UNEMPLOYMENT INSURANCE REGULATIONS

THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

As of December 1, 2007

INTRODUCTION

The Mississippi Department of Employment Security (hereafter MDES) is a state agency whose primary function is to promote employment security by helping individuals find jobs and obtain necessary vocational guidance, training, and retraining. An important adjunct duty of MDES is to collect unemployment insurance taxes from employers, administer the Unemployment Insurance Benefit Trust Fund, and distribute unemployment insurance benefits to individuals who, through no fault of their own, are temporarily unemployed. This system helps to stabilize Mississippi during times of economic insecurity caused by involuntary unemployment, while at the same time providing long term benefits to the state by creating a highly trained, versatile, and overall more successful workforce.

The law that governs the duties and responsibilities of MDES is known as the "Mississippi Employment Security Law," and is set forth in Sections 71-5-1 to 71-5-541 of the Mississippi Code Annotated. From these statutes, MDES is given the power to adopt, amend, or rescind such rules and regulations as it deems necessary to administer and interpret the Mississippi Employment Security Law. Thus, the following regulations are promulgated in furtherance of this power. They are set forth into the following sections: **Benefit Payment Regulations, Tax Regulations, Benefit Payment Control Regulations, and Benefit Appeal Regulations.**

For purposes of these regulations, the following terms and definitions shall apply:

References to the word **"Agency"** shall mean the Mississippi Department of Employment Security.

References to the word **"Law"** shall mean the "Mississippi Employment Security Law," which is the law that governs the duties and powers of the Mississippi Department of Employment Security. (Sections 71-5-1 to 71-5-541 of the Mississippi Code Annotated)

"ALJ" stands for Administrative Law Judge. The ALJ is the MDES official who presides over unemployment benefit and tax rate appeals.

"WIN Job Center" stands for Workforce Investment Network Job Center. A WIN Job Center is an office that provides convenient, one-stop employment and training services to employers and job seekers. The center combines federal, state, and community workforce programs. These centers are found throughout the state.

Any reference to the word **"Department"** shall mean the Mississippi Department of Employment Security.

BENEFIT APPEAL REGULATIONS

200.0 Administrative Law Judge Defined

(A) For purposes of the Law, a referee shall be an Administrative Law Judge (ALJ) as used throughout the following Regulations.

(B) Pursuant to and as provided by the Employment Security Act, appealed claims shall be heard and decided by an ALJ.

(C) Pursuant to and as provided by the Law, appeals of ALJ's decisions shall be heard and decided by the Board of Review.

200.01 Filing an Appeal

(A) **Time for Filing:** Pursuant to Sections 71-5-517 and 71-5-519 of the Law, an interested party must file an appeal for an initial or amended determination within fourteen (14) days of the date the determination was mailed to the last known address. If the last day to appeal falls on a Saturday, Sunday, or other legal holiday, or day in which the Agency is closed for business, then the time allowed to appeal shall run until the end of the next business day.

(B) **Method of Filing:** Appeals shall be filed using methods and procedures the Agency has established. Those methods prescribed by the Agency and new methods that may develop with technological advances and specifically include the following:

(1) delivery by the United States Postal Services to the address provided on the determination or decision being appealed;

(2) faxing to the number provided in the determination or decision being appealed;

(3) in-person at any WIN Job Center;

(4) electronically at the address provided in the determination or decision being appealed; or

(5) telephonically by calling the number provided on the determination or decision being appealed.

200.02 Scheduling of Hearings before the Appeals Department

(A) **Telephone Hearings:** Filed appeals will be set for a hearing to be conducted using a telephone conferencing system, unless a request for a Video Conference or In-person Hearing is made and the Department determines it necessary.

(1) **In-person Factors:** Factors that will be considered prior to granting a request for a Video Conference or In-person Hearing include, but are not limited to, the timeliness of the request, the location of the hearing if held in-person, cost factors for the Agency and the parties, the number of witnesses and/or exhibits to be introduced, credibility issues, sense related issues (i.e. visual appearance), interpreter issues, and any clear and present safety concerns.

(B) **Scheduling of a Hearing:** Within fifteen (15) days of the receipt of an appeal (barring extraordinary circumstances) the Appeals Department of the Agency (the "Appeals Department"), shall schedule the appeal for a hearing before an ALJ. At least ten (10) days prior to the scheduled hearing date, a Notice of Hearing shall be sent by regular mail or electronically to the parties interested in the determination being appealed.

(1) **Contents of the Notice of Hearing:**

(a) A statement of the legal authority and jurisdiction under which the

proceeding is being conducted;

(b) A reference to the applicable statutes and rules;

(c) A statement of the issues to be decided;

(d) A statement of the time (and if in person the place) of the hearing;

(e) **A phone number that the parties must call the day before and leave their phone contact number for the time of the hearing**.

(C) **Consolidation:** If the Agency determines that a number of appeals cases are similar in facts and circumstances, the Agency has the discretion to consolidate the cases. The Agency shall advise the parties to select from their members an individual to act as representative for their side (a claimants' representative and an employers' representative).

(D) **Exhibits:** A party desiring to offer exhibits as evidence shall provide copies to the Appeals Department and the opposing party which must be post marked, faxed, hand-delivered, or sent by electronic delivery, no less than three (3) days prior to the hearing unless approval for a later date is requested and granted for good cause.

(1) Information submitted to the Agency is **not** part of the appeals record unless discussed at the hearing and

entered in the record. See Section 200.04 (D), Page 11 of these regulations for more on exhibits, evidence, and the record.

(E) **Continuances:** A request for a continuance must be made no later than three (3) days prior to the scheduled date of the hearing. A request for a continuance must include reasons that constitute good cause for granting the continuance. The need to attend to other business does not constitute good cause. A request for continuance does not grant a stay of the scheduled hearing. The Appeals Department must affirmatively grant the request or the hearing remains as scheduled. In determining whether there is good cause to grant a continuance, the following factors will be considered:

(1) The amount of time between the receipt of the Notice of Hearing and the request for continuance;

(2) What actions the party requesting the continuance has taken to attend the hearing;

(3) Whether the request for continuance is due to illness or incapacity;

(4) Whether granting the continuance would result in a decision being issued over thirty (30) days after the appeal was filed; and

(5) To the extent the reason is the unavailability of counsel and whether there are other attorneys in the firm that may represent the requesting party.

200.03 Disqualification Duties; Reports; Conflicts of Interest:

(A) An Administrative Law Judge (ALJ) or Board of Review Member (Board Member) may not participate in the hearing of an appeal in which they have an interest. Challenges to the interest of an ALJ or Board Member who refuses to recuse themselves may be heard and decided by the Chairman of the Board of Review.

(B) Whenever an ALJ is disqualified or it becomes impracticable for the ALJ to continue the hearing, another ALJ may continue with the hearing. If it is shown that substantial prejudice to any party will result, the new ALJ shall start the hearing over with a blank record. Whenever a Board Member is disqualified or it becomes impracticable for the Board Member to continue the hearing review, the remaining Board Members may continue with the review. If it is shown that substantial prejudice to any party will result, the remaining Board of Review members shall disregard prior discussions and start the hearing review over.

(C) **Ex parte Communications:** An ex parte communication is an off-the-record communication between a presiding ALJ or Board Member and one party to the appeal without the other party's presence. This practice is generally not acceptable. Further, the ALJ and the Board of Review shall maintain independent decision making from one another.

(1) In any adjudicatory proceeding, no Board Member or ALJ authorized to take final action or to make findings of fact and conclusions of law shall communicate directly or indirectly in connection with any issue of fact, law, or procedure, with any party or other persons legally interested in the proceeding, except with proper notice and opportunity for all parties to participate.

(2) This subsection does not prohibit Board Members from:

(a) Communicating in any respect with other Board Members; or

(b) Having the aid and advice of their own staff, counsel or consultants retained by the Board of Review who have not participated and will not participate in the Board of Review proceeding in an advocate capacity.

(3) This subsection does not prohibit any ALJ from:

(a) Communicating in any respect with other members of the Appeals Department; or

(b) Having the aid or advice of those members of her own staff, counsel or consultants retained by the Appeals

Department who have not participated and will not participate in the Appeals Department proceeding in an advocate capacity.

200.04 Conduct of Hearings

(A) **The ALJ's duties are to:**

(1) preside over and control the hearing;

(2) maintain the official timepiece of the hearing;

(3) administer oaths and affirmations;

(4) rule on the admissibility of evidence;

(5) set the time and place for continued hearings;

(6) when warranted, fix the time for filing evidence, briefs, and other written submissions; and

(7) take other actions authorized by the Law and these Regulations.

(B) Every interested party shall have the right to present evidence and arguments on all relevant and noticed issues during the course of a hearing. This shall be done through the opportunity to testify, call and question witnesses, question or cross examine the other party and their witnesses that testify, present exhibits, and object to the other party's exhibits.

(C) The parties to an appeal, with the consent of the ALJ, may stipulate to facts involved in writing or on the record. The ALJ may decide the appeal on the basis of the stipulated facts or, in their discretion, may proceed with a

hearing and take such further evidence as they deem necessary to determine the facts and proper decision.

(D) **Evidence (Testimony and Exhibits):**

(1) Hearsay evidence may be admitted and weighed accordingly. Generally, evidence will only be admitted and/or given weight if:

a. it meets a hearsay exception, or

b. is from a source normally considered reliable, or

c. is corroborated by other witnesses, or

d. the ALJ otherwise determines that, in his or her opinion, the hearsay may be relied upon considering all of the facts and circumstances.

(2) All testimony shall be under oath. The ALJ shall administer an oath to all witnesses before they testify in a proceeding.

(3) Exhibits to be offered into evidence at the hearing must be submitted as described in 200.02 (D) above. A party or witness must explain what the exhibits are, and then must request the exhibits be entered as evidence. Prior to entering exhibits into the record as evidence, the ALJ will give the other party an opportunity to object to the admission. The ALJ will then decide

whether or not to enter the exhibits in as evidence.

(4) Parties should submit all relevant documents prior to the hearing date in accordance with 200.02(D). Further, parties should bring individuals with first–hand knowledge of facts and events regarding the issues to the hearing as witnesses.

(5) When the decision is made, the ALJ will consider only the evidence entered into the record during the hearing, or evidence from which judicial notice is taken.

(6) The ALJ and the Board of Review may take judicial notice of evidence, including Agency generated documents and forms, which shall then become record evidence. Judicial notice for purposes of these regulations is defined as: (a) that which is commonly known or accepted; (b) that which is accepted as an authority on a matter especially of a scientific or technical nature; (c) that which is generated by a Court, Agency or other government body; or (d) that which is the best evidence available to prove or disprove a fact in the case; and (e) such evidence is admissible without being formerly explained and offered by a party.

(7) Facts entered through judicial notice will be indicated as such in the record and/or the decision.

(8) If an appeal is made to the Board of Review, only testimony and exhibits entered into evidence at the hearing, or otherwise submitted by the ALJ with the appeal, will be included in the appeals record forwarded to the Board of Review. Only the record transcript and exhibits before the Board of Review will be submitted to the Courts, including additional evidence, exhibits, and testimony taken by the Board.

(E) Sequestration of Witnesses.

All witnesses present, not including any interested party or their designated representative, who has not yet testified in the proceeding before the Board of Review or Appeals Department, may be sequestered at the request of a party or the discretion of the ALJ or Board of Review. Witnesses who have testified, but who may be recalled to testify further may also be sequestered at the request of any party or upon the initiative of the Board of Review or the ALJ.

(F) Subpoenas.

(1) Subpoenas to compel the attendance of witnesses and the production of records for a hearing of an appeal may be issued by a member of the Board of Review or by the ALJ before whom the hearing is scheduled. A subpoena will only be issued if a request showing the necessity for the issuance of the subpoena is made in writing and the ALJ or Board of Review deems it necessary.

(2) Witnesses subpoenaed for hearings before an ALJ or the Board of Review shall be paid a daily witness fee amount, as well as a mileage per diem for in-person hearings according to the rates provided in Section 25-3-41 of the Law.

(3) No witness fee shall be allowed a witness who does not appear at the hearing when called or who is disqualified from testifying. No witness fees or mileage will be paid unless the ALJ or the Chairman of the Board of Review before whom the witness was called to testify certifies the attendance of the witness and the amount of witness fee to which she is entitled. One copy of such witness certificate shall be given to the witness, one transmitted to the Agency, and one copy preserved in the file of the case.

(G) **Record:** A record shall be kept of the proceedings, which shall include the following:

(1) All applications, pleadings, motions, preliminary and interlocutory rulings, and orders;

(2) Evidence received or considered;

(3) A statement of facts officially noticed;

(4) Offers of proof, objections, and rulings thereon; and

(5) Proposed findings and exceptions, if any;

(6) The decision of the Board of Review and the Appeals Department

The record does not include documents submitted to the Agency prior to an appeal being filed that are not either resubmitted after the appeal is filed or discussed during the hearing.

(H) **Other recordings:** In order to assure the confidentiality of hearings before an ALJ, no party or participant at a hearing shall be permitted to record such hearing by any means, and the recording made by the ALJ shall be the official record of the proceeding. This prohibition is pursuant to the provisions of Sections 71-5-127 and 71-5-525 of the Law.

(J) **Dismissal Due To Behavior.** In the event any party or party's representative during a hearing conducts themselves in a manner determined by the ALJ to be disrespectful, and who, after having been warned once to stop, fails to stop, shall be dismissed from the hearing. If, in the ALJ's opinion, justice requires that the party be granted a continuance to obtain another representative, then it shall be granted.

200.05 Disposition without full hearing

(A) The Board of Review or the Appeals Department may make informal disposition of any adjudicatory proceeding by default when the appealing party or the party with the burden of proof fails to appear at the scheduled hearing. A party shall be deemed to have failed to timely appear at a hearing when the party fails to appear as provided in the notice of hearing, including calling an Appeals

Department telephone number or providing in advance a telephone number as required by the notice of hearing, or by failing to be present at the telephone number provided by the party for ten (10) or more minutes past the scheduled start time of the hearing.

(B) Any such default may be set-aside by the Board of Review or Appeals Department for good cause shown. The procedure for good cause hearings is as follows:

(1) No later than fourteen (14) days after the date of the postal or electronic mailing of the decision, upon written request setting forth the reasons for failing to appear, the Appeals Department may provide a good cause hearing to a party that failed to appear at the hearing. If the Appeals Department determines that good cause exists, it will conduct a hearing on the underlying substantive issues. Similarly, upon written request setting forth the reasons for failing to appear at a hearing, the Board of Review may provide a good cause hearing to the appealing party. A hearing on the underlying substantive issues shall be conducted only if the Board of Review determines that good cause exists.

(2) If it is decided that a party did not have good cause for nonappearance, no evidence will be taken on the substantive issues, and the decision previously made will remain unaffected and in force.

200.06 Decisions

(A) Every decision of the Board of Review and Appeals Department shall be in writing and shall include findings of fact sufficient to inform the parties of the basis for the conclusions of law and the decision. Findings of fact must be supported by substantial evidence in the record.

(B) A copy of the decision shall be promptly mailed via U.S. Mail or electronically to each party to the proceeding and their representative of record. Written notice of the party's rights to appeal to the Board of Review or the courts, and the time within which such action must be taken, shall be given to each party with the decision.

(C) The following statement shall appear on the ALJ's decision: **"If an appeal is taken to the Board of Review, such appeal will be considered on the record previously made, and no hearing before the Board will be scheduled."**

(D) The Board of Review shall maintain a record of the vote of each member of the Board of Review with respect to the Board of Review decision. If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision setting forth the reasons why it fails to agree with the majority.

201.01 APPEALS PENDING BEFORE ADMINISTRATIVE LAW JUDGE AND REMOVED TO BOARD OF REVIEW

(A) The Chairman of the Board of Review may remove to the Board of Review the proceedings on any claim pending before an ALJ.

(B) Any appeal removed to the Board of Review shall be presented, heard, and decided by the Board of Review in the manner prescribed by the Law and in the preceding and following Regulations.

202.00 APPEALS FROM DECISIONS OF ADMINISTRATIVE LAW JUDGES TO THE BOARD OF REVIEW

202.01 Right to Appeal

Any interested party to a decision of an ALJ, adversely affected by the decision, shall have the right to appeal to the Board of Review.

202.02 Method of Review

(A) The Board of Review may affirm, modify, reverse, or set aside any ALJ decision based on the record previously made by the ALJ. All

appeals to the Board of Review shall be heard upon the evidence in the record previously made. The Board of Review, at its discretion, may also consider written arguments or briefs filed by any of the parties.

(B) The Board of Review, in its discretion, may remand any claim that is before it to an ALJ for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the ALJ in the manner prescribed for the conduct of hearings on appeal before the ALJ. Upon the completion of the taking of evidence by an ALJ, pursuant to the direction of the Board of Review, the record of such evidence shall be returned to the Board of Review for a decision. Alternatively, the ALJ may be instructed to issue a decision and in that case, a right of appeal to the Board of Review shall be provided to the parties.

202.03 Appeals by Board of Review of its Own Motion

(A) Within fourteen (14) days following a decision issued by an ALJ, and in the absence of filing of a notice of appeal by any of the parties, the Board of Review, on its own motion, may order the parties to appear before it for a hearing on the claim or any issue involved.

(B) Such hearing shall be held only after ten (10) days prior notice to the parties, and shall be heard in the manner prescribed for the hearing of appeals from the decision of the ALJ.

202.04 Board of Review Decision

Any decision of the Board of Review shall become final ten (10) days after the regular U.S. Mail mailing date or electronic transmittal date of the notification.

No request by any party for reconsideration by the Board of its decision, made by a standard review of an ALJ's hearing record, shall be considered by the Board.

However, in any case in which the Board of Review conducts a hearing and receives additional evidence, testimony, or hears argument on the issues, any party not present or represented at such a hearing may, not later than ten (10) days after the date of notification of the Board's decision, file with the Board a written request to set aside such decision and reopen the case for further hearings.

Such request shall state the reasons for the party's failure to appear and if the Board of Review determines that the party has made a showing of good cause for his or her failure to appear, it shall reschedule the case for further hearing and its final decision.

202.05 Appeals to Courts

Within ten (10) days after the decision of the Board of Review has become final (see 202.4), any party who is aggrieved thereby may appeal an action in the Circuit Court of the County in which they reside against the Agency for a review of such decision. The Agency is also authorized to appeal decisions of the Board of Review involving questions of interpretation of the Law. The Agency will provide notice to the parties to the decision, and such an appeal shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the Board of Review from which the appeal is taken.

203.00 Requests to Supply Information from the Records of the Department of Employment Security

Requests for information from the records of the Agency by a party to an appeal, or their representative, shall be complied with to the extent necessary for the proper disposition of the claim, in accordance with Section 71-5-127 of the :Law, All such requests shall state the nature of the information desired. Such compliance may include the furnishing of a copy of the record on appeal to a party, which will generally be a recorded copy of the hearing.

204.00 Representation before Administrative Law Judges and Board of Review

(A) Any individual may represent themselves, or have a duly authorized representative or counsel in any evidentiary hearing before an ALJ or the Board of Review. Any partnership may be represented by any of its members or its duly authorized representative. Any corporation or association may be represented by an officer or its duly authorized representative.

(B) All fees for representation that are charged to claimants must be approved by the ALJ or the Board of Review, as the case may be, for representation in hearings before them. No fee shall be allowed unless request for such fee shall have been filed with the ALJ or the Board of Review, as the case may be, prior to the adjournment of the hearing.

(C) As authorized in Section 71-5-537 of the Law, the Board of Review hereby approves, subject to the provisions of subsection (4) below, the following charges for representing claimants by persons entitled to charge for such representation by the laws of this State:

(1) For representation in proceedings before an ALJ, not to exceed eighty (80%) per centum of the claimant's weekly benefit amount or thirty dollars ($30.00), whichever is greater.

(2) For representation in proceedings before the Board of Review, not to exceed one hundred twenty (120%) per centum of the claimant's weekly benefits amount or fifty dollars ($ 50.00) whichever is greater.

(3) For representation in proceedings in the Circuit Court or the Supreme Court, such fee as may be approved by the Court.

(4) In any case in which the claimant and his or her counsel believe the fee as approved in subsection (1) or (2) above for representation in proceedings before the ALJ or the Board of Review is insufficient, the amount of the fee may be appealed by giving notice in writing to the ALJ or the Board of Review at the hearing and filing within ten (10) days. A sworn statement, signed by the claimant and the counsel, of the facts upon which they base their contention must be presented. The Board of Review will render its final decision on any such appeal on the

amount of fee at its next regular meeting after receipt of the sworn statement. In appeals on the amount of fee for representation in proceedings before the ALJ, the Board of Review may request a statement from the ALJ on the reasonableness of the fee being requested.

(5) An appeal on the amount of fee for representation of a claimant shall be entirely separate and apart from and shall have no bearings whatsoever upon the appeal proceedings on the merits of the pertinent claim, decisions, or appeals.

(6) If a party is represented by more than one (1) attorney at a hearing, only one of them may participate in the hearing.

205.00 Waiver of Notice and Entry of Appearance

Interested parties to whom a notice of any hearing on appeal is required by these Regulations to be given, whether before an ALJ or the Board of Review, may, prior to or at such hearing, waive the requirement of such notice and enter their appearance at such hearing for all purposes. Such waiver and entry of appearance is evidenced by a statement in writing to that effect, or a statement duly recorded, which is made part of the record of the hearing.

206.00 Records of Decisions of Administrative Law Judges and Board of Review to be Kept

(A) All decisions of any ALJ and of the Board of Review shall be listed in a minute book and /or electronic file provided for such purpose. Decisions of any ALJ shall be signed by the individual rendering the same, and decisions of the Board of Review shall be signed as "The Board of Review." The minute book or electronic file shall be kept by the Chairman of the Board of Review.

(B) Copies of all decisions of the ALJ and the Board of Review shall be kept on file, via either paper file or electronic file, at the Agency in Jackson, Mississippi. Such decisions shall be open for inspection, without in any manner without revealing the names of any of the parties or witnesses involved. The said decisions shall be numbered, codified, or identified by the Board of Review, or its authorized representative, and in such manner as it shall determine.

(C) For purposes of these regulations, "parties in interest", "interested parties", and "parties interested" shall mean, unless otherwise indicated, the claimant, the Agency, the Claims Examiner whose determination has been appealed, and the claimant's last employer, and any other person whose interests may be proximately affected.

207.00 Precedent Decision

(A) The Board of Review, by unanimous vote, may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(B) A legal or policy determination is significant if it establishes a rule of law or policy, resolves an unsettled area of law or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(C) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the Agency.

(D) A precedent decision shall be clearly identified as such and published in such a manner as to make it available for public use. Information identifying any party shall be removed prior to the publications.

(E) The Board shall maintain an index of significant legal and policy determinations made in precedent decisions.

208.00 Responsibility of Parties to Notify the Appeals Department of Address Change

(A) It is the responsibility of each party to an appeal before the ALJ or the Board of Review to notify the Appeals Department of any change of name or address. If any party to an appeal has reason to believe that it will be difficult to receive mail at the address

provided to the Appeals Department, the party shall make the necessary arrangements to insure timely receipt of all correspondence from the Agency.

(B) In any instance where a party alleges failure to receive timely notice of a hearing, or of a decision from the ALJ or Board of Review, it shall be the burden of such party to prove compliance with subsection (A) above.

209.00 Notices from the Appeals Department

Any notice of hearing, decision, or continuance properly named, addressed, and mailed by the Appeals Department and Board of Review to any interested party, and not returned by the U.S. Postal Service, shall create a rebuttable presumption of proper delivery and receipt of such notice or decision.

BENEFIT REGULATIONS

300.00 Filing Initial, Additional and Reopened Claims

The effective date of an initial claim will be the Sunday preceding the date on which the individual files a claim for benefits by any method provided by the Agency.

If the Agency determines that an individual filed their initial claim at the first available opportunity, the effective date of the claim will be the Sunday prior to the date they became unemployed.

An initial claim for benefits may be backdated to the Sunday proceeding the date the individual became

unemployed provided good cause is established, and the individual reports within seven (7) calendar days of the date the first opportunity was afforded by the Agency.

Good cause will be defined as circumstances beyond the control of the person. For the purposes of this paragraph, the first day of unemployment for an individual whose unemployment begins on Saturday or Sunday shall be the following Monday.

In case of a catastrophic occurrence, the Agency will have the authority to waive the time afforded the applicant to file a claim.

301.0 Reconsideration of Initial Determination

An initial determination may for good cause be reconsidered if the request is filed within fourteen (14) days from the date such notification was mailed to an individual's last known address. The Agency has the discretionary authority to consider untimely filed requests made under this regulation if it can be shown there are compelling circumstances which justify a reconsideration such as fraud, misconception of facts or any other reason the Agency deems compelling.

302.00 Filing Mass Lay-off Initial Claims

Initial claims for benefits for individuals with short term unemployment not to exceed four (4) weeks may be filed in groups of not less than twenty-five (25) persons. The effective date of the claims will be the Sunday proceeding the first day of unemployment, provided the person files at a designated time, date, and place agreed on by the employer and the Agency.

303.00 Filing Weekly Certifications for Benefits

A claim for waiting period credit or benefits must be filed by the Friday following the week being claimed, using methods prescribed by the Agency. An exception to this rule can be considered if the individual files their claim within fourteen (14) days of the week being filed, provided no availability issue exists.

If an individual is in a claim series and makes no attempt to file a continued claim for three (3) or more consecutive weeks, no claim for benefits will be allowed until the claim is reopened. A reopened claim is an additional claim without interim employment with a new effective date. The effective date of the reopened claim will be the Sunday prior to the date in which the individual attempted to file another claim.

The Agency will have the authority to deny benefits or waiting period credit for any week which is not properly filed within set guidelines.

304.00 Reporting Requirements

Individuals must report to the Agency as directed. Such reporting may be in person or by other methods established by the Agency. Failure to report may result in a denial of benefits.

305.00 Registering for Work

In order to receive benefits an individual must be registered for work through the Agency unless they fall within one the following categories of workers:

1. Temporary layoff of less than four (4) weeks;
2. In Agency approved training;
3. Unemployed due to a Labor Dispute; and/or

4. Individuals who have a specific return to work date.

306.00 Lifting Disqualification

Some disqualifications require that an individual return to work and earn eight times the Weekly Benefit Amount (8XWBA) in covered employment. The WBA of the benefit year in which the separation occurred must be used to remove this disqualification.

307.00 Approved Training

An individual is considered to be in approved training if they are participating in training which will enhance their chances of obtaining employment. Usually, the individual is referred to such training through the Agency. However, if the training is self-funded, and is identical to the training to which applicants are normally referred, they will be considered to be in approved training.

308.00 Misconduct

An individual shall be found guilty of employee misconduct for the violation of an employer rule under the following conditions:

(1) the employee knew or should have known of the rule;

(2) the rule was lawful and reasonably related to the job environment and job performance; and

(3) the rule is fairly and consistently enforced.

309.00 Leaving work due to Good Cause and Domestic Violence

An individual is disqualified for leaving employment for marital, filial, or domestic circumstances. However, the claim may be allowed if sufficient evidence shows that continuing in the employment

would be a detriment to the welfare of the claimant or the claimant's under-aged dependents due to domestic violence. Further, if sufficient evidence shows that continuing in the employment would present an identifiable, clear and present risk to the claimant's health, safety or morals, good cause will be shown.

309.01 Temporary Agencies

The Agency will have sole discretion to determine if a temporary employer or employee has met the requirements of Section 71-5-571(l) of the Law. In making its determination, the Agency may consider the following factors:

(1) the policy of the temporary agency;

(2) the reasonableness of the policy;

(3) the actions of the temporary agency; and

(4) the actions of the temporary employee.

Upon the completion of an assignment, if the temporary employee contacts the temporary employer and is given a new job assignment, the Agency may examine the suitability of the new assignment under Section 71-5-513 (A)(3)(a) of the Law.

310.00 Refusal of Work Disqualification

An individual is disqualified for the week in which the failure to accept work occurred, and for not more than twelve (12) weeks immediately following such week, as determined by the Agency according to the circumstances in each case. The Agency has the discretion of issuing varying lengths of disqualification. However, a disqualification for refusing an offer of suitable work should not exceed the length of the available suitable work.

311.00 New Benefit Year Requalification Provision

An individual who established one (1) benefit year, and received benefits, is not eligible for benefits in the second benefit year unless they have returned to work and earned eight (8) times their previous weekly benefit amount (WBA). These wages must be in covered employment and must be earned after the effective date of the prior benefit year.

312.00 School Employee Designated Vacation or Holiday

School employees who are off work for a designated vacation period, such as Christmas holiday or spring break are subject to denial under Section 71-5-511(k) of the Law which provides for denial of benefits during a designated holiday or vacation period. However, if claims are filed by school employees between academic years or terms, such as summer break, they must be adjudicated under Section 71-5-511(h) of the Law.

313.00 Total Unemployment Definition

An individual is considered totally unemployed during any week in which they perform no services and in which no wages are payable to him or her. They are considered part totally unemployed if wages are less than their weekly benefit amount plus forty dollars ($40.00) or if they work less than full time. Employment less than thirty-five (35) hours per week will not be considered full time, unless industry standards are considered. Such consideration will be at the discretion of the Agency.

314.00 Claim Week

An individual's week of total or part-total unemployment shall consist of a calendar week (Sunday through Saturday).

If any part of a week falls within a benefit year, the entire week is considered to be in that benefit year.

315.00 Change of Address

Each claimant or employer must notify the Agency immediately of any change in their address.

316.00 Employers' responsibility to furnish separation information

Upon request of the Agency, each employer or employing unit shall furnish to the Agency information concerning any worker separated from their work with such employer or employing unit, including:

(1) the last day on which such worker was employed;

(2) the reason for their separation from work; and

(3) such other matters as may be requested. Such information shall be furnished to the Agency within the specified time.

It will be presumed that employers who fail to furnish such information within the time required have admitted that the individual claiming benefits is not subject to disqualification.

317.00 Employers Required to Report Labor Disputes

An employer is required to notify the Agency of cases of unemployment due to a strike, lockout, or other labor dispute. This may be through the WIN Job Center nearest to their place of business or to the state

office of the Agency. The notification by employer should include the circumstances surrounding the dispute, including the number of workers affected and a list of workers ordinarily attached to the business or the establishment where such unemployment exists.

318.00 Payment of Benefits to Interstate Claimants

Regulations 318.01 through 318.07 shall govern the Agency in its administrative cooperation with other states adopting similar regulations for the payment of benefits to interstate claimants.

318.01 Definitions

As used in this Regulation, unless the context clearly requires otherwise:

(A) **Interstate Benefit Payment Plan** means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

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

(C) **State** includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(D) **Agent State** means any state in which an individual files a claim for benefits from another state.

(E) **Liable State** means any state against which an individual files a claim for benefits through another state.

(F) **Benefits** mean the compensation payable to an individual, with respect to their unemployment under the unemployment insurance law of any state.

(G) **Week of Unemployment** includes any week of unemployment as defined in the Law of the liable state from which benefits with respect to such week are claimed.

318.02 Registration for work

(A) Each interstate claimant shall be registered for work, through any public employment office in the agent state as required by the Law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state provided Mississippi is the liable state and such requirements are not contrary to the provisions of the Mississippi Department of Employment Security Law.

(B) Each agent state shall duly report to the liable state whether each interstate claimant meets the registration requirements of the agent state.

318.03 Benefit Rights for Interstate Claimants

If a claimant files a claim against a state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall

be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

318.04 Claims for Benefits

(A) Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the reporting period used by the agent state. Any adjustments required to fit the reporting period used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(B) Claims shall be filed in accordance with agent state regulations for intrastate claims by established agency methods.

(1) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim

series and no continued claim for a past period shall be accepted.

(2) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state, provided the same is not inconsistent with the provisions of the Mississippi Department of Employment Security Law.

318.05 Determination of Claims

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

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

318.06 Appellate Procedure

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

(B) With respect to the time limits imposed by the law of the liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate

claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

318.07 Extension of interstate benefit payments to include claims taken in and for Canada.

As part of the interstate agreement, the regulations regarding interstate claims shall apply to claims taken in and for Canada.

319.00 Benefits – Deceased Claimants

In order to provide for the payment of benefits in cases where the claimant has filed a valid claim and has died before receiving payment, the Agency adopts the following regulations:

(A) Wholly or partially paid benefits at the time of the claimant's death will be paid to the duly qualified administrator or executor of the estate of the deceased claimant. If an administrator or executor is not appointed, the benefits will be paid to the claimant's heir or heirs at law as determined by the laws of descent and distribution in the State of Mississippi, and supported by appropriate affidavit.

(B) Any benefit checks that have not been cashed that were issued directly to the deceased claimant shall be returned to the Agency for cancellation before any funds shall be paid in lieu of such check.

(C) Any claim for benefits due a deceased claimant by any person as herein provided must be filed with the Agency within ninety

(90) days following the death of the claimant; provided, however, the Executive Director, may extend said period.

(D) It is the responsibility of the person claiming payment of benefits due a deceased claimant to request payment of such benefits, and must provide an affidavit setting forth facts upon which the claim is based.

(E) Payments due a deceased claimant that are made by electronic processes will only be issued to the individual requesting said benefits under the guidelines established by the banking industry.

320.00 Seasonal Industry

(A) Definitions:

(1) **Seasonal industry** is

(a) that group of employers classified as "cotton gins" under the four-digit Industrial Classification Code based on the Standard Industrial Classification Manual. If an employer with a different classification has a cotton ginning operation, the Agency will assign such unit a sub-classification for cotton gins.

(b) that group of employers who employ vendors, concessionaires, and people working at jobs providing services at professional baseball stadiums.

(2) **Seasonal employment** is employment in a seasonal industry within the seasonal operating period, as determined by the Agency.

(3) **Seasonal wages** are wages paid in seasonal employment as above defined.

(4) **Seasonal benefits** are benefits based on seasonal wages as above defined.

(5) **Non-seasonal employment** is employment for which wages paid in such employment carry no seasonal restrictions. This employment may consist of :

(a) Employment in the seasonal industry for which wages are paid outside the seasonal operating period (employment in the seasonal industry and in no other part of an employer's operations).

(b) Employment in any other covered employment as defined in the Law.

(6) **Non-seasonal wages** are wages paid in non-seasonal employment as defined above.

(7) **Non-seasonal benefits** are benefits based on non-seasonal wages as defined above.

(B) (1) **The seasonal operating period**, as determined by the Agency for the cotton ginning industry, shall be from September 1 through December 31 of each year.

(2) The seasonal operating period, as determined by the Department for the professional baseball industry, as defined in A(1)(b), above shall be from April 1 through September 15 of each year.

(C) **Employer quarterly reports-** Each employer in the cotton ginning industry shall keep separate accounts of wages paid to employees so that the following separate quarterly reports may be made to the Department if appropriate.

(1) Wages paid in the cotton ginning industry inside the seasonal operating period.

(2) Wages paid in the cotton ginning industry outside the seasonal operating period.

(3) Wages paid in any other covered employment.

(D) **Professional Baseball Industry Report -** Each employer in the professional baseball industry, as defined in A(1)(b) above, shall, within fourteen (14) days from the mailing date of the Determination Notice to Base-Period Employer of Valid Claim Filed (Form EXR-21), submit to the Agency information as to the type of service performed by the individual, and the period of employment, in order for the Agency to properly administer the seasonal provision of the Law.

(E) (1) **Payment of benefits to Seasonal Workers.**

The weekly benefit amount and the maximum benefit amount of any claimant who is a seasonal worker shall be calculated in the usual

manner as prescribed by the Law. Seasonal benefit rights shall be used in payment of such worker's benefits only when the benefits accrue during weeks of unemployment within the seasonal operating period as defined above.

Any week which begins within the seasonal operative period shall be deemed to be within the seasonal operating period.

(2) The calculation of a benefit determination for individuals with seasonal cotton ginning wages shall include the amount of "seasonal" benefits which may be payable only for weeks of unemployment occurring within the seasonal operating period, and the amount of benefits based on wages with no seasonal restrictions, if any. Benefits with no seasonal restrictions shall be payable to cotton gin workers for a week of unemployment during the season only if their seasonal benefits have previously been exhausted. Seasonal benefits and benefits with no seasonal restrictions may be payable for weeks of unemployment occurring during the seasonal operating period. Benefits with no seasonal restrictions shall be payable to a seasonal worker for weeks of unemployment occurring outside such period, but shall be based only on wages earned in employment with no seasonal restrictions.

(3) Benefits paid to a seasonal worker and a non-seasonal worker shall be charged to an employer's experience rating in the usual manner as prescribed by Law.

(4) No wages shall be deemed to have been paid in seasonal employment, as defined in A(1)(a) above, if paid prior to July 1, 1983.

321.00 Charging and Non-Charging of Benefits

(A) Benefits paid to a claimant will be charged or non-charged as set forth in Section 71-5-355(2) (b)(ii) the Law.

(B) An employer shall be eligible for non-charging as provided in (A) above only when they have furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, whichever is applicable, in the manner and within the time required, by one of the following methods:

(1) The employer has, within fourteen (14) days from the mailing date of Determination-Notice to Base Period Employer of Valid Claim Filed (Form EXR-21), to submit to the Agency a written statement showing the date and detailed reason for the separation or the date and details with respect to the refusal of an offer of suitable employment from such employer, whichever is applicable, identifying the individual involved by name and Social Security account

number. Failure to furnish such information within the time required will result in the employer being denied eligibility for the relief of charges as provided in the referenced section of the Law.

(2) The employer has fourteen (14) days from the date of the refusal of an offer of suitable employment to notify the Agency in writing of such refusal, giving the date and details with respect thereto.

(C) When an employer has furnished the Agency with notice regarding the separation from work or refusal to accept an offer of suitable work, within the time and in the manner prescribed, a decision regarding the chargeability to the employer's experience rating record will be issued. This determination will be final unless the employer files an appeal within fourteen (14) days from the mailing date or notification of the decision.

The appeal will be heard in accordance with Section 71-5-519 of the Law. After affording all interested parties an opportunity for a fair hearing, a decision will be issued to affirm, modify or reverse the determination. That decision will become final unless within fourteen (14) days after the mailing or notification of such decision an appeal is filed to the Board of Review.

Any decision of the Board of Review will become final ten (10) days after the date of mailing or notification of that decision. Any party may secure judicial review in accordance with Section 71-5-531 of the Law by commencing action in the circuit court.

The circuit court to which action should be pursued is that of the county in which the plaintiff resides, or the county in which the action occurred.

322.00 Vacation and Holiday Pay

The Law's definition of unemployment specifies that an individual shall be deemed "unemployed" in any week during which they perform no services, and with respect to which no wages are payable to him or her. Vacation and holiday wages flow from services rendered prior to being laid off temporarily or released from employment, and are earned prior to such action. From and after July 1, 2001, vacation and holiday pay shall not be deducted from unemployment insurance benefits to which an individual is otherwise entitled.

BENEFIT PAYMENT CONTROL REGULATIONS

400.0 Overpayments Generally

Any benefits erroneously paid to claimant pursuant to the provisions of Section 71-5-517 of the Law may be set up as an overpayment to the claimant; and must be liquidated before any future benefits can be paid to the claimant. Further, the Agency shall be entitled to reimbursement or repayment of overpayments when benefits were paid to a claimant erroneously for any reason, including but not limited to a re-determination or reversal due to an appeal. However, the Agency shall have the discretion not to setup an overpayment when the Agency deems the overpayment amount to be too small to offset, recoup, or otherwise justify the administrative costs of doing so. The Agency may also have the discretion not to setup an overpayment in the event benefits were erroneously paid due to an Agency-caused administrative error. The Agency may

also have the discretion to write-off an overpayment when the claimant proves total disability according to the Agency's rules and regulations or the Social Security Administration, and in the event of proof of death.

401.00 Reporting Earnings While Filing for Benefits

For purposes of determining entitlement to benefits, an individual must report wages as defined by the Law payable to him or her in any week, regardless of whether compensation has been received.

402.00 Criteria for Determining Fraud and Non-Fraudulent Overpayments

An overpayment of benefits occurs when a person receives such benefits pursuant to the Law while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his/her case, or while he/she was disqualified from receiving benefits, or when such person receives benefits and is later found to be disqualified or ineligible due to any reason, including but not limited to a re-determination or reversal by the Agency or the courts of a previous decision to award such person benefits.

For the purpose of determining fraud, the Agency will consider that: (1) a person received benefits, (2) at a time when he/she was ineligible, (3) by reason of a nondisclosure or misrepresentation of a material fact, (4) made by that person or another, and (5) irrespective of fraudulent intent or knowledge of the omitted or misrepresented fact, when his or her actions actually

constitute fraud, or may be implied from the circumstances. Fraud shall include, but not be limited to, failure to properly report earnings on weekly claims forms or falsification of any documents.

For purposes of determining unreported earnings, the Agency will consider the claim week to be Sunday through Saturday.

The Agency will not consider holiday pay, vacation pay, severance pay, bonus pay, jury duty, reserve components (week-end drill), unit training assembly (summer camp), loans, cash advances, and retroactive wages in the computation of unreported earnings overpayments.

403.00 Collection of Overpayments

Pursuant to the authority granted to the Agency by Section 71-5-19(4) of the Law, the Agency shall have the authority or discretion to pursue repayment and collection of overpayments that occurred due to any reason, including overpayments that result from a re-determination by the Agency, or that occur as the result of an appeal within the Agency or to the courts, and irrespective of whether said overpayment resulted from fraud, non-disclosure, or misrepresentation by the claimant. The Agency shall have the authority to pursue collection of all overpayments, including overpayments that result from a re-determination or reversal from an appeal, by the methods or manner as provided in Sections 71-5-363 through 71-5-383 of the Law, for the collection of past-due contributions, also authorized by Section 71-5-19 of the Law. Methods of collection shall include, but not be limited to, cash repayment, offset of future benefits, filing liens, warrants, or suit, garnishment, and interception of state income tax refunds.

Any such judgment, lien or warrant against a person for collection of an overpayment shall be in the form of a seven (7) year renewable lien. Unless action is brought thereon prior to expiration of the lien, the Agency must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the Agency may refile notices of liens for collection of overpayments.

The Agency will participate in the Interstate Reciprocal Overpayment Recovery Arrangement, which will include withholding benefits in order to assist other states in collecting overpayments.

Benefits that have been erroneously paid will be established as an overpayment. Such overpayments must be liquidated in accordance with specific program restrictions before future benefits can be paid to the individual.

404.00 Disqualification Period Assessed for Fraud

The Agency has the authority to assess disqualifications; and the time when such period begins and ends may be determined by the Agency, in its discretion, according to the circumstances of each case. Such documents may include but are not limited to certification or proof of earnings and doctor's statements.

405.00 Interest Accrual

Interest accrues at the rate of one per centum (1%) per month on the unpaid principal balance beginning with the month following the month in which the overpayment is established.

406.00 Prosecution of Fraudulent Overpayments

The Agency has the authority to prosecute overpayments due to fraud as defined in Subsection 402.00 above and Section 71-5-19(4) of the Law.

500.00 LEGAL

No applicable Administrative Regulations as of December 1, 2007

600.00 CONTRIBUTIONS

600.01 First Contribution Payment

The first contribution payment of an employer who is newly liable for contribution in any year will become due and be payable on or before the last day of the month immediately following the calendar quarter the individual or employing unit became a liable employer.

600.02 Payment of Contribution

(A) Each quarterly contribution payment shall be based upon wages paid for employment in all pay periods (weekly, biweekly, monthly, semimonthly) ending within the quarter.

(B) The first contribution payment of an employer who becomes newly liable for contributions in any year because of employment performed for such employer within such a year shall include contributions with respect to all wages

paid for employment from the first day of the calendar year. Such wages shall be reported in the calendar quarter in which the wages were paid and contributions shall be paid for the quarter in which the wages were paid.

(C) The first contribution payment of an employer who becomes newly liable for contributions by any of the three following methods is due for the quarter in which the wages were paid. Employers establish liability by:

(1) Acquiring the business of an employer;

(2) Employer and/or employer's predecessor(s) who employed one or more workers, acquiring the business of an employing unit whose employment record together with his or her own employment record totals one or more employees on one or more days in each of twenty (20) weeks of the current or last calendar year, regardless of whether the workers were the same person or different in each of the different weeks; and/or

(3) Affiliation with one or more other employing units whose employment record together with his or her employment record totals one or more employees on one or more days in each of twenty (20) weeks of the current or last calendar year.

(D) Contributions shall be due for all wages paid that are subject to this chapter in the calendar year if contributions are due on any part of the wages paid in the calendar year.

(E) With respect to employment, the measure of the contribution is the total amount of wages paid by an employer during each calendar quarter.

600.03 Transmittal of Contributions Payments

Payment of contributions sent through the United States mail shall be deemed to have been made as of the date shown by the postmark thereon. All other payments of contributions shall be considered to have been made on date received by the Agency.

600.04 Overpayment of Contributions

Overpayment of contributions by an employer for one period may be credited on subsequent contributions due.

601.00 WAGES

601.01 Definition

"Wages" means all remuneration for personal services, including commissions and bonuses, and the value of all remuneration in any medium other than cash. The name by which such remuneration is designated is immaterial. Thus, salaries, commissions on sales or on insurance premiums, fees, and bonuses are wages within the meaning of the Law if they are, in fact, remuneration or compensation for services not excluded by the Law. The basis upon which the remuneration is payable or paid, the amount of

remuneration, and the time of payment are immaterial in determining whether the remuneration constitutes "wages". Thus it may be paid or payable on the basis of piecework or a percentage of profits; and it may be paid or payable hourly, daily, weekly, monthly, or annually. Facilities or privileges (such as entertainment, cafeterias, restaurants, medical services, so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees, generally are not considered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employee or as a means of promoting the health, good will, contentment, or efficiency of his employees.

601.02 Definition of Wages for Tax Purposes

Wages paid in any calendar quarter shall include wages actually or constructively paid for all pay periods ending within the quarter and wages paid during the quarter for services performed in prior quarters or prior years. Wages constructively paid means payments credited to the account of, or set apart for, the wage earner so that they may be drawn upon by him or her at any time although not then actually reduced to possession.

601.03 Exclusions

Certain exclusions apply as directed by Section 71-5-11 of the Law, however, the plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an

employee's remuneration or whether such payments are required, expressly or implied, by the contract of service.

601.04 Items Included

The total wages paid by an employer to his or her employees with respect to employment during any calendar year, or any pay period thereof, shall include items actually or constructively paid during that calendar year, or any part thereof.

(A) Items actually paid shall include:

(1) Cash; and

(2) The fair market value, at the time of payment, of all items other than money. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him or her at any time although not then actually reduced to possession.

(B) Items actually or constructively paid shall include:

(1) Cash; and

(2) The fair value, at the time of actual or constructive payment, or all items other than money.

(3) Vacation allowances - Payment to an employee's so-called vacation allowances constitute wages.

(4) Traveling and other expenses - Amounts paid to traveling salespersons or other employees as

allowances or reimbursements for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.

(5) Premium on life insurance - Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his or her employees are not wages, if the employee has no option to take the amount of premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to surrender value on termination of his employment).

(6) Deductions - Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the employee at the time of such deduction. It is immaterial that the Law, or any Act of Congress or the law of any state, requires or permits such deduction and the payment of the amount thereof to the United States, a state, or any political subdivision thereof.

(7) Payments by employers into stock bonus or profit-sharing funds - Payments made by an employer into

a stock bonus or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

(8) Hiring of individual with his or her equipment - Only remuneration employment is the basis of contributions. Equipment is only rented and its rental value should not be included in the basis for contributions, provided it is accounted for separately. Contributions should be based on the remuneration for services only. In the case of hiring an individual and his or her equipment, such as a truck driver who owns his or her truck, the employer may differentiate between the fair value of the wages and the rental value of the equipment and pay contributions only on the wages.

(9) Pensioned employees-Retirement Pay - Contributions are based only on wages of employees arising out of the performance of service. Employees who have been pensioned or retired by an employer and who perform no service for such former employer are pensioned or retired employees and the remuneration or compensations received by them as

pension or retirement pay is not considered wages and should not be included in the payroll upon which contributions are based. However, if a pensioned or retired employee receives any compensation or remuneration distinct from such pensions or retirement pay for any employment, whether occasional, temporary or permanent, such pensioned or retired employee is covered by the Law and his or her earnings must be included in the payroll upon which contributions are based.

C. For all political subdivisions that elect to make contributions under the provisions of either Section 71-5-559 (2)(j), or Section 71-5-357 (b)(iv), the Law provides that the rates specified in those sections, i.e., two percent (2%) and five tenths percent (.5%) respectively, shall be applied to the first seven thousand dollars ($7,000) of remuneration paid to each employee in the calendar year, from and after January 1, 1983.

601.05 Private Unemployment Benefit Plans

Employees covered by private unemployment benefit plans are not thereby excluded from the requirement to be reported and their wages taxed as all other employees described in the Law.

601.06 Reduction of Commissions, Sales Cancelled in Later Years

Commission on sales made in one calendar year constitutes wages with respect to employment during the calendar year. When a sale made in one calendar year is cancelled in a subsequent calendar year and the commission is deducted from the earnings of the salesperson during the calendar year in which the sale is cancelled, such a reduction in commission is a reduction of the wages of the salesperson for the calendar year in which the services were performed and not for the year in which the sale is cancelled.

601.07 Bonuses in the Form of Securities

Bonuses in the form of securities are wages and contributions are payable on the fair market value of such securities at the time of transfer.

601.08 Sales Contest Prize Awards

The cash or fair market value of prizes awarded to salespersons as winners of contests conducted by their employer for the purpose of stimulating the sales of certain products constitute wages upon which contributions are required, and shall be included in the total amount of wages paid, as additional compensation or remuneration, in computing contribution liability.

601.09 Gifts

Gifts from employers to employees, such as Christmas gifts, directly or indirectly based upon or related to

services rendered, constitute wages upon which contributions are payable.

601.10 Gift to Spouse of Deceased Employee

An amount paid to the widow or widower of a deceased employee in excess of the compensation earned by the decedent in the course of his or her employment and for which the widow or widower renders no services does not constitute wages.

601.11 Spouse Employed by Corporation Wholly or Principally Owned by Other Spouse

Services performed by the spouse of the sole or principal stockholder of a corporation are not exempt since the corporation and its stockholders are entirely separate and distinct legal entities.

601.12 Spouse Employed by Partnership in Which the Other Spouse Is Partner

Although the Law excludes from its operation services performed by a spouse in the employ of the other spouse, the exclusion does not apply to the services performed by a spouse of a member of a partnership in the employ of such partnership, since the partnership is a legal entity separate and distinct from the individuals who comprise it.

601.13 Trustees in Bankruptcy-Compensation Paid To

Compensation paid to trustees in bankruptcy is not subject to the contribution liability imposed under the Law.

601.14 Payments Made to Labor Union Representatives for Lost Wages

Payments made to labor union representatives for lost wages will not be considered wages for unemployment insurance purposes provided the individual is not otherwise employed by the labor union.

601.15 "Idle Time" Payments under Minimum Number of Hours Guarantee

Payments made to an employee for "idle time" by a company which guarantees to its employees a minimum number of hours of employment per week and makes payments to them for "idle time" when they do not render services for the minimum number of hours, constitutes wages with respect to employment and the total of such remuneration should be included in the computation of wages for the purpose of determining the amount of contributions.

601.16 Tips

Tips accounted for by an employee to his or her employer are wages on which contributions are payable.

601.17 Remuneration Covering Salary and Expenses

Where an employee, such as a salesperson, is paid an amount to cover salary and expenses incurred in the employer's business, the amount constituting wages subject to contribution liability is the total amount paid minus the expenses actually incurred by the salesperson in the employer's business and is accounted for as such by him or her. It is, therefore, necessary for the salesperson to maintain such records as will enable accountability to the employer for the amount of expenses actually incurred, and the employer must keep such records as will show the portions of the total amount paid to the salesperson which represent, respectively, expenses and remuneration for services.

601.18 Training Courses

Expenses for employees' training courses, paid by the employer, do not constitute wages on which contributions are payable.

601.19 Use of Employer's Car by Employee

Where an employee keeps a car belonging to his or her employer and at times uses same for his or her own personal use, such use of the car does not constitute wages or remuneration.

601.20 Payments to Employees Absent on Account of Sickness

Where an employee is absent on account of sickness and he or she is kept on the payroll and wages are paid to him or her, such wages must be reported and contributions paid thereon.

601.21 Cash Value of Certain Remunerations

If board, lodging, or any other payment in kind, considered as payment for services performed by an employee, is in addition to (rather than a deduction from) monetary wages, or wholly comprises an employee's wages, the Agency may determine the cash value of such board and lodging in individual cases for the purpose of computing contributions due under the Law. The cash value for such board and lodging furnished an employee as agreed upon shall be deemed the value of such board and lodging.

602.00 EMPLOYER

602.01 Proprietors

A proprietor of a business is not considered an employee even though a salary may be paid for services performed.

602.02 Partners

Partners are not considered employees of the partnership, and the income of partners from the business whether recorded as salary or drawings, is considered a distribution of profits, and not wages.

602.03 Officers of Corporations

Corporate officers, who perform services for wages or under any contract of hire, written or oral, expressed or implied, are employees.

602.04 Directors of Corporations

A director of a corporation, who performs no service for the corporation except as director in the usual and ordinary sense of the term, is not an employee and the compensation paid as a director is not subject to contributions. A director, who performs services for the corporation other than as a director, is an employee, and the compensation paid him therefore is subject to contributions.

602.05 Demonstrators

A demonstrator, who is placed by a manufacturer in department and specialty stores to aid in the sale of the specialized products of such a manufacturer, and who is engaged by the manufacturer, who are paid directly or indirectly by the manufacturer, and who work under the direction which may be delegated to the retailer, is an employee of the manufacturer. If the retailer, not acting as an agent for the manufacturer, engaged a demonstrator and the demonstrator works under the

direction of the retailer and receives the salary directly from the retailer, the retailer is the employer. If the wages are paid in part by the manufacturer and in part by the retailer, the demonstrator is an employee of both manufacturer and retailer and each is required to pay contributions on that part of the salary that he pays.

602.06 Employers Disposing of Business Assets Thereof, Ceasing Business, Etc.

Every employer who shall sell, convey, or otherwise dispose of his or her business or any part of the assets of the business, or who shall cease business for any reason, whether voluntary by being in bankruptcy, or otherwise, shall no less than thirty (30) days prior to such sale or conveyance of business, report such fact in writing to the Agency, stating the name, address and telephone number of the person, firm or corporation, or other entity to whom such business or all of any part of the assets thereof shall have been conveyed. In cases of bankruptcy, receivership, or similar situations, such employer shall report the name address and telephone number of the trustee, receiver, or other official placed in charge of the business.

602.07 For Profit Corporation Owned by Non-Profit Charitable Organization

Services performed in the employ of a corporation operated as a business enterprise but wholly owned by a non-profit charitable organization are not exempt under the Law. Such organizations are separate legal entities and must be considered separately.

602.08 Payroll Records of Predecessor "Employer" Modified Rate of Contribution for Successor

In determining "modified" rates of contributions, under Section 71-5-355 of the Law, for an employer who succeeds, or has succeeded, or acquires, or has acquired the organization, trade, separate establishment (provided separate payroll records have been kept and maintained for such separate establishment by the predecessor and are clearly identifiable and segregable), or business, or substantially all the assets thereof, or another, the payroll records of the predecessor may be used only if such predecessor was an "employer" as defined and subject to the Law at the time of such acquisition. The term "separate establishment," as used herein, means a distinct and separate portion of the business.

602.09 Successors to Reimbursable Employer Who Become Tax Paying (contributory) Employers by Requirements of the Law

When a successor employer becomes a contributory employer (pursuant to requirements defined by the Law) by acquiring the business of a reimbursing employer, then such successor shall be considered a newly subject employer, within the meaning of Section 71-5-353 of the Law.

602.10 Reimbursable Employers Who Elect to Become Tax Paying (Contributory)

When an employer elects to change from reimbursing status to contributory status, the employer shall be considered a newly subject employer, within the meaning of Section 71-5-353 of the Law.

602.11 Predecessor Employers Who Resume Employment

In any case in which the account number of an employer is terminated by the Agency because the employer sold the business and the experience was transferred to the successor, and the predecessor resumes employment, he or she shall be considered a newly subject employer, within the meaning of Section 71-3-353 of the Law.

602.12 Status by Voluntary Election

An employing unit not otherwise subject to the Law that elects voluntarily to become subject thereto must furnish the Agency detailed data sufficient in the opinion of the Agency to warrant approval of such election.

603.00 EMPLOYMENT

603.01 Independent Contractors

The Law provides that the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant. Generally, the relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done, but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he or she has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work to the individual who performs the service. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he or she is an independent contractor, not an employee.

If the relationship of employer and employees exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two (2) individuals in

fact stand in relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, co-adventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

Generally, physicians, lawyers, dentists, veterinarians, contractors, sub-contractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether or not persons performing services, directly or indirectly, for an employing unit are employees depends upon the particular facts in each case. No single test is conclusive and every employing unit claiming the existence of a relationship other than that of employer-employee shall make application to the Agency for determination of its status. They shall furnish to the Agency a full and complete statement of all facts concerning its relationship with the person claimed to be an independent contractor, together with a copy of the contract existing between them. All persons performing services for any employing unit shall be deemed employees unless and until this rule shall have been complied with and their status shall have been otherwise determined by the Agency after a decision has been made by the Agency relative to the employer-employee relationship, and the business has

been notified by mail or electronically. The business has the right within ten (10) days from the transmittal date of this decision to protest the decision and request a hearing before the Agency, as provided in Section 71-5-355(2)(b)(ix) of the Law.

603.02 Service in Usual Trade or Business

An employing unit which contracts with or has under it any contractor or sub-contractor for any employment which it claims is not part of its usual trade, occupation, profession, or business shall submit to the Agency a complete, detailed written statement of facts in support of such claim. No such claim shall be recognized until and unless the Agency is satisfied of its validity and correctness.

603.03 Employed Individuals

The words "**employ**", "**employer**", and "**employee**", as used herein, are to be taken in their ordinary meaning. An employer, however, may be an individual, a corporation, partnership, a limited liability company, trust, estate, association, joint-stock company, insurance company, or corporation, or other recognized business organization, whether domestic or foreign, syndicate group, or entity. An employer may be a person acting in a fiduciary capacity or on behalf of another, such as a guardian, committee, trustee, executor or administrator, trustees in bankruptcy, receiver, assignee, for the benefit of creditors, or conservator.

An individual is in the employment or employ of another within the meaning of the Law if he performs a service, including service in interstate commerce, for such other, for wages or under any contract of hire, written or oral, expressed, or implied. The relationship between the individual who performs such service and the person for whom such service is rendered must be the legal relationship of employer and employee. The Law makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the Law.

Whether the relationship of employer and employee exists, will in questionable cases be determined upon examination of the particular facts of each case.

603.04 Services Excluded from the Definition of Employment (Generally)

(A) To constitute "employment" within the meaning of the Law the services performed by the employee must be performed, in whole or in part, primarily or incidentally, within the State of Mississippi; or if performed elsewhere, must be incidental to service in the United States for a Mississippi based employer. To the extent that an employee performs services wholly or outside of the State of Mississippi for the person who employs him or her, he or she is not in "employment" within the meaning of the Law unless such services are incidental to service in this state, or unless such services are performed outside the United States for a Mississippi based employer.

Furthermore, the employee's remuneration for services that he or she performs wholly outside the State of Mississippi, and that are in no way incidental to services in this state, is excluded from the computation of wages upon which his or her employer's contribution is based, except that wages paid by a Mississippi based employer for services performed outside the United States must be included in the computation of wages upon which the employer's computation is based. However, if any services are performed by the employee

within the State of Mississippi, such services, unless specifically excluded by the Law, constitute "employment."

In such cases the employee is counted for the purpose for determining whether the person who employs him or her is an "employer," within the meaning of the Law and his wages on account of such employment are included in the computation of wages for the purpose of determining the amount of the employer's contribution. The place where the contract for services is entered into and the citizenship or residence of the employee or of the person who employs him or her is immaterial.

Thus, the employee and the person who employs him or her may be citizens and residents of a foreign country or a foreign state and the contract for the services may be entered into in a foreign country or foreign state, and yet, if the employee under such contract actually performs services within the State of Mississippi, there is an "employment" within the meaning of the Law, and the person who has employed such individual may be an "employer" within the meaning of the Law.

(B) Even though the services of the employee are performed within the State of Mississippi, if they are in a class which is excluded by the Law, they are excluded for the following purposes:

(1) In determining whether a person employs a sufficient number of individuals to be an employer subject to contribution; or

(2) In computing the employer's total wages with respect to employment during the calendar year.

The exclusion is attached to the services performed by the employee and not to the employee as an individual; and the exclusion applies only for the period during which the individual is rendering services in an excluded class.

603.05 Officers and Members of Crews

The expression "navigable waters within, or within and without the United States" means such waters are navigable in fact and which by themselves or in connection with other waters form a continuous channel for commerce with foreign countries or among the states.

The word "vessel: includes every description of watercraft or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual subject to his or her authority serving on board and contributing in any way to the operation and welfare of the vessel. The expression extends, for example, to services rendered by the master, mates, pilots, pursers,

surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids and by seal hunters and fishermen on sealing and fishing vessels.

603.06 Family Services

Under Section 71-5-11l(15)(d) of the Law, certain services are excluded because of the existence of family relationship between the employee and the person for whom he or she performs the services. The exclusions are as follows:

(A) services performed by a husband for his wife, or by a wife for her husband;

(B) services performed by a father or mother for a son or daughter, or for a partnership composed of sons and/or daughters only; or

(C) services performed by a son or daughter under twenty-one (21) years of age for the father or mother, or for a partnership composed of the father and mother only.

(D) The term "child" shall mean and include adopted or stepchild.

Under (A) and (B) above, the exclusion is conditioned solely upon the relationship of the employer to the employee. Under (C), in addition to the relationship of parent and child, there is a further requirement that the child shall be under the age of twenty-one (21) and the exclusion continues only during the time that such child is under the age of twenty-one (21).

The exclusions do not extend to services performed by an employee for a corporation or other entity except such family partnerships as are set forth in (B) and (C) above.

603.07 Religious, Charitable, Scientific, Literary, and Educational Exemption

Any organization claiming an exemption under Section 71-5-11I(4) of the Law e a copy of such Internal Revenue Service documents that show exemption under Section 501 (c)(3) of the Internal Revenue Code. The Agency shall not make exemptions based upon the Agency's determination of an employer's exempt status absent a copy of the exemption.

603.08 Aliens, Non-Residents and Minors

Aliens, non-residents, and minors are employees if they are performing any service for an employer within the State of Mississippi and come within the definition of employee and employment.

603.09 Newspaper and Magazine Distributor

A newspaper distributor who owns his own truck, hires or discharges his or her own employees or helpers, distributes newspapers or magazines in his own territory, and keeps track of his or her own records as to sales and collections, with all sales to such distributor by the publisher and all magazines or newspapers returned within certain limited period being credited to the distributor, who receives no salary, wages or other remuneration from the publisher, no record being kept on where the distributor disposes of the magazines or newspapers which are taken by him or her, is not an employee of the publisher for the reason that the distributor's

remuneration for his or her services or activities in distribution of magazines or newspapers is derived solely from the resale of magazines or newspapers to customers.

603.10 Temporary, Casual and Training Period Workers

The length of employment of an individual employee, however short, and the amount of remuneration paid to him or her, however small, does not affect the employer's liability to pay contributions. Contributions are required to be paid on wages of temporary employees as well as on wages of permanent employees.

The term "**casual labor**" exempted under Section 71-5-11 I(15)(c) of the Law includes labor, which is occasional, incidental, and irregular. The expression "not in the usual course of the employing unit's trade or business" includes labor that does not promote or advance the trade or business of the employing unit.

603.11 Pieceworkers

Persons who are paid on the basis of the amount of work accomplished are employees, especially where they are subject to the direction or control of the employer.

603.12 Non-resident Employers

Non-resident employers may be subject to Mississippi Law and the employer's citizenship or residence is immaterial.

603.13 Services Performed for the United States

Service performed in the employ of the United States or of an instrumentality wholly owned by the United States is excluded. The exemption of federal instrumentalities is restricted to those instrumentalities:

(A) wholly owned by the United States; and/or

(B) exempt from the Law by virtue of some federal statutory provision.

603.14 Dredges

Services are exempt that are performed on dredges used for navigation and transportation in carrying on the work of deepening and removing obstructions from channels and harbors which are navigable waters of the United States are exempt.

603.15 Concessionaires on Vessels on Navigable Water of the United States

Services performed in the employ of concessionaires on vessels on the navigable waters of the United States are not exempt under the Law.

603.16 Book Publishing Establishment Owned and Operated by Religious Organizations

Services performed in the employ of a book publishing establishment owned by a church or convention or association of churches, or that is owned by an organization that is operated primarily for religious purposes, or that is operated, supervised, controlled, or principally supported by a church or convention or association of churches primarily for religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, are exempt from the Law.

603.17 Privately Owned Hospitals

Services performed in the employ of privately owned hospitals are not exempt under the Law. If they are organized and operated exclusively for charitable purposes and no part of the net earnings inures to the benefit of any private shareholder or individual, they come under the "four (4) or more in twenty (20) weeks" provision of Section 7-1-5-11 I(4) of the Law.

603.18 Privately Owned Colleges

Services performed in the employ of privately owned institutions of higher learning are not exempt, but if the institution is a non-profit organization it is not a covered employer unless it employs four (4) or more employees for some day in each of twenty (20) different weeks in the current or preceding calendar year.

603.19 Newspaper Correspondents

Newspaper correspondents who contribute items subject to acceptance for publication by the newspaper at a stipulated remuneration per item or per inch for news items accepted and published, but who are not employed full time and whose time and effort are not subject to the control of the newspaper, are not employees of the newspaper under the Law.

603.20 Newspaper Carrier

Section 71-5-11 I(15)(m) of the Law, exempts services performed by a person under the age of eighteen (18) in making street sales of newspapers and in making house-to-house delivery of newspapers or shopping news, including handbills and other similar types of advertising material. This exemption does not apply to the handling of newspapers and advertising material prior to the time they are turned over for subsequent delivery or distribution.

603.21 Traveling Salesperson

The Law covers individuals performing services for another as salespersons and remunerated on a commission basis and contributions are required on their commissions. Section 71-5-11I(2) of the Law specifically covers certain agent-drivers and commission-drivers and certain traveling or city salespersons.

603.22 Agents of Magazine Publishing and Distributing Companies

Salespersons and collectors for publishing companies engaged in selling magazines and other publications of such company and collecting for same on a commission basis are employees of the company.

603.23 Officers of Parent Corporation Serving Subsidiary Corporation

Officers of a parent corporation serving as officers of a subsidiary corporation, whether they receive remuneration as such or not, are to be included and counted as employees for the purpose of determining whether such subsidiary corporation employs a sufficient number of employees to be subject to the payment of contributions.

603.24 Voluntary Coverage of Exempted Employments

An employer may, under certain circumstances, waive his or her exemption and voluntarily become subject to the Law, thereby covering and entitling to benefits his or her employees who would otherwise be exempt.

603.25 Beneficiaries Employed by Administrator

Beneficiaries of an estate employed by the administrator of the estate in the operation of the business previously conducted by the decedent are employees of the estate.

603.26 Trustees and Estate-Fiduciaries, Receivers, Trustee, Trustees in Bankruptcy, Administrators of Estates, Guardians and Liquidators of Banks

Trusts or estates managed and conducted by a fiduciary, such as a receiver, trustee, trustee in bankruptcy, administrator of an estate, guardian, or liquidator of a bank, are held generally to the employer of persons employed to render and rendering services in connection with the trust, estate, or bank. This construction is applicable not only to strict trusts but also to corporations and estates whose affairs are being administered or liquidated by trustees in bankruptcy and state and federal estates should be filed by the fiduciary. The fiduciary, whether receiver, trustee, trustee in bankruptcy, administrator of an estate, guardian, or liquidator of a bank, is not himself or herself considered an employee of the trust or estate.

603.27 Banks Acting as Trustee, Receiver, Administrator, or Guardian

Where a bank acts in the capacity of trustee, receiver, administrator, or guardian and employs persons to render services for the corporation in receivership or the estate being administered, paying such persons out of the funds of such trust or estate, the services performed by such persons are not exempt. The trust, company in receivership, or estate, as the case may be, is the employer. Returns and reports must be made in the name of the trust, company in receivership, or estate, by the bank in its fiduciary capacity.

603.28 Real Estate Agents Managing Real Estate for Owner

Where a real estate agent or company manages improved real estate for the owner thereof under an agency contract and in accordance with such contract and as agent of the owner, employs, supervises, directs, controls, and discharges building managers, janitors, maids, and other help, but is not responsible for the payment of their wages except from the funds of the owner in its possession that are deposited in a special account un-comingled with the company's fund, the owner of the real estate, and not the real estate agent or company, who is an independent person, is the employer of such individuals.

604.00 Records

(A) Each employing unit shall keep a true, accurate and complete record which shall show:

(1) all disbursements by items;

(2) the amount of each disbursement;

(3) to whom each disbursement is made;

(4) for what each disbursement is made; and

(5) the number of employees on that day in each week in which it employed the highest number.

(B) For each individual worker and each pay period the records shall show:

(1) employee's Social Security account number;

(2) employee's name;

(3) employee's place of employment within the state;

(4) period covered by each payment;

(5) number of hours worked for each pay period;

(6) employee's wages for employment under this act, showing separately

(a) cash wages and

(b) the cash value of any other remuneration;

(7) any special payments for services other than those rendered exclusively in a given quarter such as annual bonuses, gifts, prizes, etc., showing separately

(a) cash payments and

(b) any other remuneration and the nature of said payment; and

(8) number of hours worked and wages payable in each week (except for workers paid on a salary or fixed stipend).

604.01 Reporting

(A) Each employer shall report to the Agency at the time of paying each contribution upon a form or any type of media, and in such a format as prescribed by the Agency, all information concerning the number of employees, total wages paid and total other remuneration paid, if any, for employment for each pay period covered by the contribution, together with such other information as may be prescribed on the report forms or requested by the Agency. He or she shall also furnish quarterly, when and as directed and upon such forms or format as the Agency may prescribe, a report showing for each of his employees during the quarter:

(1) Social Security Account Number;

(2) employee name;

(3) wages paid for employment;

(4) amount of other compensation paid for employment, during the quarter; and

(5) such other information as may be prescribed on the report forms or requested by the Agency.

604.02 Reports of Subsidiary Employing Units

Any employing unit that owns or controls another separate employing unit within this State may, with the approval of the Agency, designate such separate employing unit as its agent or attorney for the purpose of keeping records and making reports or contributions with respect to employment performed for such separate employing unit. Such designation, however, shall not subrogate the primary liability of the controlling employing unit.

605.0 Determining the Number of Employees

One or more individuals must be employed on any days within the weeks used to calculate the number of employees. The days used to calculate the number of employees does not need to be consecutive. It is not necessary that the individuals so employed be the same individuals; they may be different individuals on each such calendar day. It is also not necessary that the one or more individuals be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient that one or more individuals be employed during the twenty-four (24) hours of a calendar day, regardless of the period of service during that day or the basis of compensation.

In determining whether a person employs a sufficient number of individuals to be an employer subject to the contribution, no individual is counted unless he is engaged in the performance, in whole or in part,

primarily or incidentally, within the State of Mississippi, of services not excluded by Section 71-5-11(I) of the Law; or is engaged in the performance elsewhere of services which are incidental to such services in this state, and which are not excluded by Section 71-5-11 (I). Any individuals who perform services outside the United States for a Mississippi based employer are counted.

606.0 Computation of Employer Tax Rates

All components of the general experience rate and the employers individual experience rate involving the accumulation of data shall be computed for each rate year independent of previous computations.

The Agency will utilize the Cost Rate Criterion (CRC) computations provided by the Unemployment Insurance Service of the U.S. Department of Labor Employment and Training Administration for each period, ending with the CRC computation for December 2001. Computations of CRC for periods subsequent to December 2001 will be made by the Agency from data accumulated through the Agency's reporting processes.

Under no circumstances will the Agency computations specified in this regulation in any manner change or affect the general experience rating of any period prior to the computation for the 2004 calendar year.

This regulation will be effective with the computation of the 2004 annual rates and for all subsequent years

607.0 Political Subdivision Surety Bond

Reimbursing Political Subdivisions may execute a Surety Bond in lieu of establishing a revolving fund as provided in Section 71-5-355(2)(f) of the Law. The bond shall be executed annually, and shall be for less than two percent (2%) of the covered wages paid during the next preceding year. This bond shall be submitted to the Agency for approval. Failure to submit an approved renewal bond in the allotted time will automatically place the political subdivision under the revolving fund requirement of the Law. Any Surety Bond approved under this regulation shall remain effective according to its terms regardless of the continuation of a contractual relationship between the Political Subdivision and any company providing unemployment insurance services to it.

608.0 Reimbursing Employer Payment Liability

Reimbursing employers who elect to become contributory, whether political subdivisions or non-profit employers defined by the Law, are liable for reimbursements which may accrue, until such time as wages paid by such employer as a reimbursing employer are no longer in the base period of a claim or in the case of extended benefits, the parent claim.

609.0 Funding Options

Any political subdivision rated at two percent (2%), reimbursing, or rated five percent (5%) and reimbursing, may elect to change its funding option

from reimbursing to rate paying in accordance with Section 71-5-359 of the Law provided the requested information is delivered to the Agency on or before December 1 of the year immediately prior to January 1 of the year for which the election is made. The election will be in effect and in force for no less than two (2) calendar years and the first election shall be made effective the first day of employment and subsequent elections will be made effective January 1 of the year. In the event an employer does not make an election within thirty (30) days of registration, the employer will become a reimbursable employer but will be allowed to make an election for the next calendar year provided the election is received by the Agency as described.

Any IRS 501(C)(3) exempt nonprofit organization that is paying contributions or reimbursing under the authority of the Law may elect to change its funding option by filing a written notice of election with the Agency not later than thirty (30) days prior to the election. Such election shall not be terminable by the organization for that and the next tax year. Any nonprofit organization which makes an election in accordance with 71-5-357(a)(i) of the Law will continue to be liable for contributions unless it files with the Agency a written termination notice not later than thirty (30) days immediately following the date of determination of such subjectivity. In the event the non-profit employer chooses to give up its right to be a reimbursing employer, such employer must give written notification to the Agency no later than November 30 of the year preceding the year for which it will again become liable for contributions. Any reimbursements that accrue following such election will continue to be the responsibility of the non-profit employer.

610.0 Temporary Help Firm

A temporary help firm is any individual or organization who recruits and hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

A temporary help firm is presumed to be the employer for unemployment insurance purposes of a temporary employee assigned to a client for up to one (1) year of continuous service with that client from the last day of the first quarter in which the worker was assigned, irrespective of the number of hours the temporary employee works at the client's place of business. Continuous service means service to the same client with less than thirty (30) consecutive days break in service. After a temporary employee has completed one (1) year of continuous service with the same client, the relationship of employer and employee shall be determined in accordance with the principles of a common law governing the relation of master and servant and a temporary help firm may be required to demonstrate that it is an employer consistent with such principles.

Provided however that any temporary help firm will be considered prima facia in compliance with this regulation if at least ninety percent (90%) of the total number of individuals working for the temporary help firm on any day has been assigned to all clients for a

period not exceeding twelve (12) months from the last day of the first calendar quarter in which the worker was assigned.

611.0 Power of Attorney

Any individual or organization providing representation to any employer or claimant, in any unemployment issues in the absence of the client, must provide a power of attorney signed by the entity they will represent. A power of attorney is not required if the individual is a Certified Public Accountant who is a member of the AICPA, or an attorney who is a member of the Mississippi Bar Association or another Bar Association of equal status in another state or jurisdiction of the United States of America.

612.0 Tax Appeal Regulation

1. Any employer who appeals a determination or redetermination of his or her unemployment tax liability, hereinafter called tax protest, shall have such tax protest heard by a hearing officer designated for that purpose by the Agency.

2. Any tax protest filed by an employer under the provisions of Section 71-5-355 of the Law shall be promptly forwarded to the MDES Appeals Department for processing purposes.

3. The ALJ who has been assigned the tax protest shall notify the employer of the scheduling of a hearing thereon, and a notice shall be mailed to the employer not later than fourteen (14) days prior to the date set for the hearing.

4. Prior to the hearing, the ALJ shall obtain from the Contributions and Status Department of the Agency the complete file pertaining to the employer filing the protest, as well as any claim file appertaining thereto, in order that he or she may prepare for the hearing. The complete files shall be made available to the employer at the hearing so that they may have an opportunity to review same at the time. The files shall be made a part of the record that is made at the hearing.

5. The Agency shall have the discretion to set the time and place of the hearing, and shall designate whether the hearing will be in-person or by telephone.

6. The employer may be represented at the hearing by an attorney or any other representative he or she has authorized.

7. Any testimony received shall be under oath, and the hearing shall be recorded by the ALJ, but need not be transcribed unless there is a further appeal.

8. The rules of evidence shall be relaxed.

9. The ALJ, upon a showing of the necessity, may issue subpoenas at the request of either party, or may subpoena any individual, including a claimant and any records maintained by either party or their agents which the ALJ believes may contain information relevant to the tax protest being heard.

10. The ALJ, at his or her discretion, may elect to continue a hearing for the purpose of securing testimony of a witness or for other purposes.

11. The hearing may be postponed or adjourned for good cause, within the discretion of the ALJ. If, at any time prior to an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, as provided by the Law, it should appear to the ALJ that the record should be perfected or completed, then a hearing may be reopened or reconvened for that purpose.

12. As soon as reasonably possible after the hearing has been concluded the ALJ shall issue his or her written decision, which shall in concise form state the findings of fact, and the conclusions based on such findings. The decision shall be mailed to the employer and delivered to the Contributions and Status of the Agency.

13. There shall appear in bold face type upon the transmittal letter the following language:

    THIS DECISION SHALL BECOME FINAL UNLESS WITHIN TEN (10) DAYS AFTER DATE OF MAILING HEREOF THERE SHALL BE AN APPEAL TO THE MDES BOARD OF REVIEW.

14. An appeal to the Board of Review may be taken by either the employer or by the Contributions and Status Department of the Agency.

15. Upon an appeal to the Board of Review, there may be oral argument, or briefs filed, within the discretion of the Agency.

613.0 Contractors and Sub-contractors Must be Reported

Whenever and as an employing unit contracts with or has under it any contractor or sub-contractor for any employment which is part of its usual trade, occupation, profession, or business, such employing unit may be required to furnish in writing to the Agency:

(A) name and address of each such contractor or sub-contractor;

(B) date of commencement of the work under such contract;

(C) place or places at which the work is to be performed;

(D) whether such contractor of sub-contractor is registered as an employer under the Employment Security Law; and

(E) if registered, the registration number of the employing unit.

614.0 Establishment of Employer Contribution Rate during Pendency of Appeal on Liability Questions

The pendency of a protest and petition for hearing to the Agency, or of an appeal to the Circuit Court or the Supreme Court, on a question involving the employer's liability for contributions shall be deemed to operate as a supersedes and as a stay of all proceedings in computing and notifying the employer of his or her contribution rate, for any tax year subsequent to the

beginning of such appeal proceedings and prior to the final determination of the appeal. However, such supersedes and stay of proceedings relative to contribution rate shall not be effective unless the question in the appeal on liability involves a decision that must be made before the amount of the employer's quarterly payroll for some portion of the qualifying period can be determined.

Unemployment Insurance Regulations

As of December 1, 2007

Benefit Appeal Regulations

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