INDIANA
WORKFORCE
DEVELOPMENT
AND ITS WorkOne CENTERS

**TO:** Indiana's Workforce Investment System

**FROM:** Teresa L. Voors
Commissioner, Indiana Department of Workforce Development

**THROUGH:** Mary Johnson, Deputy Commissioner of Unemployment
Dustin Stohler, General Counsel

**DATE:** June 30, 2009

**SUBJECT:** DWD Policy 2008-40
Indiana Department of Workforce Development's Definition and Allocation of Certain Income Deductions for Unemployment Insurance Benefit Purposes

**Purpose**
To explain how DWD defines and allocates certain income deductions from unemployment insurance benefits, based on Indiana Code §§ 22-4-5-1 and 22-4-5-2.

**Rescission**
DWD Policy 2007-41

**References**
Indiana Code §§ 22-4-5-1 and 22-4-5-2

**Contents**
*Applicability*
The Indiana Department of Workforce Development (DWD) establishes this policy to clarify how DWD defines and allocates certain income deductions from UI benefits, pursuant to Indiana Code §§ 22-4-5-1 and 22-4-5-2. This policy applies to initial determinations of eligibility regarding deductible income as well as any subsequent appeals of those determinations to DWD's UI Appeals Division or the UI Review Board.

*Background*
Indiana law requires the deduction of certain types of income from UI benefit payments.[1] If a claimant receives certain types of income at anytime after the claimant is separated from employment, the claimant's weekly benefit amount may be decreased even if the claimant is

[1] IC §§ 22-4-5-1; 22-4-5-2

otherwise eligible for UI benefits. This policy relates to treatment of certain income with respect to its deductibility from UI benefit payments.

*Payments Made in Connection with a Layoff or Plant Closure*
Indiana Code identifies three situations in which a payment is "made in connection with a layoff or plant closure" and treats each situation differently with respect to the deductibility of the payment from UI benefit payments.

*Definition of Compensation Paid "In Connection with a Layoff or Plant Closure"*
The following sections apply to all payments made by an employer to an individual in connection with a layoff or plant closure: IC §§ 22-4-5-1(a)(12), 22-4-5-1(a)(13), and 22-4-5-1(c)(2). A payment is made in connection with a layoff or plant closure if: 1) the claimant's position is eliminated as part of a plan whereby the employer intends to close its facility or eliminate a portion of its workforce; and 2) the claimant would not have received the payment but for the layoff or plant closure. Such payments must be offered or negotiated as part of the layoff or plant closure and may include, but are not limited to: severance payments, dismissal payments, and separation payments.

*Payments Made by an Employer to an Individual who Accepts an Offer in Connection with a Layoff or Plant Closure*
Sections 22-4-5-1(a)(12) and 22-4-5-1(a)(13) apply when a payment is made "by an employer to an individual who accepts an offer from the employer." Such payment is understood to mean that the payments at issue were made pursuant to an agreement that the claimant had the right to accept or reject it on an individual basis.

Generally, a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or plant closure is deductible in the week it is paid, pursuant to IC §22-4-5-1(a)(12).

Section 22-4-5-1(a)(13) applies when a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or plant closure, if the payment is made pursuant to an agreement that: 1) is in writing; and 2) by its terms, computes the benefit in terms of weeks paid, such that a portion of the payment is explicitly attributable to specific weeks in the future. Under §(a)(13), a payment is deductible in the week to which it is attributable, if that week occurs after the payment is received.

*Payments made under a valid negotiated contract or agreement*
Indiana Code § 22-4-5-1(c)(2) applies to compensation made under a valid negotiated contract or agreement. Compensation is understood to be made under a "valid negotiated contract or agreement" if it is paid pursuant to a contract or agreement that is negotiated on behalf of two or more employees whose positions are eliminated as part of the layoff or plant closure.

Compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure is not deductible from UI benefit payments, regardless of how the payment is characterized in the contract or agreement, pursuant to IC §22-4-5-1.

*Examples*
The following examples illustrate how DWD applies the law related to payments made in connection with a plant closure or layoff. The examples do not address all possible situations.

1. An employer has a policy pursuant to which employees are paid accrued vacation upon termination of employment. The employer closes its facility and employees receive accrued vacation pursuant to this policy. This payment is not paid "in connection with a layoff or plant closure" because the employees would have received the payment upon termination regardless of the reason for termination. Therefore, the payments are vacation pay that are allocated to the week to which the payments are attributable pursuant to IC § 22-4-5-2(a) and are deductible from UI benefit payments.

2. An employer has a policy pursuant to which employees are not paid accrued vacation upon termination of employment. The employer closes its facility and offers to pay employees accrued vacation to alleviate the effects of the plant closing. This payment is "in connection with a layoff or plant closure" because the employees received the payment because of the plant closure. Therefore, the payment is not deductible income.

3. An employer closes its facility and offers its employees a severance package. The employer develops a formula to determine the amount each employee will be offered based on seniority and requires each employee to sign a legal release in exchange for the payment. Each employee is free to accept or reject the package. The payment is made by an employer to an individual who accepts an offer from the employer. Even though the employer offers the same amount or an amount based on a set formula, the employees are free to accept or reject the offer on an individual basis, so § (c)(2) does not apply. Therefore, the payment is deductible from UI benefit payments.

4. An employer closes its facility and offers its employees a severance package. The employer develops a formula to determine the amount each employee will be offered based on seniority and current salary. The employer requires each employee to sign a legal release in exchange for the payment. The release each employee signs states that the employee has received a lump sum amount and that the amount was calculated by multiplying the employee's years of service by the employee's weekly salary and that amount is intended to cover a period in the future equal to that many week's salary. Each employee is free to accept or reject the package. The payment is made by an employer to an individual who accepts an offer from the employer. Even though the employer offers the same amount or an amount based on a set formula, the employees are free to accept or reject the

offer on an individual basis, so § (c)(2) does not apply. The claimant has deductible income in the amount of his weekly salary for the number of weeks equal to the number of years of service because the agreement indicates that the payment was intended to cover that number of weeks in the future.

5. An employer closes its facility and offers its employees a severance package. The employer develops a formula to determine the amount each employee will be offered based on years of service multiplied by a set amount unrelated to an individual's weekly compensation. The employer also requires each employee to sign a legal release in exchange for the payment. The release each employee signs states that the employee has received a lump sum amount and that the amount was calculated by multiplying the employee's years of services by $400. Each employee is free to accept or reject the package. The payment is made by an employer to an individual who accepts an offer from the employer. Even though the employer offers the same amount or an amount based on a set formula, the employees are free to accept or reject the offer on an individual basis, so § (c)(2) does not apply. The claimant would have deductible income in the week the payment was made because the agreement does not indicate that the payment was intended to cover any number of weeks.

*Payments Made Pursuant to a Contract with an Educational Institution*
If an individual providing service to an educational institution in an instructional capacity elects to be paid for services rendered during an academic term over a 12-month period and such individual is discharged prior to the expiration of the contract, any amount paid to the individual by the employer pursuant to such contract and following the notice of termination will not be considered deductible income, as defined in IC § 22-4-5-1, for purposes of unemployment insurance benefits.

*All other payments*
DWD will evaluate all other types of payments not specifically addressed in law, regulation, or this policy, which are made to a claimant after the claimant's separation from employment, for deductibility pursuant to IC §§ 22-4-5-1 and 22-4-5-2. Unless the claimant provides evidence to the contrary, DWD will assume that all payments are deductible from the claimant's UI benefit payments.

**Review Date**
July 1, 2011

**Ownership**
Director of UI Benefits
Indiana Department of Workforce Development
10 North Senate Avenue
Indianapolis, IN 46204
Telephone: 317.234.5822

Director of UI Policy
Indiana Department of Workforce Development
10 North Senate Avenue
Indianapolis, IN 46204
Telephone: 317.232.0198

**Effective Date**
July 1, 2009

**Action**
Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.