

IR-39 Rev. 03/2012

(Title page)

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State of Connecticut
REGULATION
of

NAME OF AGENCY

Connecticut Department of Labor

Concerning

SUBJECT MATTER OF REGULATION

Unemployment Compensation

Section One. Section 31-222-9 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-222-9. Unemployment notices and employee information packet[, low earnings reports] and lack of work verification form

All employers, whether or not subject to Chapter 567 of the Connecticut General Statutes, shall submit the following reports, forms, notices and information packets, in such medium as is authorized by the [administrator] Administrator, at the times and under the conditions specified:

- (1) **An unemployment notice and employee information packet.** This notice shall be prepared on forms made up or approved by the [administrator] Administrator and shall contain the information required by such forms. The notice shall be attached to an employee information packet, which provides information regarding how to file for unemployment benefits and available reemployment assistance. The [administrator] Administrator shall provide such employee information packets, upon request, to the employer. The unemployment notice shall be completed by the employer and issued to the employee, along with the employee information packet, immediately upon layoff or separation from employment, whatever the cause of such layoff or separation, including a voluntary leaving. This notice shall not be used or required for any purpose other than the filing of a claim for unemployment compensation benefits by the employee. When the [administrator] Administrator determines that, based on the information contained in this notice, or information provided by the individual or the employer, that an issue exists which may affect the individual's eligibility, including, but not limited, to the separation being due to reasons other than a lack of work layoff, the [administrator] Administrator shall promptly provide notice to interested parties in a manner prescribed by the [administrator] Administrator of a fact-finding process on the issue of the individual's eligibility for unemployment benefits.

[(2) Employee low earnings report.

The administrator may require an employer to complete this report with respect to an individual filing a claim for partial unemployment benefits pursuant to section 31-229 of the Connecticut General Statutes. The employer shall complete and submit the report in the manner and within the time period prescribed by the administrator. Information required on the report shall include, but not be limited to: the earnings for such individual for the calendar week in question, the cause of the reduced earnings, the name and the Connecticut registration number of the employer and the signature (individual or facsimile) of the authority supplying the information.]

[(3)] (2) Separation verification form.

(A) The [administrator] Administrator shall promptly transmit this form to the employer to verify that a separation has occurred, and to request separation information as specified on the form.

(B) The [administrator] Administrator shall transmit the form in the manner and to the address or email selected by the employer in the Administrator's Unemployment Insurance system. [to the employer's address that appears on the administrator's Notice of Separation form. Where no Notice of Separation is provided to the administrator, the administrator shall transmit the form to the most recent address of record provided by the employer to the administrator's Employer Status unit or,] If [if] the employer participates electronically in SIDES, as defined in section 31-244-1a of the Regulations of Connecticut State Agencies, the Administrator shall transmit the notice to the employer's most recent electronic address.

(C) The form shall advise the employer of the following:

- (i) the reason for the separation, as specified by the claimant;
- (ii) that the employer is required to respond within the time frame and as prescribed on the form; and
- (iii) the consequences for the employer's failure to timely respond, as described in subdivisions (D) and (E) of this subsection.

(D) If the employer fails to respond to the [administrator] Administrator with the required information within the time frame and in the manner prescribed by the [administrator] Administrator, benefits may be paid based upon the information provided by the individual.

(E) If the employer fails to respond to the [administrator] Administrator with the required information within the time frame and in the manner prescribed by the [administrator] Administrator and prior to first payment of benefits, the [administrator] Administrator shall find that the employer has waived its right to a fact-finding and has failed to participate for the purposes of section 31-241 of the Connecticut General Statutes.

(F) If the employer responds to the [administrator] Administrator within the time frame and in the manner prescribed by the [administrator] Administrator and advises the [administrator] Administrator that the separation was for a reason which does not constitute a lack of work layoff, the [administrator] Administrator shall promptly initiate a fact-finding process pursuant to the provisions of section 31-244-3a of the Regulations of Connecticut State Agencies.

(G) Nothing in this section shall preclude the [administrator] Administrator, based on the [administrator's] Administrator's own judgment, from initiating a fact-finding process with respect to any claim, based upon the specific circumstances of the claim.

[(4) Repealed.]

Section 2. Section 31-222-11 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-222-11. Interest on past due contributions

[When an employer subject to the federal unemployment tax act for any year becomes subject to the act as of the beginning of the calendar year in accordance with the provisions of section 31-223(a) (1) of the general statutes, the administrator shall waive the interest on all contributions payable with respect to wages paid for calendar quarters prior to the calendar quarter during which such twentieth week was completed, provided all such contributions shall be due and payable on or before the next regular contribution return date. If such contributions are not paid by the next regular contribution return date, they shall thereafter be subject to the interest provided by the act until paid. In like manner, the administrator shall waive the interest when an employer has accepted voluntarily the provisions of the act on all contributions payable with respect to wages paid for calendar quarters prior to the date of signing such voluntary acceptance. In the case of an employer who is found by the administrator to be delinquent because he is in good faith was not aware of the fact that he was subject to the act, the administrator shall waive the interest which accrued during the first five calendar quarters that he was so subject. A registered employer is considered to be aware that he is subject to the act after he has been officially notified in writing by the administrator of his liability. Interest will not be waived for any quarterly period after notification of liability even though such period is within the first five quarters after the employer became subject. If an employer has erroneously paid to some other state or to the federal government contributions later determined to be due to the state of Connecticut, no interest shall be charged on such delinquent contributions from the due date to the date of the discovery of the error and until after the end of the month next succeeding such discovery.] If contributions are not paid in full by the due date of the quarter in which the employer became subject, they shall thereafter be subject to the interest provided by the Connecticut Unemployment Act until paid in full.

Section 3. Subsection (e) of section 31-222-13 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-222-13. Benefit claim procedure

(a) **Definitions.** For purposes of this section, the following definitions shall apply:

(1) “Good faith error” means the excusable failure of an individual to file a claim, either initial or continuing, in the manner prescribed by the [administrator] Administrator, due to the individual’s own negligence, provided (A) there is no prior history of late filing due to such error, (B) the claim is not excessively late, and (C) there is no prejudice to any adverse party.

(2) “Invalidation” means (A) the withdrawal of an otherwise valid initiating claim within twenty-one days from the date on which the monetary determination is issued, (B) the exercising by the [administrator] Administrator of the [administrator’s] Administrator’s discretion to reopen a claim under section 31-243 of the Connecticut General Statutes, or (C) the withdrawal of a valid initiating claim in favor of an initiating claim with a later effective date at any time during the six month period following the issuance of the monetary determination.

(3) “Valid initiating claim” means a claim filed by an unemployed or partially unemployed individual who meets the requirements of subdivisions (1) and (3) of subsection (a) of section 31-235 of the Connecticut General Statutes, provided that, with respect to any week of unemployment or partial unemployment, the individual is not found to be entitled to unemployment compensation under any other state’s law or compensation for temporary disability under any workers’ compensation law for the same period.

(b) All claims for benefits shall be made in a manner prescribed by the [administrator] Administrator.

(c) **Initiating and continuing claims.**

(1) **Initiating claim.** A week of unemployment shall be a calendar week commencing at midnight on Sunday. An initiating claim shall be filed during the week of unemployment with respect to which it is filed and shall be effective as of the commencement of the week within which it is filed, except where, pursuant to the provisions of section 31-229 of the Connecticut General Statutes, an individual’s partial earnings in any week exceed such individual’s weekly benefit entitlement with respect to such week, the claim shall be effective as of the commencement of the following week. An initiating claim for partial unemployment shall be filed within four weeks from the end of the calendar week in which the individual’s hours were reduced to less than full time and shall be effective as of the commencement of the week of the individual’s partial unemployment.

(2) **Continuing claims.** A continuing claim for benefits shall be filed in such manner as prescribed by the [administrator] Administrator and the claimant shall attest to work search efforts. A continuing claim for partial benefits shall be filed in the same manner as a claim for total unemployment, except that it shall include the statement of earnings provided for under section 31-222-9 of the Regulations of Connecticut State Agencies.

(3) **Failure to file claim within time limit.** Failure to file a claim for benefits, either initial or continuing, within the time limits set forth in this section and in the manner prescribed by the [administrator] Administrator, may be found to be for good cause if the [administrator]

Administrator determines that a person exercising reasonable prudence in the same circumstances would have been prevented from timely filing. Reasons constituting good cause for failure to timely file a claim include, but are not limited to: (A) failure of the employment security division to discharge its responsibilities, (B) failure of the employer to comply with verification or other requirements relating to unemployment, including failure to issue the unemployment notice and employee information packet, (C) coercion or intimidation which prevented the prompt filing of a claim, or (D) good faith error, provided the individual acted with due diligence in the filing of the claim once the individual was appropriately notified of such individual's rights to benefits or once the reason which provided good cause for the individual's failure to file ceased to exist. Unless due to the Administrator's failure to discharge the Administrator's duties, backdating of an initial or continued claim shall not be made for an effective date more than six months from the date of the request for backdating of the initial or continuing claim.

(4) **Invalidation of initiating claim.** Upon the individual's request, subject to the provisions of sections 31-241 and 31-243 of the Connecticut General Statutes, the [administrator] Administrator may invalidate a valid initiating claim provided the individual has first repaid in full any amount of benefits which the individual will be overpaid as a result of the invalidation [unless the overpaid benefits can immediately be recouped in full from subsequent payable benefits]. Overpayments resulting from an individual's request for invalidation of a valid initiating claim shall not be deemed to have occurred through error and shall not, therefore, be subject to the provisions of section 31-273(a) of the Connecticut General Statutes.

(5) The [administrator] Administrator may direct or authorize an individual to file in person when the [administrator] Administrator determines that it would be administratively more efficient, considering such factors as language barriers, lack of access to a telephone, the complexity of the claim, or the individual's mental or physical disability or inability to complete a claim using the claim filing system.

(d) **Return to work.**

Upon returning to employment, the individual shall provide the following information to the [administrator] Administrator in a manner prescribed by the [administrator] Administrator: the date on which the individual returned to work, the name and address of the individual's new employer and whether or not the work is self-employment.

(e) Shared work claims.

[Any initial or continuing claim for shared work benefits, pursuant to sections 31-250-8 to 31-250-12, inclusive, of the Regulations of Connecticut State Agencies, may be filed by an employer on behalf of its employees in such manner as directed by the administrator.] Employees referenced in an approved Shared Work application shall be required to file their own initial claim and weekly certifications. The employer administering an Approved Shared Work application is also required to file a weekly Shared Work certification. No unemployment benefit payment may be released unless both the employer and employee file the weekly certifications and the employee is otherwise eligible for unemployment benefits.

Section 4. Section 31-235-23 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-235-23. Efforts— method of work search; exemptions

(a) The Administrator shall find that a claimant is making adequate efforts to obtain work in any week in which the claimant reports the minimum number of work search efforts prescribed by the Administrator during the week the claimant filed for benefits. The claimant shall certify to the Administrator the required number of work search efforts in a manner prescribed by the Administrator, one of which shall include a contact with a potential employer.

Failure to provide the required number of valid work search contacts for a week in which a claim is filed or failure to answer fully all questions related to a work search contact provided by the claimant may result in the denial of benefits.

(b) A valid work search activity shall include, but not be limited[,] to₂ the following:

(1) applying to an employer for work, in a manner prescribed by the Administrator, for which the claimant is reasonably suited, based upon prior work experience, skills, knowledge and ability and which will ensure the employer will be able to contact the claimant regarding possible employment;

(2) attending a [work shop] workshop at an American Job Center;

(3) attending a job fair;

(4) participating in reemployment service activities at an American Job Center;

(5) creating a reemployment plan;

(6) attending a job interview;

(7) creating a resume and uploading the resume to the Connecticut Department of Labor's State Job Bank; or

(8) creating a personal user profile on a professional networking site.

(c) Work search efforts may be conducted on any day of the week in which a claimant files for benefits.

(d) Multi-day work search activities may be considered multiple work search activities during a particular week.

(e) A valid work search does not include:

(1) seeking self-employment;

(2) working as an independent contractor; or

(3) reporting part-time work.

(f) The claimant shall retain all work search effort information necessary for verification by the Administrator for a minimum of three (3) years from the date such effort was undertaken. The Administrator may request information that includes, but is not limited to:

(1) date of the work search activity;

(2) information on the employer, including, but not limited to, the name of the employer, contact person at the employer, employer's Internet web address, and telephone number of the employer;

(3) position applied for by claimant[,] if a specific position was advertised;

(4) result of the work search activity;

(5) copy of confirmation of receipt of application or resume by the employer for an online application, if available;

(6) copy of job advertisement, when applicable;

(7) copy of workshop flyer; and

(8) copy of job fair flyer.

(g) The Administrator may exempt a claimant from the requirement to complete work search efforts and retain work search effort information when the claimant is:

(1) job attached and is scheduled to return to work on a definite date as prescribed by the Administrator;

(2) union attached;

(3) engaged in state-approved training;

(4) participating in a shared work program approved by the Administrator; or

(5) serving on jury duty.

Section 5. Subsection (c) Section 31-235-27 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-235-27. Participation in profiling and the Reemployment Services and Eligibility Assessment program

.....

(c) As a condition of eligibility for unemployment benefits, an individual shall participate in any appropriate RESEA program reemployment service to which the individual has been referred unless the individual can demonstrate that justifiable cause existed for the individual's nonparticipation. Failure to comply with the RESEA program requirements shall result in a delay or loss of a claimant's unemployment benefits [for a particular week] until the requirements have been met unless the Administrator fails to discharge the Administrator's duties by rescheduling the service in a timely manner.

Section 6. Section 31-236-26d of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-236-26d. Absence from work

(a) **Application.** The Administrator shall apply this section to determine eligibility in all cases in which the individual was discharged or suspended due to absence from work.

(b) **Definitions.** For the purposes of this section, the following definitions shall apply:

(1) "Good cause for absence from work" means any compelling personal circumstance which would normally be recognized by the individual's employer as a proper excuse for absence, or which would prevent a reasonable person under the same conditions from reporting for work. Examples of such good cause shall include, but not be limited to: personal illness or injury which prevented the individual from reporting to work; a serious isolated transportation problem over which the individual had no control; or a sudden event which required the individual to address a compelling personal responsibility or family emergency.

(2) "Notice" means notification to the employer of absence from work through any reasonable method and within any reasonable timeframe prescribed by the employer.

(3) "Separate instance" means "separate instance" as defined in section 31-236(a)(16) of the Connecticut General Statutes.

(c) **Elements of wilful misconduct – Absence from work.** [In order to] To establish that an individual was discharged or suspended for absence from work which constituted wilful misconduct in the course of employment under section 31-236-26 of the Regulations of Connecticut State Agencies, the Administrator shall find that all of the following elements have been met:

(1) the individual had three separate instances of absence from work;

(2) with respect to each instance of absence, the individual either –

(A) did not have good cause for absence from work, or

(B) did not provide notice of such absence to the employer which could have been reasonably provided under the circumstances; and

(3) the three separate instances of absence occurred within a twelve-month period.

(d) **Failure to give notice.** Even if the Administrator determines that the individual had good cause for absence from work, such absence shall be counted as a separate instance under this section if the individual failed to give notice of such absence when such notice could have been reasonably provided under the circumstances.

(e) **Compelling personal circumstances.** The Administrator shall not find that an individual could have reasonably provided notice if the individual's failure to provide notice was due to compelling personal circumstances which would have prevented a reasonable person in the same circumstances from providing notice.

(f) **Consecutive days – Separate Instances.**

(1) Where a separation that occurred prior to January 1, 2024, is due to [Where] an absence without good cause for absence from work or without notice that continued for two or more consecutive days, the Administrator shall rely upon the following table to determine the number of separate instances of absence under this section.

Consecutive Days

Instance(s) of Absence

2	1
3	2
4	2
5	3
6	3

(2) For separations occurring on or after January 1, 2024, where an absence without good cause for absence from work or without notice continued for two or more consecutive days, each day shall constitute a separate instance of absenteeism under this section.

(g) Exclusions.

(1) Tardiness. An occasion of tardiness is not a separate instance of absence under this section. The Administrator shall determine the eligibility of any individual who was discharged or suspended for tardiness under the provisions of section 31-236-28 of the Regulations of Connecticut State Agencies.

(2) Unauthorized leaving of work. An individual's unauthorized leaving of his work site during scheduled working hours after the individual has reported to work is not a separate instance of absence under this section. The Administrator shall determine the eligibility of any individual who was discharged or suspended for such unauthorized leaving under either section 31-236-26a or section 31-236-26b of the Regulations of Connecticut State Agencies.

Section 7. Section 31-236-45 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-236-45. Employer remuneration-general

(a) An individual shall be ineligible for benefits during any week with respect to which the individual has received or is about to receive remuneration from his employer or his employer's agent in any of the following forms:

(1) wages in lieu of notice, including any payment made under the federal worker adjustment and retraining notification act; or dismissal payments, including severance or separation payment by an employer to an employee beyond the employee's wages upon termination of the employment relationship, except, for separations prior to January 1, 2024, as provided in section 31-236-46(c); or

(2) any payment by way of compensation for loss of wages or any other state or federal unemployment benefits.

(b) When an individual receives or is about to receive a payment, described within this section, corresponding to a given week in an amount less than his weekly benefit rate, the Administrator shall deduct such payment from his entitlement for that week dollar for dollar.

(c) This section shall not apply to remuneration in the form of mustering out pay, terminal leave pay or any allowance or compensation granted by the United States under an Act of Congress to an ex-serviceperson in recognition of his former military service, or any service-connected pay or compensation earned by an ex-serviceperson paid before or after separation or discharge from active military service.

Section 8. Section 31-236-46 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-236-46. Dismissal payments; wages in lieu of notice

(a) The Administrator shall allocate any wages in lieu of notice or dismissal payments to the week or weeks immediately following separation from employment, except that where an individual's separation occurs before the end of his scheduled work week, the allocation of such payment shall be effective with the day immediately following separation.

(b) Where the Administrator finds that all the terms essential to the computation and distribution of a payment described within this section have not been agreed upon, allocation of such payment shall be effective with the week of receipt.

(c) For separations occurring prior to January 1, 2024, [Where] where a condition is attached by an employer to the receipt of a payment described within this section which requires the individual to waive or forfeit a right or claim independently established by statute or common law against the employer, the [administrator] Administrator shall find such payment to be non-allocable.

(d) For the purposes of this section, statutory rights or claims include but are not limited to rights established under or claims relative to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1991, the Employee Retirement Income Security Act of 1974, the Americans With Disabilities Act of 1990, the state or federal Family Medical Leave Act and any other local, state or federal law, regulation or ordinance. For the purposes of this section, common law claims include but are not limited to claims relative to wrongful discharge under Connecticut law. Contractual recall rights do not constitute statutory or common law rights.

(e) For the purposes of this section, "dismissal payments" means any severance or separation payment, by an employer to an employee beyond his wages upon termination of the employment relationship.

Section 9. Section 31-236-47 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-236-47. Payment by way of compensation for loss of wages

(a) In order to determine that a payment is a payment by way of compensation for loss of wages with respect to a given week or weeks, the Administrator must find that the payment is provided for by the employment agreement and represents compensation in an amount substantially equivalent to the pay an individual would have received for services rendered if he had actually worked.

(b) For separations occurring prior to January 1, 2024, [The] the Administrator shall find vacation pay to be a payment by way of compensation for loss of wages when the vacation pay relates to an identifiable week or weeks, either designated as a vacation period by arrangement between the individual, or his representative, and his employer or which is the customary vacation period in the employer's industry. Where the vacation pay relates to an identifiable week or weeks, the Administrator shall allocate the vacation payment to the identifiable week or weeks.

[(c)] (1) Except as provided in subdivision (2) of [subsection (d)] of this section, where the Administrator finds that a vacation payment does not relate to an identifiable week or weeks, the payment shall be allocated effective with the week of receipt or the individual's first day of unemployment not otherwise compensated, whichever is later.

[(d)] (2) For separations occurring prior to January 1, 2024, [Where] where an employer has closed a Connecticut facility and as a result, an individual has no substantive reemployment rights with that employer, the payment of accrued vacation pay shall not be allocable.

[(e)] (3) For separations occurring prior to January 1, 2024, [Where] where an individual is not required to take equivalent vacation time in order to receive vacation pay for a given period under his employment agreement, the Administrator shall not consider such payment to be a payment by way of compensation for loss of wages, but instead shall find it to be a non-allocable bonus payment.

(c) For separations on or after January 1, 2024:

(1) Where an individual receives any vacation pay relating to an identifiable week or weeks designated as a vacation period by arrangement between the individual or the individual's representative and the individual's employer or that is the customary vacation period in the employer's industry, the payment shall be allocated to the period of time covered by the vacation pay unless such payment is made upon the claimant's separation from employment;

(2) Where an individual receives any payment of accrued vacation pay upon separation from employment, the payment of accrued vacation pay shall not be allocable.

Section 10. Section 31-244-9a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 31-244-9a. Employer's appeal of charges resulting from its nonparticipation in the fact-finding process or in response to a request for information by the Administrator

The issue of an employer's non-participation in a fact-finding or in response to a request for information by the Administrator may not be the subject of an appeal until notification of the nonparticipation and the right to appeal is noticed in a decision by [until the effect of such non-participation is reflected in (1) a statement of quarterly charges (Form UC-54Q) in the case of a

contributing employer, (2) in the case of a reimbursing employer, a monthly billing statement, or (3) in the case of an out-of-state from employer, first notification to the employer from the Administrator. The employer may appeal its assessment of charges resulting from its non-participation in the fact-finding process upon receipt of the first statement of quarterly or monthly charges which includes charges resulting from the employer's non-participation. Such statement of quarterly or monthly charges shall be the only determination of the Administrator through which the issue of nonparticipation may be appealed. A contributing employer's appeal from this determination shall be made pursuant to the provisions of Section 31-225a(h)(3) of the Connecticut General Statutes. A reimbursing employer's appeal from this determination shall be made pursuant to the provisions of Section 31-225(g)(2)(D) of the Connecticut General Statutes.] the Employment Security Appeals Division.

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(Statement of Purpose page)

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

Statement of Purpose: The proposed regulations implement modifications made to the Connecticut Unemployment Compensation Act, Chapter 567 of the Connecticut General Statutes, through the passage of Public Act 21-200 and Public Act 22-67, which are effective on January 1, 2024. The proposed regulations also contain technical changes to align the Unemployment Compensation regulations with the modernized system.