . . , 19 . . .

Plaintiff.

By . . . Attorney for Plaintiff.”

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford him reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with him, shall not permit said filed notices to be taken from his office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which he is defendant.

See: *Fleck v. Iowa Emp. Sec. Comm.*, 233 Iowa 67, 8 N. W. 2d 703.

PROTECTION OF RIGHTS AND BENEFITS

96.15 Waiver—fees—assignments.

1. *Waiver of rights void.* Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months, or both.

2. *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission, or an appeal tribunal or a court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provisions of this subsection shall, for each such offense, be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than six months, or both.

3. *No assignment of benefits—exemptions.* Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts. Any waiver of any exemption provided for in this subsection shall be void.

96.16 Offenses.

1. *Penalties.* Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or for

any other person, shall be punished by a fine of not less than twenty dollars nor more than fifty dollars or by imprisonment for not longer than thirty days. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

2. *False statement.* Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from an employing unit under this chapter, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal, shall constitute a separate offense.

3. *Unlawful acts.* Any person who shall willfully violate any provisions of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

4. *Misrepresentation.* Any person who, by reason of any error, or by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the commission for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in section 96.14, subsection 3, for the collection of past-due contributions.

REPRESENTATION IN COURT

96.17 Counsel.

1. *Legal services.* In any civil action to enforce the provisions of this chapter, the commission and the state may be

represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or, at the commission's request, by the attorney general. In case the governor designates special counsel to defend on behalf of the state, the validity of this chapter, the expenses and compensation of such special counsel employed by the commission in connection with such proceeding may be charged to the unemployment compensation administration fund.

2. *County attorney.* All criminal actions for violations of any provision of this chapter, or of any rules or regulations issued by the commission pursuant thereto, shall be prosecuted by the prosecuting attorney of any county in which the employer has a place of business or the violator resides, or, at the request of the commission, shall be prosecuted by the attorney general.

96.18 Nonliability of state. Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commission shall be liable for any amount in excess of such sums.

DEFINITIONS

96.19 Scope. As used in this chapter, unless the context clearly requires otherwise:

1. "Annual payroll." The term "annual payroll" as used in subsection 3 "d" of section 96.7 means the total amount of taxable wages paid by an employer for insured work during the period of four consecutive calendar quarters ending on September 30 of each year, and the term "average annual payroll" as used in said subsection means the average of the "annual payrolls" of an employer for the last three periods of four consecutive calendar quarters immediately preceding the computation date. Except that for an employer who qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, the term average annual payroll shall be the average of the annual payrolls for the last two periods of four consecutive calendar quarters immediately preceding the computation date.

2. "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

3. "Commission" means the employment security commission established by this chapter.

4. "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

5. "Employing unit" means any individual or type of organization, including any partnership, association, trust,

estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 6 or section 96.8, subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 6 or section 96.8, subsection 3, shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 6 or section 96.8, subsection 3, may recover the same from such contractor or subcontractor, except as any contractor or subcontractor who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general rules of the commission. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

6. "Employer" means:

a. For purposes of this chapter the term "employer" means with respect to any calendar year after December 31, 1971 any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages as defined in subsection thirteen (13) of this section of one thousand five hundred dollars or more, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day).

b. Any employing unit (whether or not an employing

unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter. Provided, that such other employing unit would have been an employer under paragraph "a" of this subsection, if such part had constituted its entire organization, trade, or business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

e. Any employing unit which, having become an employer under paragraph "a", "b", "c" or "d", "f", "g", or "h" or "i" as provided for in section twenty-two (22) of this Act, has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8, subsection 3, any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required, pursuant to such Act, to be an "employer" under this Act.

Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the commission that his employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

h. Any employing unit for which service in employment as defined in subsection seven (7), paragraph "a", subparagraph four (4), of this section, provided for in section twenty-three (23) of this Act, is performed after December 31, 1971.

i. Any employing unit for which service in employment, as defined in subsection seven (7), paragraph "a", subparagraph five (5), of this section provided for in section twenty-three (23) of this Act, is performed after December 31, 1971.

j. For purposes of paragraphs "a" and "i", employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with subsection seven (7), paragraph "d" of this section, by the commission and an agency charged with the administration of any other state or federal unemployment compensation law.

k. For purposes of paragraphs "a" and "i" of this subsection, if any week includes both December thirty-first and January first, the days of that week up to January first shall be deemed one calendar week and the days beginning January first another such week.

7. "Employment".

a. Except as otherwise provided in this section "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1971, by:

(1) Any officer of a corporation, or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, or

(3) Any individual other than an individual who is an employee under subparagraphs one (1) or two (2) of this paragraph who performs services for remuneration for any person as an agent driver or commission driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for his principal; as a traveling or city salesman, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

Provided, that for purposes of paragraph "a", subparagraph three (3) the term "employment" shall include services performed after December 31, 1971, only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) The individual does not have a substantial investment

in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) The services are not in the nature of single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(4) Service performed after December 31, 1971, by an individual in the employ of this state or any of its wholly owned instrumentalities.

(5) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. 3301-3308) solely by reason of section 3306 (c) (8) of that Act.

(6) For the purposes of subparagraphs four (4) and five (5), of this paragraph, the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(c) In the employ of a school which is not an institution of higher education.

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work.

(e) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(f) For a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

(2) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this

state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state, or

(3) The service is performed outside the United States (except in Canada or the Virgin Islands) after December 31, 1971, by a citizen of the United States in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs one (1) and two (2) of this paragraph or the parallel provisions of another state law), if:

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

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subdivisions (a) and (b) of this subparagraph is met, but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(d) An "American employer", for purposes of this subparagraph, means a person who is an individual who is a resident of the United States or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state.

(4) Notwithstanding the provisions of subparagraphs one (1), two (2), and three (3) of this paragraph, all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within and without the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state, and

(5) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required to be covered under this Act.

c. Services performed within this state but not covered under paragraph "b" of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of

the federal government.

d. Services not covered under paragraph "b" of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

e. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state, or

(2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

f. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact.

g. The term "employment" shall not include:

(1) Service performed in the employ of this state by an elected official or service performed in the employ of any political subdivision of this state or any instrumentality of its political subdivisions. Provided that this exemption shall not be deemed to apply to services performed for a hospital or institution of higher education operated by a political subdivision of this state which has elected coverage for such services pursuant to section ninety-six point eight (96.8), subsection three (3), paragraph "c", of the Code; and service performed in the employ of any political subdivision of this state, or any instrumentality of any political subdivision, which for the effective period of its election pursuant to section ninety-six point eight (96.8), subsection three (3), paragraph "a", of the Code, has voluntarily elected that all services performed for it by individuals in its employ shall be deemed to constitute employment for all purposes of this chapter. Nothing in this or any other provision of this chapter shall be construed to restrict the right of any political subdivision to elect coverage solely for institutions of higher education and hospitals as provided in section ninety-six point eight (96.8), subsection three (3), paragraph "c" of the Code.

(2) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States; provid-

ed, however, that the general language just used shall not include any such instrumentality of the United States after Congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immunity to make the contributions, imposed by this chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal internal revenue code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided for in section 96.14, subsection 5, which section provides for the refunding of contributions erroneously collected.

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided, that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11, subsection 2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter.

(4) Agricultural labor. For purposes of this chapter, the term "agricultural labor" means any service performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated service performed after December 31, 1971:

(a) On a farm in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in

section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, Sec. 3, 12 U.S.C. 1141j), or in connection with ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(ii) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in (i) of subdivisions (d) of this subparagraph, but only if such operators produced more than one-half of the commodity with respect to which such service is performed;

(iii) The provisions of (i) and (ii) of subdivision (d) of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(f) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(5) Domestic service in a private home.

(6) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of eighteen in the employ of his father or mother.

(7) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Service performed by an individual under the age of twenty-two years who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly orga-

nized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

8. "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

9. "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

10. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at his then regular job, he works less than the regular full-time week and in which he earns less than his weekly benefit amount plus six dollars.

c. An individual shall be deemed partially unemployed in any week in which he, having been separated from his regular job, earns at odd jobs less than his weekly benefit amount plus six dollars.

11. "State" includes, in addition to the states of the United States, the District of Columbia, Canada, Puerto Rico, and the Virgin Islands.

12. "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

13. "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the commission. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4, and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

14. "Week" means such period or periods of seven consecutive calendar days ending at midnight, or as the com-

mission may by regulations prescribe.

15. "Weekly benefit amount". An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one week of total unemployment. An individual's weekly benefit amount, as determined for the first week of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

16. "Benefit year". The term "benefit year" means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

17. "Base period" means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which he filed a valid claim.

18. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

19. "Customary self-employment". An employee shall be deemed to be engaged in "his customary self-employment," as said words are used in section 96.5, during the periods in which he customarily devotes the major portion of his working time and efforts: (a) To his individual enterprises and interests; or (b) to her duties as housewife; or (c) to attending classes and preparing his studies for any school or college.

20. "Insured work" means employment for employers.

21. "Taxable wages". For the purposes of section ninety-six point seven (96.7), subsections one (1) and two (2) of the Code and subsequent to December 31, 1971, taxable wages shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

For the purposes of this subsection, the term "employment" includes service constituting employment under any unemployment compensation law of another state provided such other state will consider service performed in Iowa in determining the contribution base.

22. "Computation date". The computation date for con-

tribution rates shall be October 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective.

See: *Mt. Vernon Bank & Trust Co. v. Iowa Emp. Sec. Comm.*, 233 Ia. 1165, 11 N. W. 2d 402.
Stromberg Hatchery v. Iowa Emp. Sec. Comm., 33 N. W. 2d 498.
Kunkel v. Eastern Ia. Light & Power, 232 Iowa 649, 5 N. W. 2d 899.
Equitable Life Ins. Co. v. Iowa Emp. Sec. Comm., 231 Ia. 889, 2 N. W. 2d 262.
Woods Bros. v. Iowa Emp. Sec. Comm., 229 Ia. 1171, 296 N. W. 345.
Kaus v. Huston, 120 F. 2d 183.
Spagnola v. Iowa Emp. Sec. Comm., 237 Ia. 645, 23 N. W. 2d 433.
Glidden Rural Electric v. Iowa Emp. Sec. Comm., 236 Ia. 910, 20 N. W. 2d 435.
Meredith Pub. Co. v. Iowa Emp. Sec. Comm., 232 Ia. 666, 6 N. W. 2d 6.
Kaus v. Iowa Emp. Sec. Comm., 230 Ia. 860, 299 N. W. 415.
Moorman Mfg. Co. v. Iowa Emp. Sec. Comm., 230 Ia. 123, 296 N. W. 791.
Dahl Enterprises v. Iowa Emp. Sec. Comm., 249 Ia. 318, 86 N. W. 2d 922.

23. "Hospital" means an institution which has been licensed, certified, or approved by the Iowa department of health as a hospital.

24. For the purposes of this chapter the phrase, "institution of higher education", means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

25. "United States" for the purposes of this section includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

26. "Extended benefit period" means a period which:

a. Begins with the third week after whichever of the following weeks occurs first:

(1) A week for which there is a national "on" indicator, or

(2) A week for which there is a state "on" indicator, and

b. Ends with either of the following weeks, whichever occurs later:

(1) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(2) The thirteenth consecutive week of such period.

Provided that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and

Provided further that no extended benefit period may become effective in this state prior to January 1, 1972.

27. "National on indicator" means for any week that the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equalled or exceeded four and one-half percent.

28. "National off indicator" means for any week that the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half percent.

29. "State on indicator" means for any week that the commission determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks the rate of insured unemployment (not seasonally adjusted) under this Act equalled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equalled or exceeded four percent.

30. "State off indicator" means for any week that the commission determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks the rate of insured unemployment (not seasonally adjusted) under this Act was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years or was less than four percent.

31. "Rate of insured unemployment", for purposes of determining state "on" indicator and state "off" indicator, means the percentage derived by dividing the average weekly number of individuals filing claims in Iowa for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the commission on the basis of its reports to the United State secretary of labor, by the average monthly insured employment covered under this Act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

32. "Regular benefits" means benefits payable to an individual under this or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., Chapter 85) other than extended benefits.

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

34. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in

an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

35. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period has received, prior to such week, all of the regular benefits that were available to him under this Act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such weeks. Provided that for the purposes of this subsection an individual shall be deemed to have received all of the regular benefits that were available to him, although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year he may subsequently be determined to be entitled to add regular benefits, or:

(a) His benefit year having expired prior to such week, has no, or insufficient, wages and on the basis of which he could establish a new benefit year that would include such week, and

(b) He has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States secretary of labor, and he has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

36. "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under 26 U.S.C. 3304.

96.20 Reciprocal benefit arrangements.

1. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states, or a contiguous country with which the United States has an agreement with respect to unemployment compensation or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

2. The commission may enter into arrangements with the appropriate agencies of other states or a contiguous country with which the United States has an agreement with respect to unemployment compensation or of the federal government (a) whereby wages or services, upon the basis of which an individual may become entitled to benefits

under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of section 96.3 and section 96.4, subsection 5; provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits, paid under this chapter upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests, and (b) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of section 96.3, subsection 5, and section 96.9, but no reimbursement so payable shall be charged against any employer's account for the purposes of section 96.7 unless wages so transferred are sufficient to establish a valid claim in Iowa, and that such charges shall not exceed the amount charged on the basis of a valid claim. The commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

The commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this Act with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for: applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplication use of wages and employment by reason of such combining.

3. The commission is hereby authorized to enter into agreements with the appropriate agencies of other states or a contiguous country with which the United States has an agreement with respect to unemployment compensation or the federal government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state.

96.21 Termination. If at any time Title IX of the Social Security Act, as amended, shall be amended or repealed by congress or held unconstitutional by the supreme court of the United States, with the result that no portion of the contributions required under this chapter may be credited against the tax imposed by said Title IX, in any such event

the operation of the provisions of this chapter requiring the payment of contributions and benefits shall immediately cease, the commission shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit, and such moneys, together with any other moneys in the unemployment compensation fund shall be refunded, without interest and under regulations prescribed by the commission, to each employer by whom contributions have been paid, proportionately to his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the commission to pay for the costs of making such refunds. When the commission shall have executed the duties prescribed in this section and performed such other acts as are incidental to the termination of its duties under this chapter, the provisions of this chapter, in their entirety, shall cease to be operative.

96.22 Servicemen not disqualified. Notwithstanding any other provision of this chapter to the contrary, any individual in good faith leaving his employment after July 1, 1951, and prior to July 1, 1955, to join the armed forces of the United States, and who does so join, or who attempting to so join is rejected, shall not be disqualified under the provisions of subsection 1 of section 96.5 for voluntarily leaving his employment.

Any benefit year as defined in subsection 16 of section 96.19 of any individual shall be extended by any time spent after June 30, 1951, and prior to July 1, 1955, by such individual after the beginning of such benefit year in the armed forces of the United States.

96.23 Base period exclusion. Any calendar quarter commencing after June 30, 1951, and ending prior to July 1, 1955, the greater portion of which is spent by such individual in the armed forces of the United States, shall not be considered as any portion of the base period provided for in subsection 17 of section 96.19.

96.24 Employer to be notified. Whenever an employee is separated from his employment for the purpose of joining the armed forces of the United States, the employee shall notify the employer in writing of his acceptance and date of reporting for service and the employer shall, within fifteen days after said notice from the employee, notify the Iowa employment security commission of such separation and date of termination of wages on a form furnished by the commission.

EMPLOYMENT SECURITY BUILDING

96.25 Office building. The employment security commission may, subject to the approval of the executive council of the state, acquire for and in the name of the state of Iowa by purchase, or by rental purchase agreement, such lands and buildings upon such terms and conditions as may entitle this state to grants or credits of funds under the Social Security Act or the Wagner-Peyser Act to be applied against the cost of such property, for the purpose of providing office space for the employment security commission at such places as the commission finds necessary and suitable.

96.26 Moneys received. The employment security commission is authorized to accept, receive, and receipt for all moneys received from the United States for the payments authorized by sections 96.25 to 96.28, inclusive, for lands and buildings and to comply with any rules and regulations made under the Social Security Act or the Wagner-Peyser Act.

96.27 Approval of attorney general. An agreement made for the purchase or other acquisition of the premises mentioned in section 96.25 of this section with funds granted or credited to this state for such purpose under the Social Security Act or the Wagner-Peyser Act shall be subject to the approval of the attorney general of the state of Iowa as to form and as to title thereto.

96.28 Deposit of funds. All moneys received from the United States for the payments authorized by sections 96.25 to 96.27, inclusive, for lands and buildings shall be deposited in the employment security administration fund in the state treasury and are appropriated therefrom for the purposes of this chapter.

96.29 Extended benefits. Except when the result would be inconsistent with the other provisions of this chapter, as provided in regulations of the commission, the provisions of the law which apply to claims for or the payment of regular benefits shall apply to claims for, and the payment of, extended benefits.

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

- a. He is an "exhaustee" as defined in this Act.
- b. He has satisfied the requirements of this Act for the

receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

2. *Weekly extended benefit amount.* The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

3. *Total extended benefit amount.* The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts.

a. Fifty percent of the total amount of regular benefits which were payable to him under this Act in his applicable benefit year.

b. Thirteen times his weekly benefit amount which was payable to him under this Act for a week of total unemployment in the applicable benefit year.

4. *Beginning and termination of extended benefit period.* Whenever an extended benefit period is to become effective in Iowa, or in all states, as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in Iowa as a result of state and national "off" indicators, the commission shall make an appropriate public announcement. Computations required by the provisions of this subsection shall be made by the commission in accordance with regulations prescribed by the United States secretary of labor.

96.30 The provisions of this Act shall become effective January 1, 1972, except that sections ten (10) and eleven (11) of this Act shall become effective October 1, 1971.

State of Iowa

1974

RULES

**For the Administration of the
IOWA EMPLOYMENT SECURITY LAW**

The following rules of the Commission are in effect at this time and are of general interest to the public. Rules and regulations which apply only to internal administrative matters are not included.

EMPLOYMENT SECURITY COMMISSION

Pursuant to the authority of Section 96.11(1) Code of Iowa, 1971, the rules appearing in 1971 Iowa Departmental Rules, pages 338 to 341, relating to employer's records and reports are rescinded and the following adopted in lieu thereof.

CHAPTER 1 EMPLOYER'S RECORDS AND REPORTS

1.1(96) Records to be kept by the employer.

1.1(1) Each employing unit having employment performed for it shall maintain records to show the information hereinafter indicated. Such records shall be kept in such form and manner that it will be possible from an inspection thereof to obtain the facts necessary to determine the eligibility of each employee as to his rights to benefits. Such records shall be open to inspection and be subject to be copied by the commission and its authorized representatives at any reasonable time. Such records shall be kept for a period of five years after the calendar year in which the remuneration to which they relate was paid, or if not paid was due.

1.1(2) Such records shall show with respect to each employee unless the commission has ruled that his services do not constitute employment:

- a. Name of worker.
- b. Social security account number.
- c. Date on which employee was hired, rehired, or returned to work after a temporary layoff, and the date separated from work and the reason therefor.
- d. Scheduled hours except for workers without a fixed schedule of hours, such as those working outside of the employer's establishment in such a manner that the employer has no definite knowledge of their working hours.
- e. Total wages paid for employment in each period and the date of payment. For all pay periods ending in each quarter show separately: money wages, the cash value of other remuneration such as any special payment for services such as wages in lieu of notice, bonuses, gifts, prizes, show separately: money payments, other remuneration and the nature of such payments such as accounts paid to employees as allowance or reimbursement for traveling and other business expenses, and the amounts of such expenditures actually incurred and accounted for by him.
- f. The state or states in which his services are performed; and if any of such services are performed outside of this state and are not incidental to the service within the state, his base of operations (or if there is no base of operations then the place from which such services are directed or controlled) and his residence (by state), and the name of the county in Iowa in which services were performed.

g. When the pay period covers services performed both in employment and in excluded work, show the hours and wages for employment under this Act and also hours and wages for excluded work.

h. For determining the worker's eligibility for partial benefits:

(1) Wages earned by weeks as provided for in the rule relating to Claims for benefits for total and partial unemployment, section C, subsection 2.

(2) Whether any week was in fact a week of less than fulltime work.

(3) Time lost, if any, by each worker due to his unavailability for work showing days and weeks in which such loss of time occurred.

1.2(96) Reports.

1.2(1) Each employing unit shall make such reports at such times as the commission may require, and shall comply with the instructions printed upon any report form issued by the commission pertaining to the preparation and return of such report.

1.2(2) Any individual or employing unit, not already an employer, who fulfills the conditions with respect to becoming an employer, shall immediately give notice to the commission of that fact. He shall set forth in such notice his name and address and the name and address of the business.

1.2(3) Any employer who terminates his business for any reason whatsoever, or transfers or sells all or a substantial part of the assets of his organization, trade or business to another, or changes the trade name of such business or address thereof, shall, within ten days after such termination, transfer, or change of name or address, give notice in writing to the commission of that fact. He shall set forth in such notice the former name and address of the business, the new name and address, the name of any new owner, and his own name and present address.

1.3(96) **Definition of wages for employment during a calendar quarter.** Unless the context otherwise requires, terms used in rules, regulations, interpretations, forms, and other official pronouncements issued by the commission shall have the following meaning:

1.3(1) "Wages paid" include both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are credited to the account of or set apart for a worker without any substantial restriction as to the time or manner of payment or conditions upon which payment is to be made and must be made available to him so that they may be drawn upon by him at any time, and their payment brought within his own control and disposition, although not then actually reduced to possession.

1.3(2) Wages payable means wages earned, includ-

ing wages earned and paid as well as wages earned and unpaid. [See section 96.19 (10) "a", and "b".]

1.4(96) Identification of workers covered by the Iowa employment security law.

1.4(1) Each employer shall ascertain the Federal Social Security account number of each worker employed by him in employment subject to the Iowa employment security law.

1.4(2) The employer shall report the worker's federal social security account number in making any report required by the Iowa employment security commission with respect to the worker.

1.4(3) If any employer has in his employ a worker engaged in employment who does not have an account number, such employer shall request the worker to show him a receipt issued by an officer of the social security board acknowledging that the worker has filed an application for an account number. The receipt shall be retained by the worker. In making any report required by the Iowa employment security commission with respect to such a worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

1.4(4) If a worker failed to report to the employer his correct federal social security account number or fails to show the employer a receipt issued by an office of the social security board acknowledging that he has filed an application for an account number, the employer shall inform the worker that regulation 106 of the bureau of internal revenue, United States treasury department, under the federal insurance contribution Act provides that:

a. Each worker shall report to every employer for whom he is engaged in employment, his federal social security account number and his name exactly as shown on the account number issued to him by the social security board.

b. Each worker who has not secured an account number shall file an application for a federal social security account number on form SS-5 of the treasury department, bureau of internal revenue. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves the employ of his employer if such date precedes such seventh day. Copies of form SS-5, "Application for a Social Security Account Number" can be secured at the field office of the social security board nearest the worker's place of employment or the local post office.

c. If, within fourteen days after the date on which the worker first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, the worker does not have a federal social security account number, and has not

shown the employer a receipt issued to the worker by an office of the social security board acknowledging that he has filed an application for an account number, the worker shall furnish the employer an application on form SS-5, completely filled in and signed by the worker. If a copy of form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex, and a statement as to whether the worker had previously filed an application on form SS-5 and, if so the date and place of such filing. Furnishing the employer with an executed form SS-5, or statement in lieu thereof, does not relieve the worker of his obligation to make an application on form SS-5 as required in paragraph b.

1.4(5) The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with the regulation 106 of the bureau of internal revenue, United States treasury department:

a. Any worker who has lost his federal social security account number card may secure a duplicate card by applying at the field office of the social security board nearest the worker's place of employment.

b. Any worker may have his account number changed at any time by applying to a field office of the social security board and showing good reason for a change. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on form SS-5, should report such change or correction to a field office of the social security board. Copies of the form OAAN-7003, "Employee's request for change in records," for making such reports may be obtained from any field office of the social security board, (or the central office of the Iowa employment security agency or a local employment office).

c. Any worker who has more than one social security account number shall report all numbers to the field office of the social security board nearest the worker's place of employment, (to a public employment office, or to the area claims office).

1.4(6) If the worker fails to comply with the requirements enumerated under 4 above, the employer shall execute a form SS-5, "Application for a Social Security Account Number", or statement, signed by the employer, setting forth as fully and as clearly as practicable the worker's full name, his present or last-known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex, and a statement as to whether an application for an account number has previously been filed by the worker, and if so, the date and place of such filing. This statement, or the executed form SS-5 signed by the employer, shall be attached to any report required by the Iowa employment security commission with respect to such a worker.

1.5(96) **Separation notices.** Separation notices re-

quired when the separation is such that no disqualification is involved.

1.5(1) Each employer shall deliver to each worker when separated from his employment with such employer permanently or for an indefinite period, or for an expected duration of seven days or more, when such separation is under conditions which, in the opinion of the employer, would not disqualify the worker from receiving benefits, a copy of "Information for workers," form IESC 200. This notice shall be delivered to the worker at the time of separation, if possible, or, if such delivery be impossible or impracticable it shall be mailed to such worker's last-known address.

1.5(2) Separation notices required under conditions which may disqualify permanently or for an indefinite period, or for an expected duration of seven days or more, for any reason defined in section 96.5 of the Iowa employment security Act which, in the opinion of the employer may disqualify him from receiving benefits, the employer shall, within seven days after such separation, notify the Iowa employment security commission of such separation on form IESC 203, notice of separation. The employer shall also deliver to such worker a copy of such notice at the time of separation, if possible, or, if delivery is impossible or impracticable, he shall mail a copy of such notice to the last-known address of such worker.

1.6(96) Employer elections to cover multistate workers.

1.6(1) The following regulation shall govern the Iowa employment security commission in its administrative co-operation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement."

1.6(2) **Definitions.** As used in this regulation, unless the context clearly indicates otherwise:

a. "Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law;

b. "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

c. "Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction;

d. "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this regulation is sent for its approval; and "interested agency" means the agency of such jurisdiction;

e. Services "customarily performed" by an indi-

vidual in more than one jurisdiction means 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.

f. "Total wages paid in covered employment" as it appears in section 96.7-3-d(1) of the Code, for computing the current reserve fund ratio, means total wages paid in covered employment, subject to contributions, as provided in section 96.7, and does not include wages paid by reimbursing employers, whose payments to the unemployment insurance fund, in lieu of contributions, are made in accordance with section 96.7-8 and -9.

1.6(3) Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.

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

(1) Any part of the individual's services are performed;

(2) The individual has his residence; or

(3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

b. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other 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. 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.

c. 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 electing employing unit of its action and of its reasons therefor.

d. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

e. 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 ten days after being notified of such action.

1.6(4) Effective period of elections.

a. Commencement. 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. 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 had no liability to pay contributions for the earlier period in question.

b. Termination.

(1) 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 particular jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph (1), of this paragraph, 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.

(3) Whenever an election under this regulation ceases to apply to any individual, under subparagraph (1) or (2) of this paragraph the electing unit shall notify the affected individual accordingly.

1.6(5) Reports and notices by the electing unit.

a. 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.

b. 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 elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

c. 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.

IOWA EMPLOYMENT SECURITY COMMISSION

Pursuant to the authority of Section 96.11(1) Code of Iowa, 1971, the rules appearing in 1971 Iowa Departmental Rules, pages 341 to 343 relating to employer's contributions and charges are rescinded and the following adopted in lieu thereof.

CHAPTER 2

EMPLOYER'S CONTRIBUTIONS AND CHARGES

2.1(96) Contributions by employers.

2.1(1) Contributions shall become due and be payable quarterly on the last day of the month next following the calendar quarter for which the contributions have accrued. Provided that if the commission finds that the collection of any contributions from a particular employer will be jeopardized by delay they may declare such contributions due and payable as of the date of the finding.

2.1(2) Upon written request filed with commission before the due date of any contribution, the commission may, for good cause shown, grant an extension in writing of the time for payment of such contribution and the due date, but (1) no extension shall exceed thirty days, and (2) no extension shall postpone payment beyond the last day for filing tax returns under the federal unemployment Tax Act. If an employer who has been granted an extension fails to pay his contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

2.1(3) The first contribution payment of any employing unit which elects with the written approval of such election by the commission, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

2.1(4) The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month next following that quarter wherein occurred the 20th calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month next following that calendar quarter in which a total of \$1500.00 in wages were paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

2.1(5) The first contribution payment of an employ-

er who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

2.1(6) Bond requirement-nonprofit organization.

a. If the commission requires a bond pursuant to Section 96.7, as amended by Chapter 113, Section 10, Acts of 64th G.A. of the code, the bond shall be issued by a surety authorized to do business in this state and be deposited with the commission within thirty days after the effective date of such nonprofit organization's election to become liable for payments in lieu of contributions, or within 30 days after demand. In lieu of the posting of such bond the nonprofit organization may deposit security in one or more of the following forms: Cash deposit, securities, certificates of deposit issued by a bank or federally insured savings and loan association, bearer bonds issued by the United States or by the State of Iowa.

b. The amount of such bond or deposit shall be equal to two and seven-tenths percent of the organization's total taxable wages paid for employment for the four calendar quarters immediately preceding the effective date of the election. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the commission.

c. If any nonprofit organization fails to post a bond or furnish security or increase security within the time specified by this section, the commission may terminate the election upon written notice to the organization. The termination, shall be effective on the first day of the calendar quarter following the date of the notice of termination.

2.1(7) Request for termination of election to make payments in lieu of contributions. A private nonprofit organization or a state owned hospital or institution of higher education being a subject employer under Chapter 113, Section 22, Acts of 64th G.A., and having elected to reimburse the Iowa employment security commission for benefits based on service performed by its employees, for a period of not less than two calendar years, may request that such election be terminated, as provided under Chapter 113, Section 23, Acts of 64th G.A., and agree to pay contributions based on wages paid its employees in accordance with section 96.7, as amended by Chapter 113, Section 11, Acts of 64th G.A. The request must be made not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective. Any employing unit above, for whom such request is granted shall continue to remain liable for reimbursing the fund for any benefit charges based on wages reported during the period when he was a reimbursable employer.

2.2(96) Group accounts.

2.2(1) Any nonprofit organization or any state owned hospital or institution of higher education which has become liable for payments in lieu of contributions may make application to the commission to participate in a group account with one or more such employers.

2.2(2) The commission shall approve those applications that meet the requirements of this rule.

2.2(3) Any application to participate in a group account may be filed at any time, provided, however, all contributions, payments in lieu of contributions, interests and penalties due from the applicant employer must be paid prior to the effective date of the employer's membership in a joint account.

2.2(4) Each applicant-employer shall agree to assume joint and several liability for any payments, interests and penalties accruing on the part of any one of the members participating in the joint account during the duration of the account in consideration for the commission granting him the right to participate in it.

2.2(5) Each member participating in a group account agrees to maintain a sufficient record of his own employment in order that he can furnish the commission with information necessary to enable the commission to make proper certification to the bureau of internal revenue of the United States treasury under the federal unemployment Tax Act and to enable the division to determine any benefit charges against his separate account.

2.2(6) All group accounts will be maintained only on a calendar year basis and such accounts must be maintained for a minimum period of one calendar year and will continue thereafter until terminated at the discretion of the commission or upon application by the group.

2.2(7) Any nonprofit organization or any state owned hospital or institution of higher education may be added to an existing group account if all of the members currently in such account file a new application with the commission for a new group account and otherwise qualify under this section.

2.2(8) Withdrawal from a group account by any participating member may be approved if the request for withdrawal is made in writing to the commission on or before September 30, of the year prior to the year for which the withdrawal is to be effective.

2.2(9) The remaining member or members shall continue to constitute a group account. The withdrawal or termination of all except one member shall not dissolve such group account, unless and until such last member shall withdraw or terminate.

2.3(96) Accrual of interest and penalties.

2.3(1) In those cases in which the commission finds that a genuine controversy exists or has existed regarding

an employing unit's liability for contributions on all or a part of its employees and the case has been resolved against such employing unit, then no interest and/or penalty will accrue from the date of such controversy between the commission and the employing unit until thirty days after the decision of the commission requiring the payment of contributions.

2.3(2) Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of section 96.19(6,g) of the Iowa employment security law until thirty days after determination of his liability under the federal Unemployment Tax Act.

2.3(3) That each non-profit organization which has been approved to make payments in lieu of contributions shall be billed each calendar month for benefits paid during such month.

2.3(4) Interest and penalty shall not accrue in those cases where the commission finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

b. That interest and penalties as provided under Section 96.14 shall accrue thirty days after the monthly billing.

2.3(5) Accrual of interest and penalties applicable to contributory employers shall be applicable to non-profit organizations which have been approved to make payments in lieu of contributions.

2.4(96) **Employers' payments to persons performing military services.** The term "wages" shall not include cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

2.5(96) **Employers' contributions and charges.**

Where an individual has been employed by two or more employers during the same period, benefits payable to such individual by reason of such employment shall be charged against the accounts of such employers against whose accounts the maximum charges hereunder have not previously been made in accordance with the following: When wage records filed with the commission by employers show that the individual has been employed by two or more employers during the same calendar quarter, but the wage records do not indicate that employment within the quarter has been consecutive, then the benefits paid to such eligible individual shall be apportioned and charged against the accounts of such employers in direct ratio to the wages earned by such individual in insured work for such calendar quarter. The method of apportionment for chargeback

purposes shall be on the basis of the ratio which the wages earned by such individual in insured work for each such employer in such calendar quarter bears to the total wages earned by such individual in insured work from all such employers in such calendar quarter.

2.6(96) **Cash value of board and room.**

2.6(1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting "employment" as defined in the Act, [Chapter 96 of Code] the reasonable cash value of same shall be deemed wages subject to contribution.

2.6(2) Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in paragraphs 4 and 5 of this rule.

2.6(3) In the absence of such agreement in a contract of hire the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph 4.

| | |
|--|---------|
| Full board and room per week | \$35.00 |
| Meals (without lodging) per week | 17.50 |
| Meals (without lodging) per day | 2.50 |
| Lodging (without meals) per week | 17.50 |
| Lodging (without meals) per day | 2.50 |

2.6(4) The commission or its authorized agent may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with paragraph 3 above or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

2.6(5) If the commission determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph 3 above, the employer's payroll and contribution reports to the commission shall thereafter show the value of such remuneration as determined by the commission.

2.7(96) **Employees hired with equipment.**

Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee's services, if specified in the contract of hire, shall

be considered "wages". If the contract of hire does not specify the employee's wages, or the value of wages agreed upon under the contract of hire is not a fair value, the commission shall determine the employee's wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

2.8(96) **Gratuities and tips.**

The following criteria shall be applicable in determining whether tips are wages under the contribution provision of the Act: Tips received by an individual from a person or persons other than his employer, and not accounted for to the employer, are not wages. Where the customer writes the amount of the tip on his bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain per cent to the customer's bill for disbursement to his employees, the sums so disbursed are wages.

EMPLOYMENT SECURITY COMMISSION

Pursuant to the authority of Section 96.11(1), Code of Iowa, 1971, the rules appearing in 1971 Iowa Departmental Rules, pages 343 to 349, relating to claims and benefits are rescinded and the following adopted in lieu thereof.

CHAPTER 3 CLAIMS AND BENEFITS

3.1(96) **Claims for benefits for total and partial unemployment.**

3.1(1) Claims and registrations for benefits for total unemployment.

a. Any individual claiming benefits for total unemployment shall report in person at the area claims office or the state employment service office of the Iowa employment security commission most accessible to him and shall there register for work and file a claim for benefits, which claim shall be effective as of the first day of the calendar week in which he does so report and file his claim, except as otherwise provided in this rule.

b. In order to establish eligibility for benefits or for waiting period credits for weeks of total unemployment, the claimant shall continue to file claims as directed, in person or by mail, at such intervals as may be prescribed by a representative of the Iowa employment security commission.

c. The Iowa employment security commission, for reasons found to constitute good cause for any individual's failure to appear at the time specified for reporting may accept a continued claim from such individual as having been made at the specified time, provided such continued

claim is filed within seven days following the date specified for his reporting.

d. If an individual is located in an area served only by an itinerant service of the Iowa employment security commission, his claim for total unemployment may be accepted as effective as of the first day of the calendar week in which he became totally unemployed, provided that he registered in person with such itinerant service at the first available opportunity following the commencement of his total unemployment.

e. Claims for benefits for total unemployment shall set forth (a) that the individual claims benefits; (b) that he registers for work; and (c) such other information as is required thereby. The claim for benefits for total unemployment shall constitute both the individual's registration for work and his claim for benefits, or waiting period credits.

f. Continued claims for benefits for total unemployment shall set forth (a) that the individual continues his claim for benefits; (b) that he is totally unemployed; (c) that he registers for work; (d) that since he last registered for work he has performed no service and earned no wages, except as indicated; and (e) such other information as is required thereby. The continued claim for benefits for total unemployment shall constitute both the individual's registration for work and his claim for benefits or waiting period credits.

3.2(2) **Definitions.**

a. The word "week" as used in section 96.19(6,a), as amended by Chapter 113, Section 22 Acts of 64th G.A., refers to a calendar week and not to a flexible week. If any week includes both December thirty-first and January first, the days of that week up to January first shall be deemed one calendar week and the days beginning January first another such week.

b. "Regular job" as referred to in section 6, Chapter 96, Acts of the Fifty-First General Assembly, shall mean a job with an employer with whom the individual has a continuous attachment during a given claim period. Attachment will ordinarily have reference to the individual who has been employed and expects to continue in the employ of the employer for a considerable period a month, six weeks or longer.

c. "Week of partial unemployment." With respect to a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his pay period week; with respect to a partially unemployed individual whose wages are not paid on a weekly basis, but the amount the claimant has earned during any seven consecutive days period or periods within such pay period can be determined and such information furnished to the commission. A week of partial unemployment shall consist of a calendar week or such other seven consecutive days period within the pay period as may be

found appropriate under the circumstances and prescribed by the commission.

3.3(1) Registration and filing of claims for partial unemployment. A claim for benefits filed by an individual in person at any local employment office in this state or with an authorized itinerant agent of the commission on form IESC 211, shall constitute such individual's notice of unemployment, registration for work and claim for benefits or waiting period credit, with respect to each week of partial unemployment covered by the claim provided that such claim is filed not later than four weeks after the individual receives, through his employer or through the commission, appropriate notice of his potential eligibility for partial benefits as to any such week of partial unemployment.

3.3(2) On the filing of a valid claim for benefits, the benefit year of such individual will begin with the first day of the employer work week with respect to which the claim is filed, provided that such claim is filed not later than four weeks after the individual receives, through his employer or through the commission, appropriate notice of his potential eligibility for partial benefits as to any such weeks of partial unemployment.

3.3(3) A continued claim for partial benefits filed by an individual in person or by mail pursuant to the provisions of this rule shall constitute such individual's notice of unemployment, registration for work and claim for partial benefits or waiting period credit, with respect to each week of partial unemployment covered by the claim provided that such continued claim is filed not later than four weeks after the individual received, through his employer or through the commission, appropriate notice of his potential eligibility for partial benefits as to any such week of partial unemployment.

3.3(4) Any partially unemployed individual who fails with good cause to file a claim for partial benefits or waiting period credit shall be permitted to file such claim with respect to any week of partial unemployment at any time up to thirteen weeks following the close of the actual or potential benefit year in which such claim period falls, provided such claim is filed within one week after the individual is appropriately notified of his potential eligibility for partial unemployment. Failure to file a claim for partial benefits or waiting period credit as provided in these regulations shall be deemed to be for good cause if due to failure on the part of the employer to comply with the requirements relating to participation in the initiation of a claim, verification, or other requirements relating to partial unemployment, to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim for partial benefits or waiting period credit, or to failure by the commission to discharge its responsibilities under the law.

3.4(96) **Employer responsibility in the initiation of claims for partial unemployment benefits.**

3.4(1) Each employer, not later than seven days, immediately following the close of any week in which he

has reduced the customary prevailing hours of work of any employee to the extent that the weekly wages of such employee amount to less than the current maximum weekly benefit (computed at the beginning of each fiscal year), plus earnings which are not deductible under Section 96.19-(10) "b", "c" of the Iowa employment security law, shall complete and deliver to such individual a notice that he may be potentially eligible for benefits. This notice shall be a claim for partial unemployment insurance benefits on form IESC-211.

3.4(2) The employer may elect to use in lieu of form IESC-211 a payroll by-product, if the pay period of the employer coincides with the week or weeks of partial unemployment claimed, providing that the payroll by-product appropriately notifies the worker of his potential right to partial unemployment benefits, and contains:

- a. Information necessary to establish the identity of the employer and claimant,
- b. The pay period week covered,
- c. The total amount of earnings in each such pay period week,
- d. The following certification (individual or rubber stamped), "I certify that the above amount represents reduced earnings in a week of less than full-time work because of lack of work."
- e. Signature of employer (individual or facsimile),
- f. The date such payroll by-product was delivered to the worker.

3.4(3) Upon filing of a first claim for partial benefits for a benefit year the commission shall promptly notify each worker named therein of his potential rights to partial benefits and shall notify his employer of such worker's partial earnings limit and the benefit year ending date. Upon receipts of such notice each employer shall record the partial earnings limit and the benefit year ending date on the payroll records.

3.5(96) **Employer's verification of partial unemployment.**

3.5(1) After an employer has been notified of a partial earnings limit a worker's weekly benefit amount, plus \$6, and current benefit year ending date of any worker in his employ, such employer, until otherwise notified shall, immediately after the end of any pay period within which there were weeks in which the worker earned less than his weekly benefit amount, plus \$6, and in any case not later than thirty days after the end of the first week of partial unemployment occurring within such pay period (as provided for in this rule section E subsection 1) which began within such benefit year and for which such worker's earnings fall below such partial earnings limit because of lack of work in such week, furnish each such worker a joint low earnings report and claim for partial unemployment compensation benefits (individual) form IESC-213, setting

forth the information required therein; or

3.5(2) The employer may elect to use in lieu of form IESC-213 a payroll by-product in conformity with the provisions of this rule section E, subsection 2.

3.5(3) Upon request by the commission an employer shall complete and return to the commission form IESC-213, request for employer's individual earnings report with respect to any individual names on such form for the purpose of verifying earnings reported by the individual to the commission.

3.6(96) Mass partial unemployment.

3.6(1) The term "Mass Partial Unemployment" means a reduction of hours to less than full-time work at the same time and for the same reason for 25 or more partially unemployed individuals customarily employed in a single establishment.

3.6(2) When mass partial unemployment occurs the employer, not later than seven days immediately following the close of any pay period during which mass partial unemployment occurred in any week and in any case not later than thirty days after the end of the first week of partial unemployment occurring within such pay period, shall complete and mail or deliver to the nearest area claims office of the Iowa employment security commission a joint low earnings report and claim for partial unemployment compensation benefits (Mass, form IESC 212), covering each week of partial unemployment occurring in any such pay period. This requirement shall remain effective with respect to each pay period in any benefit year of any individual unless the employer is otherwise notified by the Iowa employment security commission.

3.6(3) Upon receipt of form IESC 212 covering initial mass partial unemployment, the Iowa employment security commission will immediately notify on form IESC 211 each individual listed on form IESC 212 that he is potentially eligible for partial unemployment compensation benefits and that he may file a claim for such benefits as provided in section D.

3.6(4) The employer or employing unit may elect to use in lieu of form IESC 212, form IESC 211 or payroll by-product as provided in section E.

3.6(5) "Employer records". Each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each worker in his employ who may be eligible for partial benefits, the following:

- a. Wages earned, by weeks, as provided for in this rule, section C, subsection 2.
- b. Whether any week was in fact a week of less than full-time work.
- c. Time lost, if any, by each such worker due to his unavailability for work.

3.7(96) Extended period for registration and filing claims for good cause.

3.7(1) Notwithstanding the provisions of these rules if the commission finds that failure of any individual to register and file a claim for unemployment compensation benefits or waiting period weeks within the time set forth by these rules was due to:

- a. Failure on the part of the employer to comply with the provisions of the Act or of these rules or,
- b. To coercion or intimidation exercised by the employer to prevent the prompt filing of such claim or,
- c. Failure of the commission to discharge its responsibilities promptly in connection with such claim, the commission 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, provided, that no such claim may be filed after the thirteen weeks subsequent to the end of the benefit year during which the week of unemployment occurred. In the event continuous jurisdiction is exercised under the provisions of the Act, the commission may, in its discretion, extend the period during which claims, with respect to week of unemployment affected by such redetermination, may be filed.

3.8(96) Notice to employer of claim filed and request for wage and separation information.

3.8(1) When an individual files a new claim for benefits, the Iowa employment security commission shall notify his last employer and all base period employers thereof; and may request wage and separation information on form IESC 201A. Each employer shall promptly complete and return so as to be received in seven days such information request form to the Iowa employment security commission's office, whose address is shown thereon, giving the following information if requested.

- a. A statement of wages paid in each calendar quarter of the base period.
- b. If the employer has knowledge of facts which might defer or deny the claimants right to benefits, a complete statement thereof;
- c. Such additional information as the Iowa employment security commission may deem necessary and request.

3.8(2) Should any employer fail to submit the information requested, as above set out, the deputy may make a determination of the claimant's benefit rights based on such information as is available.

3.9(96) Active and earnest search for work. According to section 96.4 subsection 3 an unemployed individual shall be eligible to receive benefits only if the commission finds among other things, that he is "earnestly and actively seeking work". Mere registration at an employment

office does not establish that the claimant is able and available for work. It is essential that he personally and diligently seek work on his own behalf. It is difficult to establish definite criteria for defining the words "actively" and "earnestly". Much will depend on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high a claimant may be expected to make more than the usual number of contacts. Likewise, unreasonable limitations by a claimant as to salary, hours or conditions of work can indicate that he is not earnestly seeking work. The commission expects each claimant for benefits, in order to continue to be available for work under the Iowa statute to conduct himself as a normal, prudent person who is out of work and seeking work would conduct himself.

3.10(96) **Part-time worker.** "Part-time worker" shall mean any person who has been in the employ of an employing unit and has established a pattern of part-time regular employment, which is subject to the employment security payroll tax, and has accrued wage credits, while working at a part-time job, if he becomes separated from this employment by the employer for no disqualifiable reason, and providing he has reasonable expectancy of securing other employment during the same hours and for the number of hours he can work, no disqualification shall be imposed under section 96.4-3 and 96.5-1 of the employment security law.

3.11(96) **Interpretation of misconduct.** As referred to in the Iowa employment security law, section 96.5 subsection 2, "Misconduct" shall have the following meaning. "Misconduct" consists of acts evidencing such willful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employees, or acts which show an intentional and substantial disregard of the employer's interest or the employee's duties and obligations to his employer. In order to justify a finding of misconduct, the matter must be within the individual's control and the behavior must be such as to show an intentional breach of the worker's obligations towards his employer.

3.12(96) **Disciplinary layoff.** Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff imposed by the employer, the claims deputy will determine the claim under the provisions of Section 96.5-2 of Chapter 96 of the Iowa code.

3.13(96) **Leave of absence.**

A leave of absence negotiated with the consent of both parties, employer and employee, shall be deemed a period of voluntary unemployment for the employee-claimant, and he shall be considered ineligible for benefits for such period.

a. If at the end of a period or term of a negotiated leave of absence the employer fails to reemploy the employee-claimant, such claimant shall be considered laid-off and eligible for benefits.

b. If the employee-claimant fails to return at the end of such leave of absence and subsequently becomes unemployed he shall be considered as having voluntarily quit and therefore is ineligible for benefits.

c. The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

3.14(96) **Interpretation of labor disputes.** As referred to in the Iowa employment security law, section 96.5, subsection 3, paragraph "6" (1), and section 96.5 subsection 4, labor dispute shall have the following meaning: "labor dispute" shall mean "any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment regardless of whether the disputants stand in the proximate relation of employer and employee."

3.15(96) **Payment of benefits to interstate claimants**

3.15(1) The following regulation shall govern the Iowa employment security commission in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

3.15(2) Definitions. As used in this regulation, unless the context clearly requires otherwise:

a. "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

b. "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Iowa employment commission finds that this exclusion would create undue hardship on such claimants in specified areas.

c. "State" includes the District of Columbia, Puerto Rico, and the Virgin Islands.

d. "Agent state" means any state in which an individual files a claim for benefits from another state.

e. "Liable state" means any state against which an individual files, through another state, a claim for benefits.

f. "Benefits" means the compensation payable to

an individual, with respect to his unemployment, under the unemployment insurance law of any state.

g. "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

3.15(3) "Registration for work".

a. Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

b. Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

3.15(4) "Benefit right of interstate claimants"

a. If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

b. The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims filed on or after July 5, 1953.

3.15(5) "Claims for benefits"

a. Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Claims filed against the Iowa employment security commission shall be processed and paid on the basis of the type of benefit week used by the agent state.

b. Claims shall be filed in accordance with agent-state regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

(1) With respect to claims for weeks of unemployment in which individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(2) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

3.15(6) "Determinations of claims".

a. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

b. The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

3.15(7) "Appellate procedure".

a. The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

b. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

3.16(96) **Training or retraining programs.** "Eligibility for training" for an unemployed individual to be considered for approval for training programs and continuing participation therein one or more of the following requirements shall be met:

3.16(1) Reasonable employment opportunities for which the claimant is fitted by training or experience are minimal, severely curtailed, or do not exist in the locality making a change in occupation necessary to again become gainfully employed.

3.16(2) Employment opportunities are severely curtailed or nonexistent for the claimant's current skills or education because of health, disability or other compelling factors.

3.16(3) Training is necessary for the claimant who has unusable or obsolete skills to enable him to obtain adequate employment.

3.16(4) The training for the claimant relates to an occupation or a skill for which there is, or is expected to be in the **immediate future**, reasonable opportunities in the locality where the claimant is residing or in a location to which the claimant is willing to move.

3.16(5) The claimant has the required qualifications and aptitudes to successfully complete the training. Basic education courses, however, which are necessary as a prerequisite for skill training, or other short-term vocationally

directed academic courses, may also be approved.

3.16(6) The training program consists of a practical and substantial curriculum to substantiate the expenditure of U. I. funds.

3.16(7) The claimant furnishes to the commission satisfactory evidence that he is attending the training course regularly.

3.16(8) "Method of making application for approval" Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the commission setting out the following:

- a. His most recent employer and employment;
- b. The reasons for his unemployment;
- c. The proposed course of training or retraining;
- d. The educational establishment at which he would receive training;
- e. The estimated time required for such training;
- f. The type of jobs for which the claimant will qualify at completion of such training.

EMPLOYMENT SECURITY COMMISSION

Pursuant to the authority of Section 96.11(1) Code of Iowa, 1971, the rules appearing in 1971 Iowa Departmental Rules, pages 349 to 351, relating to appeals procedure are rescinded and the following adopted in lieu thereof.

CHAPTER 4 APPEALS PROCEDURE

4.1(96) Appeals and hearing officers.

4.1(1) "The presentation of appealed claims".

a. A party appealing from a decision of a deputy shall file with the Iowa employment security commission at the administrative office in Des Moines, or at any public employment service office, a notice of appeal in writing setting forth:

- (1) The name, address and social security number of the claimant;
- (2) A reference to the decision from which the appeal is taken;
- (3) The fact that an appeal from such decision is being made;
- (4) The grounds upon which such appeal is based.

b. Upon the scheduling of a hearing on an appeal, notices of hearings shall be mailed to all parties interested in the decision of the deputy which is being appealed at least seven days before the date of hearing, specifying the place and time of hearing. A copy of the notice of appeal

showing the ground for appeal shall also be sent to the interested party who is the respondent in the case.

4.1(2) "Disqualification of an unemployment insurance hearing officer". No hearing officer shall participate in the hearing of any appeal in which he has an interest. Challenges to the interest of any hearing officer shall be heard and decided by the commission.

4.1(3) "Hearing of appeal".

a. All hearings shall be conducted informally in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. The claimant and any other party to an appeal before an unemployment insurance hearing officer may present such evidence as may be pertinent and each party shall have the right to examine the opposing party and his witnesses. Where a party appears in person the hearing officer shall examine such party and his witnesses and those of any opposing parties. The hearing officer, with notice to the parties of the time and place thereof, may take such additional evidence as he deems necessary.

b. The parties to an appeal, with the consent of the unemployment insurance hearing officer, may stipulate the facts involved in writing. The hearing officer may decide the appeal on the basis of such stipulation; or, in his discretion, may set the appeal down for hearing and take such further evidence as he deems necessary to enable him to determine the appeal.

c. If one of the parties fails to appear at the hearing, the unemployment insurance hearing officer shall, unless it appears that there is good cause for continuance, proceed to make his decision on the appeal.

4.1(4) "Adjournments of hearings".

a. The unemployment insurance hearing officer shall use his best judgment as to when adjournment of a hearing shall be granted in order to secure all the evidence that is necessary and to be fair to the parties.

b. If either party fails to appear at the first hearing, the unemployment insurance hearing officer may adjourn the hearing to a later date, or, if a decision is made, may re-open the same within 10 days upon good cause being shown.

4.1(5) "The determination of appeals".

a. Following the conclusion of a hearing of an appeal the unemployment insurance hearing officer shall, within seven days, announce his findings of fact, decision with respect to appeal, and the reasons therefor, provided that the commission may, upon proper showing by the hearing officer, extend this time. The decision shall be in writing, signed by the hearing officer, and filed with the commission. Copies of all decisions and the reason therefore shall be mailed by the appeals section to the claimant, to all other parties to the appeal, and to the deputy.

4.2(96) **Appeals to the commission.**

4.2(1) "The presentation of an appeal to the commission".

a. A party appealing from a decision of an unemployment insurance hearing officer shall file a notice of appeal with the Iowa employment security commission at the administrative office in Des Moines or at any area claims office or state employment service office of the Iowa employment security commission.

4.2(2) "Hearings of appeals."

a. Except as provided in rule 4.2(4) for the hearing of appeals removed to the commission from an unemployment insurance hearing officer the commission, to enable it to determine an appeal, may direct the taking of additional evidence before it.

b. In the review of an appeal, the commission may base its decision on the record before the hearing officer, or it may permit the parties to offer oral or written argument, or both. If, in the discretion of the commission, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Iowa employment security commission at least seven days before the date of hearing, specifying the place and time of hearing. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue on which the commission directed the taking of evidence.

c. The commission, in its discretion, may remand any claim or any issue involved in a claim to an unemployment insurance hearing officer for the taking of such additional evidence as the commission may deem necessary. Such testimony shall be taken by the hearing officer in the manner prescribed for the conduct of hearing on appeals before a hearing officer. Upon the completion of the taking of evidence by a hearing officer pursuant to the direction of the commission, the claim or the issue involved in such claim shall be returned to the commission for its decision thereon.

4.2(3) "The hearing of appeals by the commission on its own motion."

a. Within 10 days following the decision of an unemployment insurance hearing officer, and in the absence of the filing of a notice of appeal to the commission by any of the parties from a decision of a hearing officer, the commission on its own motion may order the parties to appear before it for a hearing on the claim or any issue involved therein.

b. Such hearings shall be held only after seven days notice mailed to the parties to the decision of a hearing officer, and shall be heard in the manner prescribed in rule 4.2(3) for the hearings of appeals by the commission.

4.2(4) "The hearings of appeals by the commission on cases ordered removed to it from any unemployment insurance hearing officer."

a. The proceeding on any claim before a hearing officer ordered by the commission to be removed to it shall be presented, heard and decided by the commission in the manner prescribed in rule 4.1(3), 4.1(4) and 4.1(5) for the hearings of claims before an unemployment insurance hearing officer.

4.2(5) "The determination of appeals."

a. Following the review of an appeal or the conclusion of a hearing on an appeal, the Iowa employment security commission shall announce its findings of facts and decision with respect to the appeal. The decision shall be in writing, signed by the members of the commission who reviewed the appeal, and shall be duly filed in the offices of the commission. It shall set forth the findings of fact of the commission with respect to the matters appealed and its decision.

b. If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision setting forth the reasons why it fails to agree with the majority.

c. Copies of all findings and decisions shall be mailed by the commission to the claimant and to the other parties to the appeal before the commission.

4.3(96) **General rules for both appeal stages.**

4.3(1) "Payment of witnesses." Witnesses subpoenaed for any hearing before a hearing officer or the commission shall be paid by the Iowa employment security commission in accordance with the following schedule: Witness fees of seven dollars per day for each day's attendance, and in all cases mileage fees of ten cents per mile for each mile traveled.

4.3(2) "Orders for supplying information from the records of the commission."

(1) Information from the records of the commission to the extent necessary for the proper presentation of an appeal shall be furnished only on application to the commission by a party to an appeal or his representative.

4.3(3) "Representation before an unemployment insurance hearing officer."

a. Any individual may appear for himself in any proceeding before any hearing officer and the commission. 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.

b. Any party may appear by an attorney at law or his duly authorized agent.

4.4(4) "Inspection of decisions of an unemployment insurance hearing officer." Decisions of a hearing officer and the commission shall be kept on file at the administrative office of the Iowa employment security commission at Des Moines, Iowa, and shall be open for inspection.

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