

ADMINISTRATION AND PERSONNEL

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DEPARTMENT OF EMPLOYMENT SECURITY

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LOCAL NHES/NH WORKS OFFICES

<u>Location</u>	<u>Address</u>	<u>Location</u>	<u>Address</u>
Berlin:	151 Pleasant St.	Littleton:	646 Union St.
Claremont:	404 Washington St.	Manchester:	300 Hanover St.
Concord:	45 South Fruit St.	Nashua:	6 Townsend West
Conway:	518 White Mtn. Hwy.	Portsmouth:	2000 Lafayette Road.
Keene:	149 Emerald St.	Salem:	29 South. Broadway
Laconia:	426 Union Ave.	Somersworth:	6 Marsh Brook Drive

NH Employment Security

Visit our Website at [www.nhes.nh.gov](http://www.nhes.nh.gov) for employment information (job listings and job seekers), current department information, unemployment compensation tax and claim information and economic labor market information.

State of New Hampshire  
Department of Employment Security  
**REVISED STATUTES ANNOTATED,  
CHAPTER 282-A, as amended**

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**The State of New Hampshire**  
**DEPARTMENT OF EMPLOYMENT SECURITY**  
**REVISED STATUTES ANNOTATED, CHAPTER 282-A, AS AMENDED**

**PREAMBLE**

**WHEREAS**, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state, and involuntary unemployment is therefore a subject of general interest and concern requiring appropriate action by the legislature to prevent its spread and to lighten the burden which now so often falls with crushing force upon the unemployed worker and his family; and (1977, 441:14, effective 9/3/77)

**WHEREAS**, the attempt to provide for such distress solely through poor relief not only is inadequate for the need but productive of serious social consequences upon many self-respecting persons, and if undertaken on an emergency basis, taxes to the utmost the administrative facilities and financial stability of the state; (1977, 441:14, effective 9/3/77)

**NOW THEREFORE**, the general court declares that the public good and the general welfare of the workers of this state require the enactment of unemployment compensation laws providing for the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and for providing a systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment. (1977, 441:14, effective 9/3/77)

**Definitions**

**282-A:1 Applicability of Definitions**

Any word or phrase defined in this subdivision shall have the same meaning throughout RSA 282-A unless the context clearly requires otherwise.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

**282-A:2 Base Periods**

I. "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the individual's benefit year except as provided in RSA 282-A:2, II.

II. "Alternate base period" means for benefit years effective on or after April 1, 2001 for any individual who does not have sufficient wages in the base period as defined in paragraph I to qualify for benefits pursuant to RSA 282-A:25, the individual's base period shall be the last 4 completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under RSA 282-A:25. The commissioner shall establish rules for obtaining wage information if wage information for the most recent quarter of the alternate base period is not available to the department from regular quarterly reports of wage information that is

systematically accessible.

- (a) Wages that fall within the base period of claims established under this paragraph are not available for reuse in qualifying for any subsequent benefit years.
- (b) In the case of a combined-wage claim pursuant to the arrangement approved by the United States Secretary of Labor, the base period is that base period applicable under the unemployment compensation law of the paying state.

**Last Source:** 1998, 87:1, eff. April 1, 2001.

### **282-A:3 Benefits**

"Benefits" means the money payable to an individual as compensation for his wage losses due to unemployment as provided in this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:3-a Supplemental Unemployment Plan**

For the purposes of this chapter "supplemental unemployment plan" shall mean a plan, system, trust or contract by the terms of which an individual will receive from the employer, trustees of the plan or trust, union or other agency, payments supplemental to unemployment compensation or based on or to be paid in conjunction with unemployment compensation, which are available to the employees generally but not available in advance, in a lump sum or for loan, to be paid only during periods of unemployment except payments for vacations, bonuses, profit sharing plans and severance pay or separation pay.

**Last Source:** 1983, 457:5, eff. Aug. 25, 1983.

### **282-A:4 Benefit Year**

"Benefit year" with respect to any individual means the one-year period beginning with the first day of the week in which an individual files an initial claim for benefits and meets the earnings requirements of RSA 282-A:25; except that the benefit year shall be 53 weeks if the filing of a new initial claim would result in the use of a quarter of wages in the new base period that had previously been included in a prior base period.

**Last Source:** 1998, 87:2, eff. April 1, 2001.

### **282-A:5 Calendar Quarter**

"Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the commissioner of the department of employment security may prescribe in a rule.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:6 Contributions**

"Contributions" means the money payments due from an employer to the state required by this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:7 Employing Unit**

I. "Employing unit" means any individual or type of organization, including any partnership, association, joint venture, trust, estate, joint-stock 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, or this state or any political subdivision or any instrumentality thereof, which has, or subsequent to January 1, 1935, had, in its employ one or more individuals performing services for it within this state.

II. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all 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, individuals in the employ of such contractors or subcontractors shall be considered to be in the employ of the employing unit unless it shall be proven to the satisfaction of the commissioner of the department of employment security that such contracting is not for the purpose of avoiding the application of this chapter. 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 the work.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:8 Employer**                      "Employer" means

I. Any employing unit which:

- (a) For some portion of a day in each of 20 different calendar weeks in either the current or preceding calendar year, whether or not such weeks are or were consecutive, has or had in employment within a calendar year one or more individuals, irrespective of whether the same individual was in employment in each such day; or
- (b) In any calendar quarter in either the current or preceding calendar year caused gross wages for services in employment to be paid or payable in the amount of \$1,500 or more;

II. Any other employing unit subject for either the current or preceding calendar year to the tax levied by the Federal Unemployment Tax Act as amended;

III. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets of another employing unit which at the time of such acquisition was an employer subject to this chapter;

IV. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets of another employing unit (not an employer subject to this chapter) and which, if treated as a single employing unit with such acquired employing unit subsequent to such acquisition, would be an employer under paragraph I;

V. Any employing unit which, having become an employer under paragraph I, II, III, or IV, has not, under RSA 282-A:99-102, ceased to be an employer subject to this chapter;

VI. For the effective period of its election pursuant to RSA 282-A:102, any other employing unit which has elected to become fully subject to this chapter; or

VII. Any employing unit which fails for whatever reason to keep records which would support a claim with respect to any individual under RSA 282-A:9, III, or to keep the records of employment required by this chapter and by the rules of the commissioner shall be deemed to be an employer liable for the payment of contributions pursuant to the provisions of this chapter regardless of the number of individuals employed by such employing unit.

VIII. An Indian tribe as defined by 26 U.S.C. section 3306(u) of the Federal Unemployment Tax Act for which services in employment are performed within this state unless such services are otherwise excluded from employment under 26 U.S.C. section 3306 (c) of the Federal Unemployment Tax Act or under RSA 282-A:9. Indian tribes shall also include wholly owned subdivisions, subsidiaries, or business enterprises of Indian tribes.

**Last Source:** 2003, 116:1, eff. Aug. 8, 2003.

## **282-A:9 Employment**

I. "Employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied, together with service performed within the state which constitutes "employment" under the provisions of the Federal Unemployment Tax Act. Notwithstanding any other provision of this section, the term "employment" shall also include all service performed after January 1, 1947, by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that there is located within this state the operating office from which the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall include an individual's entire service, performed within or both within and without this state, if:

- (a) The service is localized within the state (i.e., performed either entirely within the state or performed both within and without the state if the service performed without is incidental to that performed within); or
- (b) If the service cannot be considered as localized in any state but some of the service is performed in the state and (i) the individual's base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in the state; or (ii) the individual's 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.

II. In no event shall services performed without this state be deemed to be employment subject to this chapter if contributions are required to be paid with respect thereto under an unemployment compensation law of any other state or of the federal government. The commissioner of the department of employment security may adopt rules by which an employing unit may elect that the services performed for it entirely without this state by a resident of this state shall be deemed to constitute employment subject to this chapter.

III. 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 commissioner of the department of employment security that:

- (a) 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; and
- (b) Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

IV. The term "employment" shall not include:

- (a) Agricultural labor, as defined in RSA 282-A:19, unless such services are covered under section 3306(c)(1) of the Federal Unemployment Tax Act;
- (b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, unless performed for a person who paid cash remuneration of \$1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;
- (c) Casual labor not in the course of the employer's trade or business;
- (d) [Repealed.]
- (e) Service as an officer or member of a crew of an American vessel performed on or in connection with such vessel if there is not located in this state the operating office from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled;
- (f) Service performed in the employ of the United States government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954 by virtue of any other provision of law; provided that, if this state should not be certified by the secretary of the United States department of labor under section 3304 of the Internal Revenue Code of 1954 for any year, then the contributions required of any instrumentalities of the United States government under this chapter with respect to such year shall be

deemed to have been erroneously collected within the meaning of RSA 282-A:149 and shall be refunded by the commissioner of employment security from the fund in accordance with the provisions of said RSA 282-A:149;

(g) (1) Service performed in the employ of a school, college, hospital or university, if such service is performed by a student, intern or resident who is enrolled and is regularly attending classes or by the spouse of such a 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, intern or resident, and such employment will not be covered by any program of unemployment compensation;

(2) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized 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;

(h) Service performed in the employ of a hospital if such service is performed by a patient of such hospital;

(i) Service performed by an inmate of a custodial or penal institution for the state, its political subdivisions, or an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code;

(j) Service performed after June 30, 1939, for an employer as defined in the Railroad Unemployment Insurance Act, and service performed after June 30, 1939, as an employee representative;

(k) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(l) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(m) Service performed in any calendar quarter by an individual in the employ of a labor organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 if the remuneration for such service during such calendar quarter does not exceed \$50;

(n) Service performed on behalf of or for a corporation or association by an officer or

director thereof, for which service no wages, as defined in RSA 282-A:15 or in the rules of the commissioner, are paid or payable to such officer or director or any person, organization or association;

(o) Service performed by an individual in the exercise of duties:

- (1) As an elected official;
- (2) As a member of a legislative body or as a member of the judiciary of the state or political subdivision;
- (3) As a member of the state national guard or the air national guard;
- (4) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;
- (5) In a position which is designated by state law as a major non-tenured policymaking or advisory position or as a policymaking or advisory position whose duties ordinarily do not require more than 8 hours per week to perform;
- (6) As described in subparagraphs (p)(3) and (4), for the state or any of its political subdivisions;
- (7) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for all such services is less than \$1,000.

(p) The following services performed in the employ of an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code:

- (1) Service 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 or an elementary or secondary school operated primarily for religious purposes; or
- (2) Service 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; or
- (3) Service 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; or
- (4) Service by an individual receiving work relief or work training 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;

(q) Service performed by an individual for an employing unit as a licensed real estate broker or a licensed real estate salesman if performance of such service requires the holding of a license and all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(r) Service performed by a full-time student in the employ of an organized camp:

(1) If such camp:

(A) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or

(B) Had average gross receipts for any 6 months in the preceding calendar year which were not more than 33-1/2 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(2) If such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year;

(s) Services by a direct seller if:

(1) Such person:

(A) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the commissioner prescribes by rule, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(B) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment; or

(C) Is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(2) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subparagraph (s)(1) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(3) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal or unemployment

compensation tax purposes;

- (t) Service performed by an individual for an employing unit as a real estate appraiser if all such service performed by such individual for such employing unit is performed for remuneration solely by way of a fee; provided, however, that such exemption shall not apply to such service performed for the state or any of its political subdivisions or for an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.
- (u) Service performed by an individual in the employ of such individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's father or mother;
- (v) Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:
  - (1) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes; and
  - (2) Service performed on or in connection with a vessel of more than 10 net tons, as determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.
- (w) Service performed by an individual who, on a temporary, part-time, contract basis, demonstrates products, offers samples of products or promotional materials to customers, conducts store audits or performs mystery shopping as part of an advertising or sales promotion for the products when such activities are conducted in the field or over the telephone on premises not used or controlled by the person for whom such contract services are being provided, however such exemptions shall not apply to such service performed for the state or any of its political subdivisions or for an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.
- (x) Participation in the New Hampshire return to work program in the department of employment security which provides a structured, supervised training opportunity to individuals through a designated employer/training partner. Individuals participate on a voluntary basis and claimants continue to receive unemployment compensation during the training period as long as they remain otherwise eligible. All participants in the training program shall be at least 18 years old and registered with the department to receive employment services. The training program duration is a maximum of 6 weeks and a maximum of 24 hours per week.

V. INCLUDED AND EXCLUDED SERVICE. If the services performed during 1/2 or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but, if the services performed during more than 1/2 of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the employee by the

person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such services is excepted by subparagraph IV(j).

VI. HOMEWORKERS. Service performed wholly or in part at an individual's own home or any other place, whether done for himself or others, for which remuneration or payment is made on the basis of pieces of work done, or quantity or lot of work done, or in proportion to the piece or part thereof completed, or by the hour, shall be employment; and the moneys so paid shall be wages within the meaning of this chapter. The employing unit which pays such wages shall be the employing unit of such individual for the purpose of this chapter.

VII. For the purposes of paragraph I, the exclusions under subparagraphs IV (o)(2), IV (o)(5), and IV (p)(4) shall apply to Indian tribes.

VIII. “Full-time work” is work in employment of at least 37.5 hours a week.

IX. “Part-time work” is work in employment of at least 20 hours a week but less than 37.5 hour a week.

**Last Source:** 2011, 82:1, eff. July 1, 2011.

### **282-A:10 Employment Office**

"Employment office" means a free public employment office or branch thereof operated by the New Hampshire department of employment security.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:11 Fund**

“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.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:12 Most Recent Employer**

“Most recent employer” means the last non-reimbursing employer prior to the effective date of the initial claim with whom an individual’s work record exceeded 12 consecutive weeks of employment while such individual received no benefits under RSA 282-A provided that the employer provided employment, or from which wages in employment were paid or are payable, between the beginning of the base period, whether primary or alternate, and the benefit year ending of the claim year.

**Last Source:** 2006, 130:1 eff. Jan. 1, 2007. 2012, 212:1, eff. Oct. 1, 2012.

### **282-A:13 State**

“State” means any state of the United States, the District of Columbia, the territory Puerto Rico, the territory the Virgin Islands, and the country Canada.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:14 Total and Partial Unemployment**

- I. (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. An individual who is not entitled to vacation pay from his employer shall be deemed to be in “total unemployment” during the entire period of any general closing of his employer's place of business for vacation purposes, notwithstanding his prior assent, direct or indirect, to the establishment of such vacation period by his employer.  
  
(b) An individual who is seeking only part-time work shall be deemed to be partially unemployed only in any week during which the individual was employed fewer than 20 hours.
- II. An individual shall be deemed to be “partially unemployed” in any week of less than full-time work if the wages computed to the nearest dollar payable to him with respect to such week fail to equal his weekly benefit amount.
- III. (a) For the purposes of paragraphs I and II, the term “wages” shall include compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States, payments in lieu of notice, a sickness or separation allowance, payment of accrued leave or sums of whatever type or nature, except those specifically excluded elsewhere in this subparagraph, payments upon discharge from military service from either the state or federal government, or both, and earnings from self-employment. “Wages” shall not mean and shall not include payments from a supplemental unemployment plan as defined in RSA 282-A:3-a or any portion of a lump sum payment for workers' compensation made pursuant to RSA 281-A:37. Wages or earnings or both shall be deemed to have been received for such week or weeks as the commissioner may find can be reasonably said to apply. The application of longevity, stay, retention, attendance, and similar payments commencing with a period of one or more weeks of partial or total unemployment shall be presumed reasonable if such payment was received 90 or fewer days prior to the commencement of such period. An individual's maximum weekly benefit amount shall be reduced by all wages and earnings in excess of 30 percent, rounded to the nearest dollar, of the individual's weekly benefit amount. Wages shall not include any payment made to an individual by reason of the individual's permanent separation from employment, for reasons other than retirement, under a prior existing plan maintained by employer contributions vested in the individual before the date of separation.  
  
(b) The employing unit shall be liable to make restitution to the unemployment compensation fund in full for any and all unemployment benefits paid to an employee for a period covered by or reasonably deemed to be included in any arbitration award, back pay award, settlement agreement, or jury verdict.

**Last Source:** 2006, 130:2 eff. Jan. 1, 2007. 2008, 297:4, eff. Aug. 26, 2008.

## 282-A:15 Wages

I. "Wages" means every form of remuneration for personal services paid or payable to a person directly or indirectly by his employing unit, including salaries, commissions, bonuses, and the reasonable value of board, rent, housing, lodging, payment in kind and similar advantages estimated and determined in accordance with the rules of the commissioner of the department of employment security.

II. The term "wages" shall not mean and shall not include:

- (a) The amount of any payment to an alien unless said alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).
- (b) The amount of any payment made to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provisions for individuals in its employ generally or for a class or classes of individuals in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of any of the following:
  - (1) Retirement.
  - (2) Sickness or accident disability paid to an individual by any third party or any entity other than the individual's employer or employing unit.
  - (3) Medical and hospitalization expenses in connection with sickness or accident disability.
  - (4) Supplemental unemployment plan as defined in RSA 282-A:3-a.
  - (5) Death, provided the individual in its employ
    - (i) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by the employing unit, and
    - (ii) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system or policy of insurance or of his employment with such employing unit.
- (c) Any amounts paid by an employing unit under the provisions of section 3101 of the Internal Revenue Code of 1954 without having deducted the same from the remuneration of individuals in its employ.

(d) Any amounts received from the federal government by members of the national guard and organized reserve, as drill pay, including longevity pay and allowances.

(e) Any amounts paid under the Comprehensive Employment and Training Act (29 U.S.C. 801) for services in public service employment (29 U.S.C. 802) unless federal funds are furnished to pay the cost of any and all unemployment compensation paid as a result of such services. The prime sponsor under the federal act shall be liable for any sums due under this chapter.

**Last Source:** 1989, 267:2, eff. July 25, 1989.

### **282-A:16 Annual Earnings**

“Annual earnings” shall be the wages, to the nearest dollar, earned during each base period from an employer by an individual in employment in New Hampshire and an amount equivalent to the average weekly wage, as determined under the New Hampshire workers' compensation statute, for each week that an individual has been found by either the labor commissioner or a court to be entitled to receive workers' compensation based on a claim involving such employer; no portion of any lump sum payment pursuant to RSA 281-A:37 shall constitute annual earnings. For any week which commences during the period between 2 successive sports seasons (or similar periods), no annual earnings shall be available for purposes of RSA 282-A:25 to any individual which are based on any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

**Last Source:** 1989, 267:3, eff. July 25, 1989.

### **282-A:17 Week**

“Week” means such period of 7 consecutive calendar days as the commissioner of employment security may prescribe by rule.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:18 Weekly Benefit Amount**

“Weekly benefit amount” means the amount of benefits an individual would be entitled to receive for one week of total unemployment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:19 Agricultural Labor**

“Agricultural labor” includes all services performed:

I. On a farm, in the employ of any employing unit, 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 furbearing animals and wildlife.

II. 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.

III. In connection with the production or harvesting of syrup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended; or in connection with the raising or harvesting of mushrooms; or in connection with the hatching of poultry; or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

IV. 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, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph 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.

As used in this section, “farm” means stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:20 Employment**

The term “employment” shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, if:

- I. The employer's principal place of business in the United States is located in this state;
- II. The employer has no place of business in the United States, but
  - (a) The employer is an individual who is a resident of this state;
  - (b) The employer is a corporation which is organized under the laws of this state; or
  - (c) 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.

III. None of the criteria of paragraphs I and II 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.

IV. An “American employer”, for purposes of this section, means a person who is:

- (a) An individual who is a resident of the United States; or
- (b) A partnership if 2/3 or more of the partners are residents of the United States; or
- (c) A trust, if all of the trustees are residents of the United States; or
- (d) A corporation organized under the laws of the United States or of any state.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:21 Institution of Higher Education**

[Repealed 1983, 124:3, eff. June 7, 1983.]

### **282-A:22 Not Wages**

The receipt of a gift or gratuity in an amount of \$25 or less by any otherwise unemployed individual shall not be considered wages or remuneration for any purpose under this chapter unless paid pursuant to any contract, agreement or stipulation related to past or future employment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:23 De Novo**

“De Novo” means anew; afresh; a new trial on all issues and a full hearing on the merits in no way restricted by what occurred before.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Benefits**

### **282-A:24 Payment of Benefits**

On January 1, 1938, benefits shall become payable from the fund; provided that wages earned for service, defined in RSA 282-A:9, IV(j), irrespective of when performed, shall not be included for the purposes of determining eligibility for any benefit year commencing on or after July 1, 1939; nor shall any benefits with respect to unemployment occurring on or after July 1, 1939, be payable under any section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such rules as the commissioner of the department of employment security may adopt.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

**282-A:25 Weekly Benefit Amount for Total Unemployment and Maximum Total Amount of Benefits Payable During any Benefit Year**

I. The maximum weekly benefit amount and maximum benefits payable to an eligible individual, the first day of whose individual benefit year is on or after the effective date of this paragraph, shall be determined by the individual's annual earnings, of which in each of 2 calendar quarters the individual must have earned not less than \$1,400, as follows:

Annual Earnings of Not Less Than	Maximum Weekly Benefit Amount	Maximum Benefits
\$ 2,800	\$ 32	\$ 832
3,100	35	910
3,400	39	1,014
3,900	45	1,170
4,200	48	1,248
4,500	52	1,352
4,800	55	1,430
5,100	59	1,534
5,600	64	1,664
6,100	69	1,794
6,600	75	1,950
7,000	80	2,080
7,400	83	2,158
7,800	88	2,288
8,200	92	2,392
8,600	96	2,496
9,000	101	2,626
9,500	105	2,730
10,000	110	2,860
10,500	115	2,990
11,000	120	3,120
11,500	126	3,276
12,500	137	3,562
\$13,500	\$148	\$3,848
14,500	159	4,134
15,500	167	4,342
16,500	178	4,628
17,500	188	4,888
18,500	199	5,174
19,500	206	5,356
20,500	217	5,642
21,500	227	5,902
22,500	238	6,188
23,500	249	6,474
24,500	254	6,604
25,500	265	6,890

26,500	275	7,150
27,500	286	7,436
28,500	290	7,540
29,500	301	7,826
30,500	311	8,086
31,500	321	8,346
32,500	331	8,606
33,500	342	8,892
34,500	352	9,152
Annual Earnings of	Maximum Weekly	Maximum
Not Less Than	Benefit Amount	Benefits
35,500	362	9,412
36,500	372	9,672
37,500	383	9,958
38,500	394	10,244
39,500	405	10,530
40,500	416	10,816
41,500	427	11,102

II, III. [Repealed.]

**Last Source:** 2006, 308:1 July 1, 2007.

### **282-A:26 Weekly Benefit for Partial Unemployment**

Each eligible individual who is partially unemployed in any week shall be paid a partial benefit with respect to such week. Such partial benefit shall be an amount calculated to the nearest dollar which, if added to his wages, as used in RSA 282-A:14, III, for such week, would equal his weekly benefit amount. Such partial benefit shall not be reduced because an individual received payments from a supplemental unemployment plan as defined in RSA 282-A:3-a. An individual who receives such supplemental unemployment payments who received no wages as defined in RSA 282-A:14, III shall be deemed not to be partially unemployed but to be totally unemployed.

**Last Source:** 1983, 457:3, eff. Aug. 25, 1983.

### **282-A:26-a Return to Work Program Participants; Workers' Compensation Eligibility**

- I. A participant in the department of employment security's return to work program shall be entitled to certain benefits under RSA 281-A. In the event that it is determined that a return to work program participant has been subject to an injury or occupational disease producing a disability arising out of and in the course of participation in the return to work program, the department of employment security shall not provide compensation pursuant to RSA 281-A:28, 281-A: 28-a, 281-A:31, and 281-A:31-a. However, a participant, who has been deemed eligible for unemployment compensation shall receive such benefits while otherwise eligible under RSA 282-A, or compensation equivalent to 90 percent of his or her weekly unemployment compensation benefit amount if the disability causes the participant to become ineligible for benefits under RSA 282-A.

- II. When determining the amount of compensation provided pursuant to RSA 281-A:32 for a scheduled permanent impairment award, the amount of compensation shall be calculated by using the minimum wage at the time of injury multiplied by the average number of hours in training per week.
- III. For a participant in the return to work program, RSA 281-A:8, I and II shall not apply and the following provisions shall apply:
  - (a) A participant in the return to work program shall be conclusively presumed to have accepted the provisions of this chapter and, on behalf of the participant or the participant's personal or legal representatives, to have waived all rights of action whether at common law or by statute or provided under the laws of any other state or otherwise:
    - (1) Against the employer/training partner, or the employer/training partner's insurance carrier, or an association or group providing self-insurance to a number of employers, or the department and the return to work program; and
    - (2) Except for intentional torts, against any officer, director, agent, servant, or employee acting on behalf of the entities named in subparagraph (a)(1).
  - (b) The spouse of a return to work program participant entitled to benefits under this chapter, or any other person who might otherwise be entitled to recover damages on account of the participant's personal injury or death, shall have no direct action, either at common law or by statute or otherwise, to recover for such damages against any person identified in this paragraph.
- IV. The department of employment security may provide this benefit by appropriate means including purchasing and serving as the master policyholder for any insurance, by self-insurance, or by administrative services contract.
- V. Except as otherwise provided in this section, all other provisions of RSA 281-A shall apply.

**Last Source:** 2011, 82.2, eff. July 1, 2011.

**282-A:27 Maximum Amount**

[Repealed 1985, 340:13, I, eff. Aug. 13, 1985.]

**282-A:28 Retirement Pay**

I. The maximum weekly benefit amount of any individual who is receiving retirement pay, which means in this section a government or other pension, retirement or retired pay, annuity, or any similar periodic payment based on previous work, shall be reduced by an amount equal to such retirement pay or other payment which the commissioner finds can be reasonably said to apply to such week. In the case of such a payment, not made under the Social Security Act or the Railroad Retirement Act of 1974, if the base period employer or chargeable employer under RSA 282-A:74 does not contribute to the fund from which such payments are made, this paragraph shall not apply.

II. If the employee contributed 50 percent or more to retirement pay as described in paragraph I, no portion of said payments shall be deducted from the individual's maximum weekly benefit amount. For purposes of this section, the employee's contribution shall be rounded up to the nearest percent.

**Last Source:** 1987, 243:3, eff. July 17, 1987.

### **282-A:29 Adjustment of Overpaid Benefit Account by Compromise**

I. The commissioner may, with the approval of the attorney general, effect by written stipulation such settlement of any overpaid benefit account due under the provisions of this chapter as he or she may deem to be for the best interests of the state; and the payment of the sum so agreed upon shall be a full satisfaction of such overpaid benefit account.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling \$50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

**Last Source:** 2003, 116:17, eff. Aug. 8, 2003.

### **282-A:30 State-Federal Extended Benefit Program**

I. DEFINITIONS. As used in this section, unless the context clearly requires otherwise:

(a) "Extended benefit period" means a period which begins with the third week after the first week for which there is a New Hampshire "on" indicator, and ends the third week after the first week for which there is a New Hampshire "off" indicator.

(b), (c) [Repealed.]

(d) There is a "New Hampshire 'on' indicator" for this state for a week if the commissioner 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 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:

(1) Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and

(2) Equaled or exceeded 5 percent; or

(3) For weeks of unemployment beginning April 1, 2001:

(A) The average rate of total unemployment in New Hampshire, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of the week equals or exceeds 6 1/2 percent; and

- (B) The average rate of total unemployment in New Hampshire, seasonally adjusted, as determined by the United States Secretary of Labor, for the 3-month period referred to in subparagraph I(d)(3)(A), equals or exceeds 110 percent of the average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.
- (C) Subparagraph I(d)(3) shall not apply if at the time of such 'on' indicator benefits are available to individuals under any federal unemployment program.
- (e) There is a “New Hampshire 'off' indicator” for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that none of the options in subparagraph I(d) are met:
  - (1) The rate of insured unemployment (not seasonally adjusted) under this chapter was:
    - (A) Less than 120 percent of the average such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or
    - (B) Less than 5 percent.
  - (2) The average rate of total unemployment in New Hampshire, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of the week was less than:
    - (A) 6 ½ percent; or
    - (B) 110 percent of the average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.
- (f) “Rate of insured unemployment”, for purposes of subparagraphs (d) and (e) means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States Secretary of Labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.
- (g) “Regular benefits” means benefits payable to an individual under this chapter 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.
- (h) “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 subdivision for weeks of unemployment in his eligibility period.

- (i) “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.
- (j) “Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:
  - (1) (A) Has received, prior to such week, all of the regular benefits that were available to him under this chapter 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 week; provided that, for the purposes of this subparagraph, 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 annual earnings or employment or both that were not considered in the original determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or
  - (B) His benefit year having expired prior to such week, has no, or insufficient, annual earnings on the basis of which he could establish a new benefit year that would include such week; and
  - (2) Has no right to unemployment benefits or allowances, as the case may be, 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 has not received and is not seeking unemployment benefits under the unemployment compensation law 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.
- (k) “State law” means the unemployment compensation law of any state approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.
- (l) “High unemployment period” means any period in which an extended benefit period is in effect if RSA 282-A:30; I (d) (3) is applied by substituting 8 percent for 6.5 percent.

II. Except when the result would be inconsistent with the other provisions of this section, as may be provided in the rules of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

III. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds that with respect to such week:

- (a) The individual is an “exhaustee” as defined in subparagraph I (j);
- (b) The individual has satisfied the requirements of this chapter 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; and

(c) In the base period with respect to which the individual exhausted all rights to regular compensation under this chapter, the individual has earnings covered by this chapter for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount.

IV. 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 last maximum weekly benefit amount applicable to his annual earnings class during the applicable benefit year.

V. The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year, calculated on the benefit schedule applicable to the individual at the close of said year, shall be 13 times the individual's maximum weekly benefit amount which was payable to the individual under this chapter during the applicable benefit year or 20 times the individual's maximum weekly benefit amount if such occurs during a high unemployment period.

VI. Whenever an extended benefit period is to become effective in New Hampshire as a result of an "on" indicator, or an extended benefit period is to be terminated as a result of an "off" indicator, the commissioner shall make an appropriate announcement.

VII. Computations required by the provisions of subparagraph I (f) shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

VIII. The commissioner is hereby authorized and directed to take such action as he deems in the best interests of the state to obtain that share of the cost of those benefits paid under this section which P.L. 91-373 provides to be paid to the state by the federal government.

IX. In no event shall benefits payable under the laws of this state to any individual exceed with respect to any benefit year an amount equal to 46 times the individual's maximum weekly benefit amount.

X. Except as provided in this paragraph, payment of extended benefits shall not be made to any individual for any week if extended benefits would (but for this section) have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, if an extended benefit period is not also in effect for such week in such state. This section shall not apply with respect to the first 2 weeks for which extended benefits are payable (determined without regard to this paragraph) pursuant to an interstate claim.

XI. An individual shall be ineligible for benefits under this chapter for any week of unemployment in his eligibility period,

(a) During which he fails to accept any offer of work which is within such individual's capabilities, if the gross average weekly remuneration payable to such individual for the position exceeds the sum of the individual's average weekly benefit amount for his benefit year, plus the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week, and the position was offered to such individual in writing and was listed with the state employment services, and the position pays wages equally to or more than the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or the applicable New Hampshire minimum wage, whichever is higher, or

- (b) During which he fails to apply for any such work or other suitable work to which he has been referred by the employment office, or
- (c) During which he fails to actively engage in seeking work by engaging in a systematic and sustained effort to obtain work during such week, and provides tangible evidence that he has engaged in such an effort.
- (d) Except that, if the individual furnished evidence satisfactory to the commissioner that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the provisions of RSA 282-A:32, I (d). No work shall be suitable under this section which does not satisfy the requirements of RSA 282-A:32, I (d)(2)(A), (B) and (C).
- (e) Ineligibility under this provision shall not end until the individual has subsequently been employed during at least 4 weeks and earned 4 times his weekly extended benefit amount.
- (f) The requirements of this section do not suspend or replace any other requirement of this chapter.
- (g) The provisions of this paragraph shall not apply to the weeks beginning after March 6, 1993 and ending before January 1, 1995.

**Last Source:** 2009, 323:1, 2 eff. Aug. 7, 2009.

**282-A:31 Benefit Eligibility Conditions**

I. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commissioner finds that:

(a) He or she has been classified in accordance with his or her experience and abilities and so registered for employment with and by the commissioner and has reported and continues thereafter to report at an employment office in accordance with such rules as the commissioner may adopt.

(b) He or she has made a claim for benefits in accordance with the provisions of RSA 282-A: 43.

(c) He or she is ready, willing and able to accept and perform suitable full-time or part-time work on all the shifts and during all the hours for which there is a market for the services he or she offers and that he or she has exposed himself or herself to employment to the extent commensurate with the economic conditions and the efforts of a reasonably prudent person seeking work.

(d) He or she is available for and seeking permanent, full-time or part-time work for which he or she is qualified provided that:

- (1) He or she must also be available for and seeking temporary, full-time or part-time work for which he or she is qualified if the commissioner determines that permanent full-time or part-time work for which he or she is qualified is not immediately available within the individual's labor market area; and
- (2) He or she must instead be available for and seeking temporary, full-time or part-time work for which he or she is qualified if the commissioner determines that the individual reasonably expects to be recalled in 4 to 26 weeks to permanent full-time or part-time work from which the individual is temporarily separated and equivalent or better work for which he or she is qualified is not immediately available within the individual's labor market area; and
- (3) The wages, hours, or other conditions of the temporary work are not substantially less favorable to the individual than those prevailing for similar temporary or permanent work in the locality; and
- (4) If availability is limited to part-time work, the claim for unemployment benefits is based on wages earned in part-time work.

(e) He or she has disclosed whether or not he or she owes child support obligations that are payable through any agency of the state of New Hampshire or its political subdivisions.

(f) He or she has participated in reemployment services when so directed by the commissioner unless he or she has completed such services or has good cause for failure to participate in such services.

(g) The individual has disclosed whether or not he or she owes an uncollected overissuance of food stamp coupons as defined in section 13(c)(1) of the Food Stamp Act of 1977 as amended.

(h) For benefit years commencing on or after January 3, 2010, the individual has served a waiting period of one week of total or partial unemployment as defined in RSA 282-A:14. No week may be counted as a week of total or partial unemployment for the purpose of this subparagraph:

- (1) If benefits have been paid with respect to that week;
- (2) Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits; and
- (3) Unless the individual was eligible for benefits with respect to that week, as provided in this section and RSA 282-A:32, except for the requirements of this subparagraph.

(i) There shall be no corresponding reduction in the individual's maximum benefit amount under RSA 282-A:25, I as a result of subparagraph (h).

II. An unemployed individual shall not be eligible to receive benefits:

- (a) Based on services in an instructional, research, or principal administrative capacity for an educational institution for any week which commences during a period between 2 successive academic years or terms (or, when an agreement provides instead for a

similar period between 2 regular but not successive terms during such period) to any individual if such individual performs such services in the first of such academic years or terms and there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

- (b) Based on services in any other capacity for an educational institution, including services for a service organization for any educational institution for any week which commences during a period between 2 successive academic years or terms to any individual if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms; provided, however, that, if compensation is denied to any individual for any week under this paragraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph.
- (c) Based on services for an educational institution for any week which commences during an established and customary vacation period or holiday recess if such individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

II-a. For the purposes of paragraph II, an individual's selection of a period or percentage-time position with an educational institution, which consists of less than the number of hours of work available per year from the educational institution, or the provision of a percentage of normal and usual employee benefits to an individual during the weeks between academic years, terms or periods by the institution shall be deemed prima facie evidence of a reasonable assurance that such individual will perform services in the second academic year, term or period.

III. Subparagraph I(c) shall be waived for any week with respect to any individual who is otherwise entitled to unemployment compensation benefits and is selected by the department of employment security and enrolled in a vocational training program approved by the commissioner of the department of employment security and is as to such week in good standing in the training program, and has not failed without good cause to attend all scheduled sessions. Remuneration for services in connection with the training program paid to any such individual shall be wages for the purposes of RSA 282-A:14.

IV. Subparagraphs II(b) and II(c) shall apply only to services in the employ of the state or any political subdivision thereof, to Indian tribes, and to organizations defined in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

V. V. [Repealed.]

**Last Source:** 2010, 321:7, eff. Jan. 01, 2010. 2012, 212.2, eff. Oct. 1, 2012.

## **282-A:31-a Worksharing Definitions**

*(Effective May 11, 2010)*

I. “Affected unit” means a specified plant, department, shift, or other definable unit consisting of no fewer than 2 employees to which an approved worksharing plan applies.

II. “Employee” means any individual employed full-time or on a permanent part-time basis by any employer subject to this chapter and in employment subject thereto.

III. “Fringe benefits” include, but are not limited to, health insurance, retirement benefits, paid vacation and holidays, sick leave, and similar advantages which are incidents of employment.

IV. “Normal weekly hours of work” mean the normal number of hours of work each week for an employee in an affected unit when that unit is operating on a full-time basis, not to exceed 40 hours and not including overtime.

V. “Unemployment benefits” or “regular benefits” mean the benefits payable under RSA 282-A:3 other than worksharing benefits and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

VI. “Worksharing benefits” mean the benefits payable to employees in an affected unit under an approved worksharing plan.

VII. “Worksharing employer” means an employer with an approved worksharing plan in effect.

VIII. “Worksharing plan” means a plan of an employer under which there is a reduction in the number of hours worked by the employees in an affected unit, and the affected employees share the work remaining after the normal weekly hours of work are reduced.

**Last Source:** 2010, 28:1, eff. May 11, 2010.

### **282-A:31-b Worksharing Plan**

I. An employer wishing to participate in a worksharing program shall submit a written and signed worksharing plan to the commissioner for approval. The commissioner may approve a worksharing plan if the following criteria, and any other criteria the commissioner deems relevant, are met:

- (a) The plan identifies the affected unit or units to which it applies.
- (b) The employees in the affected unit are identified by name, social security number, the normal weekly hours of work, and proposed weekly wage and hour reduction.
- (c) The normal weekly hours of work by employees in the affected unit are reduced by not less than 10 percent and not more than 50 percent and the reduction in hours in each affected unit is spread equally among employees in the affected unit.
- (d) The plan provides that health benefits and retirement benefits under a defined benefit plan (as defined in section 414(j) of the Internal Revenue Code) or contributions under a defined contribution plan (as defined in section 414(i) of the Internal Revenue Code) shall continue to be provided to the employees in the affected units under the same terms

and conditions as though their normal weekly hours of work had not been reduced, or to the same extent as other employees not participating in the worksharing program, and specifies the effect, if any, the reduction in the normal weekly hours of work will have on other fringe benefits provided by the employer.

- (e) The plan certifies that the reduction in the normal weekly hours of work is instead of layoffs and states the reason for and expected duration of the work reduction. The plan shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment.
- (f) The plan describes the manner in which the requirements of this section will be implemented (including a plan for giving notice, where feasible, to an employee whose work week is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in the worksharing program. If advance notice of the implementation of the worksharing plan is not feasible, the plan shall explain why it is not feasible.
- (g) The written approval by the collective bargaining representative for each affected unit is included in the plan.
- (h) The plan specifies a beginning and ending date. The ending date shall be not more than 26 weeks from the beginning date.
- (i) The plan contains an agreement by the employer to furnish all reports and information necessary for the administration of the plan and to permit access by the commissioner to all records necessary to verify and evaluate the plan.
- (j) No employee's participation in the plan shall be precluded or limited by any particular definition of attachment to the employer, such as length of employment.
- (k) The plan applies to only full-time or permanent part-time employees. No seasonal employees may participate in a worksharing plan.
- (l) The plan certifies that the employer has paid all contributions, payments in lieu of contributions, interest, or penalty charges due under this chapter.
- (m) The plan certifies that its terms and their implementation are consistent with employer obligations under applicable federal and state laws.

II. The commissioner shall approve or reject a worksharing plan in writing no later than 15 business days after its receipt. The commissioner's rejection of the worksharing plan shall be final and shall not be appealable, but rejection shall not prevent an employer from submitting another plan for approval.

III. An approved worksharing plan may be modified only with the approval of the commissioner. The worksharing employer shall notify the commissioner in writing of any proposed changes in the conditions of an approved plan. If the proposed changes meet the requirements for approval of a plan, the commissioner may approve the modifications. If the modifications do not meet the requirements for approval, the commissioner may revoke the plan.

IV. The commissioner may revoke approval of a worksharing plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include, but is not limited to, failure to comply with the assurances given in the plan, unreasonable revision of the productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based. Such action may be initiated at any time by the commissioner on his or her own motion, or at the request of any of the affected unit's employees, or at the request of the appropriate collective bargaining agent. The revocation order shall be final and shall not be appealed.

V. At the end of the worksharing period provided in subparagraph I(g), the worksharing employer may submit a new worksharing plan to the commissioner for approval.

VI. The provisions of RSA 282-A:161, RSA 282-A:163, RSA 282-A:164, RSA 282-A:165, RSA 282-A:166, RSA 282-A:166-a shall apply to any information submitted in connection with an application for approval or modification of a worksharing plan, the implementation of an approved worksharing plan, or the payment of worksharing benefits. An employer shall also be liable for the repayment to the commissioner of any worksharing benefits improperly paid by the commissioner as a result of information the employer submitted to the commissioner in connection with the approval, modification, or implementation of a worksharing plan which is substantially misleading or contains a material misrepresentation of fact. In addition, a claimant shall be liable for the repayment to the commissioner of any worksharing benefits which were improperly paid due to the fault of the claimant. The commissioner may utilize any remedies provided by this chapter to recover worksharing benefits.

**Last Source:** 2013, 210:4, eff. September 8, 2013.

### **282-A:31-c Eligibility**

I. An individual shall be eligible to receive worksharing benefits, subsequent to serving a waiting period as prescribed by the commissioner, with respect to any week only if, in addition to meeting the other conditions of eligibility for regular benefits under this chapter which are not inconsistent with this section, the commissioner finds that:

- (a) The individual is employed as a member of an affected unit under an approved worksharing plan that is in effect; and
- (b) The individual is able to work and is available for the normal weekly hours of work with the worksharing employer.

II. No otherwise eligible affected individual shall be denied worksharing benefits for any week by reason of the application of provisions relating to availability for work, active search for work, or applying for or accepting suitable work with other than the worksharing employer.

III. An individual shall be eligible to receive worksharing benefits in any week for which remuneration is payable to him or her as an employee in an affected unit for less than the employee's normal weekly hours of work as specified under the approved worksharing plan in effect for that week.

IV. An individual who is not eligible to receive unemployment benefits by reason of the application of RSA 282-A:28, I shall not be eligible to receive worksharing benefits.

V. Eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Innovation and Opportunity Act of 2014) to enhance job skills if such program has been approved by the commissioner.

**Last Source:** 2016, 249:1, eff. June 10, 2016.

### **282-A:31-d Benefits Payable**

I. The weekly worksharing benefit amount payable to an affected individual shall be the product of the regular weekly benefit amount, as defined in RSA 282-A:25 multiplied by the percentage reduction in the individual's normal weekly hours of work, rounded to the next lower full dollar amount. The weekly worksharing benefit amount shall not be reduced by reason of application of the provisions of RSA 282-A:26 to remuneration received from the worksharing employer. If in any week an individual performs services for a worksharing employer and an employer other than the worksharing employer, the weekly worksharing benefit amount shall be reduced by the amount by which the remuneration received from the non-worksharing employer exceeds 30 percent of the maximum benefit rate in effect.

II. The total worksharing benefit amount payable to an affected individual during any benefit year shall not exceed the amount of total benefits calculated under RSA 282-A:25 minus the amount of regular and worksharing benefits paid to said individual under this chapter.

III. An individual who has received all the worksharing benefits or the combined regular benefits and worksharing benefits available in a benefit year shall be considered an exhaustee for purposes of extended benefits under RSA 282-A:30 and for any special federal extended benefits program, and, if otherwise eligible, shall be permitted to receive extended benefits and special federal extended benefits.

IV. An individual who performs no services during a week for the worksharing employer and is otherwise eligible shall be paid benefits in accordance with the other provisions of this chapter.

V. Claims for worksharing benefits shall be filed by the worksharing employer or as otherwise prescribed by the commissioner.

VI. Notwithstanding any other provision of this chapter relating to charges, all worksharing benefits shall be charged to the account of the worksharing employer. Benefits paid under this section shall be charged to the employer's account in the same manner as regular benefits are charged, except that, if the employer pays contributions in accordance with RSA 282-A:87, Schedules II and III, the employer shall be charged and billed as if it had elected to make payments in lieu of contributions under RSA 282-A:70.

VII. Except where inconsistent with the provisions of this section, the provisions of this chapter, including the rules and regulations adopted under this chapter, shall apply to benefits under this section.

**Last Source:** 2010, 28:1, eff. May 11, 2010.

### **282-A:31-e Conformance with Minimum Standards**

- I. In the event that the Congress of the United States should pass any legislation, or the Secretary of Labor of the United States shall issue any regulation, establishing certain minimum standards for eligibility for 100 percent reimbursement, the commissioner of the department of employment security, or the commissioner's duly authorized representative, is hereby authorized to make such revision as may be necessary to cause this section to conform with such minimum standards. If any of the provisions of this section or the application thereof to any persons or circumstances are held invalid, the remainder of this section and the application of this section to other persons or circumstances shall not be affected thereby.
- II. In the event that any provision in this section fails to be approved by the Secretary of Labor of the United States under section 3306 (v)(10), FUTA, such provision shall be severed here from, and the validity of the remainder of this section shall not be affected thereby.

**Last Source:** 2013, 210:4, eff. September 8, 2013.

### **282-A:31-f Suspension or Termination of Program**

The commissioner, with the consent of the advisory council on unemployment compensation, may suspend or terminate the operation of the worksharing program if, at any time, he or she determines that such action would be in the best interests of the state of New Hampshire.

**Last Source:** 2010, 28:1, eff. May 11, 2010.

### **282-A:31-g Definitions in the subsection**

- I. "Commissioner" means the commissioner of the department of employment security.
- II. "Department" means the department of employment security.
- III. "Self-employment assistance activities" means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed. "Self-employment assistance activities" shall include entrepreneurial training, business counseling and technical assistance.
- IV. "Self-employment assistance allowance" means an allowance payable, in lieu of regular benefits, from the unemployment compensation trust fund to an individual who meets the requirements of this subdivision.
- V. "Self-employment assistance program" means a program under which an individual who meets the requirements of RSA 282-A:31-h, II is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.
- VI. "Regular benefits" means benefits payable to an individual under this chapter, including benefits payable to federal civilian employees and to former members of the United States Armed Forces pursuant to the United States Code, Chapter 85, other than additional benefits, extended benefits, and extended benefits for dislocated workers.

**Last Source:** 2013, 218:2, eff. July1, 2013.

**282-A:31-h Self-Employment Assistance Program.**

I. There shall be in the department of employment security, a self-employment assistance program. Participants in the self-employment assistance program shall receive an allowance in lieu of regular benefits so long as participants meet the conditions established by this subdivision.

II. An individual may receive a self-employment assistance allowance if that individual:

- (a) Is eligible to receive regular benefits or would be eligible to receive regular benefits except as provided in paragraph V;
- (b) Is identified by a worker profiling system as an individual likely to exhaust regular benefits;
- (c) Has filed an application for participation in a self-employment assistance program within 60 days of filing an initial application for regular benefits and has provided such information as the commissioner may prescribe;
- (d) Has, at the time the application is filed, a balance of regular benefits equal to at least 18 times the individual's weekly benefit amount and at least 18 weeks remaining in the individual's benefit year;
- (e) Has been accepted into a program approved by the commissioner that will provide self-employment assistance activities;
- (f) Is participating in self-employment assistance activities;
- (g) Is actively engaged on a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and
- (h) Has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes.

III. The weekly amount of a self-employment assistance allowance payable to an individual under this section shall be equal to the weekly benefit amount for regular benefits otherwise payable under RSA 282-A:25.

IV. The sum of the self-employment assistance allowance paid under this section, and regular benefits paid under this chapter may not exceed the maximum amount of benefits established under RSA 282-A:25 of this chapter with respect to any benefit year.

V. Unemployment assistance shall be payable to participants in the self-employment assistance program at the same interval, on the same terms, and subject to the same conditions as regular benefits except that:

- (a) The requirements of this chapter relating to availability for work and active search for work shall not be applicable to the participant.
- (b) The requirements of this chapter relating to refusal to accept work shall not be applicable to the participant.
- (c) The requirements of this chapter relating to disqualifying income shall not be applicable to income earned from self-employment by the participant.
- (d) A participant who meets the requirements of this section shall be considered unemployed for the purposes of this chapter.
- (e) A participant who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, which may include training related to establishing a business and becoming self-employed, shall be denied benefits for the week the failure occurs.

VI. The aggregate number of individuals participating in the self-employment assistance program at any time may not exceed 2.5 percent of the number of individuals receiving regular benefits at that time.

VII. Self-employment assistance allowance shall be charged to the unemployment trust fund established in RSA 282-A:103.

VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- (a) Procedures for application to the self-employment assistance program.
- (b) The definition of self-employment activities and self-employment assistance activities.
- (c) Procedures for filing weekly claims for assistance while participating in the self-employment assistance program.
- (d) Any other matters that may require rules under the provisions of this subdivision.

IX. The commissioner may terminate a participant's self-employment assistance allowance when the commissioner deems it appropriate.

**Last Source:** 2013, 218:2, eff. July1, 2013.

## **Disqualification for Benefits**

### **282-A:32 Disqualifications for Benefits**

In this section, "date" as used in "subsequent to the date" means the last calendar day on which the individual performed services for the employer. An individual shall be disqualified for benefits and no waiting period may be served:

I. Until the individual has earned in each of 5 weeks wages in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV (f), or wages earned in a like manner in another state, of at least 20 percent more than such individual's weekly benefit amount, subsequent to the date:

(a) The individual left work voluntarily without good cause in accordance with rules of the commissioner. This section shall not apply and benefits shall be paid without regard thereto where:

(1) An unemployed individual, not under a disqualification, accepts employment which would not have been deemed suitable work under subparagraph (d) and terminates such employment within a period of not more than 12 consecutive weeks of employment with or without good cause;

(2) An individual terminates employment in good faith to accept better employment, which is to begin within a reasonable period;

(3) The individual reasonably believes that separation from employment is necessary to protect himself or herself or any member of his or her immediate family from domestic abuse, as defined in RSA 173-B:1. The existence of domestic abuse shall be verified by the department, through reasonable documentation, and the department shall keep such information confidential;

(4) The individual is separated from employment because he or she has become unable to perform some or all of his or her job duties due to pregnancy or to an illness or injury that is not work-related, provided that a physician has attested to the individual's inability to perform work duties in a written notice. Nothing in this section shall relieve an employer of the duty to provide reasonable accommodation as that term is defined by state or federal law;

(5) The leaving of employment was necessary to allow the individual to accompany his or her spouse to a place from which it is impractical for the individual to commute due to a change in location of the spouse's employment; or

(6) The leaving of employment was due to the illness or disability of a member of the individual's immediate family as those terms are defined by the Secretary of the United States Department of Labor.

(b) He was discharged for misconduct connected with his work, if so found by the commissioner;

(c) [Repealed.]

(d) The individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him or her, or to return to his or her customary self-employment (if any) when so directed by the commissioner.

(1) If the commissioner determines that work in the individual's customary occupation, at the individual's customary rate of pay, is immediately available within the

individual's labor market area, the commissioner, to find that any work is suitable for an individual, shall determine each of the following:

(A) That the degree of risk involved to the individual's health, safety and morals in performing such work is reasonable; and

(B) That the individual's physical fitness reasonably allows the individual to perform the essential functions of the work; and

(C) That the individual's prior training and experience reasonably allow the individual to successfully perform or to acquire those skills necessary to perform the work; and

(D) That the distance of the available work from the individual's residence is reasonable; but such distance shall not be considered reasonable if it is both substantially greater than that distance to all those places to which others living in the same town or city travel for work which utilizes similar or related skills or services, and also substantially greater than the distance to where the individual acquired his or her currently available annual earnings; and

(E) That the rate of pay for the work is reasonable in light of the individual's prior earnings and length of unemployment, but in determining whether the rate of pay is reasonable his or her prior earnings shall be given more weight than his or her length of unemployment.

(2) If the commissioner determines that work in the individual's customary occupation and at the individual's customary rate of pay is not immediately available within the individual's labor market area, the commissioner, to find that any work is suitable for an individual, shall determine each of the following:

(A) That the degree of risk involved to the individual's health, safety and morals in performing such work is reasonable; and

(B) That the individual's physical fitness reasonably allows the individual to perform the essential functions of the work; and

(C) That the individual's prior training and experience reasonably allow the individual to successfully perform, or to acquire those skills necessary to perform, the work; and

(D) That the distance of the available work from the individual's residence is reasonable; but such distance shall not be considered reasonable if it is both substantially greater than that distance to all those places to which others living in the same town or city travel for work which utilizes similar or related skills or services, and also substantially greater than the distance to where the individual acquired the individual's currently available annual earnings; and

(E) That the work, part-time or full-time, pays minimum wage or an hourly rate which when multiplied times 40 is equal to or greater than 150 percent of the individual's weekly benefit, whichever is greater; and

- (F) That the wages, hours, or other conditions of the temporary work are not substantially less favorable to the individual than those prevailing for similar temporary or permanent work in the locality.

(3) 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 full-time or part-time work under any of the following conditions:

- (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (B) If the wages, hours, or other conditions of the work are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (C) 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;
- (D) If the individual is unable to apply for or accept full-time or part-time work during the hours of a particular shift because he or she is the only adult available for the care of an ill, infirm, or physically or mentally disabled family member whom a licensed physician has certified is in need of care for the activities of daily living;
- (E) If the individual is unable to apply for or accept full-time or part-time work during the hours of a particular shift because he or she is the only adult available for the care of a natural, adopted, step, or foster child under the age of 16; or
- (F) If the individual is permanently physically and/or mentally disabled, full-time or part-time work for such individual shall be deemed to be the hours and shifts the individual is physically able to work as certified by a licensed physician provided there is a market for the services the individual offers during such hours and shifts.

(4) Notwithstanding any other provision of this chapter, benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new suitable, temporary, full-time, or part-time work, offered to the individual without the expectation of such work becoming permanent, for any week which follows the earlier of:

- (A) The last week which includes one or more days within the maximum expected duration of the temporary work; or
- (B) The fifth week of the 5 weeks in which the individual, subsequent to the date the individual refused such temporary work, meets the earnings requalification requirements of RSA 282-A:32, I.

(5) For the purposes of section 3304(a)(8) of the Internal Revenue Code of 1954, this subsection, together with RSA 282-A:31, I(c) shall be waived.

- (e) He left his self-employment or closed his business.

II. For any period for which proper and timely claims were not filed.

III. [Repealed.]

IV. For any week during which the individual resides other than in New Hampshire, another state, the District of Columbia, Puerto Rico, the Virgin Islands or a contiguous country with which the United States has an agreement with respect to unemployment compensation.

**Last Source:** 2009, 321:8, eff. January 1, 2010. 2012, 212:3-5, eff. Oct. 1, 2012

### **282-A:33 Temporary Self-Employment**

No individual shall be ineligible for benefits or disqualified for benefits solely because he has engaged in temporary self-employment without intending to establish a business while otherwise unemployed if he continues to seek employment after completion of such temporary self-employment endeavor.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:34 Intoxication; Drugs; Theft**

I. An unemployed individual who has been discharged for intoxication or use of controlled drugs as defined in RSA 318-B:1, VI, of such degree and rate of occurrence as to seriously hamper or interfere with the individual's work, shall be disqualified for benefits. Such disqualification shall continue until a period of not less than 4 weeks nor more than 26 weeks from the date of discharge, as may be determined by the commissioner, has passed and until such individual has earned wages as provided in RSA 282-A:32, I.

II. An unemployed individual who has been discharged for a single theft or multiple thefts in the aggregate of an amount greater than \$100 but less than \$250, where such conduct is connected with his or her work, shall be disqualified for benefits. Such disqualification shall continue until a period of not less than 4 weeks nor more than 26 weeks from the date of discharge, as may be determined by the commissioner, has passed and until such individual has earned wages as provided in RSA 282-A:32, I.

**Last Source:** 2011, 254:2, eff. Sept. 11, 2011.

### **282-A:35 Gross Misconduct**

An unemployed individual who has been discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or a single theft or multiple thefts in the aggregate of an amount equal to or greater than \$250, where such conduct is connected with his or her work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.

**Last Source:** 2011, 254:1, eff. Sept. 11, 2011.

### **282-A:36 Labor Dispute**

A person shall be disqualified for benefits for any week with respect to which the commissioner finds that his or her 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 or she is or was last employed; provided that this section shall not apply if it is shown to the satisfaction of the commissioner that:

- I. (a) The person is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and  
  
(b) The person 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; or
- II. The person has become unemployed and entitled to unemployment compensation before the commencement of the labor dispute and his connection with the employer has been totally severed, including the absence of recall rights, seniority rights and other fringe benefits and indicia of employment; or
- II-a. The stoppage of work was due solely to a lockout or the failure of the employer to live up to the provision of any agreement or contract of employment entered into between the employer and his or her employees; or
- III. The stoppage of work has continued for a period of 2 weeks after the termination of the labor dispute; or
- IV. The person has, since becoming unemployed for the reasons set forth in the introductory paragraph, worked in 5 or more weeks in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV(f), or wages earned in a like manner in another state, earning in each week an amount at least equal to such person's maximum benefit rate plus 20 percent thereof, and then becomes unemployed from said employer due to a lack of work.

**Last Source:** 2003, 116:7, eff. Aug. 8, 2003.

### **282-A:37 Federal Unemployment Compensation**

An individual shall be disqualified for benefits for any week or part of a week with respect to which he is seeking to receive or has received payments in the form of unemployment compensation, or payments supplementary to New Hampshire unemployment compensation, under any law of the federal government; provided, however, that there shall be no disqualification for seeking to receive or receiving unemployment compensation, or supplementary payments, under Chapter 85 of Title V of the United States Code.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:38 Another State**

An individual shall be disqualified for benefits for any week or part of a week with respect to which he is seeking to receive or has received payments in the form of unemployment compensation under an unemployment compensation law of any other state or under a similar law of the federal government, provided that seeking to receive or receiving payments under any reciprocal arrangement to which New Hampshire is a party under RSA 282-A:169-172 shall not disqualify the individual for benefits.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:39 Unavailable for Work**

An individual shall be disqualified for benefits for any week or weeks during any part of which he is not available for work outside a home, irrespective of his reason for refusing to be available for work outside a home.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:40 Disciplinary Layoff**

An individual shall be disqualified for benefits for the duration of his disciplinary layoff; provided, however, that the disciplinary layoff is for a reasonable term and based upon good cause as determined by the commissioner or his authorized representative.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:41 Aliens**

I. An individual shall be disqualified for benefits on the basis of services performed by an alien unless such an alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act).

II. Any data or information required of individuals claiming benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all claimants for benefits.

III. In the case of an individual whose claim for benefits would otherwise be approved, no determination that benefits are not payable to such individual because of his alien status shall be made except upon a preponderance of the evidence.

**Last Source:** 2005, 239:1, eff. Jan. 1, 2006.

## Claims for Benefits

### 282-A:42 Definitions

The following terms used in this subdivision shall have the following meanings unless the context clearly requires otherwise:

I. CERTIFYING OFFICER. “Certifying officer” shall mean the commissioner or his representative authorized to make determinations on claims.

II. CLAIM. A “claim” shall mean:

- (a) Initial Claim. The first filing for benefits within a benefit year or the first claim for benefits immediately following any 7-day period for which the claimant did not file for benefits or with respect to which the claimant did not or will not receive any benefits. Such 7-day period need not be a 7-consecutive-day period.
- (b) The application for either total or partial unemployment compensation benefits for any 7-consecutive-day period. Said period is to be determined in accordance with the rules of the commissioner.

III. INTERESTED PARTY. “Interested party” means the claimant, his last employing unit or employer, any employer whose account was or may be charged with benefits paid and any employing unit or employer whenever the claimant's reason for leaving their employ may be material to his claim.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:43 Filing

Claims for benefits shall be made in accordance with such rules as the commissioner of the department of employment security may adopt.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:44 Determination Procedure

A determination shall be a decision by the certifying officer on a claim and shall be made, except as otherwise specifically provided in this chapter, as follows:

I. A determination on an initial claim for total or partial benefits for any week shall include: the maximum duration thereof; whether or not, with the reasons therefor, the claimant is payable for such week and for consecutive weeks thereafter for which claims are filed (no other fact appearing to the contrary during such period); and identification of the employer whose account will be charged with benefits to be paid by reason of such determination. This determination shall in every case be mailed to all interested parties.

I-a. A determination on the first claim in a benefit year shall be mailed to the claimant and shall include:

- (a) The annual earnings in the base period with the name of each employer reporting wages paid to the claimant, and the amount of such wages;
- (b) The maximum benefits then available; and
- (c) The maximum weekly benefit amount and the maximum duration of such weekly benefits.

II. A determination shall be made by a certifying officer on any claim for benefits, though not an initial claim, if, in his judgment, there appears to be an issue relative to the entitlement of the claimant to benefits. The determination shall be in the manner provided in paragraph I, and the interested parties shall be notified in the same manner.

III. Nothing in this section shall be construed to require that a determination be made with respect to a claim for any week or where the week is one of any of the consecutive weeks for which benefits are paid immediately following the week with respect to which a determination is made under paragraph I except as provided in paragraph II.

**Last Source:** 1989, 267:6, eff. July 25, 1989.

### **282-A:45 Fact Finding; Employer Cooperation**

I. Except as provided in RSA 282-A:45-a, in finding the facts material to a claim, the certifying officer shall in every case in which the reason for an individual's leaving employment may be material:

- (a) Send to the last employing unit or any employer who was or may be charged with benefits and any employing unit or employer whenever a claimant's reason for leaving their employ may be material to the claim a notice of the filing of a claim advising the employer or employing unit of the material information provided by the claimant and advising the employer or employing unit whether the department will initiate contact with the employer or employing unit to obtain full and complete information or whether the employer or employing unit is required to contact the department to dispute the information provided by the claimant; and
- (b) [Repealed.]
- (c) Send to the same employing units or employers as in subparagraph (a) an information verification and waiver form as provided in RSA 282-A:50.

II. The notice, request and waiver form provided for in paragraph I may be in one or more forms and shall be as provided for in the rules adopted by the commissioner, including such time limitations as the commissioner deems appropriate.

III. Failure on the part of the employing units or employers to respond in at least one of the methods provided in paragraph I shall, at the expiration of the period set for response, be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall remain so charged even though the claimant is, by reason of some later decision, held not to be entitled to such benefits.

**Last Source:** 2005, 239:2, eff. Jan. 1, 2006.

### **282-A:45-a Fact Finding for Mass Layoffs**

Fact finding for mass layoffs, whether such layoff is temporary or permanent, shall be in accordance with the following:

I. An employing unit or employer shall file a mass layoff notice with the department if the employer lays off or expects to lay off 25 or more individuals:

- (a) In the same calendar week;
- (b) For an expected duration of 7 days or more; and
- (c) For either of the following reasons:
  - (1) Vacation or holiday shutdown; or
  - (2) Company closure.

II. The mass layoff notice form required in paragraph I may be on one or more forms and shall be as provided for in the rules adopted by the commissioner, including such time limitations as the commissioner deems appropriate.

III. Failure on the part of the employing unit or employer or both to file the notice required in paragraph I shall, at the expiration of the period set for response, be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall remain so charged even though the claimant is, by reason of some later decision, held not to be entitled to such benefits.

IV. An employing unit or employer may be granted a waiver from filing the mass layoff notice required in paragraph I if the commissioner determines, in accordance with such rules as the commissioner shall adopt, that it is unlikely that 25 or more of the individuals laid off will file an initial claim, as defined in RSA 282-A:42, II(a), due to the expected receipt of wages, as defined in RSA 282-A:14, III. Any such waiver shall become void if in fact 25 or more of the individuals laid off claim benefits.

**Last Source:** 2005, 239:3, eff. Jan. 1, 2006.

### **282-A:46 Redetermination**

I. A certifying officer may, within 60 days of any determination, for good cause reconsider the determination or any part thereof, provided there was no appeal taken from the determination, or the appeal tribunal has remanded the determination to the certifying officer under RSA 282-A:56.

II. Notwithstanding the filing of an appeal, a certifying officer may within one year reconsider that part of the determination that established the claimant's annual earnings, maximum benefit amount, or maximum weekly benefit amount. Such redetermination shall be made, and an appeal therefrom may be had, in the same manner as the original determination.

**Last Source:** 2005, 239:4, eff. Jan. 1, 2006.

### **282-A:47 Referral to Appeal Tribunal**

Any claim or question involved in a determination may be referred by the certifying officer to an appeal tribunal, and such appeal tribunal shall make its decision with respect thereto in accordance with the procedure described in RSA 282-A:53-58.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:48 Appealing Determination**

Any interested party may appeal from a certifying officer's determination by filing an appeal to an appeal tribunal which must be received or, if filed by mail, postmarked within 14 calendar days after the determination was mailed to his last known address; provided that, if the commissioner finds sufficient grounds to justify or excuse a delay in filing an appeal, he may extend the time for filing the appeal.

**Last Source:** 1991, 311:5, eff. June 30, 1991.

### **282-A:49 Determination Final**

If no appeal from a determination by a certifying officer is taken within the time limits in RSA 282-A:48, such determination shall thereupon become final and benefits shall be paid or denied in accordance therewith, subject to the provision in RSA 282-A:48 relative to good cause for late filing of the appeal; provided, however, that the certifying officer's determination shall continue to have effect as though no appeal had been filed with respect to all weeks of unemployment and any amount not affected by the appeal.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:50 Waiver**

A last employing unit or any employer whose account may become charged with benefits paid as a result of a determination by a certifying officer may waive, in proper form, in writing, his right to appeal from such determination prior to the making thereof. If such written waiver in proper form is made in such case, the determination shall become final as to the issues involved when made; and benefits may be immediately paid pursuant to such determination.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:51 Opportunity to Appear**

It shall be a condition precedent to the cessation of payment of benefits to any individual that he be given an opportunity to appear in person at a designated office in accordance with the commissioner's rules to be heard relative to his continued entitlement to benefits. His failure to

appear within the designated period shall be deemed a waiver of such right, and he shall be bound by the determination unless he appeals as provided in RSA 282-A:48.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:52 Paying Benefits**

Benefits found payable by any administrative determination or decision, or court decision, order or decree, shall be immediately paid in accordance therewith up to the week in which a subsequent appellate body renders a decision, order or decree finding that benefits were not payable or are not payable or both. If the final decision, order or decree so decides an issue that the claimant would not have received the benefits paid him by a prior decision, such amount shall be deemed overpaid. The commissioner shall recover such amount by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156, and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount against the overpayment until it is repaid in full.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Appeals**

### **282-A:53 Appeal Tribunals; Composition and Jurisdiction**

Appeal from a certifying officer's determination and a decision made pursuant to RSA 282-A:164 shall be to an impartial tribunal appointed by the commissioner. Each such tribunal shall be known as an appeal tribunal, and shall consist of 3 members or one member. If the tribunal consists of 3 members, one member shall be a representative of employees, one shall be a representative of employers, and one shall be an employee of the department of employment security who shall serve as chairman of the tribunal. If the tribunal consists of one member, that member shall be an employee of the department of employment security and shall be the chairman. No person shall participate as a member of an appeal tribunal in any case in which he is an interested party or is the employee of an interested party. The chairman shall not be disqualified in an appeal concerning an individual claiming benefits by reason of state or federal employment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:54 Tenure**

The appointed members shall serve at the pleasure of the commissioner and shall be paid \$40 for each day or any part thereof during which they perform services at the request of the commissioner. They shall be reimbursed for all expenses determined by the commissioner to be necessary to the performance of their duties.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:55 Withdrawal of Appeal**

A chairman may allow an appeal to be withdrawn by the appellant; but, in such case, the chairman shall send notice by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be the most appropriate, of his or her allowance of the withdrawal to all interested parties at the last address of each according to the records of the department of employment security. Simultaneously with the mailing of such notice, the determination of the certifying officer from which the appeal had been taken shall become final.

**Last Source:** 2013, 39:3, eff. August 3, 2013.

### **282-A:56 Procedure**

A hearing shall be conducted in such a manner as to ensure a fair and impartial hearing to the interested parties. The appeal tribunal shall hear the appeal de novo and shall not be bound by prior findings or determinations of the department of employment security although the records of said department shall be part of the evidence to be considered by the tribunal. An appeal shall be filed and presented and the hearing conducted in accordance with rules adopted by the commissioner. Such rules need not conform to common law or statutory rules of evidence or other technical rules of procedure. The place and time of a hearing shall be determined by the commissioner. In no case shall a hearing proceed unless the chairman is present. With the agreement of all the parties the appeal tribunal may, without holding a hearing, remand a determination for redetermination pursuant to RSA 282-A:46 for the purpose of correcting obvious department error.

**Last Source:** 2005, 239:5, eff. Jan. 1, 2006.

### **282-A:57 Records**

A full and complete record shall be kept of all proceedings in connection with an appeal, and all testimony at any hearing shall be recorded verbatim.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:58 Decision**

In every appeal, except those withdrawn, the chairman shall prepare a written decision which shall be sent by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be most appropriate, to each interested party at the last address of each according to the records of the department of employment security. The decision, except one on an appeal dismissed for lack of prosecution or defaulted for failure to attend, among other necessary things as determined by the commissioner, shall: set forth all the material findings and specific provisions of law necessary to support the conclusions; identify the interested parties and the account, whether fund or employer, to which benefits will be charged, if allowed; identify the week or period during which benefits are denied; identify the first week and subsequent period with respect to which benefits will be paid, if allowed; determine all things necessary to finally dispose of the case; and identify the members of the tribunal.

**Last Source:** 2003, 116:8, eff. Aug. 8, 2003.

### **282-A:59 Appearance and Postponement**

In order to protect the rights of the interested parties, if the commissioner, in his sole judgment, finds sufficient grounds to justify or excuse an interested party from appearing at a hearing or from requesting a postponement of a hearing, he shall direct the appeal tribunal to hold a further hearing. Such further hearing shall be de novo notwithstanding that a decision may have become final.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:60 Reopening of Appeal Tribunal Decision; Procedure**

The second level of appeal shall be to the commissioner. The commissioner may, upon written request of an interested party or upon his own initiative, in any case in which a decision has been rendered, reopen the case on the basis of fraud, mistake, or newly discovered evidence. Such request shall set forth the facts or argument considered to be the basis for the reopening. Any request for reopening shall be received in his office or, if mailed, postmarked within 14 calendar days immediately following the date of the mailing of the appeal tribunal's decision provided that, if the commissioner finds sufficient grounds to justify or excuse a delay in filing, he may extend the time for filing the appeal. The commissioner shall promptly notify in writing all interested parties of the request for reopening.

**Last Source:** 1991, 311:6, eff. June 30, 1991.

### **282-A:61 Commissioner's Determination**

The commissioner shall render his or her determination within a reasonable period after all the facts or arguments are made available to him or her. The determination of the commissioner shall be sent by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be the most appropriate, to each interested party at the last address of each according to the records of the department of employment security. The appeal tribunal shall, upon direction to reopen, proceed in the same manner as though an appeal in said case were being taken from a determination of a certifying officer; provided, however, that the further hearing shall be limited to the introduction of evidence or argument relative to and concerning the factors which constitute the basis or ground for the reopening unless the commissioner orders a de novo hearing.

**Last Source:** 2013, 39:3, eff. August 3, 2013.

### **282-A:62 Appellate Board**

I. There shall be an appellate board consisting of 8 members, who are and continue to be residents of New Hampshire, appointed by the governor with the advice and consent of the executive council for 4-year terms and until their successors are appointed and qualified. Two of the members shall be

attorneys-at-law admitted to the practice of law in the state of New Hampshire, one of whom shall be the chair, and one of whom shall be the vice chair and shall serve in the absence of the chair. These 2 members shall be the only members of the appellate board who are attorneys-at-law. Two members shall be representatives of business management familiar with unemployment compensation laws. Two members shall be representatives from organized labor familiar with unemployment compensation laws. Two members, who shall also be familiar with unemployment compensation laws, shall represent the public. The appointments shall be for 4 years. No person shall serve more than 8 consecutive years. Any vacancy shall be filled for the unexpired term. The members shall be paid \$150 for each day or any part thereof during which they perform services, except that the chair and vice chair shall be paid \$200 for each day or any part thereof during which they perform services. All members shall be reimbursed for all expenses determined by the commissioner to be necessary to the performance of their duties including mileage and board and room necessary for the conduct of hearings, except that no person who is a member of the appellate board and holds a part time, full time or per diem position with the executive, legislative or judicial branch shall receive the per diem allowance.

II. In the event of an increased workload the chair of the appellate board may request the governor with the advice and consent of the executive council to appoint up to 4 additional members to the board, with equal representation for business management and organized labor. These new members shall serve for one year from the date of appointment.

**Last Source:** 2000, 116:1, eff. July 7, 2000.

### **282-A:63 Organization and Support**

The appellate board shall be part of the department of employment security for organizational purposes but shall operate independently of that department. All clerical personnel, facilities, space, supplies, services, and other support necessary to the functioning of the appellate board shall be determined by, provided for, and administered by, the commissioner.

**Last Source:** 2000, 116:2, eff. July 7, 2000.

### **282-A:64 Jurisdiction**

I. The appellate board shall hear appeals from decisions of the appeal tribunal or final decisions of the commissioner under RSA 282-A:95. An appeal must be filed with the appellate board or, if filed by mail, postmarked within 14 calendar days of the date of mailing of:

- (a) The commissioner's decision on a request for reopening or the final decision of the commissioner; or
- (b) The appeal tribunal's decision on an appeal which had been remanded by the appellate board, in which case a request for reopening is not required.

II. The appellate board may allow a late appeal, if, in its opinion, good cause exists.

III. The review by the appellate board shall be confined to the record. No evidence shall be received. The appellate board shall provide all parties and the commissioner with a tape recording of the appeal tribunal; however, the appellate board chair may require a transcription of the first level hearing. In such case a copy shall be provided to all parties. The commissioner shall provide

the appellate board with a copy of all other department records relating to the claim.

IV. The appellate board may decline to review any appeal which presents no substantial question within the appellate board's jurisdiction as set forth in RSA 282-A:65.

**Last Source:** 2000, 116:3, eff. July 7, 2000.

### **282-A:65 Reversal, Modification or Affirmation**

The appellate board shall not substitute its judgment for that of the commissioner or appeal tribunal as to the weight of the evidence on questions of fact, or as to the prudence or desirability of the determination. The appellate board shall reverse or modify the decision or remand the case for further proceedings only if the substantial rights of the appellant had been prejudiced because the findings, inferences, conclusions, or the decision is:

I. In violation of constitutional or statutory provisions; or

II. In excess of the statutory authority of the department of employment security; or

III. Affected by reversible error of law; or

IV. Affected by fraud; or

V. Affected by the absence of newly discovered evidence, which was not available to the affected party upon reasonable search at the time of the first level hearing, in which case the appeal shall be remanded to the appeal tribunal.

Otherwise, the appellate board shall affirm the order.

**Last Source:** 1987, 409:10, eff. July 1, 1987.

### **282-A:66 Quorum, Sessions, Exclusivity**

I. The appellate board, while in session, shall consist of 3 members designated by the chair. No 2 members shall be from the same category of representation. In addition, for appeals of final decisions of the commissioner under RSA 282-A:95, the members shall consist of the chair or vice-chair, one business management representative, and one labor representative. Any party aggrieved by a decision of the appeal tribunal may appeal. The parties to such appeal shall be the claimant, all interested parties as defined in this chapter, and the commissioner. The appellate board shall adopt rules of procedure pursuant to RSA 541-A. It shall not require written briefs. The appellate board shall:

(a) Render a written decision within 15 business days of the hearing; or

(b) Adopt the decision of the appeal tribunal.

II. The appellate board shall sit in Concord, or any other area designated by the chair, and shall hold sessions at least monthly for the purpose of hearing arguments, making orders, rendering decisions and filing opinions.

III. The appellate procedures provided by this chapter shall be exclusive.

**Last Source:** 2000, 116:4, eff. July 7, 2000.

### **282-A:67 Administrative Reconsideration and Judicial Review**

I. An interested party who is aggrieved by the decision of the appellate board or the commissioner, may within 20 days of the date of mailing of the board's decision request that the board reconsider its decision or that the board order a new hearing specifying in the request the grounds therefor. The appellate board shall within 30 days deny or grant the motion for reconsideration or order a new hearing.

II. An interested party who has exhausted all administrative remedies within the department and who is aggrieved by a final decision of the appeal tribunal as reversed, modified, or affirmed by the appellate board after a motion for reconsideration is granted or denied or after the decision on rehearing, may appeal that decision to the supreme court, but only if the notice of that appeal is filed with the court within 30 days after the date of mailing of the decision from which the appeal is taken and the notice of appeal is served upon the commissioner and the attorney general contemporaneously with the filing of that notice of appeal with the court. In addition, that notice of appeal shall be served upon all parties of record. The service required by this section may be in person or by certified mail, return receipt requested. The appeal shall be styled "appeal of name of the party filing the appeal regarding unemployment compensation". Any interested party, and the state, shall have a right to participate as a party in the appellate proceedings before the court. The notice of appeal shall specifically identify each error for which review is sought. The filing of a notice of appeal shall not stay enforcement of the appeal tribunal decision.

III. Within 60 days after the service of the notice of appeal upon the commissioner, or within such further time allowed by the court, the commissioner shall transmit to the court a certified copy of the entire record of the proceeding. By stipulation of all parties to the review proceeding, the record may be shortened. If the record is shortened by stipulation, the court may subsequently require additional portions of the record certified.

IV. The review of the court shall be confined to the record. No evidence shall be received in the court. The court may require oral argument or written briefs, or both.

V. The court shall not substitute its judgment for that of the appeal tribunal as to the weight of the evidence on questions of fact. The court shall reverse or modify the decision of the appeal tribunal, or remand the case for further proceedings, as determined by the court, only if the substantial rights of the appellant had been prejudiced because the administrative findings, inferences, or conclusions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of statutory authority;
- (c) Made upon unlawful procedures;
- (d) Clearly erroneous in view of the substantial evidence on the whole record; or
- (e) Affected by other error of law.

Otherwise, the court shall affirm the appeal tribunal's decision.

VI. For the purposes of this section the commissioner shall be an interested party.

**Last Source:** 1993, 71:2, eff. April 23, 1993.

### **282-A:68 Exclusivity**

The judicial review provided by RSA 282-A:67 shall be exclusive of all other methods of judicial review of unemployment compensation decisions, including extraordinary writs, including the writ of certiorari. No unemployment compensation decision shall be questioned, invalidated, vacated, set aside, suspended, or otherwise impeached by any court or other tribunal except in accordance with the provisions of this section and RSA 282-A:67.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981; 576:7, eff. Oct. 1, 1981.

## **Contributions**

### **282-A:69 Payment of Contributions**

I. Contributions shall accrue and become payable by each employer for each calendar year, in which the employer is subject to this chapter, in an amount equal to 2.7 percent, except as otherwise provided in RSA 282-A:79-90, of the wages paid or payable for employment during such calendar year, not to exceed \$14,000 which have been paid to an individual in any calendar year. Such contributions shall become due and be paid by each employer to the commissioner of the department of employment security for the fund in accordance with such rules as the commissioner of the department of employment security may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ; provided that the contributions of an employer becoming subject to the law within any calendar year shall be first due and payable after such employer has satisfied the conditions with respect to becoming an employer. For the purposes of this section, the term "wages" shall include service subject to contribution under any employment security law of another state.

II. Notwithstanding this section, any organization or group of organizations, described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code or Indian tribe as defined in RSA 282-A:8, VIII, which becomes an employer under this act, may elect to change its status either to reimburse in the manner provided for the state in RSA 282-A:70 or to pay contributions as hereinabove provided. The change in status shall be irrevocable for 3 calendar years. Thereafter the employer may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years. Any 2 or more of such employers or any 2 or more cities, towns, counties or other political subdivisions of this state may elect, for a period of not less than 3 years, to pool their separate accounts under such rules as may be adopted by the commissioner, including appropriate bonding and fiscal safeguard requirements, and each unit shall be jointly and severally liable for payments due.

III. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more in which case it shall be increased to one cent.

IV. A contribution, as defined in RSA 282-A:152, I shall not be considered due for any purpose under this chapter from an employer required to pay contributions under this chapter when the total amount due is less than one dollar.

V. The following provisions shall apply to Indian tribes electing to make payments in lieu of contributions:

- (a) At the discretion of the commissioner, any Indian tribe that elects to become liable for payments in lieu of contributions shall be required within 30 days after the effective date of its election, to:
  - (1) Execute and file with the commissioner a surety bond approved by the commissioner; or
  - (2) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.
- (b) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions for the following tax year unless payment in full is received before the contribution rate for the next tax year is computed.
- (c) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment shall have such option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
- (d) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted, will cause services performed for such tribe to not be treated as employment for purposes of this section.
- (e) The commissioner may determine that any Indian tribe that loses coverage under subparagraph (d) may have services performed for such tribe again included as employment for purposes of RSA 282-A:9 if all contributions, payments in lieu of contributions, penalties and interest have been paid.
- (f) The commissioner shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subparagraphs (d) and (e).
- (g) Notices of payment and reporting delinquency to Indian tribes shall include information that failure to make full payment within the prescribed time frame:
  - (1) Shall cause the Indian tribe to be liable for federal unemployment tax;
  - (2) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(3) Could cause the Indian tribe to be excepted from the definition of employer, as provided in RSA 282-A:8, and services in the employ of the Indian tribe to be excepted from employment.

(h) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

**Last Source:** 2009, 321:3 eff. Jan. 1, 2012.

### **282-A:70 Payment of Contributions by State**

The liability of this state including the state university system for benefits paid shall be as follows:

I. In lieu of contributions required of other employers subject to this chapter, the state shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits, including extended benefits, paid to claimants who during the applicable period were paid wages by this state. If a claimant during such base period was employed by this state and by other employers subject to the provisions of this chapter, the amount to be paid into the unemployment compensation fund by this state with respect to such claimant shall be prorated pursuant to RSA 282-A:72.

II. The amount of payments required under this subdivision to be made into the fund shall be ascertained by the commissioner of the department of employment security as soon as practicable after the end of each calendar month and shall, except as provided hereafter, be paid by the commissioner of administrative services from funds appropriated therefor; provided that, if said appropriation is not sufficient to make all such payments or no appropriation is made therefor, they shall, upon warrant by the governor, be paid from the general funds of the state, out of any money not otherwise appropriated. If a claimant to whom benefits were paid was paid wages by the state during the base period from a special administrative fund provided for by law, into which moneys, in addition to, or other than from the state treasury, are placed, the payment into the unemployment compensation fund shall be made from such special administrative fund in the regular manner provided for disbursing such money.

III. The payment by the state into the unemployment compensation fund shall be made at such times and in such manner as the commissioner of the department of employment security, with the approval of the commissioner of administrative services, may determine and prescribe.

**Last Source:** 2006, 130:5, eff. Jan. 1, 2007.

### **282-A:71 Payment of Contributions by County, City, Town or Other Political Subdivisions of This State**

I. A county, city, town or other political subdivision which becomes an employer under this act shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits paid to claimants who during the applicable base period were paid wages by such county, city, town or other political subdivision. If a claimant during such base period was employed by both such county, city, town or other political subdivision and other employers subject to the provisions of this chapter, the amount to be paid into the fund by such county, city, town or other political subdivision

with respect to such claimant shall be prorated pursuant to RSA 282-A:72. The amount of payments required under this subdivision to be made into the fund shall be ascertained by the commissioner of the department of employment security as soon as practicable after the end of each calendar month. The payments by such county, city, town or other political subdivision into the fund shall be made at such times and in such manner as the commissioner of the department of employment security may determine and prescribe. A county, city, town or other political subdivision shall maintain a record of the social security account numbers of its employees.

II. In lieu of paragraph I, such county, city, town or other political subdivision may elect to change its status to pay contributions as provided for other employers. Such change in status shall be for not less than 3 years and shall be made by August 21, 1979, or before January 1 of the applicable year. Thereafter, the political subdivision may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years.

III. Sums appropriated by a county, city, town or other political subdivision to meet the obligations imposed by this chapter shall not be transferred or used for any other purpose, and such sums or the unused balance of such sums shall lapse at the end of each fiscal year.

**Last Source:** 2006, 130:6, eff. Jan. 1, 2007

#### **282-A:72 Proration of Reimbursing Charges**

If the base period wages of an individual include wages from one or more reimbursing employers and one or more additional employers, reimbursing employer or taxpayer, benefits paid to such individual shall be charged to any such reimbursing employer in the same proportion as the wages from such reimbursing employers bears to the total amount of all wages in the individual's base period. Any benefits not charged to a reimbursing employer shall be charged to the most recent employer or as otherwise required by RSA 282-A.

**Last Source:** 2006, 130:7, eff. Jan. 1, 2007.

#### **282-A:73 Credit for Other Funds Received**

I. The state and all other employers who have reimbursed the unemployment compensation fund for benefits paid shall be given a credit against future billing, or, in whole or in part, shall be given a refund at the discretion of the commissioner in an amount equal to the amount of such benefits which are repaid to the unemployment compensation fund from any other source.

II. The provisions of RSA 282-A:74, RSA 282-A:75 and RSA 282-A:76 shall not apply to any employer electing reimbursement under RSA 282-A:69, II, RSA 282-A:70, RSA 282-A:71, or RSA 282-A:72.

**Last Source:** 1987, 243:7, eff. July 17, 1987.

#### **282-A:74 Separate Accounts; Chargeable Account**

I. The commissioner shall maintain a separate account for each employer and shall credit his account with all contributions timely paid by him or on his behalf; but nothing in this chapter shall be construed to grant any employer or any individual 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.

II. Benefits paid to an eligible individual shall be charged against the account of the claimant's most recent employer, including 1/2 of such benefits as are paid to an individual under RSA 282-A:30, except whenever benefits are paid and a chargeable employer under this paragraph has not been established following a determination that an individual previously disqualified under RSA 282-A:32, but now eligible due to having earned wages in employment as required by RSA 282-A:32, I, the fund shall be chargeable.

**Last Source:** 2006, 130:8, eff. Jan. 1, 2007.

### **282-A:75 Fund Chargeable**

In assigning the charges for benefits to the account of the most recent employer under this subdivision, no benefits shall be charged to the account of an individual employer but shall be charged by the commissioner against the fund where:

I. Benefits are paid and are not chargeable against any employer's account in accordance with the provisions of RSA 282-A:42 and RSA 282-A:44-52;

II. Benefits are paid to a claimant as provided in RSA 282-A:165, II;

III. Benefits are paid to an individual by reason of RSA 282-A:31, III; or

IV. Benefits are paid to an individual by reason of RSA 282-A:32, I(a)(2), (3), (4), (5), or (6).

**Last Source:** 2010, 45:1, eff. May 18, 2010. 2012, 212:6, eff. Oct. 1, 2012.

### **282-A:76 Overpayments Chargeable to Fund**

The account of the most recent employer shall immediately be relieved of charges where benefits are determined to be overpayments as a result of the application of any provision of this chapter, and such benefits shall be charged against the fund, unless the overpayment was caused by error of the employer; in such case, benefits shall be charged to the fund in an amount equal to the benefits that have been repaid from any source to the unemployment compensation fund.

**Last Source:** 1987, 243:8, eff. July 17, 1987.

### **282-A:77 Monthly Notification**

At least once each month the commissioner shall notify all employers of benefits charged during the preceding month to their separate accounts by means of a duplicate or copy of each such claimant's benefit checks or in any manner determined by the commissioner.

**Last Source:** 1996, 50:2, eff. June 23, 1996.

### **282-A:78 More Than One Employer Simultaneously**

The commissioner shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time. "Performed employment" for purposes of this section shall include the receipt of wages or earnings found to apply to such time period pursuant to RSA 282-A:14, III(a).

**Last Source:** 2006, 130:9, eff. Jan. 1, 2007.

### **282-A:79 Merit Rating**

The commissioner shall classify employers for each calendar year in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience, such rate to become effective with the fiscal year beginning July 1, 1951, and on each succeeding fiscal year beginning on July 1 thereafter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:80 Definitions**

I. "Annual payroll" shall be the total amount of taxable wages under this chapter paid for employment during a calendar year.

II. "Average annual payroll" shall be the average of the employer's actually existing annual payrolls for the 3 immediately preceding consecutive calendar years prior to January 1 of the year in which the computation applies.

**Last Source:** 1981, 416:11, eff. Aug. 22, 1981.

### **282-A:81 Newly Covered Employers**

No employer shall be entitled to a rate of less than 2.7 percent unless and until as of January 1 of the year in which such rate becomes applicable there has been one calendar year immediately preceding the computation date throughout which such separate account was chargeable with benefits, except as provided in RSA 282-A:82.

**Last Source:** 1985, 340:8, eff. Aug. 13, 1985.

### **282-A:82 Minimum Rate**

I. There shall be subtracted in any calendar quarter from every employer's contribution rate .5 percent whenever the unemployment compensation fund equals or exceeds \$250,000,000 throughout the next preceding calendar quarter.

II. There shall be subtracted in any calendar quarter from every employer's contribution rate one percent whenever the unemployment compensation fund equals or exceeds \$275,000,000 throughout the next preceding calendar quarter.

III. There shall be subtracted in any calendar quarter from every employer's contribution rate 1.5 percent whenever the unemployment compensation fund equals or exceeds \$300,000,000 throughout the next preceding calendar quarter.

IV. The minimum contribution rate under this section shall not be less than .10 percent.

**Last Source:** 2009, 321:5 eff. Jan.1, 2010.

### **282-A:82-a Inverse Minimum Rate**

For each employer assigned a rate under RSA282-A:87, II or II-a:

I. There shall be added in any calendar quarter to every such employer's contribution rate 1.5 percent whenever the unemployment compensation fund fails to equal or exceed \$250,000,000 throughout the next preceding calendar quarter.

II. There shall be added in any calendar quarter to every such employer's contribution rate one percent whenever the unemployment compensation fund fails to equal or exceed \$275,000,000 throughout the next preceding calendar quarter.

III. There shall be added in any calendar quarter from every employer's contribution rate .5 percent whenever the unemployment compensation fund fails to equal or exceed \$300,000,000 throughout the next preceding calendar quarter.

**Last Source:** 2009, 321:6 eff. Jan. 1, 2010.

### **282-A:83 Business Suspended**

The time the operation of a business of an employer was suspended because of the employer's service in the armed forces during World War II, or because of the employer's service in the armed forces of the United States or any of its allies or of the United Nations after July 1, 1950, shall be considered as if the business had been actively and continuously operating during such period.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:84 Emergency Power**

Should the commissioner determine at any time that the solvency of the fund is in jeopardy and the continuation of merit rates is in danger, he shall add to every employer's contribution rate .5 percent

in order to preserve the merit rate principle in this state and continue the solvency of the unemployment compensation fund. He may either concurrently or independently suspend the operation of RSA 282-A:82.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:84-a Emergency Surcharge**  
*(Effective January 1, 2010)*

For contribution rates applicable to calendar quarters commencing on or after January 1, 2010, should the unemployment compensation trust fund fail to equal or exceed \$150,000,000 throughout the next preceding calendar quarter and should the commissioner determine that the exercise of emergency power pursuant to RSA 282-A:84 is insufficient to preserve the solvency of the trust fund, the commissioner may add to every employer's contribution rate a .5 percent surcharge. Such surcharge shall be in addition to the contribution rate assigned under any other provision of RSA 282-A.

**Last Source:** 2009, 321:4, eff. Jan. 1, 2010.

**282-A:85 Standard Rate and Qualification for Reduced Merit Rate**

I. The standard contribution rate as required by the Federal Unemployment Tax Act shall be 5.4 percent.

II. No employer shall be entitled to a reduced merit rate under RSA 282-A:87, I for any fiscal year unless, as of April 30 preceding said fiscal year, the employer has properly and duly submitted reports and contributions required and previously due under the provisions of this chapter.

III. No employer assigned an earned rate under RSA 282-A:87, II or II-a shall be assigned a rate less than the maximum in that paragraph for any fiscal year effective with the fiscal year beginning July 1, 1995, unless as of April 30 preceding said fiscal year the employer has properly and duly submitted reports and contributions previously due under this chapter.

**Last Source:** 2009, 321:11, eff. Jan. 1, 2010.

**282-A:86 Computation Date**

I. The computation date shall be January 31. The total for all past years of all benefits charged as of the computation date against an employer's separate account shall be subtracted from the total of all contributions paid on an employer's own behalf and credited as of the computation date to the employer's separate account for all past years. Delinquent contributions received after January 31, 1997, shall be credited to the employer's separate account on the next computation or recomputation date.

II. If contributions so credited exceed benefits so charged, the excess shall be computed as a percent of the employer's average annual payroll, which percent shall determine the contribution rate as provided in RSA 282-A:87, I.

III. Commencing with the computation date of January 31, 2010, if benefits so charged exceed contributions so credited, and benefits so charged have exceeded contributions so credited for 3 or fewer consecutive computation dates including the computation date of January 31, 2010, the excess shall be computed as a percent of the employer's average annual payroll, which percent shall determine the contribution rate as provided in RSA 282-A:87, II.

IV. Commencing with the computation date of January 31, 2010, if benefits so charged exceed contributions so credited, and benefits so charged have exceeded contributions so credited for 4 or more consecutive computation dates including the computation date of January 31, 2010, the excess shall be computed as a percent of the employer's average annual payroll, which percent shall determine the contribution rate as provided in RSA 282-A:87, II-a. .

**Last Source:** 2009, 321:9, eff. Jan. 1, 2010.

**282-A:87 Contribution Rates**

I. An employer's contribution rate shall, after computation is made in the manner described in RSA 282-A:86, and subject to the provisions and conditions of this subdivision otherwise provided, be in the following percent:

SCHEDULE I.	
Percent of Average Annual Contribution	
Pay Roll Equals or Exceeds	Rate
1%	2.6%
2	2.5
3	2.4
4	2.3
5	2.2
6	2.0
7	1.9
8	1.7
9	1.5
10	1.0
11	.7
12	.5
13	.3
14	.2
16	.15
19	.1
26	.05

II. An employer's contribution rate shall, after computation is made in the manner described in RSA 282-A:86, and subject to the provisions and conditions of this subdivision otherwise provided, be in the following percent:

SCHEDULE II.  
Percent of Average Annual  
Contribution

Pay Roll Equals or Exceeds	Rate
1%	2.8%
2	2.9
3	3.0
4	3.1
5	3.2
6	3.3
7	3.4
8	3.5
9	3.6
10	3.7
11	3.8
12	3.9
15	4.0
18	4.1
21	4.2
23	4.3
26	4.5
29	4.6
31	4.7
33	4.8
35	5.0
36	5.2
37	5.3
38	5.4
40	5.5
46	5.6
50	5.7
60	5.8
70	5.9
80	6.0
100	6.5

II-a. An employer's contribution rate shall, after computation is made in the manner described in RSA 282-A:86, and subject to the provisions and conditions of this subdivision otherwise provided, be in the following percent:

SCHEDULE III.  
Percent of Average Annual  
Contribution

Pay Roll Equals or Exceeds	Rate
1%	3.3%
2	3.4
3	3.5

Pay Roll Equals or Exceeds	Rate
4	3.6
5	3.7
6	3.8
7	3.9
8	4.0
9	4.1
10	4.2
11	4.3
12	4.4
15	4.5
18	4.6
21	4.7
23	4.8
26	5.0
29	5.1
31	5.2
33	5.3
35	5.5
36	5.7
37	5.8
38	5.9
40	6.0
46	6.1
50	6.2
60	6.3
70	6.4
80	6.5
100	7.0

III. [Repealed.]

IV. (a) (1) Each employer subject to payment of contributions pursuant to RSA 282-A:69, I shall have its rate reduced by 2/10 of one percent beginning in the second quarter of 2007. An administrative contribution equal to the amount of this reduction shall be paid by all such employers.

(2) Commencing July 1, 2007, after deduction of all costs incurred in the collection of the administrative contribution, 1/3 of the quarterly administrative contribution collected, not to exceed \$2,000,000 annually, shall be deposited each quarter in the fund established by RSA 282-A:138-a and shall be expended only as provided by and for the purposes provided in that section. The remaining quarterly administrative contribution collected shall be deposited in the fund established by RSA 282-A:140 and shall be expended only as provided by and for the purposes provided in that section, and not for any other purpose.

(b) [Repealed.]

(c) All costs incurred in the collection of the administrative contributions shall be paid

from funds derived from such contributions.

- (d) The commissioner shall report to the advisory council on unemployment compensation quarterly all moneys collected and amounts expended. When, in the opinion of the commissioner with the advice and consent of the advisory council on unemployment compensation, sums collected exceed anticipated expenditures, the commissioner shall transfer such excess funds to the unemployment compensation fund established under RSA 282-A:103.
- (e) [Repealed.]
- (f) Each employer's separate account established under RSA 282-A:103 shall be credited with available interest earned by the unemployment compensation trust fund in an amount equal to timely administrative contributions collected pursuant to subparagraph (a).

**Last Source:** 2010, 28:4, eff. January 1, 2011.

### **282-A:88 Election**

Notwithstanding any other provision of this chapter, an employer whose contribution rate is determined to be 3.5 percent or more may, on or before a computation date, elect to have his contribution rate thereafter computed on each computation date solely on the then most recent 5 calendar years' experience. Such election by an employer shall be irrevocable. Provided, that in the event of such election, no rate shall be assigned lower than 2.7 percent at any time thereafter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:89 Recomputation**

Except as otherwise provided in this subdivision, whenever through inadvertence, mistake or any other means erroneous charges or credits are found to have been made to an employer's account, the same shall be readjusted as of the date of discovery. Such readjustment shall not affect any computation or rate assigned prior to the date of discovery, but there shall be an immediate recomputation, in accordance with the applicable provisions of this subdivision, of such employer's account with notice to the employer of the result thereof. If such recomputation results in a contribution rate either higher or lower than that rate in effect on the date of discovery, such new rate shall become effective and applicable to taxable wages as of the first day of the quarter next succeeding the quarter in which the discovery is made.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:90 Ineligible for Rate Reduction**

No employer assigned a rate under RSA 282-A:87, II or II-a, shall be entitled to any such rate reductions occasioned by fund balances as are provided in RSA 282-A:79-89.

**Last Source:** 2009, 321:12, eff. Jan. 1, 2010.

### **282-A:91 Successorship; Total Acquisition**

An employing unit which acquires substantially all of the New Hampshire assets of any employer with the intent to continue said employer's organization, trade or business, excepting, in any such case, any assets retained by such employer incident to the liquidation of his obligations (whether or not such acquiring employing unit was an employing unit within the meaning of this chapter prior to such acquisition), shall within 30 days notify the commissioner thereof and shall assume, for the purpose of liability, the position of such employer with respect to such employer's separate account and contribution liability as if no change with respect to such separate account and liability had occurred and with the same effect for such purpose as if the operations of such employer had at all times been carried on by such employing unit. Such separate account shall be transferred by the commissioner to such employing unit and, as of the date of such acquisition, shall become the separate account or part of the separate account, as the case may be, of such employing unit. The benefits thereafter chargeable to such employer on account of employment prior to the date of such acquisition shall be charged to the former employer's separate account until the fact of successorship is determined by the commissioner and thereafter shall be charged to the account of the acquiring employing unit.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:91-a Special Rules Regarding Transfers of Experience and Assignment of Rates.**

I. Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

- (a) (1) If an employer transfers its trade or business, or a portion thereof, to an employing unit or to another employer and, at the time of the transfer, there is any common ownership, management, or control of the 2 employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective following the date of the transfer of trade or business in accordance with such rules as the commissioner may adopt.
- (2) If, following a transfer of experience under subparagraph (1), the commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, then the experience rating of the employer accounts involved shall be combined and the combined rate assigned to each employer in accordance with such rules as the commissioner may adopt.
- (b) Whenever a person who is not an employer under this chapter at the time he or she acquires the trade or business, or a portion thereof, of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the commissioner finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the new employer rate under RSA 282-A:81.

- (c) In determining whether there is any common ownership, management, or control of 2 employers, the commissioner shall use objective factors which may include the extent of commonality or similarity of: ownership; any familial relationships; principals or corporate officers; organizational structure; day-to-day operations; assets and liabilities; and stated business purposes. Ownership of publicly-traded mutual funds, publicly-traded stocks, and similar publicly-traded investments shall not be indicative of common ownership, management, or control.
- (d) In determining whether a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, the commissioner shall use objective standards which may include the cost of acquiring the business to which the experience was transferred, how long such business enterprise was continued after the transfer, the extent to which such business enterprise reduced its workforce following the transfer, the size of each employer's workforce before and after the transfer, and the business activity conducted by each employer prior to, and after, the transfer.
- (e) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.
- (f) (1) If a person knowingly violates or attempts to violate subparagraph (a), (b), or or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:
  - (A) If the person is an employer, such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the 3 rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for such year.
  - (B) If the person is not an employer, such person shall be subject to a civil fine of not more than \$5,000. Any such fine shall be deposited in the fund established by RSA 282-A:140. Such person shall also be jointly and severally liable with any liable employer for additional contributions and all related penalties, fees, interest, and costs owed as a result of the application of this section. Such person shall be subject to civil action for such liability in any manner provided for collection of contributions in RSA 282-A:141-156.
- (2) In addition to other penalties imposed in this paragraph, any violation of this section may be prosecuted under RSA 282-A:166 or any other appropriate statute.

- (g) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.
- (h) For purposes of this section:
  - (1) “Knowingly” means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.
  - (2) “Person” means “person” as defined in section 7701(a)(1) of the Internal Revenue Code of 1986.
  - (3) “Trade or business” includes the employer’s workforce.
  - (4) “Violates” or “attempts to violate” includes, but is not limited to, intent to evade, misrepresentation, and willful nondisclosure.
- (i) The reporting by an employer of its payroll under the account of another employer with which there is no common ownership, management, or control, is prohibited unless the reporting employer is an employee leasing company lawfully making such report.
- (j) A management company which contracts with any employer to report wages of managed employees shall be considered, in accordance with such rules as the commissioner may adopt, to have common management or control with such employer, and with any other management company with which the employer may contract for the same purpose in the future.

II. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

**Last Source:** 2005, 239:6, eff. Jan.1, 2006.

### **282-A:92 Contribution Rate**

No rate of less than 2.7 percent shall be permitted an employing unit succeeding to the experience of another employing unit pursuant to RSA 282-A:91-93 for any period subsequent to such succession except in accordance with rules adopted by the commissioner, which rules shall be consistent with federal requirements for additional credit allowance in section 3303 of the Internal Revenue Code of 1954 and consistent with the provisions of this chapter; except that such rules may establish a computation date for any such period different from the computation date generally prescribed by this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:93 Acquisition of Segregable Unit**

I. Whenever any employing unit, whether or not an employing unit at the time, in any manner succeeds to, or has succeeded to, or acquires, or has acquired, a segregable portion of an employer's organization, trade, or business, and all of the assets of that employer devoted to that segregable portion, with the intent to continue the organization, the trade and the business of that segregable

portion, it may assume for all purposes the position of such employer with respect to such employer's separate account and contribution liability to the extent such separate account and contribution liability is assignable to such segregable unit.

II. If such succeeding employing unit is at the time of acquisition an employer, it shall continue to pay contributions at the rate assigned to it until the end of the then current tax year.

III. If such succeeding employing unit is not at the time of acquisition an employer, it shall pay contributions at the rate assigned to the transferring employer until the end of the then current tax year.

IV. No transfer of a portion of any employer's separate account shall be made under RSA 282-A:91-93 except upon application of the succeeding employing unit and waiver by the transferring employer of all its rights and interest in such segregable portion of its separate account. Application in writing together with the notarized waiver shall be filed with the commissioner within 30 days from the date on which the acquisition occurs.

V. For the purpose of RSA 282-A:91-93, "segregable unit" shall mean a separately maintained, housed and conducted establishment whose activities have been physically detached from the other plants, factories or premises of the employer and for which the employer has maintained separate books of account including payrolls. A unit shall be considered segregable only for the periods during which such separation of location and books of account are maintained.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

#### **282-A:94 Employer Liability Determination**

The commissioner of the department of employment security or his authorized representative shall make an initial determination on all questions relating to the liability of employing units or employers or both, including the amount of contributions, the rate at which contributions shall be paid and successorship. A copy of the initial determination shall be sent by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be most appropriate, to the last address, according to the records of the department, of each employing unit or employer affected thereby.

**Last Source:** 2006, 130:11 eff. July 1, 2006.

#### **282-A:95 Appeal**

The affected employing unit or employer or both may appeal in writing to the commissioner from the initial determination. No appeal shall be entertained by the commissioner unless received in his office or, if filed by mail, postmarked within 14 calendar days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall, with the expiration of said period, become final and conclusive in all respects and for all purposes; provided that, if the commissioner finds sufficient grounds to justify or excuse delay, he may extend the time for filing the appeal.

**Last Source:** 1991, 311:10, eff. June 30, 1991.

### **282-A:96 Formal Hearing**

I. A formal hearing on each such appeal shall be conducted according to the rules adopted by the commissioner, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure; and a complete record of such hearings shall be made and kept by the commissioner except that such record may be destroyed as provided in RSA 282-A:107-135. The record shall include the evidence, the commissioner's findings of fact and decision. A copy of the decision of the commissioner shall be sent by certified mail, return receipt requested, to the last address according to the records of the department, of each employing unit or employer affected thereby.

II. An employer or employing unit who is aggrieved by the decision of the commissioner may, within 20 days of the date of mailing of the commissioner's decision request that the commissioner reconsider the decision or that the commissioner order a new hearing specifying in the request the grounds therefor. Notice of the commissioner's decision on such request shall be sent as provided in paragraph I.

**Last Source:** 2000, 116:5, eff. July 7, 2000.

### **282-A:97 Appeal to Appellate Board**

The commissioner's decision on said appeal shall be final and conclusive as to the liability of the employing unit or employer or both unless an appeal therefrom is filed in accordance with the provisions of RSA 282-A:64.

**Last Source:** 2000, 116:6, eff. July 7, 2000.

### **282-A:98 Sole Remedy**

The procedures set forth above shall be exclusive for the determination of all questions relating to the liability of employing units or employers or both except matters determined under RSA 282-A:42-68. No questions relating to the liability of employing units or employers or both which have been determined prior to June 19, 1961, shall be reviewed hereunder.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Period for Election and Termination of Employer's Coverage**

### **282-A:99 Initial Coverage; Continuation**

Any employing unit which is or becomes an employer subject to the provisions of this chapter within any calendar year shall be subject to the provisions of this chapter as of January 1 and for the whole of such calendar year except as provided in RSA 282-A:102, and shall remain an employer subject to the provisions of this chapter until coverage is terminated as provided in RSA 282-A:101, 102.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:100 Termination; Death, etc**

The commissioner may terminate an employer and permanently remove his separate account as of the time an employer has died ceased business or removed from the state.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:101 Termination; Failure to Comply**

Except as otherwise provided in this subdivision, where the commissioner, after such investigation as he deems necessary, finds that an employer during the then last completed calendar year did not satisfy the conditions of becoming an employer as set forth in this chapter, he shall terminate such employer and permanently remove such employer's separate account as of the first day of January of the calendar year succeeding the year above described.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:102 Elective Coverage**

I. An employing unit not otherwise subject to this chapter which files with the commissioner of the department of employment security its written election to become an employer subject hereto for not less than 2 calendar years shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval. Such an employing unit shall cease to be subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if, at least 30 days prior to such first day of January, it has filed with the commissioner of the department of employment security a written notice to that effect, or the commissioner, on his own motion, has given notice of such termination of such coverage.

II. Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the commissioner of the department of employment security a written election that all such services performed by individuals in its employ in any or all of its places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the commissioner, 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 2 calendar years only if, at least 30 days prior to such first day of January, such employing unit has filed with the commissioner a written notice to that effect, or the commissioner, on his own motion, has given notice of such termination of such coverage.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Unemployment Compensation Fund**

### **282-A:103 Establishment and Control**

There is hereby created the unemployment compensation fund to be administered by the commissioner of the department of employment security, subject to audit by the commissioner of administrative services without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions collected under this chapter, all interest earned upon any moneys in the fund, any properties or securities acquired through use of moneys or securities belonging to the fund and all earnings of such properties or securities, and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

**Last Source:** 1981, 399:3, I, eff. July 1, 1985

### **282-A:104 Accounts and Deposit**

I. The commissioner shall designate a permanent full-time classified employee of the department to be treasurer of the fund. Such designated employee shall also be the custodian of the fund. The treasurer shall administer such fund solely in accordance with the directions of the commissioner. He shall maintain 3 separate accounts within the fund:

- (a) A clearing account,
- (b) An unemployment trust fund account, and
- (c) A benefit account.

II. All moneys payable to the fund, upon receipt thereof by the treasurer, shall be immediately deposited in the clearing account. Refunds payable pursuant to RSA 282-A:149 may be paid from the clearing account. The clearing account shall be used for deposit and clearance of any instrument which involves payment to the unemployment compensation fund and any other fund created within or without the state treasury by this chapter; upon clearance, such amount as is found to be due such other fund shall immediately be withdrawn by check and forwarded, or electronically transferred, to the custodian of such fund for deposit. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America 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.

III. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer 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 said fund. The treasurer shall give a bond conditioned upon the faithful performance of his duties, including those as custodian of the fund, in the amount of \$300,000. Premiums for said bond

shall be paid from the unemployment compensation and employment service administration fund. Said bond shall be purchased by the division of purchase and property.

**Last Source:** 1995, 249:5, eff. June 19, 1995.

### **282-A:105 Withdrawals**

The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary solely for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such moneys in the benefit account. Benefit payments shall be made solely from the benefit account. All checks drawn on either the clearing account or benefit account shall bear the signature of the commissioner or his duly authorized agent for that purpose. 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 commissioner of the department of employment security, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in RSA 282-A:104.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:106 Management of Funds Upon Discontinuance of Unemployment Trust Fund**

I. The provisions of RSA 282-A:103 through 105, 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 of America 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.

II. 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 commissioner of the department of employment security in accordance with the provisions of this chapter; provided that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America, or of this state or of its political subdivisions. Provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

III. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner of the department of employment security.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Administrative Organization and Administration**

### **282-A:107 Department of Employment Security**

There shall be a department of employment security which shall include an unemployment compensation bureau, an employment service bureau, and an economic and labor market information bureau.

**Last Source:** 1989, 267:11, eff. July 25, 1989.

### **282-A:108 Commissioner; Term; Removal; Salary**

I. There shall be a commissioner of the department of employment security who shall be appointed by the governor with the advice and consent of the council.

II. The commissioner shall hold office for 5 years from the date of appointment. Otherwise the commissioner may be removed only as provided in RSA 4:1.

III. The annual salary of the commissioner of the department of employment security shall be that prescribed by RSA 94:1-4.

**Last Source:** 2007, 156:8, eff. Aug. 17, 2007.

### **282-A:109 Deputy Commissioner**

I. The commissioner of employment security shall nominate for appointment by the governor, with the consent of council, a deputy commissioner of the department of employment security, who shall serve for a term of 4 years and shall be qualified to hold that position by reason of education and experience. The deputy commissioner shall act as commissioner whenever the commissioner of the department of employment security is incapacitated, absent, or unable to act for any cause. The deputy commissioner shall also act as commissioner of the department of employment security until a new commissioner is duly appointed whenever there is no commissioner.

II. The salary of the deputy commissioner shall be specified in RSA 94:1-a, I.

**Last Source:** 2013, 180, eff. July 1, 2013.

### **282-A:110 Expenses**

Subject to compliance with laws and regulations approved by the United States department of labor, the actual expenses incurred by the commissioner of the department of employment security in the work of his office shall be paid.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:111 Bonds**

The commissioner and the deputy commissioner shall each give a bond in the amount of \$150,000 conditioned upon the faithful performance of his duties under this chapter. Premiums for such bonds shall be paid from the unemployment compensation and employment service administration fund and purchased by the department of administrative services, division of plant and property management.

**Last Source:** 1989, 267:12, eff. July 25, 1989.

## **282-A:112 Duties and Powers of Commissioner**

I. It shall be the duty of the commissioner of the department of employment security to administer this chapter. He shall have power and authority to adopt, amend, or rescind rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. The commissioner shall determine his own organization and methods of procedure in accordance with the provisions of this chapter. Not later than the thirtieth day of June of each year, the commissioner shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendments to this chapter as he deems proper. Such reports shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

II. For the purpose of establishing and maintaining free public employment offices, the commissioner of the department of employment security 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 unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization; and, as a part of any such agreement, the commissioner may accept moneys, services, or quarters as a contribution to the employment service account.

III. [Repealed.]

IV. For the purpose of establishing and maintaining free public employment offices, the commissioner is authorized, except as provided in paragraph V, with the approval of the governor and council, to enter into purchase or lease purchase agreements.

V. Notwithstanding any provision of the law to the contrary, the consent of the capital budget overview committee, established in RSA 17-J, shall be required for all total project agreements exceeding \$50,000 for:

- (a) Acquisition of land or existing buildings;
- (b) New construction;

(c) An addition to an existing facility; or

(d) An improvement or repair to a facility which exceeds routine maintenance.

VI. The commissioner shall not close any district office nor reduce services or hours of operation without the prior permission of the fiscal committee.

**Last Source:** 2006, 308:8, eff. June 19, 2006.

### **282-A:113 Unemployment Compensation Bureau, Employment Service Bureau and Economic and Labor Market Information Bureau**

I. There shall be in the department of employment security 3 coordinate bureaus, the employment service bureau, the unemployment compensation bureau, and an economic and labor market information bureau, each of which shall be administered by a full-time salaried administrator who shall be subject to the supervision and direction of the commissioner of the department of employment security. Each bureau shall be responsible for the discharge of its distinctive functions. Each bureau shall be a separate administrative unit with respect to personnel, budget, and duties except so far as the commissioner of the department of employment security may find such separation is impractical.

II. The commissioner of the department of employment security, through the employment service bureau, shall establish and maintain free public employment offices in such numbers and in such places as may be necessary for the proper administration of this chapter.

III. The commissioner of the department of employment security may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

**Last Source:** 1991, 311: 11, eff. June 24, 1991.

### **282-A:114 Publication of Rules**

The commissioner of the department of employment security shall cause to be printed in proper form for distribution to the public the text of this chapter, his rules, his annual reports to the governor and any other material he deems relevant and suitable and shall furnish the same to any person upon request.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:115 Personnel**

I. The commissioner of the department of employment security is authorized to employ all the necessary officers, accountants, clerks, agents, investigators, auditors and other persons necessary for the proper administration of this chapter and, under a classification plan, to fix the amount of their compensation according to the responsibility and difficulty of the work, quality and length of service, and other relevant factors, and to take such action as he deems necessary and appropriate to enable department personnel to participate in a plan similar to the government-wide service benefit plan.

II. Selection, retention and promotion of personnel, excepting those positions which by federal law need not be under a merit system of personnel administration, shall be on the basis of merit and shall include ability, efficiency, fitness, veterans' statutory preferences, an open competitive examination where feasible, training and experience.

III. No discrimination may be exercised against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action, because of race, national origin, political or religious opinions or affiliations, or other non-merit factors.

IV. The commissioner shall fix the duties and powers of all department personnel and may authorize any such person to perform any of the functions of the commissioner under this chapter. The commissioner may, other statutes to the contrary notwithstanding, bond such persons and in such amounts as he, in his sole discretion, deems proper and necessary. The federal statutes and regulations, and standards promulgated by the United States office of personnel management, applicable to a merit system of personnel administration in state employment security agencies shall be applicable to the department. The commissioner, as well as any other affected state agency, is authorized to take whatever steps are necessary to comply therewith.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:116 Segregation of Special Risks**

The commissioner of the department of employment security shall investigate and report upon the degree of unemployment hazard in various industries and occupations and their cost to the unemployment fund. He shall recommend to employers in industries or occupations showing an excessive cost to the fund means for stabilizing employment. He shall also, if necessary, recommend to the legislature a higher rate of contribution for any classification of industries or occupations in which unemployment is excessive or chronic.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:117 Records and Reports; Record Keeping**

Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the commissioner may by rules prescribe. Such records shall be open to inspection and subject to be copied or reproduced by the commissioner, or his authorized representatives in this state at any reasonable time and as often as may be necessary at a place selected by the commissioner. The commissioner may, at his discretion, notify any employer of the prospective benefit rights of any individual in his employ. The commissioner may upon petition for cause authorize such records as he requires be maintained to be physically located in a state other than New Hampshire; however, when such petition is allowed, such records may, in the sole judgment of the commissioner, be examined at the department administrative office in this state or at their location outside this state. Where examination occurs outside this state, a penalty equal to all costs attendant thereupon, solely as computed by the commissioner, shall be paid by the employer to the department.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:117-a Employment Reports to Department of Employment Security; State Directory of New Hires**

I. The commissioner shall, pursuant to an agreement with the department of health and human services which shall include payment of costs of administration, maintain a state directory of new hires. Any employing unit shall report to the department for entry into the directory:

- (a) The hiring of an individual who has not previously been employed by the employing unit, and who earns wages or any other form of compensation in this state;
- (b) The rehiring of an individual who previously performed services as an employee for an employing unit; and
- (c) The contracting for services, other than casual labor, in this state with an individual, in accordance with the rules adopted by the commissioner, when reimbursement for such services is anticipated to exceed \$2,500.

II. An employing unit with employees in 2 or more states, which transmits reports magnetically or electronically, may comply with this section by designating one of the states as the state to which the reports will be transmitted. Such an employing unit shall notify the United States Secretary of the Department of Health and Human Services in writing as to which state is so designated.

III. An employing unit required to report under paragraph I shall mail or transmit a copy of the individual's W-4 form to the department or send all information required in paragraph V in a format acceptable to the department by electronic or magnetic tape or by any other means mutually agreed upon.

IV. The employing unit shall submit to the department a report of an individual's hire, rehire, or contract for services within 20 days of such action or, in the case of magnetic or electronic reports, by 2 monthly transmissions not less than 12 days nor more than 16 days apart. The report shall contain:

- (a) The individual's complete name, address, social security number, and first day of work.
- (b) The employing unit's name, address, and federal and state identification number.

V. Information reported under paragraphs III and IV shall be entered by the department in the state directory of new hires within 5 business days of receipt.

VI. The department and the department of health and human services shall conduct automated comparisons of the social security numbers reported by employing units pursuant to paragraphs III and IV and the social security numbers appearing in the records of the state case registry of child support cases pursuant to RSA 161-B:7, I. When such comparison reveals a match with respect to the social security number of an individual required to provide support under a support order, the department shall provide the department of health and human services with the name, address, and social security number of the individual to whom the social security number is assigned, and the employing unit's name, address, and federal and state identification number.

VII. Within 3 business days after the date the information is entered into the directory, the department shall furnish the information to the National Directory of New Hires.

VIII. The department of health and human services shall be authorized to use the information transmitted to it by the department of employment security, to establish paternity and establish, modify, and enforce child support obligations against a named individual and may disclose such information about such named individual to any agency under contract with the department of health and human services to carry out such purposes.

IX. The department of employment security shall furnish to the National Directory of New Hires quarterly extracts of the reports required under 42 U.S.C. 503 (a)(6) to be made to the United States Secretary of Labor concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the United States Secretary of Health and Human Services shall specify in regulations.

X. State agencies responsible for administering any program specified in 42 U.S.C. 1320b-7(b) shall have access to information reported by employers pursuant to this section pertaining to named individuals for purposes of verifying eligibility for the program.

XI. The department of employment security and state agencies operating workers' compensation programs shall have access to information reported by employers pursuant to this section for the purposes of administering such programs.

XII. Any individual earning wages in this state, hired or rehired by an employing unit, or entering into a contract for services with an employing unit, shall be deemed to consent to the release to, and the disclosure by, the department of the information consistent with the provisions of this section.

XIII. This section does not apply to an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the employee's safety or compromise an ongoing investigation or intelligence mission.

XIV. The commissioner and the commissioner of health and human services may adopt such rules as may be necessary for the efficient administration of this section pursuant to RSA 541-A.

XV. Subparagraph I(b) of this section shall apply to the rehiring of an individual who:

- (a) Was previously employed by the employing unit but has been separated from prior employment for at least 60 consecutive calendar days.
- (b) Was required to complete a W-4 form due to a previous work separation.

XVI. Subparagraph I(c) of this section shall apply to the contracting for other than casual labor with an individual when:

- (a) The remuneration for services is anticipated to exceed \$2,500.
- (b) The remuneration for services although not anticipated to exceed \$2,500 does exceed \$2,500 in a calendar year.

(c) There was a break in services for at least 60 consecutive calendar days and the anticipated or actual remuneration for services following the break in services exceeds \$2,500 unless:

- (1) The contact is in writing.
- (2) The break in service is during the term of the contract.
- (3) The break in service is in accordance with the provisions of the contract.

**Last Source:** 2013, 47.4, eff. Aug. 3, 2013.

### **282-A:118 Reports or Statement; Confidentiality**

The commissioner or his authorized representatives and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports or statements, with respect to persons employed by it, which either deems necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual, claimant or employing unit pursuant to the administration of this chapter shall be held confidential and shall not be published or open to public inspection in any manner revealing the individual's or employing unit's identity except:

I. That an employing unit may inspect, at the convenience of the commissioner, records and reports which pertain to his separate account, and records and reports of claimants where the employing unit was the last employing unit or the employer whose separate account may be or has been charged with benefits paid to such claimant;

II. That a claimant may inspect records and reports of an individual or employing unit which are directly connected with any claim for benefits which he may have made, including any which he has submitted in support of his claim for benefits; but he shall not be entitled to inspect the separate account or records directly connected therewith of any employing unit;

III. That public employees in the performance of their public duties may inspect records and reports of an individual, an employing unit, or a claimant where such information will aid in the performance of their public duties;

IV. That authorized federal employees granted access as provided in paragraph III shall be granted access on a case-by-case basis. In no event shall access to or copies of any database, whether written, electronic, or other, be provided to any agency, employee, or agent of the federal government except as required by federal or state law and duly authorized by the commissioner; and

V. That for the purpose of assessing governmental performance and accountability, the commissioner of the department of employment security may provide information to the Wage Record Interchange System, the Wage Record Interchange System 2, the Federal Employment Data Exchange System, or any other similar system or combination thereof in effect on or before July 1, 2018 developed by the U.S. Department of Labor as administered by the U.S. Department of Labor, or its designee, and utilized by each state's Performance Accountability and Customer Information Agency (PACIA). The use of the information shall be limited to the purposes contained in the federal Workforce Innovation and Opportunity Act of 2014 or the Wagner-Peyser Act. The department may only provide aggregate statistical reports to entities participating in federal or state

supported workforce training programs and only for purposes of assessment and evaluation of those programs. The department shall require any such qualifying entity to enter into an agreement with the department which sets forth terms and conditions that are consistent with federal and state law prior to being provided any aggregate statistical reports. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place;

VI. That for the purpose of the Social Security Administration and the department of employment security establishing and verifying eligibility and payment amounts; and preventing and detecting waste, abuse, fraud and identity theft, the commissioner of the department of employment security may enter into a reciprocal electronic data-exchange agreement with the Social Security Administration. The Social Security Administration's use of the information provided shall be limited to use in accordance with federal laws and regulations pertaining to prevention and detection of fraud, waste, and abuse in the Social Security Administration's programs, and the entitlement, eligibility, and benefit payment amounts of individuals under Title II or Title XVI of the Social Security Act. Authorized federal employees granted access as provided in this paragraph shall be granted access on a case by case basis as provided in paragraph III. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place; and

VII. That for the purpose of participating in a joint local employment dynamics program with the United States Census Bureau in order to produce quarterly workforce indicators, the commissioner of the department of employment security may provide quarterly employment and wage information to the United States Census Bureau. The United States Census Bureau's use of the information provided shall be limited to the purposes of its Longitudinal Employer-Household Dynamics Program. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place.

**Last Source:** 2016, 249:2, eff. June 10, 2016.

#### **282-A:119 Summary, Duplication, etc.; Admissibility**

The commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof, as he may deem advisable for the effective and economical preservation of the information contained therein. Such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

#### **282-A:120 Destruction of Records**

The commissioner may by rules order the destruction, after reasonable periods, of any and all records, reports, transcripts or reproductions thereof, or other papers kept pursuant to the administration of the unemployment compensation law, which are not considered by him as necessary to the administration of this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:121 Penalty**

Any employee of the department of employment security, member of an appeal tribunal, or any individual, corporation, association, partnership or other type of organization, who lawfully obtains or sees records, reports or information obtained in the administration of this chapter who violates any provision of this subdivision shall be guilty of a misdemeanor.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:122 No Liability**

No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:123 Records Unavailable for Legal Process**

No records of any type in any form whether copies, compilations or reproductions pertaining to any individual or employing unit obtained in the course of or growing out of the administration of this chapter, or oral testimony relative thereto, as to either a specific person or in general shall be available for use in any proceeding, administrative or judicial; except that a necessary party to a proceeding directly and primarily concerned with workmen's compensation or an employer-employee relationship may by the use of valid judicial process obtain such records as directly relate to the necessary parties to the proceeding, and otherwise as is provided by this chapter. In matters unrelated to those enumerated previously, such records and oral testimony shall be available for use in any proceeding, administrative or judicial, where the state is a necessary party. No oral or written policy statements, opinions, advice, instructions or information of the department as to a specific person or in general shall be available for use in any proceeding, administrative or judicial through any means, and any process which attempts to obtain such shall be null and void.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:124 Oaths and Witnesses**

In the discharge of the duties imposed by this chapter, the commissioner of the department of employment security, the chairman of an appeal tribunal, and any duly authorized representative of either of them 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.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:125 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 commissioner of the department of employment security, the chairman of an appeal tribunal, or any duly authorized representative of either of them, or a court of this state, or in obedience to the subpoena of any of them in any cause or proceeding before the commissioner, or an appeal tribunal, 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 or 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.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:126 Subpoenas; Witness's and Sheriff's Fees**

I. In the 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 commissioner of the department of employment security, the chairman of an appeal tribunal, or any duly authorized representative of either of them, shall have jurisdiction to issue to such person an order requiring such person to appear before the commissioner, the chairman of an appeal tribunal or any duly authorized representative of either of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

II. Any person who, without just cause, shall 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 so to do, in obedience to a subpoena of the commissioner, the chairman of an appeal tribunal, or any duly authorized representative of either of them, shall be guilty of a misdemeanor. Each day such violation continues shall be deemed to be a separate offense.

III. A witness subpoenaed pursuant to this chapter shall be allowed fees at the rate established for a witness in the superior court. A sheriff shall be allowed the customary fees for service and travel. Such fees shall be deemed a part of the expenses of administering this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:127 State-Federal Cooperation**

I. In the administration of this chapter, the commissioner of the department of employment security shall cooperate to the fullest extent consistent with the provisions of this chapter, with the United States Department of Labor, and is authorized and directed to take such action, through the adoption of appropriate rules, the adoption of 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, under the provisions of section 3302 of the Federal Unemployment Tax Act and under the provisions of the Wagner-Peyser Act approved June 6, 1933, as amended; 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 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 III of the Social Security Act for the purpose of assisting in the administration of this chapter.

II. Upon request therefor, the commissioner of the department of employment security shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

III. The commissioner may make the state's records relating to the administration of this chapter available to the railroad retirement board and may furnish the railroad retirement board, at the expense of such board, such copies thereof as the railroad retirement board deems necessary for its purposes. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:128 Advisory Council**

There is hereby created within the unemployment compensation bureau an advisory council on unemployment compensation, hereinafter called the advisory council. The advisory council shall consist of 9 members to be appointed, with the exception of the legislative members, by the governor with the consent and advice of the governor's council. Three of the appointees of this advisory council shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employers; 3 shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employees; one shall be a senator from the insurance committee appointed by the senate president; one shall be a representative from the labor, industrial and rehabilitative services committee appointed by the speaker of the house; the remaining appointee, who shall be designated as chairman, shall be a person whose training and experience qualify him to deal with the problems of unemployment compensation. Such advisory council shall meet no later than 45 days after each calendar quarter and aid the commissioner 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. Advisory council meetings shall provide opportunity for public comment.

**Last Source:** 2002, 122:1, eff. July 7, 2002.

### **282-A:129 Term of Office**

The term of office of each nonlegislative member of the advisory council shall be 3 years and until his successor is appointed and qualified. The term of office of each legislative member shall be

coterminous with the legislative term. In the event of a vacancy in the membership of said council, the appointment shall be made in the manner provided in RSA 282-A:128 and for the unexpired term.

**Last Source:** 1995, 275:2, eff. June 20, 1995.

### **282-A:130 Compensation**

Each nonlegislative member of the advisory council shall be paid a fee of \$40 per day for each day of actual attendance at called meetings of the advisory council and shall also be reimbursed for necessary travel and other necessary expenses. Legislative members shall receive mileage at the legislative rate for each day of actual attendance at called meetings.

**Last Source:** 1995, 275:3, eff. June 20, 1995.

### **282-A:131 Unable to Attend**

In the event that a member of the advisory council is unable to attend any called meeting, the commissioner may appoint a substitute who shall for such meeting assume in all respects the position of the absent member.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:132 Cooperation**

It shall be the duty of the city and town clerks to cooperate with the employment service bureau in the reception and forwarding of applications from those seeking employment and those desiring employees. Such clerks shall receive such compensation from the department of employment security as the commissioner of said department determines appropriate, and to the extent he finds that funds are available, and may receive additional compensation therefor according to the direction of the respective cities and towns.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:133 Removal from Records of Amounts Due**

Upon a written determination by the commissioner of the department of employment security with the approval of the attorney general that the best interests of the state would be served by taking no further action to collect any sum or sums due under the provisions of this chapter, the same may be removed from the books and records of the department by said commissioner.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:134 Claimant Assistance**

There shall be in the department, assigned to the commissioner's office, a full-time, classified employee with the title of claim representative. He shall be qualified as a certifying officer and possess such other requisite skills, knowledge and abilities as appropriate. His duties shall include advice to claimants relative to presentation of their best case to a certifying officer for purpose of redetermination, and the presentation of, or assistance therein, a claimant's case before an appeal tribunal including request for reopening. There shall also be in the department, but not members of the state classified service, part-time assistant claim representatives who shall be knowledgeable about unemployment compensation, shall be appointed by and serve at the pleasure of the commissioner, receive \$40 for each day or any part thereof that they perform services at the request of the commissioner or his authorized representative, and, when necessary to the performance of their duties as determined by the commissioner, shall be reimbursed for mileage and meals as are state employees generally. The assistant claim representative shall assist the claim representative and shall work under his general supervision to the extent deemed appropriate by the commissioner. Neither appointment under RSA 282-A:53-58 and RSA 282-A:128-131 nor receipt of retirement or pension payments from the state shall bar appointment and remuneration as an assistant claim representative. No claimant shall be a beneficiary of this provision, except for preliminary evaluation, unless the commissioner or the claim representative finds the case to be one about which reasonable men may disagree.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:135 Custody of Department of Employment Security Buildings**

All buildings and land connected therewith which are used by the department of employment security shall be in the custody of the commissioner of said department. He shall be responsible for the care, maintenance, alterations and repair connected with such buildings and land to the extent of such federal moneys as are granted to said department for the specific purpose, or, in his sole judgment, from the fund provided at RSA 282-A:140. The provisions of RSA 228 shall not apply to such buildings and land.

**Last Source:** 1991, 311:12, eff. June 24, 1991.

### **282-A:136 House Counsel for the Department of Employment Security**

I. There shall be a general counsel and counsel in the department of employment security appointed by the commissioner. The general counsel and counsel shall be licensed to practice law in New Hampshire. The general counsel shall have been engaged in the practice of law for not less than 5 years, and the counsel not less than 3 years. The general counsel and counsel shall hold office during good behavior, and may be removed only in accordance with RSA 4:1. The general counsel and counsel shall be compensated in accordance with the provisions of RSA 94:1-a.

II. Subject to the supervision of the attorney general as to matters of law, the general counsel and counsel shall be responsible to the commissioner, and shall perform such duties as the commissioner may from time to time assign. Appearances of general counsel and counsel shall be limited to administrative proceedings, except as otherwise provided by RSA 282-A:137.

**Last Source:** 1989, 267:15, eff. July 25, 1989.

## **282-A:137 Representation in Court**

I. The attorney general, upon his own initiative or upon the request of the commissioner, may enforce the provisions of this chapter, or any rules adopted under this chapter, by any appropriate proceeding, criminal or civil, legal or equitable, in any court.

II. All criminal actions for violation of any provision of this chapter, or rule adopted pursuant to this chapter, shall be prosecuted by the attorney general of the state or, at his request and under his direction, by counsel for the department of employment security in any county in which the employer has or had a place of business or the violator resides.

III. Subject to the approval and supervision of the attorney general as to matters of law, the general counsel and counsel of the department may appear in any court in civil proceedings for the collection of taxes and recovery of overpaid benefits. However, upon the filing of any claim against the department in any circuit court district division as a result of such proceedings, the department shall move for immediate removal of the entire proceeding to the superior court. The superior court shall have exclusive jurisdiction to hear such claims. Upon request of the commissioner and approval of the attorney general, the general counsel and counsel may appear in any proceeding where such appearance is deemed by the attorney general to be in the best interest of the state.

**Last Source:** 2013, 206:4, eff. July 10, 2013.

## **The Unemployment Compensation and Employment Service Administration Fund**

### **282-A:138 Special Fund**

I. There is hereby created in the state treasury a special fund to be known as the unemployment compensation and employment service administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commissioner of the department of employment security for expenditure in accordance with the provisions of this chapter and shall not lapse at any time nor be transferred to any other fund.

II. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in RSA 282-A:107 through 282-A:135 shall be expended solely for the purposes and in the amounts found necessary by the United States Department of Labor for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state; all moneys received from the United States of America, or any agency thereof; and all moneys received from any other source for such purpose. The fund shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the unemployment compensation and employment service administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter. Such moneys shall be secured by the depository by collateral in the full amount of the funds on deposit. Such security shall consist of (a) United States

government obligations, direct or guaranteed and (b) direct obligations of the state of New Hampshire. Such collateral security shall be pledged at not to exceed the face value of the obligation and shall be kept separate and distinct from any collateral security pledged to secure other funds of the state.

III. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation and employment service administration fund provided for under this chapter. Such liability on the official bond shall be effective May 10, 1941, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment compensation and employment service administration fund shall be deposited in said fund.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:138-a Training Fund**

I. There is hereby created in the state treasury a special fund to be known as the training fund. Commencing January 1, 2002, the moneys in this fund may be used, solely as determined by the commissioner of business and economic affairs in accordance with rules and guidelines adopted by the commissioner of business and economic affairs, for funding training under the job training program for economic growth, established under RSA 12-O:30 through 12-O:37. Rulemaking authority relative to administration of the grant award process shall be with the commissioner of business and economic affairs pursuant to RSA 12-O:33.

II. The commissioner of business and economic affairs shall act as the fiscal agent for moneys deposited in the training fund. All costs incurred by the commissioner acting as fiscal agent of the training fund shall be paid from such fund.

III. Any interest earned on the moneys in this fund shall remain in the fund and shall be expended as provided in paragraph I.

IV. Any moneys paid into the training fund during a calendar year, which are either not obligated by June 30 of the following year or spent by June 30 of the year thereafter, shall be continually appropriated and shall not lapse.

**Last Source.** 2017, 156:60, eff. July 1, 2017.

### **282-A:139 Reimbursement of Fund**

If any moneys received after June 30, 1941, from the social security administration or its successor, the United States Department of Labor, 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 are found by the social security administration or its successor, the United States Department of Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by the social security administration or its successor, the United States Department of Labor, for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys in the contingent fund

established by RSA 282-A:140 or by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in RSA 282-A:138. Upon receipt of notice of such a finding by the social security administration or its successor, the United States Department of Labor, and in the event that there are insufficient funds in the contingent fund, as provided in RSA 282-A:140, the commissioner of the department of employment security 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 section 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.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:140 Contingent Fund**

I. There is hereby created in the state treasury a special fund to be known as the contingent fund. All interest, fines, late-filing fees and penalties collected under the provisions of this chapter after May 11, 1949, shall be paid into this fund. The moneys in this fund may, solely as determined by the commissioner, be used for the following purposes:

- (a) As a revolving fund to cover expenditures (necessary and proper under the law) for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds if and when received;
- (b) [Repealed.]
- (c) For rents; equipment; supplies; motor vehicles and their maintenance; fees; costs of administration as specifically provided in this chapter; salaries; per diem and expense payments; and training and education, whether institutional, departmental or conference-type, of assistant claim representatives, appeal tribunal and advisory council members and full and part-time department employees and department officers, including attendance at and hosting conferences and meetings sponsored or participated in by the United States department of labor and also in the Interstate Conference of Employment Security Agencies.

II. The moneys in this fund may be used for any other purpose which upon request of the commissioner is found by the governor and council to be in furtherance of the administration of this chapter. Moneys, as determined by the commissioner, in this fund shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of this chapter. This fund shall be used by the commissioner 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 unemployment compensation and employment service administration fund on or after May 11, 1949. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the Social Security Act, as amended, which, because of any action or contingency, have been lost or expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of this chapter.

III. The moneys in this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund except as herein provided. In the event that a refund of interest, a fine, a late-filing fee or penalty is found necessary, and such interest, fine, late-filing fee or penalty has been deposited in the contingent fund, such refund shall be made from the contingent fund. This shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury.

**Last Source:** 2001, 133:6, II, eff. June 29, 2001.

### **282-A:140-a Money Credited Under Section 903 of the Social Security Act**

I. Money credited to the account of this state in the unemployment trust fund by the Secretary of the Treasury of the United States of America 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 state's unemployment compensation law and public employment offices. Such money may be requisitioned pursuant to RSA 282-A:105 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this state's unemployment compensation law and public employment offices but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purpose for which such money is appropriated and the amount appropriated therefor. Such appropriation is subject to the following conditions:

- (a) The period within which such money may be obligated is limited to a period ending not more than 2 years after the date of the enactment of the appropriation law except that this restriction does not apply to the special Reed Act distribution under section 903(d) of the Social Security Act; and
- (b) The amount which may be obligated is limited to an amount which does not exceed the amount by which, the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this act and charged against the amounts transferred to the account of this state.

II. For purposes of subparagraph I (b), the amounts obligated under an appropriation for the above-described administrative purposes shall be charged against transferred amounts at the exact time the obligation is entered into.

III. The appropriation, obligation, and expenditure or other disposition of money appropriated under this section shall be accounted for in accordance with standards established by the United States Secretary of Labor.

IV. Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the fund established in RSA 282-A:140 from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be immediately expended, shall be returned promptly to the account of this state in

the unemployment trust fund.

V. Notwithstanding paragraph I, moneys credited with respect to federal fiscal years 1999, 2000, and 2001, shall be used by the commissioner with the consent and acceptance of governor and council or budget legislation of allocated funds solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature. The Reed Act distribution under section 903(c) of the Social Security Act, transferred to the state in October 1998 with respect to the federal fiscal year 1998, shall be used solely for the administration of this state's unemployment compensation law. The special Reed Act distribution under section 903(d) of the Social Security Act transferred to the state on March 13, 2002 may be used for all purposes set forth in paragraph I.

VI. Notwithstanding paragraph I, moneys credited with respect to the 2009 special transfer made under sections 903(g) of the Social Security Act shall be used by the commissioner, with the consent and acceptance of governor and council, and are not subject to appropriation by the legislature. Such moneys shall be used effective February 17, 2009 solely for:

- (a) Implementing and administering the statutory provisions in RSA 282-A which qualified New Hampshire for the receipt of incentive payments for unemployment compensation modernization pursuant to Section 2003 of Public Law 111-5;
- (b) Improved outreach to individuals who might be eligible by virtue of such statutory provisions;
- (c) The improvement of unemployment compensation benefit and tax operations, including responding to increased demand for unemployment compensation; and
- (d) Staff assisted reemployment services for unemployment compensation claimants.

**Last Source:** 2009, 323:3, eff. Aug. 7, 2009.

**282-A:140-b Appropriation of Federal Funds; Department of Employment Security.**

There is hereby appropriated out of federal funds made available to this state under section 903(d) of the Social Security Act, 42 U.S.C. section 1103(d), as amended, transferred to the state on March 13, 2002, the sum of \$11,900,000, or so much thereof as may be necessary, to be used, under the direction of the New Hampshire department of employment security for the purpose of developing and implementing a new automated unemployment compensation benefit system, including the upgrade or replacement of critical interfaces. Critical interfaces include but are not limited to interactive voice response, job matching, imaging, and web-enabled claim and appeal systems. Expenditures may include providing funds for hardware, software, equipment, staffing, technology maintenance, enhancements, and other purposes that are in accordance with any uses authorized by the United States Congress, now or in the future. Such funds shall exclusively be used for expenses authorized under section 903(d) of the Social Security Act, 42 U.S.C. section 1103(d), as amended.

**Last Source:** 2005, 195:1 eff. July 1, 2005.

## Collection of Contributions

### 282-A:141 Interest on Past-Due Contributions

Contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner of the department of employment security in a rule, shall bear interest at the rate of one percent per month or part thereof until payment plus accrued interest is received by the commissioner. Interest collected pursuant to this paragraph shall be paid into the contingent fund provided in RSA 282-A:140.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:142 Late-Filing Fee; Filing Extensions

Commencing with reports due beginning with the third calendar quarter of 2001:

I. If any employer subject to payment of contributions as provided in RSA 282-A:69, I, fails to file any required report on the date on which it is due, as prescribed by the commissioner of the department of employment security in a rule, the employer shall pay a fee for such failure equal to 10 percent of the contributions due thereon but not less than \$25 for each such failure.

II. If any employer electing to reimburse the fund as provided in RSA 282-A:69, II fails to file any required report on the date on which it is due, as prescribed by the commissioner of the department of employment security in a rule, the employer shall pay a fee for such failure equal to .001 of the gross wages paid during the quarter covered by such report but not less than \$25 for each such failure.

III. The state, county, city, town, or other political subdivision that elects to reimburse the fund pursuant to RSA 282-A:70 and RSA 282-A:71, I shall pay a fee of \$25 for each failure to file any report on the date on which it is due as prescribed by the commissioner of the department of employment security in a rule.

IV. Upon timely application and payment of a fee of \$50, the time for filing any such report may be extended 30 days. All fees shall be paid into the contingent fund provided in RSA 282-A:140.

V. All filing fees may be collected in any manner provided for the collection of contributions in this subdivision or in RSA 282-A:161-168 or by RSA 80.

**Last Source:** 2001, 133:4, eff. July 1, 2001.

### 282-A:143 Property Lien

If any employer required to pay contributions under this chapter neglects or refuses to pay contributions after demand, the amount, together with all penalties, fees, and interest and any costs that may accrue becomes a lien in favor of the state upon all property and rights to property whether real or personal, belonging to the employer. The lien arises at the time demand is made by the commissioner and continues until the liability for the sum, with interest and costs, is satisfied.

Certificates of release of such lien shall be issued on the satisfaction of the lien. For the purposes of RSA 282-A:141-155, "employer" in the case of corporations or limited liability companies includes the president, treasurer, members, or any other person in a managerial capacity of said corporation or limited liability company. No lien against real property under this section shall be effective until it is recorded at the registry of deeds for the county in which the real property lies. Liens against personal property shall be filed in the office of the secretary of state. Fees for recording and filing such liens and any certificates of release thereof shall be in accordance with RSA 478:17-g.

**Last Source:** 2001, 102:30, eff. July 1, 2001.

### **282-A:144 Injunction**

Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalties when due under the provisions of this chapter, after 10 days' written notice sent by the commissioner or his authorized representative to the employer's or employing unit's last known address by registered mail, may be enjoined from operating any business in the state while in violation of the provisions of this chapter upon the complaint of the commissioner of the department of employment security in the superior court of the county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice. Such injunction may enjoin any employer or employing unit from operating his or its business until such reports or contributions (including interest and penalties) or both shall have been made and filed or paid. The provisions of this section shall be deemed as cumulative and in addition to any other provisions of this chapter relating to the collection of contributions by the commissioner.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:145 Time Limitation**

No action may be maintained under this chapter unless commenced within 6 years of the time the cause arose or 2 years after the department is put on notice that the cause exists, whichever is later.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:146 Collection, Distraint**

If, after due notice, any employer shall fail to make any payment of contributions or interest thereon, the amount due, with interest thereon pursuant to RSA 282-A:141, shall be collectible by any means provided by law for the collection of any tax due to the state of New Hampshire or to any subdivision thereof, including any means provided by RSA 80:2. Tax warrants referred to in said chapter may be signed by either the commissioner of the department of employment security or the duly authorized counsel for such department.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:147 Priorities Under Legal Dissolution 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, or 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 of not more than \$250 to each claimant, earned within 6 months of the commencement of the proceeding. In the event of any employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or hereafter due shall be entitled to such priority as is provided in section 64(b) of that act, U.S.C., Title 11, section 104(b), as amended.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:148 Adjustment of Contribution by Compromise**

I. The commissioner of the department of employment security may, with the approval of the attorney general, effect by written stipulation such settlement of the contribution or interest due under the provisions of this chapter as he or she may deem to be for the best interests of the state, and the payment of the sum so agreed upon shall be a full satisfaction of such contribution and interest.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling \$50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

**Last Source:** 2003, 116:18, eff. Aug. 8, 2003.

### **282-A:149 Adjustments and Refunds**

If not later than 4 years from the last day of the period with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employing unit or employer who has paid such contribution or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commissioner shall determine that such contributions or interest or any portion thereof was erroneously collected, the commissioner shall allow such employing unit or employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him; or, if such adjustment cannot be made, the commissioner shall refund said amount, without interest, from the fund, unless such payments are to be refunded from the contingent fund as provided in RSA 282-A:140. The commissioner, on his own initiative, may, in any case, for like cause and within the same period, allow either adjustment or refund, as he in his discretion may deem to be for the best interests of the state. Nothing in this chapter or in any part thereof shall be construed to authorize any refund or credit of monies due and payable under the law and rules in effect at the time such monies were paid. It being further provided that the amount to be refunded or adjusted shall be reduced by the amount of unemployment compensation benefits which would not have been paid except for the erroneously reported employment and wages.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:150 Jeopardy Assessment**

I. If the commissioner believes that the collection of contributions will be jeopardized by delay, he shall immediately assess on the basis of whatever information he may have such contributions together with all interest and penalties, whether or not the time prescribed by RSA 282-A:69 through 98 and this subdivision or by the rules adopted by the commissioner for making return and paying such contributions has expired. Such contributions, interest and penalties shall thereupon become immediately due and payable; and immediate notice and demand, either in person or in writing, shall be made by the commissioner or his duly authorized representatives for the payment thereof. Upon failure or refusal to pay immediately such contributions, interest and penalties, collection thereof by any means provided in this subdivision shall be lawful without regard to the period prescribed in RSA 282-A:151 or by the rules of the commissioner and proceedings may also be instituted under RSA 282-A:161-168 for such failure or refusal.

II. The collection of the whole or any part of the amount of such assessment may be stayed by filing with the commissioner a bond in such amount as is equal to the amount to which the stay is desired and with such sureties as the commissioner deems necessary conditioned on payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

III. An assessment under this section shall not finally fix the amount of such contributions, interest and penalties. Where the amount due is subsequently discovered to be greater than that assessed, the balance shall be collected by any means provided in this subdivision. If the amount due is subsequently discovered to be less than that assessed, it shall be adjusted in the manner provided by RSA 282-A:149.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:151 Failure of Employer to File Report of Contributions Due**

I. If an employer shall fail to file a report for the purpose of determining the amount of contributions due under this chapter, or if such report when filed shall be incorrect or insufficient and the employer shall fail to file a correct or sufficient report within 20 days after the commissioner of the department of employment security shall have required the same by written notice, the commissioner shall determine the amount of contribution due, with interest thereon pursuant to RSA 282-A:141, from such employer on the basis of such information as he may be able to obtain; and he shall give written notice of such determination to the employer. Such determination shall finally fix the amount of contribution unless the employer shall initiate an appeal in the manner provided in RSA 282-A:94-98. The determination of the commissioner shall be deemed to be prima facie correct, and the burden of proving error therein shall be upon the employer. Except for good cause shown, no ground of error shall be considered unless set forth in the petition of appeal.

II. If on appeal the determination of the commissioner shall be confirmed, or the amount of the contribution originally determined by the commissioner shall be increased, the cost of such proceedings, as in civil actions, shall be assessed against the employer. No costs shall be assessed against the state on such appeal.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **282-A:152 Collection of State Contributions**

I. Whenever used in this subdivision, unless the context shall otherwise require, or unless otherwise specifically provided, the word “contribution” shall include not only the principal of any contribution but also all interest, penalties, fees and other charges added thereto by law; and the term “serving officer” shall include any sheriff, deputy sheriff, constable or other officer authorized to serve any civil process. Delivery of written notice by an authorized representative of the commissioner shall be deemed proper service of process.

II. Upon the failure of any person to pay any contribution due to the state within 30 days from its due date, the commissioner of the department of employment security or his duly authorized representative charged by law with its collection shall add thereto such penalty or interest or both as shall be prescribed by law. The attorney general may collect any such contribution by a civil action, or the commissioner or his duly authorized representative charged by law with the collection of such contribution may make out and sign a warrant directed to any serving officer for distraint upon the goods, realty or body of such person. Each serving officer so receiving a warrant shall make return to the party making out such warrant within a period of 30 days from its receipt by him. To each warrant placed in the hands of any serving officer shall be attached an itemized bill, certified by the party making out such warrant to be a true and correct statement of the total amount of contribution due from such person. Any serving officer deputed to serve a warrant drawn under the provisions of this law shall, so far as such warrant is concerned, have, mutatis mutandis, all the powers vested in tax collectors and sheriffs under the provisions of RSA 80; shall proceed pursuant to the terms of one or more of said statutes; shall make return to the party making out such warrant within 10 days of the completion of service and shall collect from such person, in addition to the amount shown on such warrant, his fees and charges, which shall be those authorized by statute for serving officers, as in all other civil actions.

**Last Source:** 2003, 116:10, eff. Aug. 8, 2003.

## **282-A:152-a Garnishment**

I. Definitions. In this section:

- (a) "Commissioner" means commissioner of the department of employment security.
- (b) "Date that the determination creating the overpayment becomes final" means the date a person has no appeal or appeal period pending under RSA 282-A:164, RSA 282-A:165, and RSA 282-A:42-68.
- (c) "Department" means the department of employment security.
- (d) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld or required by the employer to be withheld as a condition of employment.
- (e) "Earnings" means any form of payment to a person for his or her labor including, but not limited to, salary, wages, commission, or other compensation.

- (f) "Employer" means any person, business, organization, employing unit, firm, corporation, or association, or any political subdivision or department of the state or federal government, which employs a person or pays income or any other compensation to a person for his or her labor.
  - (g) "Individual debtor" means a person determined to have been overpaid under RSA 282-A:164, provided the department provided to such person notice of the determination that he or she was overpaid, provided an opportunity for appeal, and opportunities for appeal have been exhausted.
  - (h) "Notice of garnishment" means a notice requiring an employer to garnish an individual debtor's earnings without a court order.
  - (i) "Notice of court-ordered garnishment" means a notice requiring an employer to garnish an individual debtor's earnings based on a court order for payments.
- II. Upon the failure of any individual debtor to pay any overpayment due to the state under RSA 282-A:164 within 90 days of the date that the determination creating the fraud overpayment becomes final, the department may serve duplicate notices of garnishment upon any employer that owes, or may owe in the future, earnings to such individual debtor. Any notice of garnishment served upon any employer shall be simultaneously served upon the individual debtor by first-class mail to his or her last known address. The department shall send the individual debtor by first-class mail to his or her last known address a notice of intent to garnish earnings 14 days before serving any notice of garnishment. No individual debtor shall be deemed under this section to have failed to pay any fraud overpayment due to the state within 90 days of the date that the determination creating the overpayment becomes final, if the debtor:
- (a) Has agreed to a payment plan approved by the department; and
  - (b) Is in substantial compliance with such payment plan.
- III. The notice of garnishment shall advise the individual debtor and individual debtor's employer:
- (a) Of the employer's obligation to provide one of the duplicate copies of the notice of garnishment to the individual debtor upon receipt;
  - (b) Of the amount which may be garnished for any week;
  - (c) Of the total amount subject to garnishment;
  - (d) That the garnishment applies to any current or subsequent earnings paid 21 or more days after the date of mailing of the notice of garnishment;
  - (e) Of the individual debtor's right to file, at any time, for suspension of the notice of garnishment;

- (f) That any amounts which the employer is obligated to withhold pursuant to RSA 458-B have priority over amounts subject to garnishment under this section;
- (g) That, including any fee added and retained under paragraph VII, the amount garnished pursuant to this section when added to the amount withheld pursuant to RSA 458-B may not exceed 25 percent of the individual debtor's weekly disposable earnings, or the amount by which the individual debtor's weekly disposable earnings exceed 50 times the minimum hourly wage as established by the Fair Labor Standards Act, whichever is less;
- (h) That the employer must implement garnishment no later than the first earnings that are paid 21 days after the notice was mailed;
- (i) That the garnishment is binding upon the employer until payment in full is made of the total amount subject to garnishment;
- (j) That the employer must send the garnished amount to the commissioner at the same time the individual debtor is paid;
- (k) Of the provisions, liabilities, and penalties in paragraphs IV-IX; and
- (l) Of the employer's right to add and retain a fee of \$1.00 for each garnishment for the administrative cost incurred as a result of the garnishment procedures.

IV. With respect to the individual debtor's right to file for suspension of the notice of garnishment, the notice of garnishment shall state as follows, in at least 12-point type: This notice of garnishment requires your employer to garnish (take) some of your earnings for work and send them to the department of employment security to repay overpaid unemployment insurance benefits. Once earnings for a week have been garnished, you will not be able to get them back.

You have the right, at any time, to file for suspension (stopping) of this garnishment. If you file for suspension of garnishment, the department of employment security has the right to take you to court to ask a judge to decide how much, if any, of your earnings should be garnished. Instead of going to court, you and the department may be able to agree to a different amount of garnishment. If you want to file for suspension or make an agreement with the department, you must call the department of employment security at \_\_\_\_\_.

- V. The amount which may be garnished for each week shall be determined by the department based on the individual debtor's financial circumstances known to the department, including but not limited to the individual debtor's financial affidavit, if available.
- VI. Garnishment under this section shall have priority over any other legal process under state law against the same earnings except withholding under RSA 458-B.
- VII. In addition to the amount garnished under this section, the employer may add and retain a fee of \$1.00 for each garnishment for the administrative cost incurred as a result of the garnishment procedures.

VIII. An employer shall:

- (a) Provide one of the duplicate copies of the notice of garnishment to the individual debtor upon receipt;
- (b) Apply the garnishment to any current or subsequent earnings paid 21 or more days after the date of issuance of the notice of garnishment;
- (c) Not garnish for any week more than the amount allowed;
- (d) Suspend garnishment of earnings paid not later than 8 days following receipt of notice from the department of the requirement to do so;
- (e) Give priority to any amounts that the employer is obligated to withhold pursuant to RSA 458-B over amounts subject to garnishment under this section;
- (f) Not allow the amount garnished pursuant to this section, including any fee added and retained under paragraph VII, when added to the amount withheld pursuant to RSA 458-B to exceed 25 percent of the individual debtor's weekly disposable earnings, or the amount by which the individual debtor's weekly disposable earnings exceed 50 times the minimum hourly wage as established by the Fair Labor Standards Act, whichever is less;
- (g) Implement garnishment no later than the first payment of earnings that occurs 21 or more days after the notice was mailed;
- (h) Treat the garnishment as binding upon the employer until payment in full is made of the total amount subject to garnishment;
- (i) Send the garnished amount to the commissioner at the same time the individual debtor is paid;
- (j) Notify the commissioner within 20 days of the individual debtor's termination of employment, and shall provide the individual debtor's last known address and the name and address of the present employer, if known.
- (k) Be liable for the accumulated amount it should have garnished if it fails to garnish in accordance with the provisions of the notice.

IX. The employer shall be liable for an administrative fine of \$100 per pay period for each individual debtor with respect to whom the employer has willfully failed to comply with the provisions of subparagraphs VIII(g) and VIII(j). For other willful violations of this section an administrative fine of not less than \$100 or more than \$500 may be imposed. Prior to assessing such fine against the employer, the commissioner shall notify the employer of its intent to assess the fine, the amount of the fine, the date by which the fine is payable, and shall provide the employer with the opportunity to appeal the imposition of the fine.

X. An employer shall be guilty of a misdemeanor and subject to a fine of up to \$1,000:

- (a) For discharging, refusing to employ, or taking any disciplinary action against an individual debtor because of the garnishment procedures.
- (b) For failure to comply with the provisions of paragraph VIII.

- XI. Notwithstanding the 90 day limitation in paragraph II an individual debtor may, subject to the approval of the department, agree to voluntary garnishment at any time.
- XII. An individual debtor may file for suspension of the notice of garnishment at any time. If the individual debtor files for suspension of the notice of garnishment, the department may file a motion for periodic payments in the Merrimack county sixth Circuit court seeking establishment of an order for payments.
- XIII. If an individual debtor files for suspension of the notice of garnishment, the department shall suspend the notice of garnishment and advise any employer upon which the notice of garnishment was served to suspend garnishment of earnings paid not later than 8 days following receipt of notice to suspend.
- XIV. If an individual debtor who filed for suspension of the notice of garnishment and the department reach an agreement as to the amount which may be garnished for any week, the department may issue a new notice of garnishment consistent with such agreement.
- XV. Following the expiration of 90 days after the date a determination which finds an individual debtor overpaid under RSA 282-A:164 becomes final, such determination with interest under RSA 282-A:141, shall be for purposes of RSA 524:6-a the judgment of any circuit court-district division in which the department files a motion for periodic payments.
- XVI. Following the issuance of an order for payments by any circuit court-district division on any overpayment due to the state under RSA 282-A:164 for more than 90 days, the department may serve a notice of court-ordered garnishment upon any employer that owes, or may owe in the future, earnings to such individual debtor. Any notice of court-ordered garnishment served upon any employer shall be simultaneously served upon the individual debtor by certified mail to his or her last known address. The amount which may be garnished for any week shall not exceed that amount, applied weekly, deemed appropriate by the circuit court-district division in its order for payments.
- XVII. The notice of court-ordered garnishment shall advise the individual debtor and individual debtor's employer:
  - (a) Of the information required by III(a)-(d) and (f)-(l) of this section; and
  - (b) Of the individual debtor's right to file a motion with the Merrimack county sixth circuit court seeking a change in the amount of the payments based on a change in financial circumstances;
- XVIII. With respect to the individual debtor's right to file a motion with the Merrimack county sixth circuit court, the notice of court-ordered garnishment shall state as follows, in at least 12-point type:

This notice of court-ordered garnishment requires your employer to garnish (take) some of

your earnings for work and send them to the department of employment security to repay overpaid unemployment insurance benefits. The amount of the garnishment is based on an order of the Merrimack county sixth circuit court. Once earnings for a week have been garnished, you will not be able to get them back.

You have the right, at any time, to file a motion with the Merrimack county sixth circuit court asking for the amount of the garnishment to be changed based on a change in your financial circumstances. If you want to file a motion, you should contact the Merrimack county sixth circuit court. Nothing in this paragraph prevents you and the department of employment security from agreeing to a greater or lesser amount of garnishment and filing the agreement with the Merrimack county sixth circuit court. If the department of employment security does not agree, you still have the right to file a motion.

- XIX. The department may agree to a greater or lesser periodic amount than that amount deemed appropriate by the Merrimack county sixth circuit court in its order for payments, whether or not the individual debtor has requested a hearing before the court to obtain a change in the court's order, and any such agreement shall be filed with the Merrimack county sixth circuit court.
- XX. Within 7 days of receiving written notice that the individual debtor has filed a motion to request a change in the court's order, the department shall suspend or modify its notice of court-ordered garnishment consistent with the individual's request to the court.

**Source.** 2012, 176:1, eff. Aug. 10, 2012.

### **282-A:153 Secretary of State Their Agent for Receipt of Service**

I. Any nonresident employing unit who acquires the status of an employer under the provisions of this chapter or any resident employing unit who, after having acquired the status of an employer under the provisions of this chapter, removes himself from the state shall be deemed to have appointed the secretary of state or his successor in office to be his true and lawful agent upon whom may be served all lawful processes in any action or proceeding against him under the provisions of this chapter; and such acquirement shall be a signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as if served on him personally.

II. Service of such process shall be made by leaving a copy of the process in the hands of the secretary of state or in his office, and such service shall be sufficient service upon said employing unit; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff to the defendant, and the defendant's return receipt and the plaintiff's affidavit of compliance therewith are appended to the writ and entered therewith. The secretary of state shall keep a record of all such processes, which shall show the date and hour of service.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:154 Continuance of Action**

The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:155 Interstate Collections**

The courts of this state shall entertain actions in the name of the commissioner to collect benefits, contributions or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government. The commissioner shall have the authority to collect any such debt by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156.

**Last Source:** 2003, 116:11, eff. Aug. 8, 2003.

### **282-A:156 Delinquent Payments**

In addition to any other remedies under this subdivision, if the commissioner finds that any county, city, town or other political subdivision has become delinquent with respect to payments due under this chapter and following the commissioner's written request for such payment, has for 60 days thereafter refused or neglected to pay the amount due, the commissioner shall notify the commissioner of administrative services of such delinquency and the total amount due. The commissioner of administrative services shall authorize the transfer of such amount to the department of employment security from any funds which would otherwise be due from the state to such county, city, town or other political subdivision.

**Last Source:** 1985, 399:3, I, eff. July 1, 1985.

## **Protection of Rights and Benefits**

### **282-A:157 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 an 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 section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Provided that this section shall not apply to agreements, waivers or releases entered into pursuant to reciprocal arrangements made under RSA 282-A:169-172.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:158 Limitation of Fees**

No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commissioner of the department of employment security, or by his representative or by any court or by any officer thereof. Any individual claiming benefits before the commissioner or his representative 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 commissioner. Any person who violates any provision of this section shall be guilty of a misdemeanor.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:159 Assignment or Attachment of Benefits; Child Support Obligations; Overissuance of Food Stamp Coupons; Income Tax Withholding**

I. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt or taxes. 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 except debts incurred for necessities furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void except for child support obligations and food stamp overissuances as provided in RSA 282-A:31 and this section and, if the individual so elects, withholding of federal income tax under rules adopted by the commissioner.

II. The commissioner is authorized to pay a portion or all of the unemployment compensation otherwise payable to a claimant to any agency of the state or its political subdivisions which enforces child support obligations. The amount so paid shall be deemed to be paid to the claimant. No such payment shall be made hereunder unless the New Hampshire department of health and human services or another New Hampshire governmental agency:

- (a) Submits to the commissioner of the department of employment security the claimant's authorization for such child support, or the order of any court or administrative agency of competent jurisdiction for such child support, equal to or exceeding the child support requested; and
- (b) Pays monthly, in advance, to the department of employment security administration costs as determined by the commissioner.

III. The commissioner may, if it is in the best interest of the state, enter into agreements to pay to a state or the federal government a portion or all of the unemployment compensation otherwise payable to a claimant if unemployment compensation benefits have been found overpaid under such state or federal unemployment compensation law.

IV. (a) The commissioner is authorized to adopt rules under RSA 541-A and enter into an agreement with the department of health and human services to pay a portion or all of the unemployment compensation payable to an individual consistent with section 303(d)(1) and (2) of the Social Security Act and section 13(b)(1) of the Food Stamp Act of 1977, to notify the department of health and human services that an individual with an overissuance of food stamp coupons has applied for unemployment compensation, and to withhold and deduct

unemployment compensation otherwise payable in amounts consistent with the federal law and this paragraph. Amounts so withheld shall be deemed to have been paid to the claimant.

(b) No such deduction or payment shall be made under this paragraph unless the department of health and human services:

- (1) Submits to the department of employment security an appropriate decision of an administrative agency or a court supporting the overissuance.
- (2) Pays monthly, in advance, the department of employment security's administrative costs as provided for in the agreement.

**Last Source:** 1998, 98:4, eff. July 1, 1998.

### **282-A:160 Prohibition Against Discrimination**

No person shall discriminate in any way against another person because of his appearance or intended appearance as a witness or party, or for giving or furnishing information in connection with any proceeding under this chapter or an appeal therefrom. Any person who violates any provision of this section shall be subject to the penalties provided in RSA 282-A:161-168.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Penalties**

### **282-A:161 Generally**

Whoever willfully makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this chapter, either for one's self, or for any other person, shall be guilty of:

I. A class A felony if the amount of the additional benefit received as a result of the misrepresentation is \$1,000 or more.

II. A class B felony if the amount of the additional benefit received as a result of the misrepresentation exceeds \$500 but is less than \$1,000.

III. A class A misdemeanor in all other cases.

**Last Source:** 1996, 50:3, eff. Jan. 1, 1997.

### **282-A:162 Out-of-State or Federal Benefits**

Any individual who willfully makes a false statement or representation or knowingly fails to disclose a material fact before a representative of the department of employment security of the state of New Hampshire to obtain benefits under the laws of any other state or the federal

government shall be subject to the same provisions of this chapter as if he were claiming benefits under this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:163 Disqualification, Restitution, and Penalty**

I. Any individual who is convicted under RSA 282-A:161 shall be deemed disqualified from receiving benefits for one year from the date of such conviction.

II. All benefits received for any week or weeks directly affected by such false statement or representation or failure to disclose a material fact shall be deemed overpaid, and the court in all such cases shall order restitution in an amount equal to such overpayment, plus a penalty equal to 20 percent of such amount.

III. Payments of the 20 percent penalty on convictions made under this section on or before October 20, 2013 shall be deposited into the fund established in RSA 282-A:140.

IV. Payments of the 20 percent penalty on convictions made under this section on or after October 21, 2013 shall be divided with  $\frac{1}{4}$  of such payments being deposited into the fund established in RSA 282-A:140 and  $\frac{3}{4}$  of such payments being deposited into the unemployment compensation fund established in RSA 282-A:103.

**Last Source:** 206:4, eff. Jul. 10, 2013.

### **282-A:164 Restitution**

Any individual who willfully makes a false statement or representation or knowingly fails to disclose a material fact, whether before a representative of the department of employment security of the state of New Hampshire or in another state before a representative of the unemployment compensation agency of that state which is acting in the capacity of agent for the state of New Hampshire, to obtain or increase any benefit or other payment under this chapter, or under the laws of any other state or the federal government, either for such individual, or for any other person, may, in the discretion of the commissioner or his or her authorized representative, be determined to be disqualified for benefits for each week directly affected by the false statement or representation or failure to disclose a material fact. All benefits received for each week of such disqualification shall be deemed overpaid, and restitution in an amount equal to such overpayment plus a penalty equal to 20 percent of the overpaid benefits shall be ordered by the commissioner or his or her authorized representative. In addition to such disqualification, such individual shall be deemed ineligible to receive benefits for not less than 4 nor more than 52 consecutive weeks, beginning with the week in which the decision is made, as determined by the commissioner or his or her authorized representative. For each week of determined ineligibility, an amount equal to the individual's maximum weekly benefit rate during such week shall be deducted from the maximum benefits available to the individual during the benefit year in which such week falls; but no change shall be made in his or her weekly benefit amount because of this deduction. Payments of the 20 percent penalty on determinations made under this section on or before October 20, 2013 shall be deposited into the fund established by RSA 282-A: 140. Payments of the 20 percent penalty on determinations made under this section on or after October 21, 2013 shall be divided with  $\frac{1}{4}$  of such payments

being deposited into the fund established by RSA 282-A:140 and  $\frac{3}{4}$  of such payments being deposited into the unemployment compensation fund established in RSA 282-A: 103. Any proceeding or action taken under this section shall be in lieu of and not in addition to any proceeding or action taken under RSA 282-A:161.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981. 2012, 176:2, eff. Aug. 10, 2012.

### **282-A:165 Overpayments**

I. Any person who has received any benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled or while the person was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments.

II. Liability shall not exist where the person receiving benefits is without fault in causing the overpayment as defined by the rules of the commissioner.

III. No such overpayment shall exist unless a determination has been made by the commissioner or an authorized representative setting forth the facts causing the creation of the overpayment and notice of such determination has been sent to the claimant who may appeal in the manner set forth in RSA 282-A:42-68. Such determination shall be made within 2 years of the weeks affected thereby and shall include notice of the compromise process under RSA 282-A:29.

IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full.

**Last Source:** 2009, 249:1, eff. Jan. 1, 2010.

### **282-A:166 Falsity by Employer**

I. Any employing unit, officer, or employee of a corporation, or member or employee of a partnership or limited liability company, who as such officer, employee, or member is under a duty to perform and:

- a) Who knowingly makes a false statement or representation; or
- b) Who knowingly fails to disclose a material fact to avoid becoming or remaining subject hereto or to avoid or prevent or reduce any contribution or other payment required of such employing unit under this chapter, or to deny or reduce payments of benefits to any individual; or
- c) Who fails or refuses to make any such contribution or other payment having in possession or control funds to do so allowing said funds to be expended for any other purpose except payment to trade creditors or payment of wages to employees other

than corporate officers or relatives other than for necessities; or

- d) Who fails or refuses to furnish any reports required hereunder; or
- e) Who fails or refuses to testify or to permit inspection of records or to produce records as required hereunder; or
- f) Who makes, permits or requires any deduction from wages to pay all or any portion of the contributions required from employers; or
- g) Who attempts to induce any individual to waive any right under RSA 282-A; or
- h) Who fails or refuses to file a mass layoff notice under RSA 282-A:45-a, I; or
- i) Who violates or attempts to violate RSA 282-A:91-a; or
- j) Who fails or refuses to furnish a report which includes every individual who performed services in employment for the time period applicable to such report shall be guilty of an offense as provided in paragraph II.

II. Violations of paragraph I are:

- a) Class A felony if the amount of contributions or benefits involved is \$1,000 or more.
- b) Class B felony if the amount of contributions or benefits involved exceeds \$500 but is less than \$1,000.
- c) Class A misdemeanor in all other cases.

III. The court in all such cases shall order such payment to be made or report to be completed and may suspend part of its sentence on condition of said performance.

**Last Source:** 206:4 eff. July 10, 2013.

### **282-A:166-a Penalties for Failure or Refusal to Make Contributions or Reports**

In the discretion of the commissioner or an authorized representative, violations of RSA 282-A:166, I(c) and (d) may subject the person to a penalty of not less than \$100 or more than the amount of the contributions then or subsequently determined by the commissioner to be due. For violations of RSA 282-A:166, I(h) a penalty of not less than \$100 nor more than \$500 for each day of failure or refusal to file. For violations of RSA 282-A:166, I(j) a penalty of up to \$25 for each such individual not reported may be imposed for each calendar day such violation continues. For violations of all other subparagraphs of RSA 282-A:166, I, a penalty of not less than \$100 nor more than \$500 may be imposed. All penalties imposed under this section shall be in addition to late filing fees and interest charges due under other sections of this chapter. Any proceeding or action taken against a person under this section shall be in lieu of and not in addition to any proceeding or action taken under RSA 282-A:166. Persons found subject to this section may appeal in the manner set forth in RSA 282-A:95-98.

**Last Source:** 2006, 129:2, eff. July 1, 2006.

### **282-A:167 General Penalty**

Any violator of any provision of this chapter, or of any order or rule thereunder, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be guilty of a misdemeanor; and each such violation shall constitute a separate and distinct offense.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:168 Recovery for Another State**

On request of an agency of another state which administers an employment security law and which has found, in accordance with the provisions of such law, that an individual is liable to repay benefits received under such law, the commissioner may collect from such individual the amount of such benefits, to be refunded to such agency; and such amounts may be collected by civil action in the name of the commissioner acting as agent for such agency.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Reciprocal Arrangements**

### **282-A:169 Reciprocal Arrangements**

The commissioner of the department of employment security is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

I. Services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states:

- (a) In which any part of such individual's service is performed, or
- (b) In which such individual has his residence, or
- (c) In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by an employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employing unit are deemed to be performed entirely within such state.

II. Potential rights to benefits under this chapter may constitute the basis for the payment of benefits by another state or the federal government, and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits

by this state. Such benefits shall be paid under such provisions of this chapter or under the provisions of the law of such other state or the federal government, or under such combination of the provisions of both laws, as may be agreed upon and which will be fair and reasonable as to all affected interests. No such arrangement shall be entered into unless it contains:

- (a) Provision for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and
- (b) Provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to this chapter. Reimbursements paid from the fund pursuant to this paragraph shall be deemed to be benefits for the purposes of this chapter.

III. Wages or services, upon the basis of which an individual is entitled or may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter; and wages for insured work, on the basis of which an individual is entitled or may become entitled to benefits under this chapter, shall be deemed to be wages or services on the basis of which unemployment compensation is payable under such law of another state or of the federal government; but no such arrangement shall be entered into unless it contains:

- (a) Provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and
- (b) Provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commissioner of the department of employment security finds will be fair and reasonable as to all affected interests.

IV. Contributions due under this chapter with respect to wages for insured work shall for the purposes of RSA 282-A:141-156 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the commissioner of the department of employment security finds will be fair and reasonable as to all affected interests.

V. The department of employment security may administer, at no cost to this state, as an agent of the United States of America, employment security and related programs authorized by the Congress of the United States and, pursuant thereto, may receive and disburse federally granted moneys. All the power and authority otherwise granted in this chapter to the commissioner shall equally apply under this provision. The commissioner may create outside the state treasury such special funds, the moneys in which shall not lapse at any time or be transferred to any other fund, except as permitted by federal law, as he determines necessary to carry out the purposes of this provision. Moneys granted by the federal government for payment of department personnel salaries and expenses, supplies, equipment and rent and such other expenses as are approved by the federal agency to carry out any agreement shall be deposited in the unemployment compensation and employment service administration fund provided by this chapter. The treasurer, as provided in RSA 282-A:103-106, shall be the treasurer of such fund as is created hereunder, and it shall be safeguarded in such manner as may be required by federal law. The cost of any bond required by

any federal agency shall be paid from the unemployment compensation and employment service administration fund created by this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:170 Reimbursement**

Reimbursements paid from the fund pursuant to any reciprocal arrangements authorized by the provisions of this chapter shall be deemed to be benefits for the purposes of this chapter; except that no charge shall be made to an employer's account under RSA 282-A:69-98:

I. In excess, for any week or weeks, of the benefits which would have been payable but for this section; or

II. In excess of the maximum benefits payable under RSA 282-A:24-41; or

III. When no benefits would have been payable to an individual, but for this subdivision, because of the lack of wages for insured work necessary to qualify for benefits. In the event that no charge is to be made to an employer's account such as hereinabove provided, such reimbursements shall be charged against the fund. The commissioner of the department of employment security is authorized to make to other state or federal agencies, and to receive from such other state or federal agencies, reimbursements from or to the fund in accordance with arrangements entered into pursuant to RSA 282-A:169.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:171 New Findings**

If, after entering into an arrangement under RSA 282-A:169, II or III, the commissioner of the department of employment security finds that the unemployment compensation law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner shall make a new finding as to whether such arrangement shall be continued with such state or states or with the federal government.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:172 Combining Employment**

The commissioner shall participate in any arrangements for the payment of unemployment compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states or of the United States of America or of both:

I. 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 unemployment compensation in such situations, and

II. Which include provisions for

- (a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws or a federal unemployment compensation law, and
- (b) Avoiding duplicate use of wages and employment by reason of such combining.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## **Miscellaneous**

### **282-A:173 Suspension and Termination**

If at any time the governor shall find:

I. That the provisions of this chapter requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the supreme court of this state or under the United States Constitution by the Supreme Court of the United States in such manner that any person or concern required to pay contributions under this chapter might secure a similar decision, or

II. That the tax imposed by the Federal Unemployment Tax Act, as amended, or any other federal tax against which contributions under this chapter may be credited, has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States with the result that no portion of the contributions required by this chapter may be credited against such federal tax, the governor shall publicly so proclaim; and, upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall be suspended. The commissioner of the department of employment security shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit and shall direct the state treasurer to deposit such moneys, together with any other moneys, in the fund, as a special fund in any bank or public depositories in this state in which general funds of the state may be deposited, and to hold such moneys for such disposition as the legislature may prescribe.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

### **282-A:174 Reservation of Right to Amend or Repeal**

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

### **282-A:175 Federal Minimum Standards**

In the event that the Congress of the United States should pass any legislation establishing certain minimum standards directing the states to make such changes in their various laws as may be necessary to bring them into conformity with such minimum standards, the commissioner of the department of employment security, or his duly authorized representative, is hereby authorized to make such revision as may be necessary to cause the provisions of this chapter to conform with such minimum standards. If any of the provisions of this section or the application thereof to any persons or circumstances are held invalid, the remainder of this chapter in the application of this section to other persons or circumstances shall not be affected thereby.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:176 Rules and Rulemaking**

I. All rulemaking power provided in this chapter shall be exercised in accordance with the provisions of RSA 541-A. All rules adopted by the authority of this chapter shall be adopted pursuant to RSA 541-A.

II. The terms “require,” “prescribe,” “determine,” “establish,” and “set” when referring to an action taken by the department of employment security to set a requirement binding on the public shall mean to “adopt a rule pursuant to RSA 541-A.”

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### **282-A:177 Administration**

The provisions of RSA 282-A:103-106, relative to the unemployment compensation fund, and of RSA 282-A:138-140, relative to the unemployment compensation and employment service administration fund, to the contrary notwithstanding, the commissioner of the department of employment security is authorized to requisition and receive from this state's account in the unemployment trust fund in the treasury of the United States, in the manner permitted by federal law, such moneys standing to its credit in said fund as are permitted by federal law to be used for expenses of administering the provisions of this chapter and to expend such moneys for such purpose. The state treasurer shall be the custodian of the amounts of money so requisitioned and received. He shall administer such fund in accordance with the directions of the commissioner of the department of employment security and such rules as the commissioner may adopt not inconsistent with federal law. The commissioner may enter into contracts and educational agreements with and for the employees of the department of employment security under such terms and conditions, which are consistent with federal requirements, as he deems advisable.

**Last Source:** 1981, 416:13, eff. Aug. 22, 1981.

### **282-A:178 Agreement Authorized**

I. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective April 3, 1975, with the secretary of labor of the United States to become an agent of the United States in order to carry out the provisions of Chapter 2 of Title II of

the Trade Act of 1974, as amended (P.L. 93-618, as amended), and to perform such acts and do all those things necessary to fully carry out such agreement.

I-a. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective November 4, 2002, with the Secretary of Labor of the United States to become an agent of the United States in order to carry out the provisions of the Trade Adjustment Assistance Reform Act of 2002, as amended, (P.L. 107-210, as amended), and to perform such acts and do all those things necessary to fully carry out such agreement.

II. (a) Solely for the purposes of carrying out the agreement authorized in paragraphs I and I-a, and notwithstanding other provisions of this chapter to the contrary, the provisions of this section permit:

(1) The payment of unemployment compensation benefits:

(A) To an individual undergoing a training or retraining program under said federal law,

(B) To an individual who voluntarily leaves employment which is not suitable as specially defined in said Trade Act to enter training which has been approved under the Trade Act prior to said leaving.

(2) An individual to receive unemployment compensation benefits though supplemented by a trade readjustment allowance or other assistance under the Trade Act.

(3) The use of moneys in the contingent fund provided by RSA 282-A:140 for payment to the United States of America where it has been found that there was gross negligence, fraud or failure to take appropriate recovery action by New Hampshire under the terms of the agreement.

(b) An individual whose benefit year ends during an extended benefit period shall have his potential maximum extended benefit amount reduced by any trade readjustment allowances received during said benefit year.

III. All costs of the Trade Act program, including benefits, training, counseling, attorney fees, or any other costs, shall be paid only out of federal funds made available to the state for that purpose. In administering the Trade Readjustment Act program, the state of New Hampshire shall be considered as acting solely as agent of the United States and shall incur no liability.

IV. The provisions of paragraph II shall be considered to be part of every grant, benefit, order or other document issued by any authority dealing with the Trade Act program as if fully set forth verbatim in such grant, benefit, order or other document.

**Last Source:** 2003, 116:12-14, eff. Aug. 8, 2003.

### **282-A:179 Exemption**

The provisions of RSA 541-A:31-36 shall not apply to proceedings conducted in accordance with RSA 282-A:42-46.

**Last Source:** 1994, 412:30, eff. Aug. 9, 1994.

### **282-A:180 Collateral Estoppel**

Decisions rendered under this chapter shall not be admissible in any court or in administrative or other proceedings, not under or pursuant to this chapter, for the purpose of barring such court or proceeding from making independent findings of fact and rulings of law under the doctrine of collateral estoppel.

**Last Source:** 1989, 267:17, eff. July 25, 1989.

## **RECIPROCAL ARRANGEMENTS RELATIVE TO CLAIM FOR BENEFITS**

New Hampshire participates with other states in a specific program to the benefit of claimants. The program is generally known as: "Interstate Benefit Payment Plan."

### **Interstate Benefit Payment Plan**

All states participate in the Plan, which permits individuals who live in any given state to file claims through the Employment Security Agency of that state against the state wherein they have benefit entitlement. The claims are filed with state and sent to the state which is to pay the benefits, where the determination as to whether or not benefits can be paid is made and from whence the payments subsequently issue. If an individual has benefit entitlement in more than one state, the agreement permits him to elect to file against the state of his choice, which is normally the state in which he has the greatest benefit entitlement. The agreement does not permit the individual to change his mind after he makes his election. The agreement does not permit, except by special arrangement between two states, an individual who immediately before becoming unemployed customarily commuted from his residence in the agent state to his work in the liable state, to file a claim in the agent state. These individuals are called commuters, and normally are required to file in the liable state.

Where an appeal follows from a determination involving claims filed pursuant to the agreement, the claimant may appear for hearing in the liable state or a hearing will be arranged for him by the proper hearing body in the agent state. The record is then transferred to the liable state, where another hearing is normally held and a determination made.

**APPENDIX BY STATUTE**

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RSA 282-A:4	Emp 303.12 Emp 403.06
RSA 282-A:8	Emp 303.01, 303.01(b)(15) Emp 403.01 Emp 403.03
RSA 282-A:9	Emp 303.01(b)(8) Emp 303.01(b)(18) Emp 303.05(b) Emp 303.14 Emp 403.01 Emp 403.03 Emp 501.11 Emp 501.15(b), (f), (g), (h), (I)
RSA 282-A:9,IV	Emp 303.01 (b)(8)
RSA 282-A:9,VIII	Emp 303.14 Emp 501.15(b) Emp 501.15(f) Emp 501.15(g) Emp 501.15(h) Emp 501.15(i)
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RSA 282-A:12	Emp 101.09 Emp 304.10
RSA 282-A:14	Emp 302.01 Emp 302.02 Emp 302.03 Emp 303.05, 303.05(a), 303.05(a)(2) Emp 303.08 Emp 303.10 Emp 303.13 Emp 303.14 Emp 303.13 Emp 304.01 (h) Emp 304.02(a)(4) Emp 304.04(b) Emp 304.04(b)(3)b Emp 405.01 Emp 405.02 Emp 501.10 Emp 501.13(a) Emp 501.15(b) Emp 501.15(f) Emp 502.06 Emp 502.07

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RSA 282-A:16	Emp 103 Emp 205.01 Emp 205.02 Emp 205.03 Emp 205.04 Emp 302.01 Emp 302.02 Emp 302.03 Emp 303.05, 303.05(a), 303.05(a)(2) Emp 403.01 Emp 403.03 Emp 501.13(d) Emp 502.04
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RSA 282-A:43	Emp 405.01 Emp 405.02 Emp 406 Emp 501.03 Emp 501.04 Emp 501.06 Emp 501.07 (Repealed) Emp 501.03 Emp 501.13
RSA 282-A:44	Emp 303.08 Emp 303.09 Emp 303.10 Emp 304.01 (h) Emp 304.02(a)(5), 304.02(b)(4), 304.02(e) Emp 405 Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06

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RSA 282-A:56	Emp 202.01 Emp 207 Emp 207.08, Emp 207.09 Emp 504.01
RSA 282-A:58	Emp 303.09 Emp 504.01
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RSA 282-A:63	Emab 102.01
RSA 282-A:64	Emab 202.04 Emab 202.05 Emab 202.07 Emab 202.08 Emab 202.13-202.14 Emab 202.17
RSA 282-A:65	Emab 202.04 Emab 202.06 Emab 202.09
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RSA 282-A:77	Emp 303.04(a) Emp 405.03 Emp 405.04 Emp 405.05 Emp 405.06
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RSA 282-A:117-a	Emp 207.25 Emp 301.01-301.06 Emp 303.01, Emp 303.01(b)(20) Emp 303.02, Emp 303.02(f)(19) Emp 303.05(a), Emp 303.05(a)(2) Emp 303.10 Emp 304.01 (h) Emp 308.01 Emp 308.02(a), (b), (c), (d), (e), (f), (g), (h), (I) Emp 308.03(a), (b), (c), (d) Emp 308.04
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RSA 541-A:33	Emp 207.27 Emp 207.28
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RSA 541-A:36	Emab 202.18

**173-B:1 Definitions.** – In this chapter:

I. "Abuse" means the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible threat to the plaintiff's safety:

- (a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.
- (b) Criminal threatening as defined in RSA 631:4.
- (c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.
- (d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.
- (e) Destruction of property as defined in RSA 634:1 and RSA 634:2.
- (f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.
- (g) Harassment as defined in RSA 644:4.

**631:1 First Degree Assault.** –

I. A person is guilty of a class A felony if he:

- (a) Purposely causes serious bodily injury to another; or
- (b) Purposely or knowingly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or
- (c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth; or
- (d) Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.

II. In this section:

- (a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus; and
- (b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

**631:2 Second Degree Assault. –**

I. A person is guilty of a class B felony if he:

- (a) Knowingly or recklessly causes serious bodily injury to another; or
- (b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or
- (c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or
- (d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or
- (e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth.

II. In this section:

- (a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus; and
- (b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

**631:2-a Simple Assault. –**

I. A person is guilty of simple assault if he:

- (a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or
- (b) Recklessly causes bodily injury to another; or
- (c) Negligently causes bodily injury to another by means of a deadly weapon.

II. Simple assault is a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation.

**631:3 Reckless Conduct. –**

I. A person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.

II. Reckless conduct is a class B felony if the person uses a deadly weapon as defined in RSA 625:11, V. All other reckless conduct is a misdemeanor.

III. A person convicted of a class B felony offense under this section shall not be subject to the provisions of RSA 651:2, II-g.

**631:4 Criminal Threatening. –**

I. A person is guilty of criminal threatening when:

- (a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or
- (b) The person places any object or graffiti on the property of another with a purpose to coerce or terrorize any person; or
- (c) The person threatens to commit any crime against the property of another with a purpose to coerce or terrorize any person; or
- (d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person; or
- (e) The person threatens to commit any crime of violence, or threatens the delivery or use of a biological or chemical substance, with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience; or
- (f) The person delivers, threatens to deliver, or causes the delivery of any substance the actor knows could be perceived as a biological or chemical substance, to another person with the purpose of causing fear or terror, or in reckless disregard of causing such fear or terror.

II. (a) Criminal threatening is a class B felony if the person:

- (1) Violates the provisions of subparagraph I(e); or
- (2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), or I(d).

(b) All other criminal threatening is a misdemeanor.

III. (a) As used in this section, ""property" has the same meaning as in RSA 637:2, I; ""property of another" has the same meaning as in RSA 637:2, IV.

(b) As used in this section, ""terrorize" means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.

**632-A:2 Aggravated Felonious Sexual Assault. –**

I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship:

- (1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable;  
or
- (2) Uses this position as such provider to coerce the victim to submit.

(h) When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

- (1) the actor is a member of the same household as the victim; or
- (2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(l) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

- (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or
- (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

**632-A:3 Felonious Sexual Assault.** – A person is guilty of a class B felony if such person:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph IV shall not be considered a defense.

**632-A:4 Sexual Assault.** –

I. A person is guilty of a class A misdemeanor under any of the following circumstances:

(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.

(b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

II. A person found guilty under subparagraph I(c) of this section shall not be required to register as a sexual offender under RSA 651-B.

III. A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person when the actor is in a position of authority over the person under any of the following circumstances:

(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph III shall not be considered a defense.

**632-A:5 Spouse as Victim; Evidence of Husband and Wife.** – An actor commits a crime under this chapter even though the victim is the actor's legal spouse. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter.

**633:1 Kidnapping.** –

I. A person is guilty of kidnapping if he knowingly confines another under his control with a purpose to:

- (a) Hold him for ransom or as a hostage; or
- (b) Avoid apprehension by a law enforcement official; or
- (c) Terrorize him or some other person; or
- (d) Commit an offense against him.

I-a. A person is guilty of kidnapping if the person knowingly takes, entices away, detains, or conceals any child under the age of 18 and unrelated to the person by consanguinity, or causes such child to be taken, enticed away, detained, or concealed, with the intent to detain or conceal such child from a parent, guardian, or other person having lawful physical custody of such child. This paragraph shall not apply to law enforcement personnel or department of health and human services personnel engaged in the conduct of their lawful duties.

II. Kidnapping is a class A felony unless the actor voluntarily releases the victim without serious bodily injury and in a safe place prior to trial, in which case it is a class B felony.

**633:2 Criminal Restraint.** –

I. A person is guilty of a class B felony if he knowingly confines another unlawfully in circumstances exposing him to risk of serious bodily injury.

II. The meaning of "confines another unlawfully", as used in this section and RSA 633:3, includes but is not limited to confinement accomplished by force, threat or deception or, in the case of a person who is under the age of 16 or incompetent, if it is accomplished without the consent of his parent or guardian.

**633:3 False Imprisonment.** – A person is guilty of a misdemeanor if he knowingly confines another unlawfully, as defined in RSA 633:2, so as to interfere substantially with his physical movement.

**633:3-a Stalking.** –

I. A person commits the offense of stalking if such person:

- (a) Purposely, knowingly, or recklessly engages in a course of conduct targeted at a specific person which would cause a reasonable person to fear for his or her personal safety or the safety of a member of that person's immediate family, and the person is actually placed in such fear;
- (b) Purposely or knowingly engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family; or
- (c) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order pursuant to RSA 597:2 that prohibits contact with a specific individual, purposely, knowingly, or recklessly engages in a single act of conduct that both violates the provisions of the order and is listed in paragraph II(a).

II. As used in this section:

(a) "Course of conduct" means 2 or more acts over a period of time, however short, which evidences a continuity of purpose. A course of conduct shall not include constitutionally protected activity, nor shall it include conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct may include, but not be limited to, any of the following acts or a combination thereof:

- (1) Threatening the safety of the targeted person or an immediate family member.
- (2) Following, approaching, or confronting that person, or a member of that person's immediate family.
- (3) Appearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found, or the residence, place of employment or school of a member of that person's immediate family.
- (4) Causing damage to the person's residence or property or that of a member of the person's

immediate family.

(5) Placing an object on the person's property, either directly or through a third person, or that of an immediate family member.

(6) Causing injury to that person's pet, or to a pet belonging to a member of that person's immediate family.

(7) Any act of communication, as defined in RSA 644:4, II.

(b) "Immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person, any person residing in the household of the targeted person, or any person involved in an intimate relationship with the targeted person.

III. For purposes of this section, a person who engages in acts which would constitute stalking after having been advised by a law enforcement officer as defined in RSA 630:1, II that the person's acts were in violation of this chapter, or a person who has been served with a protective order issued pursuant to paragraph III-a of this section, shall be presumed to have acted knowingly.

III-a. A person who has been the victim of stalking as defined in this section may seek relief by filing a civil petition in the district court or the superior court in the county or district where the plaintiff or defendant resides. Upon a showing of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking. The types of relief that may be granted, the procedures and burdens of proof to be applied in such proceedings, the methods of notice, service, and enforcement of such orders, and the penalties for violation thereof shall be the same as those set forth in RSA 173-B.

III-b. The minority of a plaintiff or defendant shall not preclude the court from issuing protective orders under this section.

III-c. Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant, for one year after the expiration of the first order and thereafter each extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the court. The court shall review the order, and each renewal thereof and shall grant such relief as may be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension. The court shall state in writing, at the respondent's request, its reason or reasons for granting the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

III-d. (a) A protective order issued pursuant to this section, RSA 173-B:4, or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

(b) A no-contact provision in a protective order issued pursuant to this section shall not be construed to:

(1) Prevent contact between counsel for represented parties; or

(2) Prevent a party from appearing at a scheduled court or administrative hearing; or

(3) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any legal pleadings filed in court relating to the domestic violence petition or related civil or criminal matters.

(c) A violation of this paragraph may result in a finding of contempt of court.

IV. In any complaint, information, or indictment brought for the enforcement of any provision of this statute, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

V. Any law enforcement officer may arrest, without a warrant, any person that the officer has probable cause to believe has violated the provisions of this section when the offense occurred within 12 hours, regardless of whether the crime occurred in the presence of the officer. A law enforcement officer shall arrest a person when he has probable cause to believe a violation of the provisions of this section has occurred within the last 12 hours when the offense involves a violation of a protective order issued pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section.

VI. (a) Any person convicted of a violation of this section and who has one or more prior stalking convictions in this

state or another state when the second or subsequent offense occurs within 7 years following the date of the first or prior offense shall be guilty of a class B felony.

(b) In all other cases, any person who is convicted of a violation of this section shall be guilty of a class A misdemeanor.

VII. If any provision or application of this section or the application thereof to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

**634:1 Arson. –**

I. A person is guilty of arson if he knowingly starts a fire or causes an explosion which unlawfully damages the property of another.

II. Arson is a class A felony if the property damaged is:

- (a) An occupied structure and the actor knew it was an occupied structure; or
- (b) An historic structure.

III. Arson is a class B felony if:

- (a) The property is either that of another or the actor's property, and the fire was started or the explosion caused for the purpose of collecting insurance on such property; or
- (b) The actor purposely starts a fire or causes an explosion on anyone's property and thereby recklessly places another in danger of death or serious bodily injury, or places an occupied structure of another in danger of damage; or
- (c) The property damaged is real estate; or
- (d) The pecuniary loss caused is in excess of \$1,000.

IV. All other arson is a misdemeanor.

V. As used in this section:

- (a) "'Occupied structure" has the same meaning as in RSA 635:1, III, and includes structures appurtenant to occupied structures and seasonal dwellings whether vacant or occupied;
- (b) "'Property" has the same meaning as in RSA 637:2, I;
- (c) "'Property of another" has the same meaning as in RSA 637:2, IV.
- (d) "'Historic structure" means any structure listed, or determined by the department of cultural resources to be eligible for listing, in the National Register of Historic Places, or designated as historic under state or local law.

**634:2 Criminal Mischief. –**

I. A person is guilty of criminal mischief who, having no right to do so nor any reasonable basis for belief of having such a right, purposely or recklessly damages property of another.

II. Criminal mischief is a class B felony if the actor purposely causes or attempts to cause:

- (a) Pecuniary loss in excess of \$1,000; or
- (b) A substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service; or
- (c) Discharge of a firearm at an occupied structure, as defined in RSA 635:1, III; or
- (d) Damage to private or public property, real or personal, when the actor knows that the property has historical, cultural, or sentimental value that cannot be restored by repair or replacement.

II-a. Criminal mischief is a class A misdemeanor if the actor purposely causes or attempts to cause pecuniary loss in excess of \$100 and not more than \$1,000.

III. All other criminal mischief is a misdemeanor.

IV. As used in this section, "'property" has the same meaning as in RSA 637:2, I; "'property of another" has the same meaning as in RSA 637:2, IV.

V. For purposes of determining pecuniary loss under subparagraph II(a), amounts involved in acts committed pursuant to one scheme or course of conduct participated in by the actor may be aggregated in determining the grade of the offense.

VI. Any person who is found guilty of criminal mischief under paragraph III of this section because he or she has vandalized, defaced, or destroyed any part of the "'Old Man of the Mountain" or any natural geological formation, site,

or rock surface located on public property that has been designated by the state or any of its political subdivisions or the federal government as a natural area or landmark shall be guilty of a class A misdemeanor and shall also make restitution to the state for any damage he or she has caused.

VII. If the court determines that a motor vehicle was used to abet the commission of the act constituting criminal mischief, the court may suspend, for a period not to exceed 90 days, the driver's license of a person who is convicted of criminal mischief, or the driver's licenses of persons who are convicted of criminal mischief.

VIII. Any person who is found guilty of criminal mischief under this section because the person has purposely or recklessly damaged an emergency vehicle, emergency apparatus, or private vehicle containing emergency equipment, shall be liable for full restitution to the injured party.

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor.

#### **635:1 Burglary. –**

I. A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

II. Burglary is a class B felony unless it is perpetrated in the dwelling of another at night, or if, in the commission of the offense, attempt at commission or in flight immediately after attempt or commission, the actor is armed with a deadly weapon or explosives or he purposely, knowingly or recklessly inflicts bodily injury on anyone; in which case it is a class A felony; except that if the person is armed with a deadly weapon and the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

III. "Occupied structure" shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. "Night" shall mean the period between 30 minutes past sunset and 30 minutes before sunrise.

IV. A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a class A felony.

V. A person is guilty of a misdemeanor if he makes or mends, or begins to make or mend, or knowingly has in his possession, an engine, machine, tool, or implement adapted and designed for cutting through, forcing or breaking open a building, room, vault, safe, or other depository, in order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose.

#### **635:2 Criminal Trespass. –**

I. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place.

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

III. Criminal trespass is a misdemeanor if:

(a) The trespass takes place in an occupied structure as defined in RSA 635:1, III; or

(b) The person knowingly enters or remains:

(1) In any secured premises;

(2) In any place in defiance of an order to leave or not to enter which was personally communicated to him by the owner or other authorized person; or

(3) In any place in defiance of any court order restraining him from entering such place so long as he has been properly notified of such order.

IV. All other criminal trespass is a violation.

V. In this section, "secured premises" means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

VI. In this section, "property," "property of another," and "value" shall be as defined in RSA 637:2, I, IV, and V, respectively.

#### **644:4 Harassment. –**

I. A person is guilty of a misdemeanor, and subject to prosecution in the jurisdiction where the communication originated or was received, if such person:

- (a) Makes a telephone call, whether or not a conversation ensues, with no legitimate communicative purpose or without disclosing his or her identity and with a purpose to annoy, abuse, threaten, or alarm another; or
- (b) Makes repeated communications at extremely inconvenient hours or in offensively coarse language with a purpose to annoy or alarm another; or
- (c) Insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or
- (d) Knowingly communicates any matter of a character tending to incite murder, assault, or arson; or
- (e) With the purpose to annoy or alarm another, communicates any matter containing any threat to kidnap any person or to commit a violation of RSA 633:4; or a threat to the life or safety of another; or
- (f) With the purpose to annoy or alarm another, having been previously notified that the recipient does not desire further communication, communicates with such person, when the communication is not for a lawful purpose or constitutionally protected.

II. As used in paragraph I, ""communicates" means to impart a message by any method of transmission, including but not limited to telephoning or personally delivering or sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer. For purposes of this section, ""computer" means a programmable, electronic device capable of accepting and processing data.

III. In any complaint or information brought for the enforcement of RSA 644:4, I(f), it shall not be necessary for the state to negate any exception, excuse, proviso, or exemption contained therein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

IV. A person shall be guilty of a class B felony if the person violates RSA 644:4, I(a) under circumstances involving making telephone calls to a telephone number that he or she knows is being used, at the time of the calls, to facilitate the transportation of voters to polling places or otherwise to support voting or registering to vote.

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