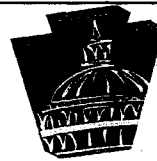


Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency: Department of Labor and Industry (Department)
Office of Unemployment Compensation Tax Services (UCTS) and
Office of Unemployment Compensation Benefits (OUCB)

(2) Agency Number: 12

Identification Number: 78

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number:

2847

(3) Short Title: 34 PA Code, Part II, Subpart A, Unemployment Compensation Chapter 61, Administration

(4) PA Code Cite: 34 PA Code § 61.1 et seq.

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Sean F. Creegan, Deputy Chief Counsel, 717-787-4186

Secondary Contact: Michael L. Ziemke, UCTS, 717-772-1581

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Michael L. Ziemke, UCTS, Room 900, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; (717) 772-1581; fax: (717) 787-7821; mziemke@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☒ Proposed Regulation
- ☐ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
 - ☐ Certification by the Governor
 - ☐ Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This rulemaking, which covers ten sections of Chapter 61, is proposed to update the Department's regulations to conform to current law and practice.

This rulemaking will repeal four sections of Chapter 61 and replace them with provisions required by federal law.

Topics covered by this rulemaking include: tax treatment of delayed wages, third-party sick pay, and confidentiality of employer and claimant information.

(9) Include a schedule for review of the regulation including:

Within 30 days following publication of the proposed rulemaking.

A. The date by which the agency must receive public comments:

B. The date or dates on which public meetings or hearings will be held:

N/A

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

Unknown at this time.

D. The expected effective date of the final-form regulation:

*

E. The date by which compliance with the final-form regulation will be required:

*

F. The date by which required permits, licenses or other approvals must be obtained:

*

* The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*, with one exception. Amended § 61.3 will be in effect as to wages paid on or after January 1 following publication.

(10) Provide the schedule for continual review of the regulation.

A review schedule is not needed, as the regulations will be monitored on an ongoing basis in the day-to-day administration of the unemployment compensation (UC) program.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The regulations are proposed under Section 201(a) of the UC Law (Law), 43 P.S. § 761(a), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the Law.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation on third party sick pay and the time when wages are considered paid for tax purposes are necessary for consistency with the Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3301 *et seq.*

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

With the exception of the regulations concerning retirement pensions and reasonable assurance, which were amended in 1998 and 2003, respectively, and the benefit table that is modified annually, the regulations in Title 34, Part II, Subpart A were adopted or most recently amended between 1969 and 1980. As a result of subsequent changes to the Law and procedure, many of the existing UC regulations are obsolete, inconsistent with the Law, and / or lack provisions needed to implement the Law. This rulemaking is necessary to modernize the UC regulations in Chapter 61 to conform to the current Law and Department procedures. As a result of this effort, the regulations will provide more up-to-date, complete and accurate guidance for both employers and claimants.

The 280,000 active Pennsylvania employers and the UC claimants who file approximately 617,000 new applications for benefits each year will benefit because the amended regulation will be a more up-to-date, complete and accurate source of guidance for the UC program.

Employers and third parties who are involved in third party sick pay arrangements will benefit from clarification regarding their relative responsibilities for UC reporting and taxation.

The updated values assigned to noncash compensation may cause some claimants to qualify for an increased amount of UC benefits.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

If the value of noncash compensation provided to the employee is increased as a result of this rulemaking, and the amount of cash compensation paid to the employee during the same calendar year is less than the maximum amount of wages subject to taxation (\$8,000), the employer may owe a higher amount of UC taxes due to the increased total of cash and noncash compensation. If payment of wages is delayed, and the employer's tax rate for the year when the wages are paid is higher than its rate for the year when the wages normally would have been paid, the employer may owe an increased amount of UC taxes.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Because § 61.1, which provides definitions for all three chapters of the UC regulations, is being amended, this rulemaking potentially affects the 280,000 active Pennsylvania employers and the UC claimants who file approximately 617,000 new applications for benefits each year. More specifically, this rulemaking affects employers who make a delayed payment of wages, and employers and claimants involved with noncash compensation. In addition, the rulemaking affects employers and their third party providers of sick pay and witnesses.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Although the provisions updating the valuation of noncash compensation and prescribing the date when wages are considered paid for tax purposes may cause some employers to owe more or less UC taxes, it is expected that these provisions will affect only a small percentage of the employer community. (For example, the amendment regarding noncash compensation can have an impact only if the worker is paid less than \$8,000 of cash compensation in the calendar year. This is the maximum amount of wages subject to taxation under the Law.) It is not possible to estimate the extent of the savings or cost associated with these provisions, because it would vary from employer to employer, the number of employers involved cannot be determined, and other data necessary for an estimate is not available. Any other costs to the regulated community as a result of this rulemaking will be negligible.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This rulemaking will have no direct impact on local governments. (However, to the extent that a local government is an employer it must comply with the Law and corresponding regulations.)

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

If the regulations updating the valuation of noncash compensation and prescribing the date when wages are considered paid for tax purposes cause an increase in taxes payable to the UC Fund, this increase cannot be estimated. (See item 17.) Any other costs or savings to the UC Fund or the Department as a result of this rulemaking will be negligible.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Unable to determine or negligible					
Local Government						
State Government	Unable to determine or negligible					
Total Savings						
COSTS:						
Regulated Community	Unable to determine or negligible					
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government	Unable to determine or negligible					
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
	2004	2005	2006	2007
UC Program Expenditures (UC Benefits paid, in thousands) (Fund 64, Benefit Payment Fund)	\$2,118,405	\$1,998,637	\$2,084,260	\$2,320,529
UC Administrative Expenditures (in thousands) (Fund 26, Administration Fund)	\$146,733	\$139,537	\$126,595	\$124,441

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This rulemaking will make the UC regulations consistent with FUTA in two areas. Also, these amendments to Chapter 61, and the companion amendments to Chapters 63 and 65, will revise regulations that were adopted or most recently amended at least 26 years ago. All Pennsylvania employers and claimants will benefit from more up-to-date, complete and accurate regulations. Some claimants may qualify for an increased amount of UC as a result of the updated values assigned to noncash compensation. These benefits of the rulemaking outweigh its adverse effects. While the amended regulations concerning noncash compensation and delayed wages could cause some employers to owe an increased amount of UC taxes, these provisions would apply only to a small percentage of the employer community and occur only in certain circumstances.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Stakeholder letters were sent to the following interested parties:

- ADP, UC Management, PO Box 58040, 3300 Clott Street, Santa Clara, CA 95052-8040
- James E. Frick, Inc., PO Box 283, 145 Weldon Parkway, St. Louis, MO 63166
- Paychex, Suite 1800, 100 Kings Highway South, Rochester, NY 14625-0397
- Gates, McDonald & Co., PO Box 1944, Three Nationwide Plaza, Columbus, OH 43216
- TALX UC eXpress, PO Box 283, St. Louis, MO 63166-0283
- Interstate Tax Service Bureau, PO Box 247, 3233 Market Street, Camp Hill, PA 17011
- Heiss, Gibbons & Co., Inc., 7 East Main Street, Mechanicsburg, PA 17055
- Pennsylvania Business Roundtable, 208 N. Third Street, Suite 400, Harrisburg, PA 17101
- National Federation of Independent Businesses, 301 Chestnut Street, Suite 101, Harrisburg, PA 17101
- Pennsylvania Chamber of Business and Industry, 417 Walnut St., Harrisburg, PA 17101-1918
- Community Legal Services, Inc., 1424 Chestnut Street, Philadelphia, PA 19102-2505
- AFL-CIO of Pennsylvania, 231 State Street, Harrisburg, PA 17101-1110
- R.E. Harrington, Inc., PO Box 11874, Federal Square Station, Harrisburg, PA 17108
- National Employers Council, UC Tax Council, PO Box 4816, Syracuse, NY 13221

Input was received from:

- Community Legal Services
- AFL-CIO

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because the purpose of this rulemaking is to update existing regulations to reflect the current Law and

Regulatory Analysis Form

practice, the only regulatory scheme available is the one chosen; that is, amendments to those regulations.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Much of this rulemaking consists of technical and procedural amendments that would not adversely affect the competitiveness of the Commonwealth. Moreover, all states are equally subject to federal requirements regarding the UC program, and generally strive for consistency between the state and federal tax schemes.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes, this rulemaking will amend existing regulations of the promulgating agency, the Department of Labor and Industry, as follows:

The following regulations are being abolished:

- §61.21. [Authorization required] Reserved.
- §61.22. [Procedure when served with a subpoena] Reserved.
- §61.23. [Furnishing of information] Reserved.
- §61.24. [Statistical publications] Reserved.

The following regulations are being amended:

- § 61.1. Definitions
- § 61.3. Wages
- § 61.11. Persons [reimbursable] eligible for compensation and expenses
- § 61.12. Reimbursable Items

The following new regulations are being added:

- § 61.3.1 Third Party Sick Pay
- § 61.25 Confidentiality of Information and Fees

Regulatory Analysis Form

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

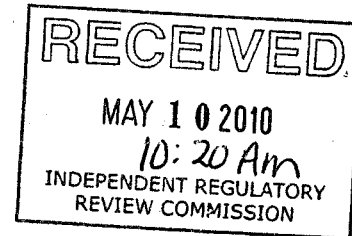
Although the regulation on third party sick pay requires either the employer or the entity making payments of sick pay on behalf of the employer to include the sick pay in quarterly UC reports, this regulation is a codification of current practice that is based on similar requirements and procedures under FUTA.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**



Do Not Write In This Space

Copy below is hereby approved as to
Form and legality. Attorney General.

[Signature]

By: _____
DEPUTY ATTORNEY GENERAL

JAN 26 2009

DATE OF APPROVAL

☐ Check if applicable.
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF LABOR & INDUSTRY
(AGENCY)

Document/Fiscal Note No. 12-78

Date of Adoption: _____

By: *[Signature]*
SANDI VITO

Title: Acting Secretary Of Labor & Industry
(Executive Officer, Chairman or Secretary)

Copy below is hereby
approved as to form and
legality. Executive or
independent Agencies.

[Signature]

By: Andrew C. Clark
DEC 24 2008

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent~~
Agency)
(Strike inapplicable title)

☐ Check if applicable. No
Attorney General
approval or objection
within 30 days after
submission.

PROPOSED RULEMAKING

TITLE 34. LABOR AND INDUSTRY

PART II, SUBPART A. UNEMPLOYMENT COMPENSATION

CHAPTER 61. ADMINISTRATION

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY OFFICE OF UNEMPLOYMENT COMPENSATION BENEFITS OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

34 PA. CODE CH. 61

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits (OUCB), and Office of Unemployment Compensation Tax Services (UCTS), propose new and amended regulations, as set forth in Annex A, for inclusion in Title 34, Labor and Industry; Part II, Subpart A. Unemployment Compensation; Chapter 61, Administration.

A. Statutory Authority

These regulations are proposed under section 201(a) of the Unemployment Compensation Law (Law) (43 P.S. § 761(a)) which authorizes the Department to promulgate and amend rules and regulations necessary to administer the Law.

B. Background and Description of Proposed Rulemaking

This rulemaking, which covers ten sections of Chapter 61, is proposed to update the Department's regulations to conform to current law and practice. The particular changes are described below.

§ 61.1 – This section contains definitions for Title 34, Part II, Subpart A, which includes Chapters 61, 63 and 65. Definitions related to the organization of the Department are amended or added to reflect the current structure of the Department. Also, obsolete definitions are deleted.

§ 61.3 - This section is amended to distinguish the tax treatment of delayed wage payments from the existing approach that will continue to be used for benefit purposes. For purposes of taxation, the amended regulation will treat wages as paid on the date the employer actually pays them. This treatment reflects the decision of the United States Supreme Court in *United States v. Cleveland Indians Baseball Company*, 532 U.S. 200 (2001). In that case, the Court held that, for federal employment tax purposes, back wages should be attributed to the date on which they actually are paid. The Department is required to follow this decision when allocating wages for tax purposes because section 4(x)(6) of the Law, 43 P.S. § 753(x)(6), requires that payments subject to taxation under the Federal Unemployment Tax Act (FUTA) also are taxed as wages under the Law. For benefits purposes, however, the existing treatment of wages remains in effect. That is,

when a payment of wages is delayed, the wages are considered paid on the day on which the employer generally pays amounts definitely assignable to a payroll period.

This section also is amended regarding the valuation of remuneration made in mediums other than cash. In addition to prescribing the general rule that the value of noncash compensation is its fair market value, the regulation specifies minimum values to be placed on meals and lodging by reference to recognized federal standards, subject to rebuttal by the employer.

§ 61.3.1 - This new section addresses third party sick pay. When sick pay is paid to a worker by a third party, the regulation provides that the third party is responsible to report, and pay unemployment compensation (UC) taxes on, the sick pay. An exception provides that the third party may meet certain requirements in order to shift that responsibility to the employer.

§ 61.11 – The amended regulation provides that an agent of an employer, like the employer he or she represents, is ineligible for witness fees for participating in an administrative proceeding if the employer is an interested party in the proceeding.

§ 61.12 – The amended regulation removes specific amounts for the mileage allowance and the per diem fee for witnesses contained in the current regulation. As amended, the regulation provides that witnesses may be paid compensation and expenses in accordance with the Judicial Code.

§§ 61.21 – 61.25 – Sections 61.21 – 61.24, concerning confidentiality of information, are being rescinded and replaced by § 61.25 which implements new federal confidentiality requirements that were recently promulgated by the U.S. Department of Labor.

C. Affected Persons

Because this rulemaking will amend the definitions for all chapters of the UC regulations, it potentially affects the 280,000 employers covered by the Law and the UC claimants who file approximately 617,000 new applications for benefits each year. Specifically, this rulemaking would affect payors and recipients of delayed wages and noncash compensation, witnesses at UC administrative proceedings, and third party payors of sick pay.

D. Fiscal Impact

Commonwealth and the Regulated Community – Some provisions of this rulemaking reflect current practice and, as a result, would not involve any fiscal impact. The provision prescribing the date when wages are considered paid for

tax purposes and the provision updating the valuation of noncash compensation could affect the amount of UC tax owed by certain employers, and the latter provision could cause some claimants to qualify for an increased amount of UC benefits. While the Department is unable to estimate the amount of any monetary impact from these provisions, the number of employers and claimants affected is expected to be small and the overall fiscal impact is expected to be minimal.

Political Subdivisions - This rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the Law.

General Public -- This rulemaking does not affect the general public.

E. Paperwork Requirement

This rulemaking will not impose additional paperwork requirements on the regulated community.

F. Sunset Date

The regulation will be monitored through practice and application. Thus, no sunset date is designated.

G. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*, with one exception. Amended § 61.3 will be in effect as to wages paid on or after the first January 1 following publication.

H. Public Comment

Interested parties are invited to submit written comments, objections or suggestions about the proposed regulations to Michael L. Ziemke, UCTS, Room 900, Labor and Industry Building, 651 Boas Street, Harrisburg, Pennsylvania 17121, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically to "mziemke@state.pa.us." A subject heading referencing the proposed regulation, name and return mailing address must be included in each transmission. In addition, all electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, you may contact Michael L. Ziemke at (717) 772-1581.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of these proposed regulations on 5-10-10 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Labor Relations Committee and the Senate Labor and Industry Committee. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, Regulatory Review and Promulgation. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed regulations to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly, and the Governor of objections raised, prior to final publication of the regulations.



SANDI VITO, Secretary

Fiscal Note

Annex A
TITLE 34. LABOR AND INDUSTRY
PART II, SUBPART A. UNEMPLOYMENT COMPENSATION
CHAPTER 61. ADMINISTRATION

§61.1. Definitions.

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

Applicant – An individual applying for [employment] services with [at] an employment office [at the Pennsylvania State Employment Service].

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

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

Bureau – The [Bureau of Employment Security of the Commonwealth] Department.

Claim for compensation – [Either claim for waiting period credit or a claim for compensation, sometimes referred to as a “payorder.”] A request for waiting week credit or payment of compensation for a week when the claimant was unemployed, filed under section 501(c) of the Law (43 P.S. §821(c)).

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

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

Department – The Department of Labor and Industry of the Commonwealth.

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

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

Leaving Work – An employee shall be deemed to have “left work” in the following situations:

- (i) If he walked off work or abandoned his position.
- (ii) If, having been on temporary short term layoff with specific date of return, he refused or failed to return to his employment on the specific date or when recalled by the employer before that date.
- (iii) If he refused a transfer or a change in conditions of work which he was required to accept under his contract of employment with the employer.

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

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

Payments in lieu of contributions – The money payments made into the Unemployment Compensation Fund by an employer with respect to employment, under sections 1003, 1104 and 1202.2 of the [I]Law (43 P.S. §§ 893, 904 and 912.2).

Secretary – The Secretary of Labor and Industry.

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

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

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

UC Tax Review Office – The individual or agency within the Department that administers appeals to the Secretary or the Secretary's designee under § 63.26.

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

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

§61.3. Wages

(a) *Date of payment.*

(1) General rule – Wages [shall be considered to be paid on the day on which] are considered paid on the date when the employer actually pays them.

(2) Delayed payment of wages - For purposes of benefits, if payment of wages is delayed, the wages are considered paid on the date when the employer generally pays amounts definitely assignable to a payroll period. [are generally paid by the employer, even though the wages have not actually been reduced to the possession of employees.]

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

(c) *[Board and lodging.] Noncash wages.*

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

(2) Meals and lodging – Meals and lodging are valued at amounts assigned to meals and lodging in the documents referenced in 41 CFR §301-11.6, for the calendar year in which they are provided and for the location where they are provided, unless the employer is able to produce sufficient, credible evidence that the fair market value of the meals and lodging is less than such values. [board or lodging constituting wages shall be the reasonable cash value to the employee of the board or lodging, but may not be considered less than the following minimum amounts, unless the employer produces evidence to the satisfaction of the Bureau that the minimum amounts are in excess of the actual value to the employee of his board or lodging:

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

§61.3.1. Third party sick pay

(a) Definitions. For purposes of this regulation:

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

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

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

(b) Reporting and contribution requirements.

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

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

(c) Date of payment. A sick pay payment is considered paid as provided in § 61.3(a).

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

§ 61.11. Persons [reimbursable] eligible for compensation and expenses

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

(1) Persons not parties-in-interest.

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

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

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

(iv) Agents and e[E]mployees, including corporate officers, of an employer who is a party-in-interest to a proceeding, shall be considered as parties-in-interest to the proceeding.

(2) Employees of the Department. Employees of the Department may not be entitled to a payment provided by the provisions of this section, but shall be reimbursed for proper expenses in accordance with the provisions of Departmental rules and regulations governing traveling expenses of employees. The receipt of a summons or a subpoena by an employee of the Department, however, will justify

the issuance of whatever authorization for travel as may be required under the travel rules and regulations.

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

§ 61.12. Reimbursable items

(a) *Compensation and expenses.* [*Transportation.*] [(1)] An individual who is entitled to reimbursement under § 61.11 (relating to persons [reimbursable] eligible for compensation and expenses) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid compensation and expenses by the Department in accordance with the provisions of 42 Pa.C.S. § 5903(b) – (g). [mileage at the rate of 7¢ for each mile he actually travels in going to the place from his place of residence and returning, but he will not be reimbursed for a greater number of miles than would be required for traveling by the usually traveled route between those places.

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

(b) *Fees.*

(1) An individual entitled to reimbursement under § 61.11 may be allowed a fee of \$5.00 for each day or part of a day spent in attending or traveling to and from a proceeding.

(2) When a proceeding is prolonged from 1 day to the next a witness necessarily present on both days who resides more than 50 miles by the usually traveled route from the place the proceeding is held and who remains there overnight may be paid an additional amount equal to the *per diem* witness fee for each night].

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

§ 61.21. [Authorization required] Reserved.

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

§ 61.22. [Procedure when served with a subpoena] Reserved.

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

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

§ 61.23. [Furnishing of information] Reserved.

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

- (1) To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling and other employment service functions.

(2) To any properly identified claimant for benefits or payments under a State, territorial or Federal unemployment compensation or re-adjustment allowance law, or training allowance law, or to his authorized representative, including information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.

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

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

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

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

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

§ 61.24. [Statistical publications] Reserved.

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

§ 61.25. Confidentiality of information and fees

(a) Confidentiality

(1) Definition - For purposes of this subsection, "unemployment compensation information" means both of the following:

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

(2) Information obtained directly or indirectly from the Department or the Board that is included in subparagraph (1) while in the possession of the Department or the Board.

(2) Rule of confidentiality

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

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

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

(1) To officers and employees of the Department and members and employees of the Board in the administration of the Law.

(2) To a claimant, the last employer of the claimant or a base year employer of a claimant, to the extent necessary for the proper determination of the claimant's application for benefits and claims for compensation.

(3) To an employer, to the extent necessary for the proper determination of the employer's liability for reports and payments under the Law and the proper administration of the employer's account.

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

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

(6) As permitted by provisions of the Law or as required or permitted by federal law.

(4) *Re-disclosure prohibited*

(i) Officers and employees of the Department and members and employees of the Board to whom unemployment compensation information is disclosed pursuant to paragraph (3)(1) shall not disclose the information to any person or before any court or other tribunal, except as authorized by the Department or the Board pursuant to paragraph (3).

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

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

(1) A legal proceeding under the Law or a statute administered or enforced by the Commonwealth.

(2) Information disclosed to a claimant or employer pursuant to paragraph (3)(2) or (3)(3).

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

(6) *Safeguards* - A person to whom unemployment compensation information is disclosed pursuant to paragraph (3) shall implement and

maintain all safeguards required by the Department to protect the confidentiality of the information and shall comply with all other terms and conditions specified by the Department in connection with disclosure of the information.

(b) Fees --Except as provided in section 702 of the Law (43 P.S. § 862), the Department or the Board may charge a fee to a person seeking documents or information from the Department or the Board. The fee will be an amount sufficient to compensate the Department or the Board for the costs to process the request and, if the requested documents or information are available, the cost to provide the documents and information. The amount of the fee will be calculated by the Department within its discretion.

COMMONWEALTH OF PENNSYLVANIA

May 7, 2010

The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

**Re: Proposed Rulemaking
Department of Labor and Industry
34 Pa. Code, Part II, Subpart A, Unemployment Compensation
Chapter 61, Administration
No. 12-78**

Dear Chairman Coccodrilli:


Enclosed is a proposed rulemaking package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry.

This rulemaking will amend Chapter 61, Administration, of the Unemployment Compensation regulations.

Comments, suggestions or questions should be directed to Sean F. Creegan, Deputy Chief Counsel, 10th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: 717-787-4186; Fax: 717-787-1303; E-mail: screegan@state.pa.us.

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Sincerely,


Sandi Vito
Secretary

cc w/ encl: Jane C. Pomerantz, Chief Counsel
Neil E. Cashman, Jr., Senior Advisor for External Affairs
Patrick T. Beaty, Deputy Secretary for Unemployment
Compensation Programs
Andrea Mead, Director, Office of Policy, Planning and Development
Daniel F. Ruzansky, Director of Legislative Affairs
Sean F. Creegan, Deputy Chief Counsel

OFFICE OF THE SECRETARY | Department of Labor & Industry | 651 Boas Street |
Room 1700 | Harrisburg, PA 17121 | 717.787.3756 | www.dli.state.pa.us

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Equal Opportunity Employer/Program*

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 12-78

SUBJECT: 34 Pa. Code, Part II, Subpart A., Unemployment Compensation
Chapter 61. Administration

AGENCY: DEPARTMENT OF LABOR AND INDUSTRY

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

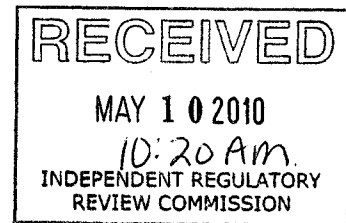
120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions



FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON LABOR RELATIONS

5/10/10 Danielle Calay

MAJORITY CHAIRMAN Robert E. Belfanti, Jr.

5/10/10 Don Kline

MINORITY CHAIRMAN Gene DiGirolamo

SENATE COMMITTEE ON

5/10 Emilio Restagno

MAJORITY CHAIRMAN John R. Gordner

5/10 BZK

MINORITY CHAIRMAN Christine M. Tartaglione

5/10/10 K. Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

5/10 n. Latture

LEGISLATIVE REFERENCE BUREAU