

S.10

An act relating to extending certain unemployment insurance provisions related to COVID-19

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Experience Rating Relief for Calendar Year 2020 * * *

Sec. 1. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

* * *

(G) ~~The~~ Between March 15, 2020 and December 31, 2020, the individual voluntarily separated from that employer as provided by subdivision 1344(a)(2)(A) of this chapter for one of the following reasons:

* * *

(3)(A) Subject to the provisions of ~~subdivision~~ subdivisions (B) and (C) of this subdivision (a)(3), an employer shall be relieved of charges for benefits paid to an individual between March 15, 2020 and December 31, 2020 for a period of up to eight weeks with respect to benefits paid because:

(i) the employer temporarily ceased operation, either partially or completely, at the individual's place of employment in response to a request from a public health authority with jurisdiction that the employer cease operations because of COVID-19, in response to an emergency order or directive issued by the Governor or the President related to COVID-19, or because the employer voluntarily ceased operations due to the actual exposure of workers at that place of employment to COVID-19;

(ii) the individual becomes unemployed as a direct result of a state of emergency declared by the Governor or the President in relation to COVID-19 or an order or directive issued by the Governor or President in relation to COVID-19, including through a change or reduction in the employer's operation at the individual's place of employment that is a direct result of such a state of emergency, order, or directive; or

(iii) the employer has temporarily laid off the individual ~~has been recommended or requested~~ based on a recommendation or request by a medical professional or a public health authority with jurisdiction ~~to~~ that the

individual be isolated or quarantined as a result of COVID-19, regardless of whether the individual has been diagnosed with COVID-19.

(B)(i) ~~As~~ Unless extended by the Commissioner pursuant to subdivision (C) of this subdivision (a)(3), an employer shall only be eligible for relief be relieved of charges for up to eight weeks of benefits paid between March 15, 2020 and December 31, 2020 under the provisions of this subdivision (a)(3) if the employer rehires or offers to rehire the individual within a reasonable period of time after the employer resumes operations at the individual's place of employment, as determined by the Commissioner, or upon the completion of the individual's period of isolation or quarantine unless the Commissioner determines that:

(I) the employee was not separated from employment for one of the reasons set forth in subdivision (A) of this subdivision (a)(3); or

(II) the reason for the individual's separation from employment set forth in subdivision (A) of this subdivision (a)(3) no longer exists and the employer has failed to rehire or offer to rehire the individual without good cause.

(ii) If the Commissioner has cause to believe or receives an allegation or other information indicating that an employer may not be entitled to relief from charges pursuant to this subdivision (a)(3), the Commissioner shall examine the employer's records and any other documents and

information necessary to determine if the employer is entitled to relief from charges pursuant to this subdivision (a)(3).

(C) The Commissioner may extend the period for which an employer shall be relieved of charges for benefits paid to employees pursuant to subdivision (A)(i) of this subdivision (a)(3) by an amount that the Commissioner determines to be appropriate in light of the terms of any applicable request from a local health official or the Commissioner of Health or any applicable emergency order or directive issued by the Governor or the President and any other relevant conditions or factors.

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* * * Experience Rating Relief for Calendar Year 2021 * * *

Sec. 2. RELIEF FROM COVID-19-RELATED UNEMPLOYMENT

BENEFIT CHARGES FOR CALENDAR YEAR 2021

(a) For calendar year 2021, an employer shall be relieved from charges against its unemployment insurance experience rating under 21 V.S.A. § 1325 for benefits paid because:

(1)(A) the individual voluntarily separated from employment with the employer for one of the reasons set forth in 21 V.S.A. § 1344(a)(2)(A)(ii)–(vi);

(B) the employer temporarily ceased operation, either partially or completely, at the individual’s place of employment in response to a request from a public health authority with jurisdiction that the employer cease

operations because of COVID-19, in response to an emergency order or directive issued by the Governor or the President related to COVID-19, or because the employer voluntarily ceased operations due to the actual exposure of workers at that place of employment to COVID-19;

(C) the individual became unemployed as a direct result of a state of emergency declared by the Governor or the President in relation to COVID-19 or an order or directive issued by the Governor or President in relation to COVID-19, including through a change or reduction in the employer's operation at the individual's place of employment that was a direct result of such a state of emergency, order, or directive; or

(D) the employer temporarily laid off the individual based on a recommendation or request by a medical professional or a public health authority with jurisdiction that the individual be isolated or quarantined as a result of COVID-19, regardless of whether the individual was diagnosed with COVID-19; and

(2)(A) the employer rehired or offered to rehire the employee within a reasonable time, not to exceed 30 days after the reason for the individual's separation from employment set forth in subdivision (1) of this subsection (a) no longer exists; or

(B) the employer demonstrates to the satisfaction of the Commissioner that it had good cause for failing to rehire or offer to rehire the

employee within the time period set forth in subdivision (A) of this subdivision (a)(2).

(b) On or before June 1, 2021, the Commissioner of Labor shall adopt procedures and an application form for employers to apply for relief from charges pursuant to subsection (a) of this section.

(c) The Commissioner shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any procedures adopted under subsection (b) of this section.

(d) On or before April 15, 2021, the Commissioner shall:

(1) submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report summarizing the procedures and application form to be adopted pursuant to subsection (b) of this section; and

(2) commence a public outreach campaign to notify employers and employees of the requirements and procedures to obtain relief from charges under this section.

* * * Extension of Unemployment Insurance-Related Sunset

from 2020 Acts and Resolves No. 91 * * *

Sec. 3. 2020 Acts and Resolves No. 91, Sec. 38(3) is amended to read:

(3) Secs. 32 and 33 shall take effect on ~~March 31, 2021~~ the first day of the calendar quarter following the calendar quarter in which the state of

emergency declared in response to COVID-19 pursuant to Executive Order 01-20 is terminated, provided that if the state of emergency is terminated within the final 30 days of a calendar quarter, Secs. 32 and 33 shall take effect on the first day of the second calendar quarter following the calendar quarter in which the state of emergency is terminated.

* * * Implementation of Continued Assistance Act Provisions * * *

Sec. 4. TEMPORARY SUSPENSION OF CERTAIN REQUIREMENTS
FOR TRIGGERING AN EXTENDED BENEFIT PERIOD

For purposes of determining whether the State is in an extended benefit period during the period from November 1, 2020 through December 31, 2021, the Commissioner shall disregard the requirement in 21 V.S.A. § 1421 that no extended benefit period may begin before the 14th week following the end of a prior extended benefit period.

* * * Unemployment Insurance Dependent Benefits * * *

Sec. 5. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

(a) Each eligible individual who is totally unemployed in any week shall be paid with respect to such a week a weekly benefit amount determined as provided in this section.

* * *

(e)(1) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in subsection (f) of this section.

(2)(A) In addition to the weekly benefit amount determined pursuant to subdivision (1) of this subsection, an individual shall be entitled to an additional weekly allowance of \$50.00 if the individual has one or more dependent children under 18 years of age.

(B) The provisions of subdivision (A) of this subdivision (2) shall not apply during the period from July 1, 2022 through June 30, 2023 if, on April 15, 2022, the balance of the Unemployment Insurance Trust Fund is either below \$90,000,000.00 or projected to drop below that amount on or before December 31, 2022.

* * *

Sec. 6. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

(a) Each eligible individual who is totally unemployed in any week shall be paid with respect to such a week a weekly benefit amount determined as provided in this section.

* * *

(e)(1) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in subsection (f) of this section.

~~(2)(A) In addition to the weekly benefit amount determined pursuant to subdivision (1) of this subsection, an individual shall be entitled to an additional weekly allowance of \$50.00 if the individual has one or more dependent children under 18 years of age.~~

~~(B) The provisions of subdivision (A) of this subdivision (2) shall not apply during the period from July 1, 2022 through June 30, 2023 if, on April 15, 2022, the balance of the Unemployment Insurance Trust Fund is either below \$90,000,000.00 or projected to drop below that amount on or before December 31, 2022.~~

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* * * Unemployment Insurance Contribution Relief * * *

Sec. 7. UNEMPLOYMENT INSURANCE RATE SCHEDULE FOR
BENEFIT YEAR BEGINNING JULY 1, 2021

(a) Notwithstanding any provision of 21 V.S.A. § 1326 to the contrary, the unemployment insurance contribution rate schedule for the benefit year beginning on July 1, 2021 shall remain at Schedule I.

(b) The provisions of this section shall not apply if, on April 15, 2021, the balance of the Unemployment Insurance Trust Fund is either below \$90,000,000.00 or projected to drop below that amount on or before December 31, 2021.

Sec. 8. AVOIDANCE OF LONG-TERM RATE IMPACTS ON
EMPLOYERS

During the period beginning on July 1, 2022 and ending on June 30, 2031, the Commissioner of Labor shall reduce the amount of unemployment insurance contributions made by employers by a total of \$66,500,000.00. The reductions shall be distributed proportionately across each year of the period and among all employers liable for payment of contributions to the Unemployment Insurance Trust Fund. Notwithstanding any provision of 21 V.S.A. chapter 17 to the contrary, the reductions shall be accomplished by the following means:

(1) a proportionate reduction in the rates for each rate class on the appropriate rate schedule set forth in 21 V.S.A. § 1326(e);

(2) any other proportionate reduction in the contributions made by each employer liable for payment of contributions to the Unemployment Insurance Trust Fund that is permitted by federal law;

(3) any other means of achieving a reduction in the contributions made by each employer liable for payment of contributions to the Unemployment Insurance Trust Fund that is permitted by federal law; or

(4) any combination of subdivisions (1) through (3) of this section.

Sec. 9. UNEMPLOYMENT INSURANCE; BASE OF CONTRIBUTIONS
FOR 2022 AND 2023

(a)(1) Notwithstanding 21 V.S.A. § 1321(b), the base of contributions for calendar year 2022 shall be the same amount as for calendar year 2021.

(2) The provisions of this subsection shall not apply if, on October 15, 2021, the balance of the Unemployment Insurance Trust Fund is either below \$90,000,000.00 or projected to drop below that amount on or before December 31, 2021.

(b) Notwithstanding any provision of subsection (a) of this section or 21 V.S.A. § 1321(b) to the contrary, the base of contributions for calendar year 2023 shall be determined pursuant to 21 V.S.A. § 1321(b) as if the base of contributions for calendar year 2022 had been determined pursuant to 21 V.S.A. § 1321(b) rather than the provisions of subsection (a) of this section.

Sec. 10. REVISED UNEMPLOYMENT INSURANCE TRUST FUND

TARGET BALANCE; REPORT

(a)(1) The Commissioner of Labor shall conduct a review of the solvency of the Unemployment Insurance Trust Fund during the period since January 1, 2000 and the impact on the Trust Fund of the statutes related to unemployment insurance contributions and benefits and any changes made to those statutes during that time period.

(2) The review shall also:

(A) include an assessment and consideration of:

(i) the amount necessary to ensure the continued solvency of the Trust Fund during a future economic recession based on the economic cycles experienced by the State since January 1, 2000; and

(ii) how potential future statutory changes related to unemployment insurance contributions and benefits may impact the amount determined pursuant to subdivision (i) of this subdivision (a)(2)(A); and

(B) develop a range of amounts needed to ensure the continued solvency of the Trust Fund during a future economic recession based on the potential future statutory changes considered during the review.

(b)(1) In conducting the review, the Commissioner shall convene and consult with a working group composed of representatives of employers and

employees, economists, and other individuals with relevant knowledge or experience as determined by the Commissioner.

(2) The Commissioner shall provide the members of the working group with an opportunity to review and comment on the analysis and determinations made pursuant to subsection (a) of this section.

(c)(1) On or before November 15, 2021, the Commissioner of Labor shall submit a written report documenting the results of the review conducted pursuant to subsection (a) of this section and the consultation with the working group pursuant to subsection (b) of this section to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development.

(2) The report shall include a detailed explanation of the potential statutory changes considered for purposes of the analysis and determinations made pursuant to subsection (a) of this section and the basis for the amount determined to be necessary to ensure the continued solvency of the Trust Fund during a future economic recession.

(3) The report shall specifically identify the members of the working group, summarize their comments regarding the analysis and determinations made pursuant to subsection (a) of this section, and identify any revisions to the Commissioner's analysis and determinations that were made based on the comments received.

(4) The Commissioner shall also provide each member of the working group with an opportunity to submit a written statement responding to the Commissioner's review, which shall be included as part of the report submitted pursuant to this subsection.

* * * Prevention of Employee and Employer Fraud * * *

Sec. 11. UNEMPLOYMENT INSURANCE; FRAUD; OVERPAYMENTS;
DETECTION; PREVENTION; REPORT

(a) On or before November 15, 2021, the Commissioner of Labor shall submit to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development a written report regarding the detection and prevention of unemployment insurance fraud and the reduction and effective recovery of overpaid unemployment insurance benefits. The report shall:

(1) with respect to unemployment insurance fraud:

(A) review the Department of Labor's existing practices for detecting fraud and preventing claimants from intentionally misrepresenting or knowingly failing to disclose material facts;

(B) identify effective strategies and measures employed by other states to detect fraud and prevent claimants from intentionally misrepresenting or knowingly failing to disclose material facts;

(C) identify potential actions for improving the Department's ability to detect fraud and prevent claimants from intentionally misrepresenting or knowingly failing to disclose material facts;

(D) identify potential actions for improving the Department's ability to effectively communicate with claimants regarding reporting requirements, application procedures, and program rules;

(E) identify any additional resources, including staff, funding, technology, and training, that may be necessary to improve claimants' ability to fully and accurately provide the Department with required information;

(F) examine the extent to which overpayments flagged as fraud are attributable to intentional fraud as opposed to the claimant's mistake, the claimant's misunderstanding of unemployment insurance rules and requirements, or a miscommunication by a departmental staff person;

(G) to the extent practicable, identify the number of fraud determinations that are appealed and the percentage of those determinations that are reversed following the appeal;

(H) examine and identify when it may be appropriate to refer unemployment insurance fraud for criminal prosecution;

(I) for any instances of unemployment insurance fraud that are determined to be appropriate for criminal prosecution, examine whether they

can be effectively prosecuted under existing statutes and, if not, identify any statutory changes necessary to allow for effective criminal prosecution; and

(J) identify any additional resources, including staff, funding, and training, that may be necessary to enable effective criminal prosecution of unemployment insurance fraud; and

(2) with respect to the overpayment of unemployment insurance benefits:

(A) review existing practices for preventing, reducing, and collecting overpayments of benefits;

(B) identify effective strategies employed by other states to prevent, reduce, and collect overpayments of benefits;

(C) identify potential actions for improving the Department's ability to prevent, reduce, and collect overpayments of benefits, including hiring additional staff and making improvements to technology and training; and

(D) identify the instances in which an individual's liability for an overpayment could potentially be reduced or waived, such as when the claimant is not at fault or the overpayment results from a mistake or lack of understanding regarding the unemployment insurance rules, and the criteria, if any, that the Department would employ to determine whether a reduction or waiver is appropriate.

(b) In preparing the report, the Department shall consult with the Attorney General, the Department of State's Attorneys and Sheriffs, representatives of employers, representatives of employees, and representatives of claimants. The report shall specifically identify the parties that the Department consulted with.

(c)(1) The report shall specifically identify any legislative action necessary to implement any measures identified pursuant to subsection (a) of this section to improve the Department's ability to prevent and detect unemployment insurance fraud and its ability to reduce and more effectively recover overpaid unemployment insurance benefits.

(2) The Department may omit from the report information regarding techniques, procedures, and guidelines for unemployment insurance fraud investigations or prosecution if the disclosure of that information could reasonably be expected to risk circumvention of the law.

(d) As used in this section:

(1) "Overpayment of unemployment insurance benefits" includes overpayments due to a mistake on the part of a claimant or the Department, a claimant's unintentional misrepresentation or nondisclosure of a material fact, or a claimant's intentional misrepresentation or nondisclosure of a material fact.

(2) “Unemployment insurance fraud” means the intentional misrepresentation or knowing nondisclosure of a material fact by a claimant or any other entity for purposes of obtaining unemployment insurance benefits.

Sec. 12. 2020 Acts and Resolves No. 85, Sec. 9(a)(1) is amended to read:

(a)(1) On or before ~~January 15, 2022~~ November 15, 2021, the Attorney General and the Commissioner of Labor shall submit a written report to the House Committees on Commerce and Economic Development and on General, Housing, and Military Affairs and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the enforcement of employment laws related to employee misclassification pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

Sec. 13. 3 V.S.A. 2222d is amended to read:

§ 2222d. EMPLOYEE MISCLASSIFICATION TASK FORCE

* * *

(f) On or before ~~January 15, 2022~~ November 15, 2021, the Task Force shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding ways to improve the effectiveness and efficiency of the system of joint enforcement by the Commissioner of Labor

and the Attorney General of the laws related to employee misclassification that is established pursuant to 21 V.S.A. §§ 3, 346, 387, 712, and 1379. In particular, the Report shall examine:

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* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a)(1) Sec. 5 (dependent benefit) shall take effect on the termination date for Federal Pandemic Unemployment Compensation set forth in 15 U.S.C. § 9023(e)(2), as amended.

(2) Sec. 6 (repeal of dependent benefit) shall take effect five years after the effective date of Sec. 5.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, Secs. 5 (dependent benefit) and 6 (repeal of dependent benefit) shall not take effect at all if on April 15, 2021, the balance of the Unemployment Insurance Trust Fund is either below \$90,000,000.00 or projected to drop below that amount on or before December 31, 2021.

(b) This section and the remaining sections shall take effect on passage; provided, however, that if the date of passage is after March 31, 2021, then notwithstanding 1 V.S.A. § 214, Sec. 3 (extension of sunset) shall apply retroactively to March 31, 2021.