

ARTICLE 3. INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

Rule 1. Contributions; Reports; Sickness and Accident Disability; Group Accounts

646 IAC 3-1-1 Quarterly contributions and reports; taxable wages defined; wage reports

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 1. (a) Every employer subject to IC 22-4 shall file quarterly contribution reports on forms prescribed by the department, or on electronic media in a format approved by the department. These reports are due on or before the last day of the month next following the quarter for which such reports are filed. Contributions are due and payable at the time these reports are filed, except for those employers who have elected to become liable for payments in lieu of contributions.

(b) Such reports must show the total remuneration paid for covered employment as well as wages subject to contribution. The amount of payroll subject to contribution for any year is termed "wages" and is limited as follows:

(1) "Wages", as used in this section, shall not include remuneration in excess of the taxable wage base established by law paid to an individual by a single employer in a calendar year with the following exceptions:

(A) In cases of an acquisition of the organization, trade, or business of an employer, or the acquisition of a distinct and segregable portion of such business, the remuneration paid to an individual by the predecessor will be combined with remuneration paid to the same individual by the successor in the same calendar year in which the acquisition occurs to determine the taxable wage base limitation.

(B) The remuneration paid by an employer to an employee in another state will be combined with the remuneration paid by the same employer to the same employee in the same calendar year in this state to determine the taxable wage base limitation.

(2) Concurrent with the quarterly contribution report, each employer shall be required to file a wage report. The wage report shall show the total remuneration paid for covered employment to each employee in any calendar quarter. Total remuneration includes taxable wages as well as remuneration in excess of taxable wages paid to each individual in a calendar year.

(Department of Workforce Development; Rule 1; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 864; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 29; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 126; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 36; filed Apr 29, 1957, 4:00 p.m.: Rules and Regs. 1958, p. 50; filed Sep 4, 1959, 9:10 a.m.: Rules and Regs. 1960, p. 31; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 30; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 42; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 71; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 154; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 59; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1907; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Alternatively cited as Sec. I, Rule 1; Part I, Rule 1; Part I, Rule 1. NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-1) to the Department of Workforce Development (646 IAC 3-1-1) by P.L. 105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-2 Reports and contributions due for entire calendar year; newly qualified employers

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 2. (a) Reports and contributions from an employer are required for the entire calendar year in which the employer first becomes subject to the law. The due date of contributions and reports for the quarter or quarters preceding the quarter in which the employing unit qualifies as an employer is the date upon which the employing unit actually acquired the status of an employer within the meaning of the law; however, interest and penalty shall not accrue on past quarters until thirty (30) days after such date.

(b) The reference to contributions in subsection (a) shall not apply to those employers that have elected to become liable for payments in lieu of contributions. However, the reference to reports applies to all employers. *(Department of Workforce Development; Rule 3; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 866; filed Dec 30, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 85; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 72; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 155; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1908; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-2) to the Department of Workforce Development (646 IAC 3-1-2) by P.L. 105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-1-3 “Nothing to report”

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. Every qualified employer is required to send in quarterly contribution reports even if no contributions are due. Reports must be sent to the department until the director grants permission to the employer to discontinue filing. If the employer finds that in a particular quarter no payroll has been incurred and no contributions are due, then the employer shall file a contribution report marked “Nothing to Report”. (*Department of Workforce Development; Rule 4; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 866; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1908; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-3) to the Department of Workforce Development (646 IAC 3-1-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-4 Correction of errors; additional contributions due; credits or refunds

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 4. (a) No contribution report when once accepted will be returned to the employer for correction. Whenever it is discovered that an error has been made in filing a contribution report, the employer shall submit a detailed explanation indicating the reason for such error. The explanation shall include the:

- (1) name;
- (2) Social Security numbers;
- (3) amount reported;
- (4) correct amount; and
- (5) difference by quarters;

for each employee affected. This adjustment may reflect either an underpayment or overpayment of contributions to the department. If additional contributions are due by reason of an underpayment, remittance plus interest from the due date must be included. If a credit or refund results from an overpayment, upon approval by the department, a credit memo will be issued, which may be taken on the subsequent quarterly report. If the refund is greater than the amount due on the subsequent quarterly report, a claim for refund shall be filed by the employer as provided in this section. An employer shall be notified when it is discovered that an overpayment has been made to the account and shall be given an opportunity to file a claim for refund in the amount of any such overpayment.

(b) No claim for refund shall be considered unless the employer claiming such refund has made application to the director upon the form prescribed by the department. This form must set forth the following:

- (1) The amount of overpayment claimed.
- (2) The period covered by the report upon which the overpayment was made.
- (3) The full reason upon which the claim is based.

(c) A claim for refund must be executed by the person to whom the claim is alleged to be due. A claim for refund by a corporation must be made in the name of the corporation and executed by an officer thereof. A fiduciary will be required to furnish a certified copy of appointment to accompany a claim for refund on contributions not paid in fiduciary capacity. (*Department of Workforce Development; Rule 6; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 867; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 30; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 72; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1909; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2857; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-4) to the Department of Workforce Development (646 IAC 3-1-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-5 Meals and lodging as wages; valuation

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. (a) Meals and lodging allowed by an employer to employees as increased or additional remuneration shall be deemed wages subject to contribution.

(b) Where the employer provides a fixed amount to the employee for meals and lodging, that fixed amount shall be considered

the amount of additional remuneration.

(c) Where a fixed amount is not allowed by the employer to the employee, the amount of additional remuneration will be the actual cost of the meals and lodging.

(d) Provided, however, that where meals and lodging are furnished by the employer, on the premises of the employer, and for the convenience of the employer, then those meals and lodging and the value thereof are not considered remuneration subject to contributions.

(e) The following are examples of meals not considered taxable remuneration:

(1) An employer owns an apartment project. He hires a man to act as maintenance man and his wife to handle rentals and show units to prospective renters. As these employees are expected to be on twenty-four (24) hour call, the employer furnishes them with an apartment in addition to their normal remuneration. As the apartment is furnished for the convenience of the employer, the value of the apartment is not considered taxable remuneration to the employees.

(2) A restaurant owner provides meals to his waitresses and prefers that they remain on the premises during rush hours in the event of an unusually large amount of customers. As these meals are provided for the convenience of the employer, they are not considered taxable remuneration.

(Department of Workforce Development; Rule 8; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 869; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 32; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 37; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 74; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 43; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 73; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1909; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-5) to the Department of Workforce Development (646 IAC 3-1-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-6 Termination or transfer of business; notice; final report; attachment of successor's assets

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) Where the status of an employer is changed by cessation or disposition of business or appointment of a receiver, trustee, trustee in bankruptcy, or other fiduciary, the employer shall immediately notify the department, and contributions with respect to wages for employment up to and including the date of the change of status and with respect to amounts which would otherwise constitute wages, as defined in IC 22-4, except for nonpayment thereof are immediately due and payable. The employer shall immediately file necessary contribution and wage reports, showing all remuneration of each of his employees for employment occurring in the calendar quarter in which the change of status occurred, and all previous unreported contributions and remuneration. Reports covering the calendar quarter in which the change of status occurred shall be marked "final report".

(b) Whenever an employer disposes of his organization, trade, or business, in whole or in part, it shall be the duty of both the employer and his successor to notify the department thereof on the forms prescribed by the department. If the disposing employer is a corporation, the employer shall follow the dissolution procedure described in IC 22-4-32-23. *(Department of Workforce Development; Rule 10; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 870; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 32; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 31; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 73; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1910; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-6) to the Department of Workforce Development (646 IAC 3-1-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-1-7 Successor employers; notice; transfer of experience account; liability for contributions

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-1; IC 22-4-7-2; IC 22-4.1

Sec. 7. (a) The director is authorized to determine when there has been an acquisition of the organization, trade, or business of an employer within the meaning of IC 22-4-7-2(a) through IC 22-4-7-2(b) and IC 22-4-10-6. Each employer who disposes of all or a part of its organization, trade, or business and the successor to that business, or part of that business, shall immediately report the transaction to the department and execute prescribed forms. If the director finds that there has been an acquisition under IC 22-4-7-2(a) by an employing unit not previously an employer within the meaning of IC 22-4-7-1 or IC 22-4-7-2, the disposing employer's entire experience account shall be transferred to the successor and the successor shall immediately assume the position of the

disposing employer with respect to the resources and liabilities reflected by the experience account as if no change had occurred. If the director finds that, within the meaning of IC 22-4-7-2(a), there had been an acquisition from an employer by an employer already subject to contribution, the disposing employer's experience account shall be transferred to the successor, but the successor shall retain its rate of contribution. Provided, however, should no reports be received by the director, then at the expiration of thirty (30) days from the date of the acquisition, transfer may be made by the director upon his own motion. Whenever a total transfer is made, the status of the original employer as an employer under IC 22-4 is terminated unless and until such employer subsequently qualifies under IC 22-4-7-1 or IC 22-4-7-2.

(b) The acquiring employer, if not previously a subject employer shall, as of the date of acquisition, become liable for contributions with respect to all wages paid to his own employees during the entire calendar year. If the acquiring employer becomes liable by reason of the acquisition, and acquires all or part of the predecessor's experience account, it shall, beginning with the first day of the calendar quarter in which the acquisition occurs, pay contributions at the rate applicable to the predecessor employer at the time of the acquisition until its rate is computed for the next succeeding calendar year. Provided, however, that if the successor employer simultaneously acquires all or part of the experience balance of two (2) or more employers, its rate, beginning with the first day of the calendar quarter in which the acquisitions occurred, shall be the highest rate applicable to the experience accounts totally acquired. Provided further, that if the successor employer had any employment prior to the date of acquisition upon which contributions were owed under IC 22-4-9-1, its rate of contribution from the first of such year to the first day of the calendar quarter in which the acquisition occurred shall be two and seven-tenths percent (2.7%). If such employer becomes liable by reason of an acquisition within the meaning of IC 22-4-7-2(b), and does not acquire a part of the experience account of the disposer, its rate shall be two and seven-tenths percent (2.7%) until a higher or lower rate is established under IC 22-4-11-2 and IC 22-4-11-3. If the acquiring employer was an employer at the time of the acquisition, the contribution rate assigned to it for that year shall continue throughout the remainder of the year.

(c) Where there is no transfer of an account to a successor and an employer has legally terminated its liability, then the employer's account shall be terminated and closed. Provided, however, that if that employer again becomes subject to the law within four (4) years of the date of termination of its account, then it shall resume its former position with respect to the resources and liabilities of the experience account and shall be entitled to an experience rate computation under IC 22-4-11-2 and IC 22-4-11-3 if benefits have been payable from and chargeable to its experience account throughout the thirty-six (36) months immediately preceding the computation date.

(d) Domestic employment, as defined in IC 22-4-7-2(i) will not be considered in the transfer of an experience account under IC 22-4-7-2(a) or IC 22-4-7-2(b). The disposer will retain the domestic portion of its experience account and will be assigned a new reporting number. (*Department of Workforce Development; Rule 11; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 871; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 32; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 37; filed Jun 15, 1955, 9:00 a.m.: Rules and Regs. 1956, p. 211; filed Sep 12, 1956, 12:30 p.m.: Rules and Regs. 1957, p. 110; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 74; filed Aug 19, 1971, 3:30 p.m.: Rules and Regs. 1972, p. 31; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 155; filed Nov 25, 1975, 3:05 p.m.: Rules and Regs. 1976, p. 103; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 60; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1910; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2596; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-7) to the Department of Workforce Development (646 IAC 3-1-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-8 Termination of coverage; partial disposition of business

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-1; IC 22-4.1

Sec. 8. Any employer who has disposed of a segregable portion of his business and a part of the resources and liabilities of his experience account is assumed by the acquirer shall cease to be an employer at the end of the year in which the disposition occurred only if the department finds that the portion retained by the disposer would not have qualified the employer under IC 22-4-7-1 if it had constituted the disposer's entire organization, trade, or business throughout such calendar year; provided, that no employer thus disposing of a segregable portion of its organization, trade, or business shall cease to be an employer at the end of the first year. (*Department of Workforce Development; Rule 12; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 873; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 34; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 128; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 157; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1911; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-8) to the Department of Workforce Development

(646 IAC 3-1-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-9 Sick pay consideration wages; disability payments defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4-4-1; IC 22-4-4-2; IC 22-4-5-1; IC 22-4-5-2; IC 22-4.1

Sec. 9. (a) "Sick pay", as referred to in IC 22-4-4-1, IC 22-4-5-1, and IC 22-4-5-2, means the amounts paid to an employee during periods of temporary absence due to illness or injury, and it is anticipated by both the employer and the employee that he will return to service; and when the employer holds himself in readiness to receive the services of the employee, the employment relationship is considered to continue. The amounts paid for such absences shall be considered remuneration and deductible income.

(b) Sickness or accident disability payments as referred to in IC 22-4-4-2(b) means payments made to or on behalf of an individual after his employment relationship has been severed by disabling sickness or accident, and it is anticipated that he will not return to employment. (*Department of Workforce Development; PT I, Rule 15; filed Aug 2, 1968, 8:50 a.m.: Rules and Regs. 1969, p. 30; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 75; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 157; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1912; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-9) to the Department of Workforce Development (646 IAC 3-1-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-10 Group accounts

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-1; IC 22-4.1

Sec. 10. If two (2) or more employers elect to form a group account under IC 22-4-10-1(c), the department will retain separate account numbers for each employer; however, a common mailing address will be assigned to each account. Separate reports will be required, but all billings will be mailed to the designated common mailing address, and only one (1) payment will be required to cover all billings sent to members of the group account. (*Department of Workforce Development; Rule 19; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 61; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1912; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-11) to the Department of Workforce Development (646 IAC 3-1-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-11 Accelerated tax payments under schedule "A"; procedures

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-1; IC 22-4.1

Sec. 11. Pursuant to the authority granted by IC 22-4-10-1 the Board, when schedule A is in effect, may accelerate tax payments. When the Board determines that tax payments should be accelerated under the conditions set forth in the law, each subject employer will be notified by regular mail not less than thirty (30) calendar days prior to the date the accelerated contribution is due. The employer shall estimate the amount of the accelerated tax payment based upon its projection of its estimated payroll for the accelerated quarter, and will remit that amount in whole or in a percentage of the whole as determined by the Board.

Any amount of estimated accelerated payment which exceeds the amount of tax actually owed by any employer for the quarter to which the acceleration applies shall not be refunded to that employer but shall be applied as a credit against future liability. If the amount of estimated accelerated tax is less than that actually owed by any employer for the quarter to which the acceleration applies, the difference between the estimated tax paid and the actual tax owed shall be paid at the time the tax is normally due for that quarter which was accelerated.

The enforcement procedures applicable to regular tax contributions shall apply to accelerated contributions. (*Department of Workforce Development; Rule 20; filed Jul 13, 1982, 2:22 pm: 5 IR 1829; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1-12) to the Department of Workforce Development (646 IAC 3-1-11) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-1-12 Initial and wage reporting requirements for professional employer organizations; separate location accounts; notice of termination

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-6

Sec. 12. (a) Each professional employer organization, under 646 IAC 3-4-11, that enters into a written agreement to provide services to a business entity during any calendar quarter shall submit to the department no later than the due date for the quarterly unemployment contribution report relating to that quarter, a report identifying the following:

- (1) The name of the business entity to which services are provided.
- (2) The location of the business entity's operations.
- (3) The unemployment insurance account number of the business entity (if any).
- (4) The effective date of the written agreement to provide services.

(b) For each separate client, the professional employer organization must obtain a location code to identify the employees related to that business entity's place of operation.

(c) The professional employer organization must include the respective client location codes with every quarterly wage or contribution report, or both, submitted to the department.

(d) A professional employer organization shall provide the department with written notification via registered mail of the termination of a written agreement to provide services to a business entity within ten (10) business days of such termination. (*Department of Workforce Development; 646 IAC 3-1-12; filed Sep 13, 2004, 9:30 a.m.: 28 IR 560*)

646 IAC 3-1-13 Responsibility of professional employer organization to pay unemployment contributions; resumption of liability by client business entity upon termination of agreement between professional employer organization and client

Authority: IC 22-4.1-3-3

Affected: IC 22-4-32-21

Sec. 13. (a) For the duration of the agreement between a professional employer organization and a client business entity under 646 IAC 3-4-11, the professional employer organization, as the employer of the employees whom it engages to perform services for the client, is responsible for the payment of all unemployment contributions related to said employees for which it is liable under IC 22-4, this article, or any other state or federal laws or regulations relating to unemployment insurance that are applicable to employers on behalf of the client.

(b) Upon termination of the agreement between a professional employer organization and a client business entity under 646 IAC 3-4-11 and proper written notice to the department, the professional employer organization must promptly pay its outstanding liability, including contributions, interest, and penalties, that have accrued on payroll amounts paid by the professional employer organization to employees that it formerly engaged to perform services for the client business entity, up to the date of the termination of said agreement. The professional employer organization will remain responsible for contributions, interest, and penalties that may accrue after the date of the termination if it does not promptly pay its outstanding liability and properly notify the department in writing of such termination.

(c) The department shall maintain the employer account of the client business entity for a period of five (5) full calendar years after the beginning of the agreement with the professional employer organization. If the agreement between the professional employer organization and the client business entity terminates prior to the end of the five (5) year period, the client shall resume responsibility for all subsequent liability as the employer of its employees as of the date of the termination. The client business entity will revert to its previous employer account number and merit rate. If the agreement between the professional employer organization and the client business entity terminates after the five (5) year period has passed, the client business entity will assume a new employer account number and new employer merit rate. (*Department of Workforce Development; 646 IAC 3-1-13; filed Sep 13, 2004, 9:30 a.m.: 28 IR 561*)

Rule 2. Definitions

646 IAC 3-2-1 Definitions

Authority: IC 22-4.1-3-3
 Affected: IC 22-4.1

Sec. 1. The definitions in this rule apply throughout this article. (*Department of Workforce Development; 646 IAC 3-2-1; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1912; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-1) to the Department of Workforce Development (646 IAC 3-2-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-2-2 "Employee" defined

Authority: IC 22-4.1-3-3
 Affected: IC 22-4.1

Sec. 2. "Employee" means any individual performing personal services for remuneration or under a contract of hire. (*Department of Workforce Development; 646 IAC 3-2-2; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1912; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-2) to the Department of Workforce Development (646 IAC 3-2-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-2-3 "Governmental entity" defined

Authority: IC 22-4.1-3-3
 Affected: IC 22-4-8-2; IC 22-4.1

Sec. 3. (a) "Governmental entity" pertains to IC 22-4-8-2(i)(1), a "political subdivision" ordinarily includes a county, city, town, village, or school district, sanitation, utility, reclamation, improvement, drainage, irrigation, flood control, or similar district. The term also includes an instrumentality of the state, or of one (1) or more political subdivisions of the state, or the state and one (1) or more of its political subdivisions.

(b) As used in this section, "instrumentality" means a legal entity organized to carry on some function of government for the state or political subdivision. It is an independent legal entity with the power to hire, supervise, and discharge its employees, and generally it may sue and be sued, enter into a contract, and hold or transfer property in its own name.

(c) Organizations such as libraries and hospitals may be integral parts of cities, counties, or other political subdivisions, and, if so, their coverage would depend on the coverage of the political subdivision of which they are a part. They may be a political subdivision in themselves, or they may be a private nonprofit organization. (*Department of Workforce Development; 646 IAC 3-2-3; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1912; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2596; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-3) to the Department of Workforce Development (646 IAC 3-2-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-2-4 "Full time" defined

Authority: IC 22-4.1-3-3
 Affected: IC 22-4.1

Sec. 4. "Full time" means that number of hours which are customarily considered full time prevailing in the industry of establishment. (*Department of Workforce Development; 646 IAC 3-2-4; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1913; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-4) to the Department of Workforce Development (646 IAC 3-2-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-2-5 "Instructional" defined

Authority: IC 22-4.1-3-3
 Affected: IC 22-4.1

Sec. 5. "Instructional" means services which consist of the following:

(1) Teaching, tutoring, or lecturing.

(2) Directing or supervising the instructional activities of others.

(3) Counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(Department of Workforce Development; 646 IAC 3-2-5; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1913; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-5) to the Department of Workforce Development (646 IAC 3-2-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-2-6 “Research” defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. “Research” means services which consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. *(Department of Workforce Development; 646 IAC 3-2-6; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1913; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-6) to the Department of Workforce Development (646 IAC 3-2-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-2-7 “Principal administrative” defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. “Principal administrative” means services which consist of managing the educational institution or one (1) of its divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations which have major impact on the overall operations and functions of the educational institution or one (1) of its major divisions or departments. *(Department of Workforce Development; 646 IAC 3-2-7; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1913; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-1.5-7) to the Department of Workforce Development (646 IAC 3-2-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-2-8 “Department” defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4-2-11; IC 22-4.1

Sec. 8. “Department” means the Indiana department of work force development, unless otherwise indicated by context. *(Department of Workforce Development; 646 IAC 3-2-8; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2857; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203)*

646 IAC 3-2-9 “Board” defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4-2-3; IC 22-4.1

Sec. 9. “Board” means the Indiana unemployment insurance board, unless otherwise indicated by context. *(Department of Workforce Development; 646 IAC 3-2-9; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2857; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203)*

Rule 3. Employment Defined; Single Unit Employers; Trustees; Helpers

646 IAC 3-3-1 Employees of trustee

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. Employees of Trustee. Individuals hired by a trustee to perform services in connection with the trust property and who are paid from the funds of the trust are considered in the employment of the trust and not the trustee. *(Department of Workforce*

Development; Reg 102; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 875; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-2-2) to the Department of Workforce Development (646 IAC 3-3-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-3-2 Bankruptcy trustee

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 2. Trustee in Bankruptcy. A trustee in bankruptcy may be an employing unit or an employer, but remuneration paid to him for his services as a trustee in bankruptcy is not considered wages because such trustee is not in employment. (*Department of Workforce Development; Reg 103; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 875; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-2-3) to the Department of Workforce Development (646 IAC 3-3-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-3-3 Common paymaster; designation

Authority: IC 22-4.1-3-3

Affected: IC 22-4-6-3; IC 22-4.1

Sec. 3. If two or more related corporations meet the requirements as defined under IC 22-4-6-3, they may file an application on prescribed division forms designating one related corporation to be the common paymaster. The same individual who has an employment relationship with two or more related corporations would have his wages reported by the designated common paymaster and only his first \$7,000.00 in remuneration would be subject to contribution.

The related corporations will still be required to submit quarterly contribution reports under their assigned account number and report wages and pay required contribution on all their other employees at the rate assigned to each corporation. (*Department of Workforce Development; 646 IAC 3-3-3; filed Mar 10, 1986, 1:30 pm: 9 IR 1969; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-2-5) to the Department of Workforce Development (646 IAC 3-3-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

Rule 4. Qualifying as an Employer

646 IAC 3-4-1 "Twenty weeks" qualification

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. In determining whether or not an employing unit has had in employment, or has incurred liability for wages payable to one (1) or more individuals, for twenty (20) weeks, the twenty (20) weeks must all occur within a single calendar year. If any week includes both December 31 and January 1, the days through December 31 shall be deemed one (1) calendar week and the remaining days in such week shall be deemed another calendar week for qualification purposes. For example, when December 28, 29, 30, and 31, fall on Sunday, Monday, Tuesday, and Wednesday, respectively, these days shall be used as a week for qualification purposes for the calendar year in which they fall and the remaining days of that week up to and including Saturday, January 3, shall be considered a calendar week for qualification purposes in the calendar year in which they fall. (*Department of Workforce Development; Reg 201; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 876; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 34; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 85; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 75; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 157; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 61; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1913; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-1) to the Department of Workforce Development (646 IAC 3-4-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-4-2 Four or more employees in one day

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-2; IC 22-4-8-2; IC 22-4.1

Sec. 2. Under IC 22-4-7-2(h) and IC 22-4-8-2(j), in determining whether or not an employing unit has had four (4) or more individuals performing services for it in one (1) day, it is not necessary that the four (4) or more individuals be employed at the same moment of time for any particular length of time. It is sufficient if the total number of individuals employed, or for whom liability for wages is incurred, during the twenty-four (24) hours of a day is four (4) or more, regardless of the period of service during that day. For example, X corporation employs two (2) individuals from 9 a.m. until 5 p.m. The corporation employs two (2) other individuals from 7 p.m. until 10 p.m. X corporation has had four (4) individuals performing services for it within the meaning of IC 22-4-7-2(h). (*Department of Workforce Development; Reg 202; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 877; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 35; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 86; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 158; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1914; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-2) to the Department of Workforce Development (646 IAC 3-4-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-3 Multiple employers

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. Employees of Two or More Employers. Where an individual is engaged in employment subject to the law by two or more employers concurrently, such individual shall be deemed an employee of each such employer for all purposes of the law.

Example: A works for X in the morning and for Y in the evening. A is counted as an employee of both X and Y and each employer must contribute upon the wages paid by him to A.

(*Department of Workforce Development; Reg 203; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 877; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-3) to the Department of Workforce Development (646 IAC 3-4-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-4 Leased department

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. Leased Department. The lessee of a leased department is considered the employer of individuals performing services for such leased department even though such individuals are hired and paid by the lessor, if the lessor hires and pays such individuals as agent of the lessee. (*Department of Workforce Development; Reg 205; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 878; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-5) to the Department of Workforce Development (646 IAC 3-4-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-5 Property managers

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. Property Managers. Where a real estate agency manages property for various property owners under an agency contract whereby the agency hires and discharges individuals engaged in maintaining such property and whereby such individuals are paid from the income derived from the respective properties or other income of the owner, such individuals are considered to be in the employment of the respective property owners. (*Department of Workforce Development; Reg 206; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 878; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-6) to the Department of Workforce Development (646 IAC 3-4-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-6 Mortgagee or assignee of rent

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. Mortgagee or Assignee of Rent. Where property is in the hands of a mortgagee in possession, or an assignee of rent,

or the trustee or receiver under the mortgage, or in foreclosure, such mortgagee, assignee, trustee or receiver, and not the owner of the property, is considered the employer of individuals performing services with respect to such property. (*Department of Workforce Development; Reg 207; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 878; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-7) to the Department of Workforce Development (646 IAC 3-4-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-7 Continuing liability

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-1; IC 22-4.1

Sec. 7. Any employing unit qualifying under IC 22-4-7-1 remains subject to the law throughout the following calendar year, even though in such following year such employing unit does not have one (1) or more employees for twenty (20) weeks in the calendar year. For example, X employs one (1) individual throughout 1972 and qualifies as an employer subject to the law. During 1973, X employs only one (1) individual for a total of eighteen (18) weeks and did not pay wages of as much as one thousand five hundred dollars (\$1,500) in any calendar quarter. X must contribute on the wages paid to the one (1) employee in 1973 because he had one (1) employee for twenty (20) weeks in the preceding calendar year of 1972 and can terminate his status as an "employer" only as of January 1, 1974. (*Department of Workforce Development; Reg 208; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 878; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 36; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 38; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 86; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 76; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 158; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1914; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-8) to the Department of Workforce Development (646 IAC 3-4-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-8 Voluntary election to qualify as employer

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 8. (a) Any employing unit not otherwise subject to the law may, with the approval of the board, become subject to the law for not less than two (2) calendar years by filing its written application to the board. Such application must be filed not later than April 1 of the first calendar year with respect to which application is made.

(b) Where an employing unit has one (1) or more individuals performing services entirely outside of this state and contributions are not required by any other unemployment compensation law with respect to wages paid by the employing unit for services, the employing unit and such individuals may, upon the approval of the board, elect to consider services as employment subject to the Indiana law. (*Department of Workforce Development; Reg 209; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 879; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 36; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 86; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 158; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1914; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-9) to the Department of Workforce Development (646 IAC 3-4-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-4-9 Election to cover exempt services

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-2; IC 22-4-8-3; IC 22-4.1

Sec. 9. Any employing unit employing individuals exempt under IC 22-4-8-2(j)(3) or IC 22-4-8-3 may elect to consider the services of such individuals, in one (1) or more distinct establishments, as employment for all purposes of the law for at least two (2) calendar years. The application must be filed with the director not later than April 1 of the first calendar year with respect to which the application is made. (*Department of Workforce Development; Reg 210; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 879; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 36; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 76; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 159; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 62; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1914; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-3-10) to the Department of Workforce Development (646 IAC 3-4-9) by P.L.105-1994,

SECTION 5, effective July 1, 1994.

646 IAC 3-4-10 Transfer of all or part of business; division of experience balance (Voided)

Sec. 10. (Voided by P.L.98-2005, SECTION 10, effective July 1, 2005.)

646 IAC 3-4-11 “Professional employer organization” defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-1

Sec. 11. “Professional employer organization” means any entity that contracts to provide the nontemporary, ongoing employee workforce of a client under a written agreement and that under contract and in fact:

- (1) has a right to hire and terminate the employees who perform services for the client;
- (2) sets the rate of pay of the employees, whether or not through negotiations;
- (3) has the obligation to and pays the employees from its own accounts;
- (4) has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to:
 - (A) conduct its business;
 - (B) meet any fiduciary responsibility; or
 - (C) comply with any applicable statutory or regulatory requirements;
- (5) with respect to all employees to whom it pays wages under an agreement with a client business entity:
 - (A) assumes responsibility for the unemployment insurance coverage;
 - (B) files all required reports;
 - (C) pays all required contributions or reimbursements for which it is liable; and
 - (D) otherwise complies with IC 22-4, this article, or any other state or federal laws or regulations relating to unemployment insurance that are applicable to employers on behalf of the client; and

(6) provides written notice of the agreement between the professional employer organization and the client to the employees. (Department of Workforce Development; 646 IAC 3-4-11; filed Sep 13, 2004, 9:30 a.m.: 28 IR 561)

Rule 5. Qualifying as an Employee

646 IAC 3-5-1 Corporate officers and directors

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-1

Sec. 1. (a) An officer of a corporation who receives remuneration for his or her services as a corporate officer from a corporation is in employment during the entire term of his or her office, and such remuneration shall be considered as wages.

(b) A director of a corporation, as such, is not considered in employment, and fees paid for attendance at meetings of such board of directors shall not be deemed wages.

(c) A member of a board of directors is in employment, however, if he or she performs services for remuneration for the corporation other than those required by attendance at, and participation in, the meetings of the board of directors.

(d) The remuneration considered wages in subsection (a) shall be deemed wages paid by a professional employer organization, and the corporate officer of a client business entity shall be deemed the employee of the professional employer organization, in the event the services performed as a corporate officer are subject to a written agreement between the professional employer organization and the client business entity as provided in 646 IAC 3-4-11. (Department of Workforce Development; Reg 301; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 880; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 36; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 38; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 159; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1916; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203; filed Sep 13, 2004, 9:30 a.m.: 28 IR 561) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-4-1) to the Department of Workforce Development (646 IAC 3-5-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-5-2 Caddies

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 2. Caddies. A caddy who performs services for a member or guest of a golf club is not in the employment of the club even though his fees are paid directly or indirectly by the club. (*Department of Workforce Development; Reg 304; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 881; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-4-3) to the Department of Workforce Development (646 IAC 3-5-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-5-3 Truckers and draymen

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. Employee and His Equipment. Where an employing unit contracts with a trucker or drayman for the transportation or delivery of its merchandise other than on an hourly, salary or commission basis, and such trucker or drayman furnishes his own equipment and is the master of his own time and effort, the services so performed are not considered employment.

However, if an employing unit employs such an individual and exercises sufficient control over him to constitute such individual an employee, and compensates him in amounts including wages and rentals for the equipment, the reasonable rental value of the equipment may be determined and deducted for contribution purposes in cases where no agreement has been made for the allocation of any portion of such payments as rental for equipment.

Example: A is a construction contractor and hires B with his dump truck to haul gravel under the supervision of A's foreman.

A pays B \$10 per day for the use of such truck and for B's services. The reasonable rental value of the truck may be deducted and contributions paid only on remuneration for the personal services of B.

(*Department of Workforce Development; Reg 306; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 881; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-4-5) to the Department of Workforce Development (646 IAC 3-5-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-5-4 Factory demonstrators

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. Factory Demonstrators in Stores. Demonstrators who are placed by a manufacturer in department and specialty stores to aid in the sale of the specialized products of such manufacturer, who are engaged by the manufacturer, who are paid directly or indirectly by the manufacturer, and who work under the direction of the manufacturer, although this direction may be delegated to the retailer, are in the employment of the manufacturer. If the retailer, not acting as an agent for the manufacturer, engages the demonstrator, and the demonstrator works under the direction of the retailer and receives his remuneration 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 in the employment of both manufacturer and retailer. Each is required to pay contributions on that part of the remuneration which he pays; provided, that one or both, as the case may be, are employers under the law. (*Department of Workforce Development; Reg 309; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 882; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-4-8) to the Department of Workforce Development (646 IAC 3-5-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 6. Employment and Residence; State Banks; Minors; Extra Workers; Church Employment; Governmental Entity Defined; Crew Leader Defined
646 IAC 3-6-1 Location of employment

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. (a) Wages paid by an employer to an individual who performs all of his services in Indiana are subject to contribution in this state even though the individual lives in another state.

(b) In cases where an individual performs services both within and without this state and contributions are not required in the other state, the employer should submit to the department for determination all the facts surrounding that employment. (*Department of Workforce Development; Reg 401; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 883; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 37; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1916; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-5-1) to the Department of Workforce Development (646 IAC 3-6-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-6-2 Reciprocal agreements

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-1; IC 22-4-22; IC 22-4.1

Sec. 2. (a) In accordance with reciprocal agreements entered under IC 22-4-22-1 through IC 22-4-22-4, coverage and allocation to certain states of services and wages paid for such services, performed both in Indiana and one (1) or more other states, shall be deemed employment and wages in the state as provided in those agreements so long as they remain in force.

(b) If services are performed both in Indiana and in one (1) or more other states with which no reciprocal agreement exists relating to the allocation of services and wages, and the services are not localized in any state, then contributions will be required on wages for services performed in Indiana, if those services constitute employment within the meaning of IC 22-4-8-1 and if contributions are not required and paid in another state. (*Department of Workforce Development; Reg 402; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 883; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 37; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 159; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1917; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-5-2) to the Department of Workforce Development (646 IAC 3-6-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-6-3 Child or spouse employed in family business

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. (a) A minor child who performs services for a partnership or corporation controlled by the parents of such child is considered in the employment of the partnership or corporation and not in the employment of his or her parents, but such employment is excluded if the firm is a partnership and the parents of the child are the sole owners and members.

(b) Services performed for an employing unit by a child or spouse of the owner do not constitute employment, but if the employing unit is a partnership an exempt relationship must exist with each member before such services shall be deemed as excluded services. (*Department of Workforce Development; Reg 404; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 884; filed Aug 8, 1979, 1:17 p.m.: 2 IR 1221; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1917; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-5-4) to the Department of Workforce Development (646 IAC 3-6-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-6-4 Extra workers for Saturdays or rush periods

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. Extra workers employed on Saturdays or during rush periods are deemed to be in employment. (*Department of Workforce Development; Reg 405; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 884; filed Jul 22, 1953, 11:00 am: Rules and Regs. 1954, p. 39; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-5-5) to the Department of Workforce Development (646 IAC 3-6-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-6-5 Churches and religious organizations

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-2; IC 22-4.1

Sec. 5. (a) As used in this rule, the following definitions under IC 22-4-8-2(j)(3)(A) apply:

(1) "Church" is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation.

(2) "Convention" and "association" refer to formal and informal groups of churches, clergy, or laymen, whether of a continuing nature or meeting periodically, whose purpose is primarily concerned with religious and denominational matters of the group or groups represented. However, the exclusion does not apply to service performed for a facility or organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated by a church (or a convention or association of churches). Thus, the service of a janitor of a church is excluded, but the service of a janitor for a separately operated college, day care center, public book store, although they may be church related, is covered.

(b) Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is the service for a novitiate or a house of study training candidates to become members of a religious order. On the other hand, a church related charitable organization, such as an orphanage or home for the aged, is not considered to be operated primarily for religious purposes.

(c) Under IC 22-4-8-2(j)(3)(B), the exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations required to be covered by the state law.

(d) A minister is "ordained, commissioned, or licensed" if he has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. However, he does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

(e) "Exercise of the ministry" includes the following:

(1) The conduct of religious worship and the ministration of sacerdotal functions.

(2) Service performed in the control, conduct, and maintenance of:

(A) a religious organization under the authority of a religious body constituting a church or church denomination; or

(B) an organization operated as an integral agency of such a religious organization or of a church or church denomination.

(3) Service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending him for a position involving nonministerial services for an organization not connected with the church).

(4) Missionary service or administrative work in the employ of a missionary organization.

(f) "Control, conduct, and maintenance" of an organization does not include services such as operating an elevator or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

(g) As established in subsection (e), service of a clergyman as a chaplain in an orphanage or in a retirement home is excluded since his service is in the exercise of his ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service. (*Department of Workforce Development; PT II, Reg 406; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 160; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1917; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-5-6) to the Department of Workforce Development (646 IAC 3-6-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 7. Exempt Employers and Employees

646 IAC 3-7-1 Agricultural labor; exempt services

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-2; IC 22-4.1

Sec. 1. (a) Agricultural labor does not include services performed in connection with forestry, lumbering, or landscaping.

(b) Greenhouses and other similar structures used primarily for other purposes, for example, display, storage, and fabrication of wreaths, corsages, and bouquets, do not constitute farms.

(c) Services performed for the owner or tenant or operator of one (1) or more farms in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment are excepted as agricultural labor, provided the major part of such services is performed on a farm. Such services may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled and semiskilled workers which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged. Since such services must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to services performed for a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) Exempt services do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the excepted services must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivery to storage or to market, or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities, except to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm.

(e) Subsequent to December 31, 1977, the exemption of agricultural employment does not apply to those employers meeting the requirements of IC 22-4-7-2(e). (*Department of Workforce Development; Reg 505; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 887; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 161; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 65; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1918; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-2) to the Department of Workforce Development (646 IAC 3-7-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-2 Domestic service; exempt services

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 2. (a) Services of a household nature performed by an individual in or about the private home of the person by whom he is employed or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed are included within the term "domestic service".

(b) As used in this section, a private home is the fixed place of abode of an individual or family.

(c) As used in this section, a local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter.

(d) If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and the services performed therein are not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purposes, the services performed therein are not within the exception.

(e) The services described in subsection (a) are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, or commercial offices of establishments.

(f) Services performed as a private secretary, even though performed in the employer's home, are not within the exception. (*Department of Workforce Development; Reg 506; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 889; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 66; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1919; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-3) to the Department of Workforce Development (646 IAC 3-7-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-3 Services not in the course of a trade or business

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 3. "Not in the course of the employing unit's trade or business" includes service that does not promote or advance the trade or business of the employer. Service which does not promote or advance the employing unit's trade or business is excepted from employment, unless the cash remuneration paid for such service performed by an individual in a calendar quarter is fifty dollars (\$50)

or more and the individual is employed in the performance of such service during some portion of a day, for at least twenty-four (24) days in such calendar quarter, or in the preceding calendar quarter. The following are examples of such service:

- (1) A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two (2) days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are excepted, and B is not considered in "employment" as defined under IC 22-4.
- (2) A's business is that of operating a sawmill. He employs B, a carpenter, to repair his home. During the month of March, B worked two (2) hours on each of twenty-seven (27) days, earning one hundred eight dollars (\$108) at an hourly wage of two dollars (\$2). B completed the repairs after working two (2) hours on each of fourteen (14) days during the month of April, earning fifty-six dollars (\$56). B's services, although not in the course of A's business, constituted employment during the first quarter because he worked on each of twenty-seven (27) days and earned one hundred eight dollars (\$108). His services during the second quarter also constituted employment, even though he worked only fourteen (14) days, because he earned fifty-six dollars (\$56) and was in employment during the preceding quarter. Casual labor, that is, labor which is occasional, incidental, or irregular, but which is in the course of the employer's trade or business, does not come within the exception stated in subdivision (1).
- (3) C's business is that of operating a sawmill. He employs D for two (2) hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted, and D is considered in "employment" as defined under IC 22-4.
- (4) E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and therefore are not excepted, and such additional clerks are considered in "employment" as defined under IC 22-4. Casual labor performed for a corporation does not come within this exception.

(Department of Workforce Development; Reg 507; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 890; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 128; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 39; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 78; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1919; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-4) to the Department of Workforce Development (646 IAC 3-7-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-4 Railroad employees

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. Services Performed for Railroad Employers. Services performed with respect to which unemployment benefits are payable under the Railroad Unemployment Insurance Act shall not be deemed employment within the meaning of the law. *(Department of Workforce Development; Reg 508; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 891; filed Sep 25, 1969, 2:50 pm: Rules and Regs. 1970, p. 79; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-5) to the Department of Workforce Development (646 IAC 3-7-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-7-5 Maritime service; definitions

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. Maritime Service. The word, "vessel," includes every description of watercraft or other contrivance used as a means of transportation on water.

The term, "American vessel," means (a) any vessel documented or numbered under the laws of the United States and (b) any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or any state.

Dredges used for navigation and transportation in deepening and removing obstructions from channels, rivers, or other waterways, are "vessels."

The expression, "officer or member of the crew," includes the master or officer in charge of the vessel, however designated,

and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel, and includes, for example, the services rendered by the master, mate, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by fishermen on fishing vessels. (*Department of Workforce Development; Reg 509; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 891; filed Mar 31, 1948, 9:55 am: Rules and Regs. 1949, p. 39; filed Jul 13, 1972, 11:00 am: Rules and Regs. 1973, p. 162; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-6) to the Department of Workforce Development (646 IAC 3-7-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-6 Federal income tax exempt organizations; exempt services

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-3; IC 22-4.1

Sec. 6. In regard to services described as exempt under IC 22-4-8-3(h), the type of service performed and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the amount of the remuneration for service performed by the individual in the calendar quarter. (*Department of Workforce Development; Reg 510; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 892; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 39; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 130; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 86; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 79; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 163; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1920; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-7) to the Department of Workforce Development (646 IAC 3-7-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-7 Insurance agents and solicitors

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. Insurance Agents and Solicitors. Services performed by an individual as an insurance agent or insurance solicitor are excepted, provided such services are performed solely for commissions.

If all or any part of the remuneration of an individual for services performed as an insurance agent or insurance solicitor is a salary, none of his services are excepted and his total remuneration (for example, salary, or salary and commissions) is included for the purposes of computing contributions. (*Department of Workforce Development; Reg 516; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 897; filed Mar 31, 1948, 9:55 am: Rules and Regs. 1949, p. 43; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-10) to the Department of Workforce Development (646 IAC 3-7-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-8 Newspaper delivery

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 8. (a) The services performed by an individual under the age of eighteen (18) years of age in making house-to-house delivery of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted.

(b) Individuals who buy their papers from the publisher and resell them to the public are not in the employment of the publisher. (*Department of Workforce Development; Reg 517; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 897; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 43; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1920; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-11) to the Department of Workforce Development (646 IAC 3-7-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-9 Partially exempt services

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-3; IC 22-4.1

Sec. 9. (a) In determining coverage or exemption of services under IC 22-4-8-3(s), a "pay period" is the period, of not more than thirty-one (31) consecutive calendar days, for which a payment of remuneration is ordinarily made to the individual by the employing unit. If the periods for which payments of remuneration are made to the individual by an employing unit are of uniform duration, each period constitutes a pay period. If, however, the periods occasionally vary in duration, the pay period is the period for which a payment of remuneration is ordinarily made to the individual by an employing unit, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if an employing unit ordinarily pays a particular individual for each calendar week at the end of the week, but the individual receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the pay period is still the calendar week; or if, instead, that individual is sent on a trip by the employing unit and receives, at the end of the third week, a single remuneration payment for three (3) weeks' services, the pay period is still the calendar week.

(b) If there is only one (1) period, and such period does not exceed thirty-one (31) consecutive calendar days, for which a payment of remuneration is made to the individual by the employing unit, such period is deemed to be a pay period.

(c) This rule does not apply:

(1) with respect to any services performed by the individual for an employing unit if the periods for which the employing unit makes payments of remuneration to the individual vary to the extent that there is no period for which a payment of remuneration is ordinarily made to the individual;

(2) with respect to any services performed by the individual for the employing unit if the period for which a payment of remuneration is ordinarily made to the individual by the employing unit exceeds thirty-one (31) consecutive calendar days; or

(3) with respect to any service performed by the individual for the employing unit during a pay period if any of such service is excepted under IC 22-4-8-3(b).

(d) If, during any period for which an employing unit makes a payment of remuneration to an individual, only a portion of the individual's services constitutes employment, but this rule is not applicable, contributions are due with respect to such services as constitute employment. (*Department of Workforce Development; Reg 518; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 898; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 44; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 164; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1921; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-12) to the Department of Workforce Development (646 IAC 3-7-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-7-10 Institutionalized persons

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-3; IC 22-4.1

Sec. 10. Under IC 22-4-8-3(t), if an inmate of a governmental or nonprofit custodial or penal institution performs services for a nongovernmental, for-profit employer, the service performed by the inmate would be considered as services performed for such employer and would not be excluded. (*Department of Workforce Development; Reg 519; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 67; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1922; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-6-13) to the Department of Workforce Development (646 IAC 3-7-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 8. Wages

646 IAC 3-8-1 Taxable wage base

Authority: IC 22-4.1-3-3

Affected: IC 22-4-4-2; IC 22-4-7-2; IC 22-4.1

Sec. 1. (a) When an employing unit qualifies under IC 22-4-7-2(a) or IC 22-4-7-2(b), the remuneration paid by the predecessor in such calendar year is combined with the remuneration paid by the successor in that same calendar year in determining when an employee has reached the taxable wage base limit.

(b) The combining of the remuneration paid to an individual by separate employers, in establishing the taxable wage base limitation, applies only in successorship cases.

(c) Under IC 22-4-4-2, remuneration paid an employee in another state is considered in determining the taxable wage base limitation for a calendar year, if wages are paid to the same employee by the same employer in this state during a calendar year. (*Department of Workforce Development; Reg 600; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 900; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 44; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 134; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 90; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 43; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 82; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 165; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 67; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1922; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-1) to the Department of Workforce Development (646 IAC 3-8-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-2 Certain exclusions from wage calculations

Authority: IC 22-4.1-3-3

Affected: IC 22-4-4-2; IC 22-4.1

Sec. 2. (a) IC 22-4-4-2(b)(4) excludes from the definition of wages amounts paid by an employer to an employee (in absence of a plan or system) for sickness or accident disability, or medical or hospitalization expense, after the expiration of six (6) calendar months following the last calendar month in which the employee performed services for the employer. However, in the absence of a plan or system by the employer to provide for such payments, sick or accident pay will be deemed wages for the first six (6) months following the last month of employment.

(b) IC 22-4-4-2(b)(5) excludes from the definition of wages certain payments from or into a trust exempt from tax under Section 401(a) of the federal Internal Revenue Code or under or to an annuity plan which meets the requirements of Sections 401(a)(3), 401(a)(4), 401(a)(5), and 401(a)(6) of the federal Internal Revenue Code. Under this section, a payment made by an employer into a trust or annuity plan is excluded from wages at the time of such payment if the trust is tax exempt or the annuity plan meets the requirements of Section 401(a) of the federal Internal Revenue Code at such time. A payment to, or on behalf of, an employee from a trust or under an annuity plan is also excluded from wages if the trust is tax exempt or the annuity plan meets the requirements of Section 401(a) of the federal Internal Revenue Code at the time of the payment to, or on behalf of, the employee. Payments of this type made to, or on behalf of, a beneficiary of an employee are also excluded from wages. A payment made to an employee of a tax exempt trust as remuneration for services rendered as such employee and not as a beneficiary of the trust is not within this exclusion. (*Department of Workforce Development; Reg 601; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 903; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 137; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 83; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 167; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1923; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-2) to the Department of Workforce Development (646 IAC 3-8-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-3 Vacation or leave of absence pay

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. Remuneration paid by an employer to an employee for vacation periods or leave of absence in the regular course of employment is wages, and such period of vacation with pay or leave with pay is deemed employment since the employment relation has not been terminated. (*Department of Workforce Development; Reg 602; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 904; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1923; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-3) to the Department of Workforce Development (646 IAC 3-8-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-4 Wages in lieu of notice or termination allowances

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. Wages in lieu of notice or termination allowances include amounts paid by an employer to an employee at the time the employee is separated from employment with the employer. All such payments are deemed to be wages subject to contribution.

(Department of Workforce Development; Reg 603; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 904; filed Jun 15, 1951, 11:00 am: Rules and Regs. 1952, p. 138; filed Feb 11, 1958, 2:00 pm: Rules and Regs. 1959, p. 75; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-4) to the Department of Workforce Development (646 IAC 3-8-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-5 “Idle time” payments

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. Idle Time. Where an employer guarantees to his 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, the payment for such idle time constitutes wages subject to contribution. *(Department of Workforce Development; Reg 604; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 904; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-5) to the Department of Workforce Development (646 IAC 3-8-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-8-6 Disability awards

Authority: IC 22-4.1-3-3

Affected: IC 22-3; IC 22-4.1

Sec. 6. Awards for disability granted by the Indiana worker's compensation board under IC 22-3-2 through IC 22-3-6 and amendments thereto, and likewise payments made to employees under IC 22-3-7, and amendments, are not wages. *(Department of Workforce Development; Reg 605; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 905; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1923; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-6) to the Department of Workforce Development (646 IAC 3-8-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-8-7 Pensions excluded

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. Pensions Are Not Wages. Pensions paid by the employer to retired employees who perform no services for such employer are not wages. *(Department of Workforce Development; Reg 606; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 905; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-7) to the Department of Workforce Development (646 IAC 3-8-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-8-8 Employee discounts on purchases

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 8. Discounts on Purchases. Discounts allowed employees on the purchase of goods from the employer are not wages if the purchase is optional with the employee and the discounts do not constitute regular or systematic remuneration for services rendered. *(Department of Workforce Development; Reg 607; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 905; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-8) to the Department of Workforce Development (646 IAC 3-8-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-8-9 Tips and gratuities

Authority: IC 22-4.1-3-3

Affected: IC 22-4-4-2; IC 22-4.1

Sec. 9. Tips and gratuities received by an employee from persons other than his employer and not accounted for to the employer are not wages; however, the amount of tips or gratuities accounted for by the employee to the employer by written

statement as required by Section 6053 of the Internal Revenue Code when such tips are in excess of \$20.00 per month, are wages within the meaning of IC 22-4-4-2.

Where an employer does not permit tipping of employees and in lieu thereof adds a certain per cent to the charges made to his patrons and disburses the added amounts to his employees, the sums so disbursed are wages and not tips. (*Department of Workforce Development; Reg 608; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 905; filed Apr 19, 1966, 8:55 am: Rules and Regs. 1967, p. 28; filed Mar 10, 1986, 1:30 pm: 9 IR 1969; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-9) to the Department of Workforce Development (646 IAC 3-8-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-10 Prizes and bonuses

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 10. (a) A prize or bonus given by an employer to an employee in cash is wages. When given in any medium other than cash, such prize or bonus will be considered wages unless it is shown that such is not, in fact, remuneration for employment.

(b) A bonus or prize paid in cash or in any other medium, whether or not paid as a result of contractual obligation, shall be reported as wages for the week in which the payment of such bonus or prize is due or paid. (*Department of Workforce Development; Reg 609; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 905; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 47; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 168; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 68; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1924; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-10) to the Department of Workforce Development (646 IAC 3-8-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-11 Promissory notes

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 11. Notes Treated as Cash Wages. Where an employee accepts a promissory note in lieu of wages, the face amount of the note at the time it is delivered to and accepted by the employee is considered the amount of wages subject to contribution, and such wages are considered paid at the time of such delivery and acceptance. (*Department of Workforce Development; Reg 611; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 906; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-12) to the Department of Workforce Development (646 IAC 3-8-11) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-12 Payments to partners

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 12. Payments to Partners. Payments made by a partnership to a partner are not wages. A partner is an employer and is not the employee of the partnership. (*Department of Workforce Development; Reg 612; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 906; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-13) to the Department of Workforce Development (646 IAC 3-8-12) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-13 Federal insurance contributions tax

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 13. Where an employer pays the employee's tax levied by the Federal Insurance Contributions Act and does not deduct the same from wages of the employee, the payment of such tax by the employer is not additional wages payable to the employee. (*Department of Workforce Development; Reg 615; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 906; filed Apr 10, 1956,*

3:10 pm: Rules and Regs. 1957, p. 91; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-16) to the Department of Workforce Development (646 IAC 3-8-13) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-14 Traveling expenses; commission drawing accounts

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 14. (a) Amounts advanced or reimbursed to employees for traveling expenses, as such, which are expenses of the employer incurred by the employee incident to his position and the business of his employer, do not constitute wages to the extent of the amount actually expended.

(b) Where an employee is allowed a drawing account against which are credited his earned commissions, and the commissions earned do not equal the amounts withdrawn, and the employee is required to account to the employer for amounts overdrawn, the commissions earned, and not the amounts overdrawn, are considered wages subject to contribution. However, if the employee is not required to account to the employer for such excess payments, then all amounts so advanced to the employee are considered wages.

(c) In determining contributions due for a quarter, each employee is to be considered individually, and, if the expenses of an employee exceed his earnings, the excess may not be credited against the contribution liability incurred by the employer by reason of wages payable to other employees of that employer.

(d) Where an employee earns wages in excess of expenses in one (1) calendar quarter, contributions are due and payable thereon, and, if that employee in a subsequent calendar quarter incurs expenses in excess of his wages, the excess shall not be taken as a credit against contributions due for a previous calendar quarter, or contributions in future months or calendar quarters, respectively. (*Department of Workforce Development; Reg 616; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 907; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1924; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-17) to the Department of Workforce Development (646 IAC 3-8-14) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-8-15 Back pay awards by national labor relations board

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 15. (a) Awards of back pay to individuals by the national labor relations board, and are reportable as wages for the quarter covered by the award.

(b) Payments of additional wages made pursuant to terms of the fair labor standards act are wages, and are reportable as wages during the quarter covered by the payment. (*Department of Workforce Development; Reg 617; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 908; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 47; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 84; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 168; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 68; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1925; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-7-18) to the Department of Workforce Development (646 IAC 3-8-15) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 9. Wages Subject to Contributions; Experience Ratings; Reimbursable Employers; Governmental Employers

646 IAC 3-9-1 Wages subject to contribution; constructive payment

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-6; IC 22-4-10-7; IC 22-4.1

Sec. 1. (a) Contributions are payable upon the total wages paid within a calendar year for employment performed, but the term "total wages" means only the first seven thousand dollars (\$7,000) paid within a calendar year to an individual by a single employer or his predecessor within such calendar year and irrespective of the year within which the services are performed. As used in this subsection, "annual payroll" means the total wages, subject to such seven thousand dollars (\$7,000) limitation, paid by an employer during the twelve (12) month period ending on the computation date in any year, including wages paid by any other employer whose

account has been assumed by such employer under IC 22-4-10-6 and IC 22-4-10-7.

(b) Wages shall be deemed paid when either actually or constructively paid. Wages shall be deemed constructively paid when they are credited to the account of or set apart for an individual who has performed services so that they may be drawn upon at any time by him, although not then actually reduced to his possession. To constitute payment in such cases, the wages must be credited to or set apart for the employee without any substantial limitation as to the time or manner of payment or condition upon which payment is to be made and must be made available to him so they may be drawn at any time and their payment brought within his control and disposition. (*Department of Workforce Development; Reg 701; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 909; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 47; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 139; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 75; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 84; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 168; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 68; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1925; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-1) to the Department of Workforce Development (646 IAC 3-9-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-9-2 Commissions on installment payments

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 2. Where commissions are paid to salesmen each time a purchaser makes payment under an installment contract, the commissions shall be considered wages paid at the time they are credited to the salesman on the books of the employer. (*Department of Workforce Development; Reg 702; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 910; filed Aug 8, 1979, 1:17 p.m.: 2 IR 1221; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1925; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-2) to the Department of Workforce Development (646 IAC 3-9-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-9-3 Voluntary payments to secure lower contribution rate

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-5; IC 22-4-11-2; IC 22-4.1

Sec. 3. (a) Voluntary payments are added to the balance shown by the experience account and included in the computation for merit rate purposes, provided the employer has met the requirements for a merit rate under IC 22-4-11-2(c) and the voluntary payments are made within thirty (30) days following the date of the department's notice that such payments may be made.

(b) Where a recomputation of a successor's rate of contribution is necessary, a voluntary payment can be made to secure a lower rate provided that voluntary payment is made within the periods of time designated by IC 22-4-10-5. (*Department of Workforce Development; Reg 703; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 910; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 48; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 139; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 40; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 91; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 75; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 44; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 85; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 169; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1926; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-3) to the Department of Workforce Development (646 IAC 3-9-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-9-4 Successor employers; contribution rate

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 4. (a) "Successor employer", includes the following:

- (1) An employing unit, not subject to contribution under IC 22-4 prior to its acquisition of all or a distinct and segregable portion of the organization, trade, or business of a subject employer.
- (2) An employer subject to IC 22-4 prior to his acquisition of all or a distinct and segregable portion of the organization, trade, or business of another subject employer.

(b) The rate of contribution for a successor employer for the year following that in which the acquisition occurred shall be computed or recomputed, on the basis of his experience, if any, combined with all or part of that of his predecessor, if he has acquired all or a part of the predecessor's experience account, as of the regular date of computation for such year. The rate of contribution of the predecessor employer for such following year shall be computed or recomputed as of the regular date of computation for such year on the basis of his remaining experience, if any. (*Department of Workforce Development; Reg 706; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 915; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 52; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 142; filed Jun 15, 1955, 9:00 a.m.: Rules and Regs. 1956, p. 215; filed Aug 19, 1971, 3:30 p.m.: Rules and Regs. 1972, p. 33; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 174; filed Nov 25, 1975, 3:05 p.m.: Rules and Regs. 1976, p. 106; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1926; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-5) to the Department of Workforce Development (646 IAC 3-9-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-9-5 Reimbursable employers; payments in lieu of contributions

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-1; IC 22-4.1

Sec. 5. Any employer who makes an election to reimburse benefit charges under IC 22-4-10-1(a)(1) and IC 22-4-10-1(a)(2) will continue to be liable for payments in lieu of contributions until it files a written request to terminate its election. If said election is approved, the employer will continue to be liable for payments of benefits which applied to an employee's base period falling in quarters in which the employer's election to reimburse was in effect. (*Department of Workforce Development; Reg 708; filed Nov 26, 1974, 9:45 a.m.: Rules and Regs. 1975, p. 310; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1926; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-6) to the Department of Workforce Development (646 IAC 3-9-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-9-6 Election of payments in lieu of contributions; time for filing

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-1; IC 22-4.1

Sec. 6. Under IC 22-4-10-1(a)(2), the thirty-one (31) days following the date upon which such entity qualifies as an employer under this article means thirty-one (31) days following the date that such entity has notified the department or has been notified by the department that such entity has qualified as an employer under IC 22-4. (*Department of Workforce Development; Reg 709; filed Jul 13, 1977, 9:15 a.m.: Rules and Regs. 1978, p. 298; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1927; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-7) to the Department of Workforce Development (646 IAC 3-9-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-9-7 Governmental contribution rates

Authority: IC 22-4.1-3-3

Affected: IC 22-4-11-2; IC 22-4.1

Sec. 7. Under IC 22-4-11-2(d), if the employer is the state or a political subdivision of the state, or any instrumentality of a state or a political subdivision, such employer will pay contributions at the rate of one percent (1%) until subject to this article throughout thirty-six (36) consecutive calendar months immediately preceding the computation date. In the event a city or town had previously been a covered employer to the extent of its municipal utilities, they will pay contributions at their computed rate, but such rate will not exceed one percent (1%). If, by statute, a municipal utility is set apart as a separate political subdivision, such utility will retain their experience account and assigned rate, and IC 22-4-11-2(d) will apply to the new account assigned to the city or town for the purpose of reporting nonutility employment. (*Department of Workforce Development; Reg 710; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 70; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1927; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-8-8) to the Department of Workforce Development (646 IAC 3-9-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 10. Employee Benefits; Payroll and Employment Records; Employer Responsibility; Employment Security Act

646 IAC 3-10-1 Payroll and employment records

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. (a) Each employing unit shall keep accurate payroll and employment records which must show the following:

- (1) Name and Social Security number of each employee.
- (2) Cash remuneration paid to each employee per calendar quarter.
- (3) Remuneration other than cash paid to each employee per calendar quarter.
- (4) Date each employee last worked and date to which wages were last payable.
- (5) Reason for termination.
- (6) Reason for lost time in any week during which any employee earns less than the maximum weekly benefit amount established by law.
- (7) Remuneration earned by each employee each calendar week.
- (8) Whether each week worked by each employee is in fact a week of less than full-time work.
- (9) The base of operations of each employee.

(b) The records shall be preserved for a period of at least four (4) calendar years in addition to the current year. (*Department of Workforce Development; Reg 801; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 918; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 56; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 41; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 92; filed Sep 4, 1959, 9:10 a.m.: Rules and Regs. 1960, p. 32; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 32; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 86; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 20; filed Jan 3, 1977, 2:43 p.m.: Rules and Regs. 1978, p. 288; filed Sep 23, 1977, 1:20 p.m.: Rules and Regs. 1978, p. 301; filed Dec 11, 1980, 9:50 a.m.: 4 IR 47; errata, 4 IR 205; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1927; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-1) to the Department of Workforce Development (646 IAC 3-10-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-2 Eligibility information reports; retroactive payment reports; notice of layoffs or labor disputes

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) Every employer shall, upon request, furnish his employees and his former employees with information necessary for them to obtain their full rights and benefits under IC 22-4.

(b) To be considered a valid document in determining benefit rights of an individual, any informational report or protest directed by an employer to the department regarding an employee or former employee shall include the correct Social Security number of the individual.

(c) An eligibility information report, either on the form supplied by the department or any other document which supplies the required information, shall be submitted to the claim-holding local office within twenty (20) calendar days from the mailing of notice that a former employee has filed an initial or additional claim for unemployment compensation and he was separated from his employment under any of the following conditions:

- (1) To accept other employment.
- (2) To enter self-employment.
- (3) Because of the individual's physical condition.
- (4) Left work voluntarily without good cause in connection with the work.
- (5) Was discharged for just cause.
- (6) Was discharged for gross misconduct in connection with his work.

(d) An eligibility information report need not be submitted by an employer when an individual was separated from his employment because of no work available except where the individual, upon separation, or will receive subsequent to separation, any amount defined as deductible income under the provisions of IC 22-4-5-1, IC 22-4-5-2, or IC 22-4-15-4. If an eligibility information report is not received by the department, it will be found that the individual involved was separated because no work was available. However, a determination of eligibility will be issued in those cases where the claimant's statement of reason for separation raises an issue of eligibility.

(e) In those initial claims or reopened claims in which the employer has not responded within the time specified by IC 22-4-17-

2, and in which an initial determination is required, the department may proceed to determine the validity of the claim in question upon the best information available and, for the purpose of the initial determination, it shall be conclusive with respect to any data which should otherwise have been submitted, and benefits paid and charged to the employer's experience or reimbursable account on the basis of such initial determination, in the absence of fraud, shall be deemed benefits properly paid and properly charged.

(f) When both the notice of the filing of an initial claim and the notice of benefit liability are mailed to an employer, the period during which the employer must furnish an eligibility information report shall run from the date the first of such notices was mailed.

(g) An eligibility information report should be submitted to the claim-holding office immediately if the individual refuses work after the employing unit has received notice of the filing of a claim.

(h) It is the responsibility of the employer to inform his partially unemployed employees of any potential rights they may have for partial benefits. When an individual becomes partially unemployed, as established under section 9 of this rule, the employer shall furnish the employee an initial low wage notice if:

(1) the employee has worked less than full time; and

(2) the employee has earned less than the maximum weekly benefit amount established under IC 22-4-12-2.

The initial low wage notice must be furnished to the employee within ten (10) days after the end of the employee's normal pay period in which the ending date of the first week of partial unemployment falls. Only one (1) initial low wage notice need be provided during an employee's benefit year.

(i) After the employer has received notice from the department to file weekly low wage reports, the reports must be furnished to the employee for each week in which the employee earns less than his or her weekly benefit amount because of lack of work. The weekly low wage notice must be furnished to the employee within ten (10) days after the end of the employee's normal pay period in which the ending date of the week of partial unemployment falls. The employer must continue to provide the weekly low wage report until notified by the department to stop.

(j) If an employer fails to furnish the required information within ten (10) days, benefits may be paid to the employee based upon his certified statement.

(k) The low wage notice and report may be filed either on the form provided by the department or by any other written instrument that contains the necessary information.

(l) The employer is responsible for making reports to the department of any retroactive payments of deductible income. The report may be made on the form supplied by the department or by any other written instrument which contains the necessary information.

(m) When individuals are separated from employment by reason of a labor dispute, the employer shall report the dispute to the employment office serving the territory, together with information showing the approximate number of individuals involved. (*Department of Workforce Development; Reg 802; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 920; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 56; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 42; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 92; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 77; filed Sep 4, 1959, 9:10 a.m.: Rules and Regs. 1960, p. 33; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 33; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 45; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 87; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 20; filed Jan 16, 1973, 3:00 p.m.: Rules and Regs. 1974, p. 106; filed Jan 3, 1977, 2:43 p.m.: Rules and Regs. 1978, p. 288; filed Sep 23, 1977, 1:20 p.m.: Rules and Regs. 1978, p. 302; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1928; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-2) to the Department of Workforce Development (646 IAC 3-10-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-3 Registration for work; waiver of requirement

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 3. Individuals permanently separated from their last employer must complete registration for work and filing of initial claim for benefits not later than during the week with respect to which he claims waiting period, except as otherwise provided in Regulation 804 and 809 [646 IAC 3-10-4 and 646 IAC 3-10-7]. Such initial registration of an applicant for benefits must be made in person at an employment office or special registration point; Provided, however, That the Director, in his discretion, may for a prescribed period accept by mail such initial registration for work and filing of either initial or continued claims for benefits; thereafter, registration must be made in person on the day of the week fixed by the representative of the Board. Registration for work and filing of initial or continued claims for benefits may be made at some other employment office or special registration point

designated by the Director or his representative.

Provided, further, that the Director shall waive or postpone the requirement that a claimant register for work if he finds that compliance with such requirement would be oppressive or would be inconsistent with the purpose of this Act [IC 22-4] in the following circumstances:

- (1) Mass layoffs.
- (2) Temporary layoffs.

A claimant's active registration with a union hiring hall or placement facility shall constitute such individual's registration for work. (*Department of Workforce Development; Reg 803; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 923; filed Jul 22, 1953, 11:00 am: Rules and Regs. 1954, p. 44; filed Sep 25, 1969, 2:50 pm: Rules and Regs. 1970, p. 89; filed Feb 5, 1988, 1:15 pm: 11 IR 1786; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-3) to the Department of Workforce Development (646 IAC 3-10-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-4 Waiting period

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. (a) An individual shall be required to serve one (1) waiting period during his benefit period.

(b) The first week of total, part-total, or partial unemployment in an individual's benefit period will be the waiting period week if during that week the individual was otherwise eligible for benefits and his deductible income for that week was less than his weekly benefit amount. Thereafter, he must register on the day and in the manner fixed by the representative of the department.

(c) Except as otherwise provided under section 9 of this rule, where an individual is required to register at a special registration point and, being otherwise eligible, earns less than his weekly benefit amount in a week, exclusive of the sum of three dollars (\$3), or twenty percent (20%) of his weekly benefit amount rounded to the next highest dollar, earned from other than his base period employer, such week shall be counted as a waiting period week if for good cause shown the individual is unable to register on the prescribed day but does register during the following calendar week. In addition to the requirement that an individual must register for work during any week with respect to which he claims waiting period rights, such individual must, after completion of such week, report in person, or by mail if permission so to report by mail has been granted to the individual by the director, to the employment office or special registration point for the purpose of disclosing earnings, if any, and establishing his availability for work during such week. Such reporting must be made not later than during the week following the week claimed, and if permission to report by mail has been granted to such individual, then such report must be mailed not later than during the week following the week claimed; provided, that this requirement shall be waived by the director or a representative of the department upon a showing of good cause. (*Department of Workforce Development; Reg 804; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 923; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 60; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 44; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 80; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 90; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1930; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-4) to the Department of Workforce Development (646 IAC 3-10-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-5 Availability for work; weekly reporting

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. (a) No individual may receive waiting period credit or benefits for any week of total unemployment in which he is unable to work or unavailable for work in three (3) or more normal work days of such week.

(b) No individual may receive waiting period credit or benefits for any week of partial, part-total, or partial and part-total unemployment in which his deductible income equals or exceeds his weekly benefit amount reduced by one-third (1/3) of his weekly benefit amount for each of the normal work days in a week that the individual is unable to work or unavailable for work. When one-third (1/3) of the weekly benefit amount is not an even-dollar amount, it shall be raised to the next higher multiple of one dollar (\$1) for each day of unavailability.

(c) The normal work days of a totally or part-totally unemployed individual in a week shall include all days of the week except legal holidays. The normal work days of a partially unemployed individual in a week shall include those days of the week established

by his employer as normal work days for that individual.

(d) No individual can establish his availability for work with respect to any week claimed unless he has made a personal report during that week at the local office, itinerant office, or special registration point at which his claim is on file; provided, that an individual can establish his availability for work with respect to any week claimed by mailing the report during that week, properly stamped and addressed to the department's local office at which his claim is on file, where permission to report by mail has been granted by the director; provided, further, that the requirement for weekly reporting shall be waived by a representative of the board upon a showing of good cause. (*Department of Workforce Development; Reg 806; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 925; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 80; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 91; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1930; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-6) to the Department of Workforce Development (646 IAC 3-10-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-6 Week defined

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. Week. The term "week" means a calendar week ending at midnight Saturday. (*Department of Workforce Development; Reg 807; filed Dec 13, 1945, 10:40 am: Rules and Regs. 1947, p. 926; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-7) to the Department of Workforce Development (646 IAC 3-10-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-7 Partial unemployment; filing of claim

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. (a) An individual is partially unemployed when, because of lack of available work, he is working less than his normal customary hours for his regular employer and is earning less than his weekly benefit amount in any calendar week.

(b) A claim for waiting period or benefits filed at the employment office or special registration point, in person, or by mail when permission to file by mail has been granted by the director, by a partially unemployed individual shall constitute that individual's registration for work and his claim for benefits or waiting period week for the week of partial unemployment covered by the claim; provided, that the claim is filed not later than two (2) weeks after the individual has received the notice under section 2 of this rule from his employer; provided, further, that in case of good cause shown for failure to file a claim for waiting period or benefits within the time prescribed by this rule, the individual shall be allowed to file his claim during an extended period of not less than one (1) week after he has been appropriately notified of his potential rights to benefits and of his earnings with respect to any week of partial unemployment. Failure to file a claim for benefits within the time limit permitted under this rule shall be for good cause if due to failure on the part of the employer to comply with verification or other requirements relating to partial unemployment or to department error. (*Department of Workforce Development; Reg 809; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 926; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 61; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 47; filed Jan 3, 1977, 2:43 p.m.: Rules and Regs. 1978, p. 291; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1930; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-9) to the Department of Workforce Development (646 IAC 3-10-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-8 Loss of wage credits; forfeiture of benefit rights

Authority: IC 22-4.1-3-3

Affected: IC 22-4-15-6.1; IC 22-4.1

Sec. 8. (a) Regardless of when actual payment is made to an individual, all of the individual's wage credits established prior to any day an individual was discharged by such employer for gross misconduct in connection with work shall be void.

(b) A claimant's wage credits shall not be canceled or benefit rights forfeited under IC 22-4-15-6.1 or IC 22-4-16-1 [*IC 22-4-16-1 was repealed by P.L.108-2006, SECTION 66, effective July 1, 2006.*] unless and until the claimant has been given notice and an opportunity to appeal the determination. In the event of an appeal of a disqualification under IC 22-4-16-1 [*IC 22-4-16-1 was*

repealed by P.L.108-2006, SECTION 66, effective July 1, 2006.], the burden of proof shall rest with the department. (Department of Workforce Development; Reg 810; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 927; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 61; filed Jun 15, 1955, 9:00 a.m.: Rules and Regs. 1956, p. 215; filed Sep 4, 1959, 9:10 a.m.: Rules and Regs. 1960, p. 38; filed Sep 25, 1969, 2:50 p.m.: Rules and Regs. 1970, p. 92; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 23; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 174; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1931; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2855; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-10) to the Department of Workforce Development (646 IAC 3-10-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-9 Warrants

Authority: IC 22-4.1-3-3

Affected: IC 22-4-12-1; IC 22-4.1

Sec. 9. Benefits shall be paid by warrant from the central office of the department in Indianapolis, Indiana. Except as otherwise provided under section 15 of this rule [section 13 of this rule], warrants shall be payable to the eligible individual and shall be mailed directly to him or her or delivered as the director may designate. *(Department of Workforce Development; Reg 812; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 928; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 46; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1931; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2857; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-11) to the Department of Workforce Development (646 IAC 3-10-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-10-10 Confidentiality of payroll records

Authority: IC 22-4.1-3-3

Affected: IC 22-4-10-6; IC 22-4-32-21; IC 22-4.1

Sec. 10. (a) Evidence relative to the payroll records or data of any employing unit, as reflected by the records of the department, may be given by any member of the board, the director, or any representative, agent, or employee of the department at any judicial or quasi-judicial hearing, including any hearing before an administrative law judge, the review board, or a liability administrative law judge.

(b) The board, the director, or any representative, agent, or employee of the department is authorized to give information to any employer, his or her attorney, or duly authorized representative relative to the payroll records or data of such employer as reflected by the records of the department.

(c) Upon written order of the director, evidence and information relative to the payroll records or data of any employing unit may be given to any other employing unit to determine whether it has incurred rights or liability under IC 22-4-10-6 or IC 22-4-32-21.

(d) A claimant for benefits may obtain information relative to his or her individual earnings reported by any of his or her base period employers by application at an office of the department.

(e) The individual must, however, identify himself or herself to the satisfaction of the employee of the department. *(Department of Workforce Development; Reg 813; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 929; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 62; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 23; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 175; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1931; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2857; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-12) to the Department of Workforce Development (646 IAC 3-10-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-10-11 Wages in lieu of termination notice, allowance, or accrued vacation pay

Authority: IC 22-4.1-3-3

Affected: IC 22-4-5-1; IC 22-4-5-2; IC 22-4-15-1; IC 22-4-15-4; IC 22-4.1

Sec. 11. (a) An individual who receives wages in lieu of notice, termination allowances, accrued vacation pay, or other income deductible under IC 22-4-15-4, IC 22-4-5-1, or IC 22-4-5-2, cannot establish a waiting period week or receive benefits for the week covered by the deductible income if such payments equal or exceed the individual's weekly benefit amount.

(b) When an individual is disqualified under IC 22-4-15-1 and receives wages in lieu of notice, termination allowances, or

accrued vacation pay covering a period of time subsequent to the week in which the disqualifying act occurs, those wages or allowances cannot be used to meet the earnings requirements to restore eligibility following a disqualification under IC 22-4-15-1. (*Department of Workforce Development; Reg 814; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 930; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 46; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 81; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 24; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 170; filed Mar 1, 1974, 3:25 p.m.: Rules and Regs. 1975, p. 306; filed Jan 3, 1977, 2:43 p.m.: Rules and Regs. 1978, p. 292; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 70; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1932; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-13) to the Department of Workforce Development (646 IAC 3-10-11) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-12 Leave of absence

Authority: IC 22-4.1-3-3

Affected: IC 22-4-15-1; IC 22-4.1

Sec. 12. (a) Where an individual takes voluntary leave of absence with the consent of the employer, it shall not constitute leaving work voluntarily without good cause within the meaning of IC 22-4-15-1. However, no benefit or waiting period weeks may be accumulated during that period, unless the individual terminates his leave of absence by notifying his employer and making himself available for work.

(b) A leave of absence for a disability granted to an individual by an employer pursuant to the employer's rule or pursuant to terms of a collective bargaining agreement shall be deemed terminated on the day following the disability when the individual again becomes mentally and physically able to work and available for work and establishes their ability to work and availability for work. (*Department of Workforce Development; Reg 815; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 930; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 63; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 24; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 176; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1932; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-14) to the Department of Workforce Development (646 IAC 3-10-12) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-13 Benefits due deceased claimants; payment to estate or heirs

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 13. (a) Benefits due and payable to a deceased applicant shall be paid to the executor, administrator, or next-of-kin of the deceased if, prior to his death, the decedent had executed a voucher for the benefits claimed. If there is an executor or administrator, payments must be made to the executor or administrator. If it is shown to the satisfaction of the director that there is no executor, and no administrator has been appointed, and in all probability no administrator will be appointed, payment may be made to the next-of-kin, due regard being given to the following order of preference:

(1) The surviving spouse.

(2) Children.

(3) Parents.

(4) Brothers and sisters.

(5) Other relatives.

(b) The director, however, is not bound to follow this order of preference.

(c) Whenever there is more than one (1) legal heir in any of the classes established in subsection (a), payment may be made to any one (1) of that group as agent for the others upon submission of proper evidence of authority and identification.

(d) Application for payment of such benefits must be made in writing and on the prescribed form within six (6) months after the death of the decedent; provided, that the department, upon good cause shown, may extend the time for filing. The warrant or warrants representing benefits claimed must accompany the application for payment. Upon approval of the application, the warrant or warrants shall be cross-endorsed to the order of the person entitled to receive the payment. (*Department of Workforce Development; Reg 816; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 930; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1933; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-15) to the Department of Workforce Development (646 IAC 3-10-13) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-14 Social Security; identification of employees

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 14. (a) Each employer shall ascertain the Social Security number of each worker employed by him or her in employment subject to IC 22-4.

(b) The employer shall report the worker's Social Security number in making any report required by the department with respect to a worker.

(c) No individual will be eligible for a monetary determination of benefits without first providing the department with his or her Social Security number. (*Department of Workforce Development; Reg 818; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 932; filed Feb 11, 1958, 2:00 p.m.: Rules and Regs. 1959, p. 81; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1933; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2858; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-17) to the Department of Workforce Development (646 IAC 3-10-14) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-15 Payments through public employment offices

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 15. All unemployment insurance benefits payable under IC 22-4 shall be claimed through public employment offices as required by 26 U.S.C. 3304(a)(1). Wherever it is provided under IC 22-4, or any rule thereunder, that any act is to be performed or thing to be done at or through free employment offices, it shall mean the public employment offices maintained and operated by the United States or the state of Indiana, and those offices are hereby designated for that purpose. (*Department of Workforce Development; Reg 820; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 935; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 64; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 46; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1934; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-18) to the Department of Workforce Development (646 IAC 3-10-15) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-16 Minimum weekly benefits

Authority: IC 22-4.1-3-3

Affected: IC 22-4-12-2; IC 22-4-15-1; IC 22-4-15-2; IC 22-4.1

Sec. 16. Benefits paid at the rate of the minimum weekly benefit amount established by IC 22-4-12-2 in cases in which an individual's weekly benefit amount actually computes to less than the statutory minimum shall not operate to increase that individual's maximum benefit amount. For the purpose of computation and payment of benefits for partial or part-total unemployment, such benefit shall be an amount which, if added to the deductible income with respect to such week, would equal the statutory minimum. In cases where the actual computed weekly benefit amount of the individual is less than the statutory minimum, and if an earnings requirement is imposed by a disqualification under IC 22-4-15-1 or IC 22-4-15-2, the earnings requirement in those sections means the actual computed weekly benefit amount. (*Department of Workforce Development; Reg 821; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 935; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 65; filed Jun 15, 1955, 9:00 a.m.: Rules and Regs. 1956, p. 216; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 25; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 176; filed Jan 3, 1977, 2:43 p.m.: Rules and Regs. 1978, p. 292; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 71; filed Dec 11, 1980, 9:50 a.m.: 4 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1935; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-19) to the Department of Workforce Development (646 IAC 3-10-16) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-17 Failure to inform claimant of suitable work offers; effect on benefits

Authority: IC 22-4.1-3-3

Affected: IC 22-4-13-1; IC 22-4-15-2; IC 22-4.1

Sec. 17. In matters adjudicated under IC 22-4-13-1(c), an employer's experience or reimbursable account shall not be relieved

unless a claims deputy determines that the offer of work constituted an offer of suitable work within the meaning of IC 22-4-15-2, and that the offer of work made by the employing unit:

- (1) identified the individual by name and Social Security number;
- (2) specified the salary or wage to be paid for the work;
- (3) described the type of work to be performed;
- (4) fixed the hours of work; and
- (5) stated the location of the work.

(Department of Workforce Development; Reg 825; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 937; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 66; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 26; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 177; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1935; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203)
NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-21) to the Department of Workforce Development (646 IAC 3-10-17) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-18 Effort to secure full-time work by claimant

Authority: IC 22-4.1-3-3

Affected: IC 22-4-14-2; IC 22-4.1

Sec. 18. (a) "Effort to secure full-time work", as discussed in this section, shall require a claimant to show that he has, in addition to registering for work under IC 22-4-14-2, followed a course of action which, with respect to individuals in the same or similar circumstances as the claimant, ordinarily results in the securing of suitable full-time work, considering the customary methods of securing work in occupations which are suitable for the claimant and the current condition of the labor market.

(b) A claimant shall be ineligible for unemployment compensation benefits for any period for which the department finds that he has failed to make effort to secure full-time work. The facts and circumstances in each case shall be considered in determining whether effort to secure full-time work has been made. The following actions may be considered efforts to secure full-time work if found by the department to constitute a reasonable means of securing full-time work by the claimant, under the facts and circumstances of his particular situation:

- (1) Registering with the claimant's union hiring or placement facility.
- (2) Registering with a placement facility of the claimant's professional organization.
- (3) Making application with such employers as may reasonably be expected to have openings suitable to the claimant.
- (4) Registering with a placement facility of a school, college, or university if one is available to the claimant in his occupation or profession.
- (5) Making application or taking examination for openings in the civil service of a government unit with reasonable prospects of suitable full-time work for the claimant.
- (6) Responding to appropriate want ads for work which appears suitable to the claimant.
- (7) Any other action which the department finds to constitute an effective means of securing full-time work suitable to the claimant.

(c) No claimant, however, shall be denied benefits solely on the grounds that he has failed or refused to register with a private employment agency or at any other placement facility which charges the job seeker a fee for its services.

(d) A claimant shall be deemed to have failed to make an effort to secure full-time work if the department finds that he has followed a course of action designed to discourage prospective employers from hiring him in suitable work.

(e) Notwithstanding subsections (a) through (d), if the department finds that for a particular locality, occupation, or class of claimant during a certain interval, the prospects of suitable full-time job openings other than those listed with the public employment service are so remote that any effort to secure work other than by registration for work under IC 22-4-14-2 would be fruitless to the claimant and burdensome to employers, then such registration by the claimant shall be deemed an effort to secure work. In applying these conditions, the department shall consider whether such claimant has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment. In determining whether or not a claimant has a reasonable assurance of reemployment, the department shall consider whether the claimant has been temporarily or permanently laid off from his work and, if temporarily laid off, the length of the prospective period of unemployment resulting from such layoff.

(f) This rule does not apply to claimants applying for benefits for a week of partial unemployment. *(Department of Workforce Development; Reg 826; filed Jun 15, 1951, 11:00 a.m.: Rules and Regs. 1952, p. 122; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 26; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 177; filed Aug 30, 1983, 8:36 a.m.: 6 IR 1924; filed Apr 30,*

1992, 5:00 p.m.: 15 IR 1935; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-22) to the Department of Workforce Development (646 IAC 3-10-18) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-19 Notice to employer by department

Authority: IC 22-4.1-3-3

Affected: IC 22-4-17-2; IC 22-4-19-13; IC 22-4.1

Sec. 19. (a) All notices to employers originating in the local offices of the department shall be sent to the employer's establishment at which the claimant last worked or to an address designated by the employer. Such designation shall be in writing and shall be sent to the director of unemployment insurance at the central office of the department in Indianapolis, Indiana. When the job location is other than the employer's place of business, the employer's notice shall be sent to the business address. If the employer elects to be represented by an agent or representative and files a power of attorney attesting to the representation, notice shall be mailed to the address indicated by the employer in the document granting power of attorney. Such notices shall include, but will not be limited to, the determinations made when the claimant's benefit eligibility is disputed.

(b) Notices to employers originating in the central office of the department will be mailed as follows:

(1) All notices, including quarterly contribution reports, delinquent notices, and any other such notices concerning interest, penalties, or other information required to properly administrate the law will be mailed to the:

- (A) corporate office of the employer;
- (B) official place of business; or
- (C) designated representative as noted in subsection (a);

except notices which reflect legal action (such notices will include, but not be limited to, warrants and liability appeals) will be mailed without exception to the corporate office or the official place of business.

(2) All notices of:

- (A) a new claim;
- (B) a reopened claim;
- (C) a claim of potential liability; and
- (D) benefit charges;

shall be mailed only to one (1) address to be designated by the employer. Employers who report wages under employer location numbers may elect to have the notices mailed to each separate establishment, the corporate office, or the designated representative.

(Department of Workforce Development; PT II, Reg 829; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 27; filed Feb 17, 1977, 1:26 p.m.: Rules and Regs. 1978, p. 295; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1936; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2855; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-23) to the Department of Workforce Development (646 IAC 3-10-19) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-20 Vocational training course attendance

Authority: IC 22-4.1-3-3

Affected: IC 22-4-14-3; IC 22-4-15-2; IC 22-4.1

Sec. 20. (a) Under IC 22-4-14-3(c), an individual shall not be deemed unavailable for work with respect to any week because the individual is enrolled in, and making satisfactory progress in, training with approval of the department. As defined in this section, "training" means any course of education with the primary purpose of training the applicant in skills that will make the individual more employable. Neither shall an individual be disqualified for refusal of an offer of work under IC 22-4-15-2 if, as a condition of being employed, the individual would be required to discontinue training into which the individual had entered with the approval of the department. The board, or its duly authorized representative, may approve such course for an individual only if it finds that the individual is in training which is provided through Trade Adjustment Assistance (TAA), the Job Training Partnership Act (JTPA), vocational rehabilitation, or the Bureau of Apprenticeship and Training and the joint apprenticeship committee, or the board finds that all of the following conditions are met:

- (1) The individual is indefinitely unemployed.
- (2) A training course exists for the individual.

(3) The training course is conducted during a sufficient number of hours, thereby ensuring that requirements of the course are completed in a reasonable length of time.

(4) The training course relates to an occupation or skill for which there are, or are expected to be, reasonable work opportunities in the labor market or the individual is willing to relocate to an area in which such opportunities exist.

(5) The training course is offered by a competent and reliable agency, educational institution, or employing unit.

(b) In determining whether a training course is offered by a competent and reliable agency, educational institution, or employing unit, the board, or its duly authorized representative, shall give full weight to whether such agency, institution, or employing unit has been:

(1) established by law and financed in whole or in part by public funds; or

(2) approved or regulated by any state regulatory board, agency, or commission.

(Department of Workforce Development; PT II, Reg 830; filed Nov 17, 1971, 9:50 a.m.: Rules and Regs. 1972, p. 27; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 178; filed Nov 26, 1974, 9:45 a.m.: Rules and Regs. 1975, p. 310; filed Sep 14, 1982, 3:40 p.m.: 5 IR 2372; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1937; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2855; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-24) to the Department of Workforce Development (646 IAC 3-10-20) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-10-21 Employment in more than one department of single employer

Authority: IC 22-4.1-3-3

Affected: IC 22-4-15-1; IC 22-4.1

Sec. 21. (a) Wage credits earned from an employer, whether in employment in one (1) or more different departments, factories, plants, or establishments, are from a single employer since an employer has only one (1) experience account covering all his operations.

(b) If an employer requires an employee of a department, factory, plant, or establishment to terminate his employment in one (1) department, factory, plant, or establishment, for the purpose of continuing his employment in another department, factory, plant, or establishment of the same employer, such termination is not a separation under IC 22-4-15-1. *(Department of Workforce Development; PT II, Reg 832; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 171; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1937; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-26) to the Department of Workforce Development (646 IAC 3-10-21) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-10-22 Employment during more than one period with single employer

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 22. (a) If a claimant subject to the disqualifications under IC 22-4-15-6 had more than one (1) period of employment with the same employer, the wage credit cancellation applies only to the wage credits earned prior to the date of the disqualifying separation and not to those earned subsequently if the following period of employment was terminated under conditions that would result in wage credit cancellation. Benefits based on subsequent wage credits are chargeable to the employer's experience account.

(b) Benefits properly paid subsequent to a nondisqualifying separation but prior to a disqualifying separation resulting in a wage credit cancellation under IC 22-4-15-6 are proper charges to the employer's experience account. *(Department of Workforce Development; PT II, Reg 833; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 171; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1937; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-27) to the Department of Workforce Development (646 IAC 3-10-22) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-10-23 Cancellation or withdrawal of claim

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 23. Once a claim has been filed by an individual and it has been established as a valid claim, then during the benefit period

established that individual cannot cancel, withdraw, or change the time of filing for the purpose of establishing a different benefit period or for any other purpose. (*Department of Workforce Development; Reg 835; filed Jan 3, 1977, 2:43 p.m.: Rules and Regs. 1978, p. 293; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1938; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-9-29) to the Department of Workforce Development (646 IAC 3-10-23) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 11. Interstate Benefit Payment Plan

646 IAC 3-11-1 Interstate benefit payment plan

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. This rule governs the state of Indiana in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants. (*Department of Workforce Development; Reg 901; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 937; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 46; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1938; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-1) to the Department of Workforce Development (646 IAC 3-11-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-11-2 Definitions

Authority: IC 22-4.1-3-3

Affected: IC 22-4-22-3; IC 22-4.1

Sec. 2. (a) The definitions in this section apply throughout this rule.

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

(c) "Benefits" means the compensation payable to an individual, with respect to his or her unemployment, under the unemployment insurance law of any state.

(d) "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 in which benefit credits have been accumulated.

(e) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one (1) or more liable states through the facilities of an agent state. The term shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specified areas.

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

(g) "State" includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(h) "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. (*Department of Workforce Development; 646 IAC 3-11-2; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1939; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2858; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-2) to the Department of Workforce Development (646 IAC 3-11-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-11-3 Registration for work

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. (a) Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, rules, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state. (*Department of Workforce Development; 646 IAC 3-11-3; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1939;*

readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-3) to the Department of Workforce Development (646 IAC 3-11-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-11-4 Benefit rights of interstate claimants

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. (a) If a claimant files a claim against any state, and it is determined by the state that the claimant has available benefit credits in such state, then claims shall be filed only against the 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.

(b) Under this rule, 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. *(Department of Workforce Development; 646 IAC 3-11-4; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1939; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-4) to the Department of Workforce Development (646 IAC 3-11-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-11-5 Claims for benefits

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. (a) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with the uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week 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 rules or regulations for intrastate claims in local employment offices, at an itinerant point, or by mail.

(c) 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.

(d) 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. *(Department of Workforce Development; 646 IAC 3-11-5; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-5) to the Department of Workforce Development (646 IAC 3-11-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-11-6 Determination of claims

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. (a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim. *(Department of Workforce Development; 646 IAC 3-11-6; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-6) to the Department of Workforce Development (646 IAC 3-11-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-11-7 Appellate procedure

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. (a) Appeals shall be conducted in accordance with the interstate agreement.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state. (*Department of Workforce Development; 646 IAC 3-11-7; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-7) to the Department of Workforce Development (646 IAC 3-11-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-11-8 Extension of interstate benefit payments to include claims taken in and for Canada

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 8. This rule shall apply in all its provisions to claims taken in and for Canada. (*Department of Workforce Development; 646 IAC 3-11-8; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-8) to the Department of Workforce Development (646 IAC 3-11-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 12. Appellate Procedure

646 IAC 3-12-1 Request for hearing before administrative law judge; statement of contention; notice of hearing

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. (a) Any interested party in the claim of an employee shall be entitled to a hearing before an administrative law judge relative to the merits of the claim.

(b) "Interested party" means the following:

(1) Any claimant for benefits.

(2) Any employer whose account may be affected by the adjudication of the claim.

(3) Any employer in the claimant's base period.

(4) Any employer who has made an offer of work to the claimant or to whose employment claimant has been furnished a referral.

(5) The claimant's last or separating employer.

(c) A party appealing from a decision or order of a deputy shall file its appeal with the department at the office where the original claim was filed or directly with the appellate division on the form provided by the department for that purpose. However, the receipt of any document that indicates on its face a desire to appeal and contains the information requested by the form provided by the department shall be treated as being in compliance with this rule.

(d) Upon scheduling a hearing on an appeal, notices of the hearing shall be mailed to the claimant and to the following:

(1) The claimant's last or separating employer.

(2) Each employer who has made an offer of work to the claimant or to whose employment claimant has been furnished a referral.

(3) Each employer who, other than being chargeable with benefits paid or payable to the claimant, has a direct connection with the issue or issues raised by the appeal. If it appears to the administrative law judge that an employer was improperly excluded as an interested party, the administrative law judge may cause that employer to be given notice of the hearing and become a party to the appeal.

(*Department of Workforce Development; Reg 1001; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 941; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 67; filed Oct 25, 1949, 4:20 p.m.: Rules and Regs. 1950, p. 53; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 94; filed Sep 4, 1959, 9:10 a.m.: Rules and Regs. 1960, p. 35; filed Dec 6, 1966, 11:15 a.m.: Rules*)

and Regs. 1967, p. 50; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1941; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-1) to the Department of Workforce Development (646 IAC 3-12-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-2 Disqualification of administrative law judge

Authority: IC 22-4.1-3-3

Affected: IC 22-4-17-15; IC 22-4.1

Sec. 2. An administrative law judge shall abide by and follow IC 22-4-17-15 to ensure the appearance of impartiality. Challenges to the impartiality of an administrative law judge shall be heard and decided by the review board. (*Department of Workforce Development; Reg 1002; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 942; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1941; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-2) to the Department of Workforce Development (646 IAC 3-12-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-12-3 Conduct of hearings before administrative law judge

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. (a) All hearings held before an administrative law judge shall be held at the local office serving the claimant's last employer unless otherwise directed by the executive director. Where the claimant's residence is at a considerable distance from the place of last employment, the claimant shall be given a fair opportunity to present his evidence at a continued hearing to be held at or near the local office nearest his place of residence. Due notice of such continued hearing shall be given to the interested parties.

(b) All hearings shall be conducted informally in order to determine the substantial rights of the parties. The parties may present evidence as the administrative law judge deems necessary for determining the substantial rights of the parties. The parties to the appeal may appear in person, by attorney, or duly authorized agent or representative, under section 12 of this rule, and shall have the right to examine their own witnesses, present evidence, and cross-examine witnesses of the opposing party. Any administrative law judge shall have the right to examine all witnesses and may require the parties to produce any available evidence he may deem necessary for proper determination of the case. Where either party fails to appear or where either party is not represented by an attorney or duly authorized agent, it shall be the duty of the administrative law judge to examine the party's witnesses, and to cross-examine all witnesses of the other party, in order to ensure complete presentation of the case. In general, rules of evidence and procedure for the trial of civil causes shall govern proceedings before an administrative law judge or the review board, but not to an extent as to obstruct or prevent a full presentation of fact or to jeopardize the rights of any interested party. No improper conduct shall be permitted during the progress of the hearing.

(c) When an employer or claimant is not present at any hearing before an administrative law judge or the review board but is represented by an agent or representative, the administrative law judge or the review board shall require the agent or representative to produce proof in writing signed by the claimant or employer giving the agent or representative authority to so appear for and represent that party.

(d) In general, hearsay evidence shall not be considered, but the administrative law judge shall consider all hearsay evidence as would be admissible under common law and statutory rules of evidence of courts in this state. Hearsay evidence which is not subject to a common law or statutory exception with respect to admissibility may be admitted but shall not be entitled to the same weight in reaching a decision as is direct testimony. Hearsay evidence properly objected to and not falling within a recognized exception and admitted into the record shall not form the sole basis for a decision by the administrative law judge or review board. (*Department of Workforce Development; Reg 1003; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 942; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 67; filed Apr 5, 1978, 10:23 a.m.: Rules and Regs. 1979, p. 76; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1941; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2596; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-3) to the Department of Workforce Development (646 IAC 3-12-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-12-4 Continuances

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. (a) The administrative law judge or the review board may continue any hearing upon its own motion or upon written application of any party to the appeal. The written application must be received not later than three (3) days before the date of the hearing. An application for a continuance of a hearing pending before an administrative law judge shall be made to the administrative law judge. If the administrative law judge is unavailable, then the application shall be made to the appeals supervisor. An application for continuance of a hearing pending before the review board shall be made to the chairman of the review board.

(b) If the party who has requested the appeal fails to appear at an administrative law judge hearing, after having received due notice, the administrative law judge may, in his discretion, dismiss the appeal and the determination from which the appeal was requested shall be deemed final unless the appeal is reinstated as provided.

(c) The review board may, in its discretion, dismiss any appeal which in its judgment has been abandoned by all interested parties, and the decision from which the appeal was taken shall be deemed final unless the appeal is reinstated as provided. No appeal shall be dismissed as abandoned if any of the interested parties appears in person or by representative at the review board hearing and refuses his consent to the dismissal.

(d) An appealing party shall be deemed to have abandoned his or her appeal to the review board if neither the party nor his or her representative personally appears at the time and place fixed for the review board hearing; except that in a proceeding before the review board to review a decision of an administrative law judge, the party appealing, or any other interested party, may, in lieu of personal appearance or representation, submit to the review board, not later than three (3) days prior to the date set for a hearing, his or her written request that the appeal be heard and decided upon the evidence in the record made before the administrative law judge.

(e) If a party failing to appear at an administrative law judge hearing shall apply within seven (7) days from the date of mailing of the decision or notice of disposition and show good cause why the case should be reinstated, the same shall be reinstated. No case shall be reinstated more than once. (*Department of Workforce Development; Reg 1004; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 943; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 69; filed Sep 5, 1952, 1:40 p.m.: Rules and Regs. 1953, p. 108; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 51; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1942; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-4) to the Department of Workforce Development (646 IAC 3-12-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-5 Withdrawal from appeal; reinstatement petition

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. Any party appealing the initial determination of a deputy or a decision of the administrative law judge may withdraw the appeal at any time prior to the hearing by notice in writing, and the decision of the deputy or administrative law judge shall become final and conclusive as against the party withdrawing the appeal unless within seven (7) days after the date of withdrawal a petition in writing for reinstatement is filed. If the petition is timely filed, the appeal shall be reinstated. However, no appeal shall be reinstated more than once. (*Department of Workforce Development; Reg 1005; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 944; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-5) to the Department of Workforce Development (646 IAC 3-12-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-6 Decision of administrative law judge

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. The decision of the administrative law judge shall contain conclusions of law supported by specific findings of fact. The decision shall be in writing and shall be signed by the administrative law judge. Copies shall be sent to the parties named, their representatives or attorneys in the appeal, and to the claim holding office. (*Department of Workforce Development; Reg 1006; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 944; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; readopted filed Aug 31, 2001,*

11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-6) to the Department of Workforce Development (646 IAC 3-12-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-7 Request for appeal to review board

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. Within eighteen (18) days after the date of mailing the decision of the administrative law judge, the adversely affected party may appeal to the review board. The appeal to the review board shall be filed at the claim holding local office or administrative office, on the form provided by the department. However, the receipt of any document that indicates on its face a desire to appeal and contains the information requested by the form provided by the department shall be treated as being in compliance with this rule. The review board may grant or deny a request for hearing and shall immediately notify all parties in writing. If a hearing is granted, the review board shall notify the parties in writing of the hearing at least ten (10) days prior to the date of the hearing. (*Department of Workforce Development; Reg 1007; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 944; filed Oct 25, 1949, 4:20 p.m.: Rules and Regs. 1950, p. 54; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 52; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-7) to the Department of Workforce Development (646 IAC 3-12-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-8 Conduct of hearing before review board

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 8. (a) Unless otherwise directed by the review board, all hearings before the review board shall be conducted in the office of the review board in the city of Indianapolis, Indiana.

(b) Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge. An application for leave to introduce additional evidence made by either party shall set forth the names of the witnesses whose testimony will be offered and the facts to which they are expected to testify. If the new evidence is documentary, then a copy of the document proposed to be introduced shall accompany the application. Such application, if made by the appellant, must be presented at the time the request for hearing is filed. No additional evidence shall be taken except after notice is issued by the review board to all parties to such appeal giving each party an opportunity to rebut the additional evidence. The notice shall designate the time when and place at which additional evidence will be received and shall set forth the names of the witnesses whose testimony will be heard, together with a summary of the facts about which they are expected to testify, and shall include a copy of any document offered as additional evidence. It is further provided, however, that if all parties to an appeal are present at a hearing at which the review board upon its own motion determines to take additional evidence and the parties voluntarily waive their right of notice of the taking of additional evidence, the review board in its own discretion may proceed in the taking of additional evidence.

(c) The review board may remand any proceeding to an administrative law judge for the hearing of additional evidence under the same conditions and after like notice as is provided for the hearing of additional evidence by the review board.

(d) In the hearing of an appeal, the review board may limit the parties to oral argument, or the filing of written argument, or both. After notice to all parties, any party to any proceeding in which additional evidence is taken may present material evidence relative to the question upon which the review board has authorized or directed the taking of additional evidence, and evidence in rebuttal also may be introduced.

(e) The proceeding of any claim before an administrative law judge ordered by the review board to be removed until it shall be presented, heard, and decided by the review board in the manner prescribed for the hearing of claims before an administrative law judge. (*Department of Workforce Development; Reg 1008; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 945; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 70; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-8) to the Department of Workforce Development (646 IAC 3-12-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-9 Decision of review board

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 9. (a) The review board shall, as promptly as possible, issue a decision with conclusions of law supported by specific findings of fact. The decision shall be in writing and shall be signed by the members of the review board who heard the appeal.

(b) If a decision of the review board is not unanimous, the decision of the majority shall control, but the dissenting member may file an opinion.

(c) Copies of the decision, together with any dissenting opinion, shall be mailed to the parties, the parties' representatives or attorneys, and the claim holding office.

(d) A decision of the review board which reverses, in whole or in part, the decision of the administrative law judge shall not incorporate by reference or restatement, in whole, the findings of the administrative law judge, but rather shall contain its own findings and conclusions. (*Department of Workforce Development; Reg 1009; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 945; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1944; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-9) to the Department of Workforce Development (646 IAC 3-12-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-10 Witnesses; subpoena; fees; limitation

Authority: IC 22-4.1-3-3

Affected: IC 22-4-17-10; IC 22-4.1

Sec. 10. (a) Whenever the attendance of witnesses or the production of documents or other evidence is desired by any party to the hearing, a request for a subpoena must be filled out, signed by the party, and filed with the deputy where the claim was filed. The request must be filed in time for the subpoena to be issued and served prior to the time and date of the hearing.

(b) Unless directed to issue by a member of the review board or an administrative law judge, or the deputy, a subpoena shall be issued only upon a showing of necessity by the party applying for the subpoena. The request for subpoena must contain the name and address of the individual being subpoenaed and a description of the document, record, or thing to be produced.

(c) Witnesses subpoenaed for any hearing before an administrative law judge or the review board shall receive the sum provided in this article provided for employees of the state for per diem fees, for each day their attendance is required in any hearing or proceeding pending before an administrative law judge or the review board and shall, in addition, receive the sum provided in this article for employees for each mile necessarily traveled in going to and returning from hearings from their residence, as provided under IC 22-4-17-10.

(d) Witnesses shall claim their fees and mileage by executing and filing forms provided by the department within fifteen (15) days after the date of the hearing which they attended. If not claimed within this time, fees will not be allowed. No fees or mileage shall be allowed any witnesses not subpoenaed by the review board, administrative law judge, or deputy.

(e) The review board or administrative law judge may refuse to hear more than three (3) witnesses produced by the same person or party to prove the same fact or facts.

(f) If any party requests more than three (3) witnesses subpoenaed to prove the same fact or facts, such party shall pay the cost of all such witnesses in excess of three (3).

(g) Subpoenas may be served by any of the following:

(1) A party to the hearing.

(2) The party's representative as specified under section 12 of this rule.

(3) A representative of the department.

(4) The sheriff of the county in which the hearing is to be held.

Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas may be served in any manner specified by the rules governing the trial of civil causes. Subpoenas shall be enforced by the review board in a court of competent jurisdiction as provided for by law. (*Department of Workforce Development; Reg 1010; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 946; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 95; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 36; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 72; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1944; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-10) to the Department of Workforce Development (646 IAC 3-12-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-11 Representation before administrative law judge or review board

Authority: IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 11. (a) Any employer or employing unit interested in any benefit claim pending before an administrative law judge or the review board may appear:

- (1) in person;
- (2) by attorney, officer, or member of the firm or its local manager;
- (3) by a recognized public accountant; or
- (4) by a representative of an unemployment compensation service firm.

(b) An employee may appear:

- (1) in person and represent his own interest; or
- (2) by attorney, recognized public accountant, or authorized agent of any bona fide labor organization.

(c) In addition, any interested party may be represented by an individual or member of a class of individuals authorized by rule of the Indiana supreme court to represent parties in judicial or quasi-judicial proceedings.

(d) The review board, in its discretion, may refuse to allow any person to represent a party in any proceeding before it, if it finds that this person is or has been guilty of unethical conduct, or has intentionally or repeatedly failed to observe the provisions of IC 22-4, the rules of the review board, or the rules of the unemployment insurance board.

(e) As used in this section, "attorney", means any person duly admitted and entitled to practice law in the state of his or her residence. Any attorney, agent, or accountant may be required to produce proof of his or her authority and qualifications before appearing in any hearing before any administrative law judge or the review board.

(f) Fees charged to claimants for representation before any administrative law judge or the review board shall be in a sum subject to the approval of the review board. Except in unusual cases this fee shall be for a sum not in excess of fifteen percent (15%) of the unpaid balance of the claimant's maximum benefit amount. (*Department of Workforce Development; Reg 1012; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 947; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 71; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1945; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-12) to the Department of Workforce Development (646 IAC 3-12-11) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-12 Records of decisions

Authority: IC 22-4.1-3-3

Affected: IC 22-4-17-3; IC 22-4-17-5; IC 22-4.1

Sec. 12. Copies of all decisions of the administrative law judge and of the review board shall be kept on file at the office of the department, Indianapolis, Indiana. These decisions shall not be open to public inspection in a manner as to reveal the names or addresses of the interested parties or their witnesses. (*Department of Workforce Development; Reg 1013; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 948; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2859; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-13) to the Department of Workforce Development (646 IAC 3-12-12) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-13 Pleadings; forms

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 13. Unless otherwise provided, all forms, pleadings, and papers in connection with disputed claims shall be filed with the deputy at the office of the department where the claim was filed. All legal motions filed by attorneys or representatives shall be served on all interested parties with a certificate of service. (*Department of Workforce Development; Reg 1014; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 948; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-14) to the Department of Workforce Development (646 IAC 3-12-13) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-14 Cause number; subsequent pleadings

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 14. All claims pending before an administrative law judge or the review board shall be promptly assigned a cause number and an employer account number. (*Department of Workforce Development; Reg 1015; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 948; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-15) to the Department of Workforce Development (646 IAC 3-12-14) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-15 Service of notice

Authority: IC 22-4.1-3-3

Affected: IC 22-4-17-14; IC 22-4.1

Sec. 15. Notice of all hearings or proceedings before an administrative law judge or the review board, unless otherwise directed by statute, shall be given by mail, and the proof of the mailing of any notice shall be prima facie proof of the service. Notices and the time period which commences with the service of notices under the appellate regulations shall comply with IC 22-4-17-14. (*Department of Workforce Development; Reg 1016; filed Apr 17, 1947, 4:30 p.m.: Rules and Regs. 1948, p. 237; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Oct 25, 1949, 4:20 p.m.: Rules and Regs. 1950, p. 54; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-16) to the Department of Workforce Development (646 IAC 3-12-15) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-16 Depositions; translations

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 16. (a) In all hearings, proof may be made by oral testimony, by documentary exhibits, or by depositions when the convenience of the witnesses or the parties so requires. Depositions shall be taken in the manner and after notice required by statute for taking depositions in civil cases.

(b) No paper or document written in any foreign language shall be introduced in evidence unless it is accompanied by a correct English translation, with satisfactory proof that the translation is a correct translation of the original. Testimony in a language other than English or by the hearing impaired shall be interpreted by an interpreter of either the witness' or the department's choice approved by the administrative law judge or review board. The interpreter is subject to the same oath or affirmation as is the witness. (*Department of Workforce Development; Reg 1017; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 949; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-17) to the Department of Workforce Development (646 IAC 3-12-16) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-17 Docket; order book

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 17. The review board and administrative law judge shall keep a case docket and an order book of all claims pending before the review board and administrative law judge. All cases shall be entered of record in the appropriate docket at the time and in the order in which they are filed, and each case shall be numbered in the order in which it is filed. The case docket of claims and cases pending shall show the following:

- (1) The names of the designated employer and employee.
- (2) The cause number.
- (3) The date of filing.
- (4) The date of issuing of notice of hearing.

(5) The date of receipt of acknowledgement of the service of such notice.

(6) The dates of all hearings in connection with such claims.

The order book of the review board and administrative law judge shall be properly indexed and shall show all entries, orders, findings, and final decisions of the review board and administrative law judge. The case docket and order book may be kept by the review board and administrative law judge in any suitable media in accordance with the Indiana rules of procedure. (*Department of Workforce Development; Reg 1018; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 949; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-18) to the Department of Workforce Development (646 IAC 3-12-17) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-18 Convening review board; quorum; amendment of rules of procedure

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 18. (a) The review board shall convene upon the call of the chairman, for consultation, and for the disposition of matters pending before the review board. Two (2) members of the review board shall constitute a quorum for the transaction of any business and the performance of any act required or authorized to be transacted or performed by the review board.

(b) The chairman, when incapacitated and with the consent of the appointing authority, may designate an acting chairman in his absence. (*Department of Workforce Development; Reg 1019; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 950; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-19) to the Department of Workforce Development (646 IAC 3-12-18) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-19 Recording hearings; transcripts

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 19. All evidence introduced at any hearing before the review board or an administrative law judge shall be preserved, and all oral evidence shall be recorded, but it shall not be necessary to transcribe the same unless further proceedings are had in which the evidence shall be in issue or be required for a proper determination of the proceeding. A transcript will be prepared only when ordered by the review board for its use or as required for judicial proceedings. (*Department of Workforce Development; Reg 1020; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 950; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-20) to the Department of Workforce Development (646 IAC 3-12-19) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-20 Transfer of hearing to unemployment insurance board

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 20. Where a claim pending before the review board is transferred to the unemployment insurance board for determination, the hearing shall be held before and decided by the full board. Rules governing hearings before the unemployment insurance board shall be the same as those applicable to hearings before the review board. (*Department of Workforce Development; Reg 1022; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 950; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 179; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-22) to the Department of Workforce Development (646 IAC 3-12-20) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-21 Telephone hearings

Authority: IC 22-4.1-3-3

Affected: IC 22-4-17-8.5; IC 22-4.1

Sec. 21. (a) A telephone hearing may be conducted at the initiation of either the review board or an administrative law judge or upon the request of an interested party.

(b) The review board and an administrative law judge may, at their discretion, initiate and conduct a telephone hearing under IC 22-4-17-8.5.

(c) The procedure for a telephone hearing requested by an interested party shall be as follows:

(1) Any party to an appeal may request a telephone hearing by submitting, in writing, the reasons for the request to the administrative law judge or review board. The request must be received by the review board or the administrative law judge three (3) days before the scheduled inperson hearing.

(2) After mailing of a notice of a telephone hearing or after mailing of a notice of a request for a telephone hearing, the claimant or employer has five (5) business days in which to file a written objection to the telephone hearing. Any interested party may object to a request by another party for a telephone hearing and, if both interested parties are located in Indiana and the nonmoving party objects to the request for a telephone hearing, then the review board and administrative law judge is precluded from holding a hearing by telephone.

(3) The review board or administrative law judge shall grant or deny requests for telephone hearings under IC 22-4-17-8.5 and immediately notify the interested parties of their decision.

(d) The notice of a telephone hearing shall contain the following:

(1) That parties have the right to object to a telephone hearing.

(2) The circumstances under which the telephone hearing will be conducted.

(3) Instructions as to how the telephone hearing will be conducted.

(4) Other rights of the parties.

(e) All hearings before an administrative law judge shall be held at the local office having hearing facilities nearest the employer who is an interested party. The location of the employer will be determined by the claimant's last work site or the office site of the claimant's immediate supervisor and as further defined by this rule.

(f) A witness for a telephone hearing must be present at the local office in Indiana or at the location of the party participating by telephone as indicated in the hearing notice or request for telephone hearing. The review board or administrative law judge at the beginning of the hearing shall advise all participants that the proceedings are being recorded. The review board or administrative law judge shall permit any party a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of that witness. Telephone hearings shall be subject to the general rules and regulations governing inperson hearings. In order for documentary evidence to be included in the record in a telephone hearing, it must have been delivered to the review board, administrative law judge, and other interested parties at least five (5) business days prior to the telephone hearing. (*Department of Workforce Development; 646 IAC 3-12-21; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1948; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-23) to the Department of Workforce Development (646 IAC 3-12-21) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-12-22 Job training and counseling

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 22. (a) The department shall provide job counseling or training, as defined in subsection (b), to an individual who remains unemployed for at least four (4) weeks. An unemployed individual who is ineligible to receive benefits may be entitled to job counseling and training. The manner and duration of the counseling and training to be provided shall be determined by the unemployment insurance board.

(b) As used in this section, "counseling" includes those activities which assist an individual in gaining self-knowledge, adapting emotionally and financially to his or her current situation, and establishing a course of action leading to employment and financial independence.

(c) As used in this section, "training" includes those activities which enhance the skills an individual needs to secure and maintain employment.

(d) Counseling and training activities may include work orientation, development of basic and master skills evaluations, school to career programs, development of performance standards and proficiencies, and other activities as directed by the unemployment insurance board.

(e) Counseling and training services may be offered either on an individual or group basis depending on the program structure of the service delivery area and approval by the department.

(f) The department shall be responsible for identifying and referring unemployed workers to appropriate counseling and training programs and tracking unemployment insurance claimants who are referred to and receive counseling and training services. *(Department of Workforce Development; 646 IAC 3-12-22; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1948; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-24) to the Department of Workforce Development (646 IAC 3-12-22) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

Rule 13. Reciprocal Arrangements

646 IAC 3-13-1 Reciprocal coverage of multistate workers

Authority: IC 22-4.1-3-3

Affected: IC 22-4-22-1; IC 22-4-22-2; IC 22-4.1

Sec. 1. This rule governs the department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement. *(Department of Workforce Development; Reg 1101; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 951; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 37; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 52; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1949; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2859; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-1) to the Department of Workforce Development (646 IAC 3-13-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-13-2 Definitions

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 2. (a) The definitions in this section apply throughout this rule.

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

(c) "Customarily performed services by an individual in more than one (1) jurisdiction" means services performed in more than one (1) jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one (1) jurisdiction or if such services are required or expected to be performed in more than one (1) jurisdiction under the election.

(d) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval.

(e) "Interested agency" means the agency of jurisdiction.

(f) "Jurisdiction" means any state of the United States, the District of Columbia, Canada, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

(g) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated. *(Department of Workforce Development; 646 IAC 3-13-2; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1950; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-2) to the Department of Workforce Development (646 IAC 3-13-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

646 IAC 3-13-3 Submission and approval of coverage elections under the interstate reciprocal coverage arrangement

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. (a) Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him by an individual who customarily works for him in more than one (1) participating jurisdiction. An election may be filed, with respect to an individual, with any participating jurisdiction in which:

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

(2) the individual has his or her residence; or

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

(b) The agency of the elected jurisdiction shall initially approve or disapprove the election. If the agency approves the election, it shall forward a copy to the agency of each other participating jurisdiction specified, under whose unemployment compensation law the individual or individuals in question might, in the absence of the elections, be covered. Each interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly.

(c) In case its law so requires, any interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(d) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons.

(e) An election shall take effect as to the elected jurisdiction only if approved by its agency and by one (1) or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by the agency.

(f) In case any election is approved only in part, or is disapproved by some of the agencies, the electing employing unit may withdraw its election within ten (10) days after being notified of this action. (*Department of Workforce Development; 646 IAC 3-13-3; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1950; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-3) to the Department of Workforce Development (646 IAC 3-13-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-13-4 Effective period of elections

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 4. (a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one (1) participating jurisdiction. Such termination shall be effective at the close of the calendar quarter in which notice of the finding is mailed to all parties affected.

(c) Except as provided in subsection (b), each election approved shall remain in effect through the close of the calendar year in which it is submitted until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(d) Whenever an election under this rule ceases to apply to any individual under subsection (b) or (c), the electing unit shall notify the affected individual accordingly. (*Department of Workforce Development; 646 IAC 3-13-4; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1951; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-4) to the Department of Workforce Development (646 IAC 3-13-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-13-5 Reports and notices by the electing unit

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. (a) The electing unit shall promptly notify each individual affected by its approved election and shall furnish the elected agency a copy of the notice.

(b) Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall notify the individual as to the jurisdiction under whose unemployment compensation law the services have been covered. If, at the time of termination, the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one (1) participating jurisdiction or where a change in the work assigned to an individual requires him or her to perform services in a new participating jurisdiction. (*Department of Workforce Development; 646 IAC 3-13-5; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1951; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-5) to the Department of Workforce Development (646 IAC 3-13-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-13-6 Approval of reciprocal coverage elections

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. The Indiana unemployment insurance board delegates to the director of the department authority to approve or disapprove reciprocal coverage elections in accordance with this rule. (*Department of Workforce Development; 646 IAC 3-13-6; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1952; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-6) to the Department of Workforce Development (646 IAC 3-13-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 14. Liability Referee Hearings

646 IAC 3-14-1 Protest of benefit charges; hearings and decisions by liability administrative law judge

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 1. (a) Any protest of charges made to an employer's experience account as reflected by the monthly statement issued by the department must be made in writing within fifteen (15) days after it is mailed to the employer's last known address. Unless protest is filed within the provided time, the records of the department shall be considered to be correct. The protesting employer may file either on the form provided by the department for that purpose, or any other document that shows a clear desire to protest charges. In any case, the protest must be signed by the employer. The protest may be filed either at a local office of the department or at the administrative office. When filed with the liability administrative law judge, a time, place, and date of hearing shall be set by the liability administrative law judge. The hearing shall be held only after not less than ten (10) days following the mailing of the notice of hearing. The protest filed by the employer shall contain the following:

- (1) The name and Social Security number of the claimant whose benefits, as alleged to have been charged, are protested.
- (2) The date of the receipt by the employer of the statement of benefit charges to which the protest is directed.
- (3) The week for which benefits were paid and the amount of each weekly payment, with respect to the charging of the benefits the protest is directed.
- (4) The cause or grounds for the protest and the particular fact relied upon to support the protest.

(b) By permission of the liability administrative law judge, the employer may amend its protest at any time prior to or during the course of the hearing. The liability hearing will be confined to the issues raised by the employer's protest, and the liability administrative law judge shall have no jurisdiction to determine the benefit rights of any individual to whom benefits have been paid as the result of a final determination.

(c) When a written protest to charges or a written request for relief from charges is filed by an employer by reason of benefits paid to any individual, and when the protest or request for relief is based upon a claim that the employer was not notified of the filing of the individual's claim for benefits and of the employer's liability for charges to its experience account by reason of benefits paid to that individual, then the liability administrative law judge shall hear and determine the protest or request after notice under subsections (a) through (b).

(d) The liability administrative law judge shall determine that the employer's experience account shall be relieved of charges by reason of benefits paid to an individual only when the following has been determined by the liability administrative law judge:

- (1) The individual was ineligible for benefits paid, and that the individual's eligibility for benefits could have been and would have been protested by the employer if due notice had been given the employer of the filing of the individual's claim and the employer's liability for charges to its experience account by reason of benefits paid that individual under the claim.

(2) The employer, if it had been given due notice of the filing of a claim by an individual and of the employer's liability for charges to its experience account by reason of benefits paid under the claim to the individual, could have and would have protested that individual's eligibility for benefits and could have been and would have been able to establish the ineligibility for benefits of that individual, or any disqualification for or reduction in such benefits.

(e) No employer's account shall be relieved of charges for benefits paid to any individual by reason of ineligibility claimed because of any prospective action which might have been taken by the employer, if the employer had received due notice of the filing of the claim and his or her liability for charges to his or her experience account for all or any portion of benefits paid thereunder, but relief from the charges to his or her experience account shall be granted to an employer only if the employee was ineligible for benefits or subject to a disqualification, by reason of facts which actually existed or events which actually occurred. For example, Claimant A filed a claim for benefits and benefits paid him or her were charged to experience account of Employer B as the only employer from whom claimant had earnings in his or her base period. Employer B filed a protest and request for relief of his or her account from charges for the benefits paid. Employer B claimed he or she did not receive notice of benefit liability and did not know of the filing of A's claim, nor that said Employer B's account was to be charged with benefits paid to Claimant A. The employer further claimed he or she would have made an offer of suitable work to Claimant A if due notice of filing of the claim had been duly given him or her.

(f) The employer's account shall not be relieved of charges because of failure to give the employer notice of the filing of the claim, for the claimant was not ineligible for benefits or subject to a disqualification by reason of facts which actually existed or events which actually occurred at or prior to the time of filing his or her claim. When an employer has filed a written protest to or request for relief from charges to his or her experience account for benefits which may be or have been paid to a claimant subsequent to the filing by the employer of a written protest to the payment thereof or to the eligibility for benefits of the claimant, together with a request in writing for a hearing thereon, then, and in these cases, the liability administrative law judge shall have no further jurisdiction of the proceeding until after the hearing has been held by the appellate section of the department upon the employer's original protest. (*Department of Workforce Development; Sec II, Reg 1201; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 179; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1952; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-13-1) to the Department of Workforce Development (646 IAC 3-14-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

Rule 15. Seasonal Employment

646 IAC 3-15-1 Seasonal employer; determination by department

Authority: IC 22-4.1-3-3

Affected: IC 22-4-7-3; IC 22-4.1

Sec. 1. (a) An employer in order to be considered a seasonal employer as defined in IC 22-4-7-3 must make application on prescribed forms attesting to the seasonal nature of the business or a portion or portions of an employer's business.

(b) Because of the seasonal nature of the business or because of climatic conditions, the operation of the business or portions thereof is during a regularly recurring period or periods of less than twenty-six (26) weeks in a calendar year. The department shall make a seasonal determination within ninety (90) days after the filing of an application by an employer. (*Department of Workforce Development; Reg 1301; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1953; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-1) to the Department of Workforce Development (646 IAC 3-15-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-2 Seasonal employer; appeal to department

Authority: IC 22-4.1-3-3

Affected: IC 22-4-32; IC 22-4.1

Sec. 2. Any interested party may file an appeal to a determination regarding an approval or disapproval of an election to become a seasonal employer. The appeal must be filed within fifteen (15) days after the determination to obtain review in accordance with IC 22-4-32. (*Department of Workforce Development; Reg 1302; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1953; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment

Insurance Board (640 IAC 1-14-2) to the Department of Workforce Development (646 IAC 3-15-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-3 Seasonal employer; portion of business considered seasonal

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 3. An employer may be a seasonal employer with respect to a portion of its business only if that portion, under the usual and customary practice in the industry, is identifiable as a functionally distinct operation. For example, a municipally owned golf course in operation twenty (20) weeks per year would be considered a portion of the operation of the municipality. An application would be required to consider this portion as a "seasonal employer". (*Department of Workforce Development; Reg 1303; filed Oct 19, 1983, 10:25 am.: 7 IR 47; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-3) to the Department of Workforce Development (646 IAC 3-15-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-4 Seasonal workers; definition; requirements

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-4; IC 22-4.1

Sec. 4. (a) Seasonal employment as defined in IC 22-4-8-4 means service performed for an approved seasonal employer during the approved seasonal period of less than twenty-six (26) weeks.

(b) A seasonal worker is an individual employed by an approved seasonal employer who is employed for less than twenty-six (26) weeks in approved seasonal employment.

(c) An approved seasonal employer will be required to submit information on department forms detailing the number of positions classified as seasonal within the approved portion or portions of such business. Also included will be the opening and closing dates of each seasonal operation. (*Department of Workforce Development; Reg 1304; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1953; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-4) to the Department of Workforce Development (646 IAC 3-15-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-5 Seasonal workers; notification to employee of employment limitations

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 5. An approved seasonal employer must notify the seasonal employee in writing of the following:

(1) The employee has been hired for a specific temporary seasonal period as determined by the department.

(2) The employee is performing services in seasonal employment for an approved seasonal employer.

(3) Employment is limited to the beginning and ending dates of the seasonal period as determined and approved by the department.

(*Department of Workforce Development; Reg 1305; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-5) to the Department of Workforce Development (646 IAC 3-15-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-6 Seasonal employer; seasonal determination; effective date

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 6. Upon department approval the effective date of a seasonal determination is the first day of the calendar quarter beginning after the date of the seasonal determination. (*Department of Workforce Development; Reg 1306; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred

from the Indiana Unemployment Insurance Board (640 IAC 1-14-6) to the Department of Workforce Development (646 IAC 3-15-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-7 Seasonal employer; reporting wages

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 7. Seasonal employers are required to keep an accurate account of wages paid to seasonal workers within the seasonal period as determined by the department. The department will furnish seasonal employers the special wage reporting forms with coding for seasonal employees. Wages will continue to be reported on a quarterly basis. (*Department of Workforce Development; Reg 1307; filed Oct 19, 1983, 10:25 a.m.: 7 IR 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-7) to the Department of Workforce Development (646 IAC 3-15-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-8 Claims for benefits; filing period

Authority: IC 22-4.1-3-3

Affected: IC 22-4-8-4; IC 22-4.1

Sec. 8. For new weeks of unemployment after October 1, 1983, benefits may be paid to individuals on the basis of service performed in seasonal employment as defined in IC 22-4-8-4 only if a claim is filed within the operating period of approved seasonal employment. If the claim is filed outside the operating period of seasonal employment, benefits may be paid on the basis of non-seasonal wages only. (*Department of Workforce Development; Reg 1308; filed Oct 19, 1983, 10:25 am: 7 IR 48; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-8) to the Department of Workforce Development (646 IAC 3-15-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-9 Seasonal operations; loss of seasonal status

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 9. A seasonal employer shall give written notice to the department when the seasonal operation exceeds twenty-five (25) weeks in a calendar year; such notice shall be filed within thirty (30) days after completion of the twenty-sixth week of operation. The seasonal employer shall automatically lose its seasonal status for that portion of its operation at the end of the calendar quarter, and wages paid to individuals in that portion of the employer's operation will be useable as regular wages to establish claims. (*Department of Workforce Development; Reg 1309; filed Oct 19, 1983, 10:25 a.m.: 7 IR 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-9) to the Department of Workforce Development (646 IAC 3-15-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

646 IAC 3-15-10 Reinstatement of seasonal status

Authority: IC 22-4.1-3-3

Affected: IC 22-4.1

Sec. 10. An employer who has lost his or her designation as a seasonal employer and who wishes reinstatement as a seasonal employer may make application with the department for reinstatement in any calendar year subsequent to the year in which its designation as a seasonal employer was revoked. (*Department of Workforce Development; Reg 1310; filed Oct 19, 1983, 10:25 a.m.: 7 IR 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-10) to the Department of Workforce Development (646 IAC 3-15-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

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