

V.S.A Title 21 Labor

Subchapter 001 : Conditions For Employment

- **§ 302. Definitions**

For the purposes of this subchapter:

(1) "Employer" means any individual, organization, or governmental body, including any partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air, or express company doing business in or operating within this state, and any agent of the employer, that has one or more individuals performing services for it within this state.

(2) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to perform services. (Amended 2007, No. 144 (Adj. Sess.), § 1.)

Title 21: Labor

Chapter 009: Employer's Liability and Workers' Compensation

- **§ 601. Definitions**

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

(1) "Brother" and "sister" includes a stepbrother and stepsister, half-brother and half-sister, and a brother and sister by adoption, but does not include a married brother or a married sister unless dependent.

(2) "Child" includes a stepchild, adopted child, posthumous child, grandchild, and a child for whom parentage has been established pursuant to 15 V.S.A. chapter 5, but does not include a married child unless the child is a dependent.

(3) "Employer" includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, and includes the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is insured, "employer" includes the employer's insurer so far as applicable. A person is not deemed to be an "employer" for the purposes of this chapter as the result of entering into a contract for services or labor with an individual who has knowingly and voluntarily waived coverage of this chapter pursuant to subdivision (14)(F) of this section.

(4) "Employment" includes public employment, and, in the case of private employers, includes all employment in any trade or occupation notwithstanding that an employer may be a nonprofit corporation, institution, association, partnership, or proprietorship.

(5) "Grandchild" includes a child of an adopted child and a child of a stepchild, but does not include a stepchild of a child, a stepchild of a stepchild, a stepchild of an adopted child, or a married grandchild unless dependent.

(6) "Grandparent" includes a parent of a parent by adoption, but does not include a parent of a step-parent, a step-parent of a parent, or a step-parent of a step-parent.

(7) "Injury" and "personal injury" includes occupational diseases, death resulting from injury within two years and includes injury to and cost of acquiring and replacement of prosthetic devices, hearing aids, and eye glasses.

(8) "Insurance carrier" includes any corporation from which an employer has obtained workers' compensation insurance or guaranty insurance in accordance with the provisions of this chapter.

(9) "Parent" includes a step-parent and a parent by adoption.

(10) "Partial disability" may be held to include diminished ability to obtain employment owing to disfigurement resulting from an injury.

(11) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of that employment.

(A) In the case of constables, chiefs of police, police officers, rescue or ambulance workers, and volunteer reserve police officers in any city, town, or incorporated village, disability or death from a heart injury or heart disease incurred or aggravated and proximately caused by service in the line of duty and that becomes symptomatic within 72 hours from the date of last service in the line of duty shall be presumed to be incurred in the line of duty.

(B) In the case of firefighters, as defined in 20 V.S.A. § 3151(3) and (4), disability or death from heart injury or heart disease that becomes symptomatic within 72 hours of service in the line of duty shall be presumed to be compensable.

(C) "Line of duty," as applied to firefighters and rescue and ambulance workers means one or more of the following:

(i) Service in the worker's town or district, in answer to a call of the department, including going to and returning from a fire or emergency or participating in a fire or emergency drill, parade, test, or trial of any firefighting or emergency equipment.

(ii) Similar service in another town or district to which the department has been called for firefighting or emergency purposes.

(iii) Service under orders of any department officer in any other emergency to which the department is called in the town or district where the department is established.

(iv) Activities authorized by the department for the purpose of raising funds for the department.

(D) "Line of duty" as applied to constables, police officers, or volunteer reserve police officers means either or both of the following:

(i) Service as a police officer in answer to a complaint lodged with the department, including going to, returning from, and investigating the complaint or disorder.

(ii) Service under orders from the department or in any emergency for which the employee serves as constable, police officer, or volunteer reserve police officer.

(E) In the case of a firefighter, as defined in 20 V.S.A. § 3151(3) and (4), who dies or has a disability from a cancer listed in subdivision (iv) of this subdivision (E), the firefighter shall be presumed to have had the cancer as a result of exposure to conditions in the line of duty, unless it is shown by a preponderance of the evidence that the cancer was caused by non-service-connected risk factors or non-service-connected exposure, provided:

(i) The firefighter completed an initial and any subsequent cancer screening evaluations as recommended by the American Cancer Society based on the age and sex of the firefighter prior to becoming a firefighter or within two years of the effective date of this act, and the evaluation indicated no evidence of cancer.

(ii) The firefighter was engaged in firefighting duties or other hazardous activities over a period of at least five years in Vermont prior to the diagnosis.

(iii) The presumption shall not apply to any firefighter who has used tobacco products at any time within 10 years of the date of diagnosis.

(iv) The disabling cancer shall be limited to leukemia, lymphoma, or multiple myeloma, and cancers originating in the bladder, brain, colon, gastrointestinal tract, kidney, liver, pancreas, skin, or testicles.

(v) The firefighter is under the age of 65.

(F) A firefighter who is diagnosed with cancer within 10 years of the last active date of employment as a firefighter shall be eligible for benefits under this subdivision. The date of injury shall be the date of the last injurious exposure as a firefighter.

(G) It is recommended that fire departments maintain incident report records for at least 10 years.

(H)(i) In the case of firefighters and members of a rescue or an ambulance squad, disability or death resulting from lung disease or an infectious disease either one of which is caused by aerosolized airborne infectious agents or blood-borne pathogens and acquired after a documented occupational exposure in the line of duty to a person with an illness shall be presumed to be compensable, unless it is shown by a preponderance of the evidence that the disease was caused by nonservice-connected risk factors or nonservice-connected exposure. The presumption of compensability shall not be available if the employer offers a vaccine that is refused by the firefighter or rescue or ambulance worker and the firefighter or rescue or ambulance worker is subsequently diagnosed with the particular disease for which the vaccine was offered, unless the firefighter or rescue or ambulance worker's physician deems that the vaccine is not medically safe or appropriate for the firefighter or rescue or ambulance worker.

(ii) In the case of lung disease the presumption of compensability shall not apply to any firefighter or rescue or ambulance worker who has used tobacco products at any time within 10 years of the date of diagnosis.

(iii) A firefighter or rescue or ambulance worker shall have been diagnosed within 10 years of the last active date of employment as a firefighter or rescue or ambulance worker.

(iv) As used in this subdivision, "exposure" means contact with infectious agents such as bodily fluids through inhalation, percutaneous inoculation, or contact with an open wound, nonintact skin, or mucous membranes, or other potentially infectious materials that may result from the performance of an employee's duties. Exposure includes:

(I) Percutaneous exposure. Percutaneous exposure occurs when blood or bodily fluid is introduced into the body through the skin, including by needle sticks, cuts, abrasions, broken cuticles, and chapped skin.

(II) Mucocutaneous exposure. Mucocutaneous exposure occurs when blood or bodily fluids come in contact with a mucous membrane.

(III) Airborne exposure. Airborne exposure means contact with an individual with a suspected or confirmed case of airborne disease or contact with air containing aerosolized airborne disease.

(12) "Public employment" means the following:

(A) all officers and State employees, as defined in 3 V.S.A. § 1101, of all State agencies, departments, divisions, boards, commissions, and institutions, and the Vermont Historical Society;

(B) full-time State's Attorneys and full-time Deputy State's Attorneys;

(C) officers and employees of the General Assembly, provided however, that members of the General Assembly shall be considered as public employees only for the periods that the General Assembly is in session or while engaged in duties for which compensation is provided by law;

(D) members of the Military Forces of the State of Vermont while in the active service of this State ordered by competent authority;

(E) employees of towns, town school districts, incorporated school districts, incorporated villages, and fire districts;

(F) road commissioners or selectboard members while actually engaged in highway maintenance or construction;

(G) policemen, firemen, and other municipal employees entitled to pensions;

(H) all teachers, as defined in 16 V.S.A. § 1931. No municipality may vote to exclude teachers from the applicability of this chapter;

(I) personnel who are engaged by the State of Vermont in forest fire suppression under the provisions of the Northeastern Forest Fire Protection Compact, while in the active service of this State ordered by competent authority;

(J) volunteer reserve police officers of towns and incorporated villages while acting in the line of duty, when the selectboard members or trustees vote to have those officers covered by this chapter;

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting in any capacity under the direction and control of the fire department or rescue and ambulance squads;

(L) members of any regularly organized private volunteer fire department while acting in any capacity under the direction and control of the fire department;

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting in any capacity under the direction and control of the rescue or ambulance squad;

(N) sheriffs, full-time deputy sheriffs and county clerks, judges of probate, probate registers, and clerks paid by the State of Vermont;

(O) the term "public employment" shall not include the following:

(i) public officials who are elected by popular vote, except those hereinbefore mentioned in this subdivision;

(ii) assistant judges of the Superior Court, high bailiffs, county treasurers, or any of their deputies or subordinates;

(iii) prisoners or wards of the State;

(iv) any person engaged by the State under retainer or special agreement.

(13) "Wages" includes bonuses and the market value of board, lodging, fuel, and other advantages which can be estimated in money and which the employee receives from the employer as a part of his or her remuneration; but does not include any sum paid by the employer to his or her employee to cover any special expenses entailed on the employee by the nature of his or her employment.

(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. The term "worker" or "employee" does not include:

(A) An individual whose employment is of casual nature, and not for the purpose of the employer's trade or business.

(B) An individual engaged in amateur sports even if an employer contributes to the support of such sports.

(C) An individual engaged in agriculture or farm employment for an employer whose aggregate payroll is less than \$10,000.00 in a calendar year, unless the employer notifies the Commissioner that the employer wishes to be included within the provisions of this chapter; the existence of a contract of insurance shall be considered sufficient notice.

(D) A member of the employer's family dwelling in the employer's house; but, if in any contract of insurance the wages or salary of such a member of the employer's family is included in the payroll on which the premium is based, then that family member shall, in the event of

sustaining an injury arising out of and in the course of employment be deemed an employee and compensated accordingly.

(E) Any individual engaged in any type of service in or about a private dwelling unless the employer notifies the Commissioner that the employer wishes to be included within the provisions of this chapter; the existence of a contract of insurance shall be considered sufficient notice.

(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided:

(i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts.

(ii) The individual controls the means and manner of the work performed.

(iii) The individual holds him or herself out as in business for him or herself.

(iv) The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.

(v) The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.

(vi) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.

(G) An individual who performs services as a real estate broker or real estate salesperson, provided:

(i) the individual is licensed to broker or sell real estate pursuant to 26 V.S.A. chapter 41;

(ii) all the individual's compensation from performing real estate broker or sales services is based on commissions from sales production or results and is not based on time worked or an hourly wage;

(iii) the services are performed pursuant to a written agreement or contract between the individual and the real estate sales or broker business or another person with whom the individual is affiliated or associated and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter and is not eligible for coverage under this chapter; and

(iv) the individual is not treated as an employee for the purposes of federal income and employment taxation with regard to the real estate broker or sales services performed.

(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four executive officers or managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory employer.

(15) "Average weekly wages" means the average weekly wages as computed under section 650 of this title.

(16) "Average compensation" means the current "average weekly wage" under section 1338 of this title, determined previous to the first day of July preceding the date of injury or when compensation is awarded, whichever is later.

(17) Repealed.]

(18) "Maximum weekly compensation" shall mean a sum of money equal to 150 percent of the average compensation, rounded to the next higher dollar.

(19) "Minimum weekly compensation" shall mean a sum of money equal to 50 percent of the average compensation, rounded to the next higher dollar. However, solely for the purposes of determining permanent total or partial disability compensation where the employee's average weekly wage computed under section 650 of this title is lower than the minimum weekly compensation, the employee's weekly compensation shall be the full amount of the employee's average weekly wages. For the purpose of determining temporary total or temporary partial disability compensation where the employee's average weekly wage computed under section 650 of this title is lower than the minimum weekly compensation, the employee's weekly compensation shall be 90 percent of the employee's average weekly wage prior to any cost of living adjustment calculated under subsection 650(d) of this title.

(20) "Commissioner" means the Commissioner of Labor or the Commissioner's designee.

(21) Repealed.]

(22) "Health care provider" means a person, partnership, corporation, facility, or institution licensed or certified or authorized by law to provide professional health care service to an individual during the individual's medical care, treatment, or confinement.

(23) "Occupational disease" means a disease that results from causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, and to which an employee is not ordinarily subjected or exposed outside or away from the employment and arises out of and in the course of the employment.

(24) "Evidence that reasonably supports an action" means, for the purposes of section 643a and subsections 650(e) and 662(b) of this title, relevant evidence that a reasonable mind might

accept as adequate to support a conclusion that must be based on the record as a whole, and take into account whatever in the record fairly detracts from its weight.

(25) "Medical bill" means any claim, bill, or request for payment from a health care provider or employee for all or any portion of health care services provided to the employee for an injury for which the employee has filed a claim under this chapter.

(26) "Denied medical payment" or "medical bill denial" means a refusal to pay a medical bill based on the employer or insurance carrier asserting, supported by reasonable evidence, any one or more of the following:

(A) The employer or insurance carrier was not provided with sufficient information to determine the payer liability.

(B) The employer or insurance carrier was not provided with reasonable access to information needed to determine the liability or basis for payment of the claim.

(C) The employer or insurance carrier has no liability to pay a medical bill under the provisions of this chapter.

(D) The service was not reasonable or medically necessary.

(E) Another payer is liable.

(F) Another legal or factual ground for nonpayment.

(27) "Medically necessary care" means health care services for which an employer is otherwise liable under the provisions of this chapter, including diagnostic testing, preventive services, and aftercare, that are appropriate, in terms of type, amount, frequency, level, setting, and duration, to the injured employee's diagnosis or condition. Medically necessary care must be informed by generally accepted medical or scientific evidence and consistent with generally accepted practice parameters as recognized by health care professionals in the same specialties as typically provide the procedure or treatment, or diagnose or manage the medical condition; must be informed by the unique needs of each individual patient and each presenting situation; and must:

(A) help restore or maintain the injured employee's health; or

(B) prevent deterioration of or palliate the injured employee's condition; or

(C) prevent the reasonably likely onset of a health problem or detect an incipient problem.

(28) "Aerosolized airborne infectious agents" means microbial aerosols that can enter the human body, usually through the respiratory tract, and cause disease, including mycobacterium tuberculosis, meningococcal meningitis, varicella zoster virus, diphtheria, mumps, pertussis, pneumonic plague, rubella, severe acute respiratory syndrome, anthrax, and novel influenza.

(29) "Blood-borne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans, including anthrax, hepatitis B virus (HBV), hepatitis C virus (HCV), human immunodeficiency virus (HIV), rabies, vaccinia, viral hemorrhagic fevers, and methicillin-resistant staphylococcus aureus.

(30) "Bodily fluids" means blood and bodily fluids containing blood or other potentially infectious materials as defined in the Vermont Occupational Safety and Health Administration Bloodborne Pathogen Standard (1910.1030). Bodily fluids also include respiratory, salivary, and sinus fluids, including droplets, sputum and saliva, mucus, and other fluids through which infectious airborne organisms can be transmitted between persons. (Amended 1959, No. 222; 1965, No. 169; 1967, No. 122, § 1; 1969, No. 186 (Adj. Sess.), § 1; 1971, No. 241 (Adj. Sess.), §§ 1, 2; 1973, No. 64, § 1; 1973, No. 70, § 1; 1975, No. 177 (Adj. Sess.), § 1; 1975, No. 201 (Adj. Sess.); 1977, No. 182 (Adj. Sess.), §§ 1, 21, eff. May 3, 1978; 1981, No. 39; 1981, No. 165 (Adj. Sess.), §§ 1, 3, 4; 1981, No. 204 (Adj. Sess.), §§ 1, 2; 1983, No. 121 (Adj. Sess.), § 1, eff. March 28, 1984; 1985, No. 194 (Adj. Sess.), §§ 1, 2; 1987, No. 183 (Adj. Sess.), § 13; 1987, No. 189 (Adj. Sess.); 1993, No. 23, §§ 1, 2, eff. May 19, 1993; 1993, No. 225 (Adj. Sess.), §§ 1, 2; 1995, No. 180 (Adj. Sess.), § 38a; 1999, No. 41, §§ 2, 3; 2003, No. 132 (Adj. Sess.), §§ 4, 14, eff. May 26, 2004; 2005, No. 69, § 1; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2005, No. 108 (Adj. Sess.), § 2; 2005, No. 209 (Adj. Sess.), § 32; 2005, No. 212 (Adj. Sess.), § 11, eff. May 29, 2006; 2007, No. 42, § 2; 2009, No. 61, § 26; 2011, No. 133 (Adj. Sess.), § 3; 2011, No. 155 (Adj. Sess.), § 44; 2013, No. 86, § 1; 2013, No. 96 (Adj. Sess.), § 136; 2013, No. 161 (Adj. Sess.), § 72.)

TITLE 21: LABOR

Chapter 017: Unemployment Compensation

Subchapter 001 : General Benefits

§ 1301. Definitions

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

(1) "Benefits" and "compensation" means the money payments payable to an individual, as provided in this chapter, with respect to his or her unemployment.

(2) "Commissioner" means the Commissioner of Labor established by this chapter, or his or her authorized representative.

(3) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

(4) "Employing unit" means any individual or type of organization, including any partnership, association, labor organization as defined in section 2(5) of the National Labor Relations Act, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, any federal, state or local governmental entity, which has had in its employ since January 1, 1936, one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter.

(5) "Employer" includes:

(A) Any employing unit which, after December 31, 1971 in any calendar quarter in either the current or preceding calendar year paid for service in employment, as hereinafter defined, wages of \$1,500.00 or more, or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment, as hereinafter defined, at least one individual (irrespective of whether the same individual was in employment in each such day). When an employing unit described in either this subdivision or subdivision (B) below, becomes an employer within any calendar year, it shall be subject to this chapter for the whole of such calendar year.

(B)(i) Any employing unit for which service in employment for a religious, charitable, educational or other organization as defined in subdivision (6)(A)(ix) of this section is performed after December 31, 1971; except as provided in subdivision (5)(C) of this section.

(ii) Any employing unit for which service in employment for the State and any of its instrumentalities, for a hospital or an institution of higher education as defined in subdivision (6)(A)(x)(I) of this section is performed after December 31, 1971; except as provided in subdivision (5)(C) of this section.

(iii) Any employing unit for which service in employment for the State or any political subdivision thereof as defined in subdivision (6)(A)(x)(II) of this section is performed after December 31, 1977; except as provided in subdivision (5)(C) of this section.

(iv) Any employing unit for which agricultural labor as described in subdivision (6)(A)(vii)(I) of this section is performed after December 31, 1977.

(v) Any employing unit for which domestic service in employment as described in subdivision (6)(A)(viii) is performed after December 31, 1977.

(C) An employing unit as described in subdivisions (5)(A) and (B) of this section except:

(i) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under this subdivision, the wages earned or the employment of an employee performing domestic service as described in subdivision (5)(B)(v) of this section after December 31, 1977, shall not be taken into account unless the total cash remuneration paid in any calendar quarter for domestic services is \$1,000.00 or more.

(ii) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under this subdivision, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977 shall not be taken into account unless the agricultural labor is in accordance with subdivision (6)(A)(vii)(I) of this section. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of subdivision (5)(A) of this section.

(D) Any individual or employing unit which acquired the organization, trade, or business of another which at the time of such acquisition was an employer subject to this chapter.

(E)(i) Any employing unit that filed with and had approved by the Commissioner, on the proper forms prescribed and supplied by the Commissioner, its written election to become

fully subject to this chapter for not less than two calendar years. Such employing unit, not otherwise subject to this chapter, that files with the Commissioner its written election to become an employer subject to this chapter for not less than two calendar years, shall, with the written approval of such election by the Commissioner, become an employer subject to this chapter to the same extent as all other employers, as of the date stated in the approval.

(ii) Any employing unit for which services that are excluded from the term "employment" by subdivisions (6)(A)(ix) and (6)(C)(i) and (ii) of this section are performed may, by election and approval, elect that all services performed by individuals in its employ, in one or more establishments or places of business, shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the Commissioner such services shall be deemed to constitute employment subject to this chapter from the date stated in the approval.

(iii) Any such employing unit may cease to be subject under either subdivision (5)(E)(i) or (ii) of this section, as of January 1, of any calendar year subsequent to such two calendar years, only if at least 30 days prior to such first day of January it has filed with the Commissioner a written notice of its intention to cancel such election but this requirement may be waived by the Commissioner for good cause.

(F) Any employing unit which acquires a part of the organization, trade, or business of another, which part, if a separate organization, trade, or business, would have been an employer. Any employing unit which acquires the organization, trade, or business, or acquires substantially all the assets of another employing unit, if the employment record of such acquiring employing unit subsequent to such an acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit an "employer."

(G) Any employing unit not an employer by reason of any other provision of this subdivision for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this chapter.

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this State, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this State may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this State. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the Commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this State.

(ii) The term "employment" shall include an individual's entire service, performed within, or both within and without, this State if the service is localized in this State. Service shall be deemed to be localized within a state if:

(I) the service is performed entirely within such state; or

(II) the service is performed both within and without such state but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(iii) The term "employment" shall include an individual's entire service, performed within, or both within and without, this State if the service is not localized in any state but some of the service is performed in this State, and

(I) the individual's base of operations is in this State; or

(II) if there is no base of operations, then the place from which such service is directed or controlled is in this State; or

(III) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(iv) The term "employment" shall include an individual's service wherever performed within the United States, the Virgin Islands, or Canada, if:

(I) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada, and

(II) the place from which the service is directed or controlled is in this State.

(v) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada) or after December 31, 1977 in the case of the Virgin Islands in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivisions (6)(A)(ii), (iii), or (iv) of this section or the parallel provisions of another state's law), if:

(I) the employer's principal place of business in the United States is located in this State; or

(II) the employer has no place of business in the United States, but the employer is an individual who is a resident of this State; or the employer is a corporation which is organized under the laws of this State; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one other state; or

(III) none of the criteria of subdivisions (6)(A)(v)(I) and (II) of this subdivision is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service under the law of this State.

(IV) an "American employer," for purposes of this subdivision means a person who is: (aa) an individual who is a resident of the United States; or (bb) a partnership if two-thirds or more of the partners are residents of the United States; or (cc) a trust, if all of the trustees are residents of the United States; or (dd) a corporation organized under the law of the United States or of any state.

(vi) The term "employment" shall also include all service performed after July 1, 1946 by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this State.

(vii) The term "employment" shall also include all service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision (6)(C)(i)(I) of this section when:

(I) such service is performed for a person who: (aa) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$20,000.00 or more to individuals employed in agricultural labor, not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in subdivision (6)(A)(vii)(II) of this section; or (bb) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in subdivision (6)(A)(vii)(II) of this section) 10 or more individuals, regardless of whether they were employed at the same moment of time.

(II) such service is not performed in agricultural labor if performed before January 1, 1980, or after December 31, 1986, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, provided, that if section 3306 in the Federal Unemployment Tax Act is amended so as to include such service in the definition of employment in agricultural labor beginning on or after January 1, 1988, then such service shall be employment in agricultural labor under this chapter.

(III) for the purposes of this subdivision any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader: (aa) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (bb) if the individual is not an employee of such other person within the meaning of subdivision (6)(A) of this section.

(IV) for the purposes of this subdivision (vii), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision (6)(A)(vii)(III) of this section: (aa) the other person and not the crew leader shall be treated as the employer of such individual; and (bb) the other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the

crew leader (either on the crew leader's own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(V) for the purposes of this subdivision (vii) the term "crew leader" means an individual who: (aa) furnishes individuals to perform service in agricultural labor for any other person; (bb) pays (either on the crew leader's own behalf or on behalf of such other persons) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and (cc) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(viii) The term "employment" shall also include domestic service as used in subdivision (6)(C)(ii) of this section after December 31, 1977, in a private home, in a local college club or local chapter of a college fraternity or sorority, performed for a person who paid cash remuneration of \$1,000.00 or more in any calendar quarter after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(ix) The term "employment" shall also include service for any employing unit which is performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization but only if:

(I) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(8) of that act; and

(II) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(x)(I) The term "employment" shall also include service for any employing unit which is performed after December 31, 1971 by an individual in the employ of this State or any of its instrumentalities, or in the employ of this State and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this State provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (6)(C)(vii) of this section.

(II) The term "employment" shall also include service for any employing unit which is performed after December 31, 1977 by an individual in the employ of this State or any political subdivision thereof or any of its instrumentalities or any instrumentality of one or more of the foregoing; and service performed for this State or any political subdivision thereof and one or more other states or political subdivisions thereof or any instrumentality of the foregoing which is wholly owned by such states or political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (6)(C)(vii) of this section.

(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that:

(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and

(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(C) The term "employment" shall not include:

(i)(I) Service performed by an individual in agricultural labor except as provided in subdivision (6)(A)(vii) of this section. For purposes of this subdivision, the term "agricultural labor" means any service performed prior to January 1, 1972 which was agricultural labor as defined in this subdivision prior to such date, and remunerated service performed after December 31, 1971: (aa) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (bb) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm; (cc) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3; 12 U.S.C. § 1141j) or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; (dd) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed; (ee) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (dd) of this subdivision (C)(i)(I), but only if such operators produced more than one-half of the commodity with respect to which such service is performed; (ff) on a farm operated for profit if such service is not in the course of the employer's trade or business.

(II) As used in subdivision (6)(C)(i)(I), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(III) The provisions of (dd) and (ee) of subdivision (6)(C)(i)(I) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(ii) Domestic service in a private home except as provided in subdivision (6)(A)(viii) of this section;

(iii)(I) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for that service is \$50.00 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter if: (aa) on each of some 24 days during the quarter the individual performs for the employer for some portion of the day service not in the course of the employer's trade or business; or (bb) the individual was regularly employed (as determined under the preceding subdivision) by the employer in the performance of the service during the preceding calendar quarter.

(II) The term "service not in the course of the employer's trade or business" includes service that does not promote or advance the trade or business of the employer. Services performed for a corporation do not come within the exception.

(iv) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a minor in the employ of his or her father or mother; or service by one member of a family to another under circumstances which, under the general law, do not give rise to the relation of employer and employee;

(v) Service performed in the employ of the U.S. government or of an instrumentality of the United States, but if the Congress of the United States shall permit states to require that the U.S. government or any instrumentalities of the United States shall make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by Congress, and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to the U.S. government or such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State should not be certified by the secretary of labor under section 3304 of the Federal Unemployment Tax Act for any year, then the payments required of the U.S. government or such instrumentalities with respect to such year shall be deemed to have been erroneously collected within the meaning of section 1337 of this title and shall be refunded by the Commissioner from the fund in accordance with the provisions of said section 1337;

(vi)(I) Before January 1, 1978, service performed in the employ of a state, a political subdivision thereof, or an instrumentality of one or more states or political subdivisions except as otherwise provided in this chapter with respect to service for a hospital or institution of higher education located in this State, and except as to any town, city, or other municipal corporation, as defined by 24 V.S.A. § 1751, or an instrumentality thereof, that duly elects otherwise, as provided by this chapter with the Commissioner's approval;

(II) After December 31, 1977, in the employ of a governmental entity referred to in subdivision (6)(A)(x) of this section if such service is performed by an individual in the exercise of duties: (aa) as an elected official; (bb) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (cc) as a member of the State National Guard or Air National Guard; (dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (ee) in a position which, under or pursuant to the laws of this State, is designated as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(vii) For the purposes of subdivisions (6)(A)(ix) and (6)(A)(x) of this section, the term "employment" does not include service performed:

(I) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(II) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order; or

(III) prior to January 1, 1978, in the employ of a school which is not an institution of higher education; or

(IV) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is limited due to being an elder or having a disability or injury or providing remunerative work for individuals who because of having a disability cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(V) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(VI) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(viii) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the Commissioner is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof in one or more newspapers of general circulation in this State, to provide reciprocal treatment to individuals who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this chapter;

(ix) Service performed on and after July 1, 1939, with respect to which unemployment compensation is payable under an act of Congress entitled "Railroad Unemployment Insurance Act";

(x) Service as an officer or member of a crew of an American vessel performed on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this State;

(xi) Service performed on or in connection with a vessel not an American vessel by an individual, if the individual performs services on and in connection with such vessel when outside the United States; and, for the purpose of this section, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes 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 performs services solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state;

(xii) Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

(I) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes; and

(II) Service performed on or in connection with a vessel of more than 10 net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States;

(xiii) Service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) (other than an organization described in Section 401(a)) or under Section 521 of the federal Internal Revenue Code, if the remuneration for such service is less than \$50.00;

(xiv) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, or by the spouse of such a student, if the spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by school, college, or university, and such employment will not be covered by any program of unemployment insurance;

(xv) Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(xvi) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section;

(xvii) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(xviii) Service performed by an individual for a person as a salesman, agent or solicitor if the state law requires the individual to be registered or licensed to engage in the performance of the service and if the individual in the performance of such service is an independent contractor under common law rules and if the individual performs all such service for remuneration solely by way of commission;

(xix) Service performed by an individual engaged in the harvesting of timber, or in the transportation of timber from the place where harvested to market, or service performed by an individual engaged as a stone artisan including but not limited to sculpting, etching, or carving quarried stone when:

(I) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and

(II) Such individual is customarily engaged in an independently established trade, occupation, profession, or business; and

(III) Such individual furnishes substantially all of the equipment, tools, and supplies necessary in carrying out his or her contractual obligations to his or her clients.

(xx) Service performed by a full-time student as defined in subsection (III) in the employ of an organized camp.

(I) if such camp: (aa) did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or (bb) had average gross receipts for any six months in the preceding calendar year which were not more than $33 \frac{1}{3}$ percent of its average gross receipts for the other six months in the preceding calendar year; and

(II) if such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; provided, that if the individual does not enroll in the immediately succeeding academic year or term, then the services of such individual as defined in this subsection shall be deemed to be employment for all purposes under this chapter.

(III) full-time student. For the purposes of subdivision (xx), an individual shall be treated as a full-time student for any period: (aa) during which the individual is enrolled as a full-time student at an educational institution; or (bb) which is between academic years or terms if (A) the individual was enrolled as a full-time student at an educational institution for the immediately preceding year or term; and (B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subdivision (A).

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

(D) Notwithstanding any other provisions of this subdivision, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

(7) "Employment office" means a free public employment office, or branch thereof, of the Vermont employment service division, or an office maintained by another state as a part of a state controlled system of free public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices; or such other agencies as the secretary of labor may approve.

(8) "Fund" means the Unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(9) "Total and partial unemployment"

(A) An individual shall be deemed "totally unemployed" in any week during which the individual performs no services and with respect to which no wages are earned by him or her;

(B) An individual shall be deemed "partially unemployed" in any week of less than full time work if the wages earned by him or her with respect to such week are less than the weekly benefit amount he or she would be entitled to receive if totally unemployed and eligible;

(C) As used in this subdivision, "wages" includes only that part of remuneration in any one week rounded to the next higher dollar which is in excess of the amount specified in section 1338a of this title;

(D) An individual's week of unemployment shall be deemed to commence only after his or her registration at an employment office, except as the Vermont Employment Security Board may by regulation otherwise prescribe.

(10) "State" means the states of the United States of America, the Commonwealth of Puerto Rico, the District of Columbia and after December 31, 1977, the Virgin Islands.

(11) "Unemployment Compensation Administration Fund" means the Unemployment Compensation Administration Fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(12) "Wages" means all remuneration paid for services rendered by an individual, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. Gratuities customarily received by an individual in the course of his or her employment from persons other than the individual's employer and reported by the individual to the individual's employer shall be treated as wages paid by the individual's employer. The

reasonable cash value of remuneration paid in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Board. The term "wages" as used in this chapter shall not include:

(A) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his or her dependents under a plan or system established by an employer which makes provision for his or her employees generally (or for his or her employees generally and their dependents) or for a class or classes of his or her employees (or for a class or classes of his or her employees and their dependents), on account of:

(i) sickness or accident disability (but, in the case of payments made directly to an employee or any of his or her dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workers' compensation law); or

(ii) medical or hospitalization expenses in connection with sickness or accident disability; or

(iii) death;

(B) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(C) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) from or to a trust described in Section 401(a) of the U.S. Internal Revenue Code which is exempt from tax under Section 501(a) of the U.S. Internal Revenue Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the U.S. Internal Revenue Code;

(D) The payment by an employer (without deduction from the remuneration of the employee) of the tax imposed upon an employee under Section 3101 of the U.S. Internal Revenue Code;

(E) Any amounts received from the federal government by members of the national guard and organized reserve, as drill pay, including longevity pay and allowances;

(F) Provided; that if the definition of "wages" in section 3306 of the Federal Unemployment Tax Act is amended so as to no longer exclude from such definition any or all of the payments or amounts enumerated in subdivisions (12)(A) through (E) of this section, then any or all such payments or amounts shall no longer be excluded from the definition of "wages" under this chapter, effective on a date to coincide with the effective date of such amendment (or amendments) to the Federal Unemployment Tax Act;

(G) Any foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the U.S. Internal Revenue Code.

(13) "Week" means such period or periods of seven consecutive days, as the Board may by regulation prescribe.

(14) "Calendar quarter" means a period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Board may by regulation prescribe.

(15) An individual's "weekly benefit amount" with respect to any week means the amount of benefits he or she would be entitled to receive for such week if totally unemployed and eligible for benefits therein.

(16)(A) "Benefit year," with respect to any individual, means the one-year period beginning with the first day of the week with respect to which the individual first files a valid claim for benefits in accordance with section 1346 of this title, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files such a claim for benefits after the termination of his or her last preceding benefit year.

(B) Repealed.]

(17)(A) For benefit years beginning prior to January 3, 1988, the "base period" is the period of 52 weeks ending with the day immediately preceding the first day of a claimant's benefit year. Such period shall be extended by one week for each week, not to exceed 18, in which the claimant had no earnings because of sickness or disability as certified by a duly licensed physician.

(B) For benefit years beginning on January 3, 1988 and subsequent thereto the "base period" shall be the period made up of the first four of the most recently completed five calendar quarters immediately preceding the first day of a claimant's benefit year, and for any individual who fails to meet the eligibility requirements of section 1338 of this title in this base period, the Commissioner shall make a redetermination of entitlement based upon a base period which consists of the last four completed calendar quarters immediately preceding the first day of the claimant's benefit year.

(C) For any individual who fails to qualify for benefits under subdivision (B) above, the Commissioner shall make a redetermination of entitlement based upon a base period which consists of the last three completed calendar quarters and all wages paid prior to the effective date of the claimant's initial claim in the calendar quarter in which the initial claim was filed.

(D) All wages which fall within the "base period" of valid claims under this section shall not be available for reuse in qualifying for any subsequent benefit years under section 1338 or 1318 of this title.

(18) "Institution of higher education" means an educational institution which (A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; (B) is legally authorized in this State to provide a program of education beyond high school; (C) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (D) is a public or other nonprofit institution. Notwithstanding any of the foregoing provisions all colleges and universities in this State are institutions of higher education for purposes of this chapter.

(19) "Hospital" means an institution which has been licensed, certified, or approved by the State Board of Health as a hospital, or an institution which is operated by the State of Vermont or any of its instrumentalities as a hospital.

(20) "Rate year" means the period beginning on July 1 of a year and ending on June 30 of the following year.

(21) "Bona fide employer" means the federal government, state governments and political subdivisions of state governments, railroads, tax exempt nonprofit organizations, established agricultural employers, employers liable under the unemployment compensation laws of this State, and an employer who has been assigned an employer identification number by the Internal Revenue Service of the United States.

(22) "Rounding." Notwithstanding any other provisions of this law to the contrary, any amount of unemployment compensation payable to any individual for any week if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(23) "Valid claim" means a claim for benefits filed by an individual who, at the time of filing the claim, has had sufficient wages in employment with an employer or employers to qualify for benefits pursuant to section 1338 of this title. The filing of a valid claim is a prerequisite to the making of a determination of an individual's eligibility for benefits under section 1343 of this title and a determination of an individual's disqualification for benefits under section 1344 of this title.

(24) "Self-employment":

(A) Except as provided in subdivision (B) of this subdivision (24), an individual shall be deemed "self-employed" or "engaged in self-employment" in any week during which he or she is engaged, not in the employ of another, in the formation, development, or operation of a trade, business, enterprise, profession, or any other activity which he or she has undertaken for the purpose of producing income and which is in the form of a sole proprietorship, partnership, joint venture, or other similar entity.

(B) An individual who is able to work and available for full-time work shall not be deemed to be self-employed or engaged in self-employment solely by reason of continued participation without substantial change during a period of unemployment in any activity undertaken while customarily employed by an employer in full-time work (whether or not such work constituted employment) and continued subsequent to separation from such work when such activity is not engaged in as a primary source of livelihood. Earnings from such a sideline activity shall not constitute wages or disqualifying income for unemployment purposes. (Amended 1959, No. 10, eff. Feb. 27, 1959; 1959, No. 33, eff. March 11, 1959; 1959, No. 107, § 1, eff. April 10, 1959; 1959, No. 120, eff. Jan. 1, 1960; 1959, No. 262, § 35, eff. June 11, 1959; 1959, No. 329 (Adj. Sess.), § 22, eff. March 1, 1961; 1961, No. 210, §§ 15, 16, eff. July 11, 1961; 1963, No. 84, §§ 1, 2; 1963, No. 122, eff. June 3, 1963; 1965, No. 64, eff. Jan. 1, 1966; 1967, No. 43, § 1, eff. March 23, 1967; 1967, No. 184, eff. April 17, 1967; 1967, No. 247 (Adj. Sess.), § 1, eff. Feb. 20, 1968; 1971, No. 77, § 1, eff. Dec. 31, 1971; 1971, No. 184 (Adj. Sess.), § 7, eff. March 29, 1972; 1973, No. 74, § 1, eff. April 14, 1973; 1975, No. 40; 1977, No. 64, §§ 1-7, 21, 22; 1979, No. 53; 1979, No. 120 (Adj. Sess.), §§ 1-5, eff. April 14, 1980; 1981, No. 66, § 5(b), eff. May 1, 1981; 1981, No. 86, § 8, eff. May 10, 1981; 1983, No. 16, §§ 1, 2, 10, 12, eff. April 4, 1983; 1985, No. 50, §§ 1-3; 1985, No. 146 (Adj. Sess.), § 3; 1987, No. 31, eff. May 8,

1987; 1987, No. 66; 1987, No. 227 (Adj. Sess.) §§ 1, 3, eff. May 26, 1988; 1991, 1987, No. 82, § 1; 1991 No. 183 (Adj. Sess.), § 1; 1993, No. 227 (Adj. Sess.), § 17; 1997, No. 101 (Adj. Sess.), §§ 1, 6; 2003, No. 131 (Adj. Sess.), § 2; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2005, No. 136 (Adj. Sess.), § 1; 2007, No. 104 (Adj. Sess.), § 1; 2013, No. 96 (Adj. Sess.), § 139.)