

**Rules of the
VERMONT EMPLOYMENT SECURITY BOARD
Effective _____**

The Department of Labor, created by 3 V.S.A. § 212, consists of the Commissioner of Labor, the Workforce Development Division, Labor Market Information Division, Workers' Compensation and Safety Division, and the Unemployment Insurance and Wages Division. The Commissioner of the Vermont Department of Labor chairs the Vermont Employment Security Board.

The Vermont Employment Security Board, a board of three members appointed by the Governor with the advice and consent of the Senate, hears and decides all matters appealed to it under the unemployment insurance law. The Board also adopts, amends, suspends, or rescinds such rules and regulations as it considers necessary and consistent with the unemployment insurance law.

Information about the Employment Security Board may be obtained by any person upon request at the central office of the Department of Labor, Commissioner's office, either by personal appearance or by written communication.

RULE 1. PETITION FOR DECLARATORY RULING, AMENDMENT OF RULES

A. Procedure

1. Any interested person may petition the Vermont Employment Security Board, Department of Labor, for a declaratory ruling as to the applicability of any provision of 21 V.S.A. Chapter 17 or of any rule or order of the Vermont Employment Security Board.

The petition must contain sufficient facts from which it can be determined that a real question exists concerning the applicability of any provision of said law or of any rule or order of the Vermont Employment Security Board to the petitioner and that a declaratory ruling by the Board would resolve the question. The Board shall consider the petition and within a reasonable time shall:

- (a) Issue a declaratory ruling;
- (b) Notify the petitioner that no declaratory ruling is to be issued; or
- (c) Set a reasonable time and place for hearing argument upon the matter and give reasonable notification to the petitioner, and any

other person or persons named as a party to the proceedings, of the time and place for such hearing and of the issue involved.

2. If a hearing as provided in (1) (c) above is conducted, the Board shall within a reasonable time:

(a) Issue a declaratory ruling; or

(b) Notify the petitioner that no declaratory ruling is to be issued.

B. Parties

When a declaratory ruling is sought, all persons shall be made parties who have declared an interest that would be affected by the declaration, and no declaratory ruling shall prejudice the rights of persons not parties to the proceeding.

C. Amendment

In addition to seeking a declaratory ruling, any individual may request that the Rules of the Employment Security Board be amended. The Board, in consultation with the Commissioner, shall consider and act on such request consistent with the requirements of the Vermont Administrative Procedures Act, as set forth in 3 V.S.A. §§ 817-849. The Board may also initiate rulemaking in response to a petition of 25 or more persons in accordance with 3 V.S.A. Section 831(c).

RULE 2. DEFINITIONS

Except where the context clearly requires otherwise, the definitions in 21 V.S.A. Chapter 17 and 3 V.S.A. § 801 shall apply to the terms used in these rules.

A. “Additional claim” means an application for determination of eligibility for benefits which certifies to the beginning date of a period of unemployment falling within a benefit year previously established, for which a continued claim or claims may be filed, and which follows a period of employment that occurred subsequent to the date of filing the last new, transitional, additional, reopened, or continued claim.

B. “Administrative law judge,” or “ALJ”, means the appellate hearing officer identified by 21 V.S.A. § 1348 as the appeals referee.

C. “Business day” means Monday through Friday, excluding state and federal holidays.

D. “Claim for benefits” means a new, transitional, additional, reopened, or continued

claim.

- E. "Claimant" means an individual who has filed a claim for benefits with the Unemployment Insurance Claims Center.
- F. "Commissioner" means the Commissioner of Labor or his or her authorized representative.
- G. "Continued claim" means an application for benefits that certifies to the completion of a week of total or partial unemployment.
- H. "Contrary to equity and good conscience" means one or more of the following circumstances exists:
 - 1. The individual recipient of overpaid benefits can demonstrate that receipt of notice that benefits would be paid, or actual receipt of the incorrect payment, caused them to detrimentally rely upon the benefits by relinquishing a valuable right or changing positions for the worse. For example, refusing other state benefits as a result of their unemployment benefits; incurring more expensive obligations (such as a new apartment lease) in reliance of the unemployment benefits; or obtaining a new loan that the individual will default on if they are required to repay the overpaid unemployment benefits.
 - 2. Repayment of overpaid benefits would result in significant and unconscionable financial hardship for the individual. Repayment of overpaid benefits would result in an inability to pay the individual's ordinary and necessary living expenses, such as housing, food, medical bills, child care, and essential utilities. When assessing the individual's financial circumstances, the Department may review the individual's sources of income and monthly financial obligations and the individual's current reliance or receipt of other state assistance.
- I. "Domestic service" means services of a household nature in or about a private home. In general, services of a household nature include services performed by a cook, food server, butler, housekeeper, child care provider, janitor, launderer, caretaker, gardener, groom, chauffeur, or personal care attendant. Service of a household nature does not include such services as private secretary, tutor, or librarian even though performed in the employer's private home.
- J. "Employing unit" is, in addition to the definition in 21 V.S.A. § 1301(4), the entity that benefits by the employees' services and provides the business purpose for which the employees work.
- K. "Employment office" means any office of the Vermont Department of Labor, also

known as a career resource center, regional office, or American Job Center.

- L. “Fault” in 21 V.S.A. § 1347(f)(1)(A) as “no fault of the person” means that the individual overpaid benefits is without fault for the overpayment. An individual may be determined without fault where they provided all information correctly as requested by the Department, but the Department failed to properly process the information. In determining fault, the Department may consider whether the individual provided incorrect information due to education, literacy, or language barriers. Fault on the part of the Department shall not relieve the individual of liability to repay overpaid benefits where the individual is also at fault. An individual may be found at fault where:
1. The individual disclosed information to the Department they knew or should have known to be incorrect; or
 2. The individual failed to disclose information they knew or should have known to be material or requested by the Department; or
 3. The individual accepted benefits they knew or should have known to be incorrect.
- M. “Fraud” is the conduct described in 21 V.S.A. § 1347(e); the intentional misrepresentation or failure to disclose a material fact, with respect to the person’s claim for benefits, whether or not benefits are paid.
- N. “Full time” work means 35 or more hours of work in a week.
- O. “Holiday” means the day or days recognized by the State as legal holidays as enumerated in 1 V.S.A. § 371(a).
- P. “Interested parties” – Interested parties shall include the claimant, the claimant’s last separating potentially liable employer, and in the case of an appeal under Rules 23 or 24, the affected employer and the Unemployment Insurance and Wages Division.
- Q. “New claim” means an application for the establishment of a benefit year, a determination of eligibility for benefits, and a determination of a weekly benefit amount.
- R. “Registration for work” means that an individual has provided the Department his or her name, usual occupation, correct mailing address, and such other information as required by the Commissioner and has declared his or her availability for suitable work. The registration for work shall continue in effect for as long as the individual continues to report in intervals of one week, unless otherwise directed. The registration for work will terminate on the date the

claimant fails to:

1. report at an employment office as directed;
2. complete required application(s) designed to facilitate job referrals as directed;
3. contact the Unemployment Insurance Claims Center or other Departmental unit as directed; or
4. register for work through Vermont Job Link or other employment service as directed by the Commissioner;

unless good cause is shown for such failure to act as directed in subsections 1, 2, 3, and 4 above, on the date he or she again becomes attached to a regular employer or on the date he or she notifies the Unemployment Insurance Claims Center of his or her unavailability for work.

- S. "Reopened claim" means an application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment falling within a benefit year previously established for which a continued claim or claims may be filed, and which follows a break in the claim series previously established, due to illness or disability, disqualification, unavailability, or failure to report for any reason other than re-employment.
- T. "Transitional claim" means an application for determination of continued eligibility for benefits that initiates the establishment of a new benefit year without interruption in the payment of benefits.
- U. "Wages" shall have the same meaning as in 21 V.S.A. § 1301(12).
- V. "Wages paid" includes both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are immediately available to the worker upon demand.
- W. "Week" shall mean the seven consecutive days commencing at 12:00 A.M. Sunday and ending 11:59 P.M. the following Saturday.
- X. "Work search" means a bona fide attempt to find work by making at least three valid job contacts during any week for which the claimant files a claim for benefits. The work search requirement may be waived in the following circumstances:
1. The claimant is a member of a union that requires its members to seek work through an internal hiring hall to not lose good standing or

membership;

2. The claimant is working reduced hours in accordance with a Short Time Compensation Program approved pursuant to the terms of 21 V.S.A. §§ 1451 – 1459; or
3. The claimant has a return to work date within a timeframe specified by the Commissioner.
4. The claimant is actively working with a Vocational Rehabilitation Counselor in order to become re-employed;
5. When otherwise deemed appropriate by the Commissioner.

RULE 3. POSTING AND FURNISHING NOTICES

Every employer, as that term is defined by 21 V.S.A. § 1301(5), (including every employing unit which has, with the approval of the Commissioner, become an employer by election under the provisions of unemployment insurance law) shall post and maintain printed notices to its workers in a conspicuous location in the workplace informing them that it is liable for contributions under the law. Such notice provided by the Department shall be posted pursuant to 21 V.S.A. § 1346.

RULE 4. RECORDS

- A. Each employing unit shall maintain and preserve for four years accounts and records with respect to workers engaged in subject employment and non-subject employment which shall show:
 1. For each pay period:
 - (a) The date and total amount of remuneration paid for subject employment;
 - (b) The date and total amount of remuneration paid for non-subject employment;
 - (c) The beginning and ending dates of each pay period; and
 - (d) The beginning and ending dates of such subject employment and such non-subject employment.
 2. For each worker:

- (a) Name, address, and social security account number;
- (b) Place of employment, including the physical location at which the work is performed;
- (c) Hourly rate of pay or salary amount and the frequency of payment;
- (d) Date on which worker was hired, or returned to work after a temporary layoff, and date separated from work and reason therefor;
- (e) The actual days worker performed services in employment each week and the actual number of hours worker performed services in employment each day;
- (f) Total remuneration paid in each quarter;
- (g) Worker's remuneration paid for each pay period showing separately:
 - i. Money payments (excluding special remuneration);
 - ii. Special remuneration of all kinds showing separately:
 - (A) Money payments;
 - (B) Specific detail of, and reasonable cash value of payments in any medium other than money; and
 - (C) The period or periods during which the services were performed for which the special remuneration was paid.
 - iii. The reasonable cash value of remuneration paid by the employing unit in any medium other than cash, i.e., lodging, room and board, etc.
 - iv. The amount of gratuities received from persons other than his or her employing unit and reported by the worker to his or her employing unit.
 - v. Amount paid worker as allowances or reimbursements for traveling or other business expenses, dates of payment, and the amounts of such expenditures actually incurred and

accounted for by worker;

(h) Whether the worker is working on a full-time or part-time basis.

3. For each worker working partial or reduced hours, each employing unit shall keep its payroll records in such form that it will be possible for an inspection thereof to determine with respect to each worker in its employ who may be eligible for partial benefits:

(a) Wages earned for any week of employment;

(b) Whether any week was in fact a week of less than full time work as defined in Rule 2(N);

(c) Time not worked, if any, by each worker and reason therefor.

B. An employing unit having its principal place of business outside of Vermont shall maintain payroll records, in accordance with Rule 4(A) of these Rules, in this State with respect to wages paid to employees who perform some service in this State, provided, however, that an out-of-state employing unit may, with the approval of the Commissioner, maintain such payroll records outside of the State upon its agreement that it will, when requested to do so, furnish the Commissioner with a true and correct copy of such payroll records within 10 days or some other time period as may be specified by the Commissioner upon a showing of hardship.

C. Each employing unit shall make available upon request the following records and documents, to enable proper assessment of covered employment under the applicable unemployment insurance laws and tax liabilities:

1. Check stubs and cancelled checks for all payments;

2. Cash receipts and disbursement records;

3. Payroll journal and time cards;

4. General journal and general ledger;

5. Copies of tax reports filed with all federal and state agencies; and

6. Copies of IRS forms W-2, W-3, and 1099.

D. Each employing unit shall make available upon request a valid workers' compensation policy, if one is required by 21 V.S.A. Chapter 9.

RULE 5. IDENTIFICATION OF WORKERS

- A. Each employer shall obtain and confidentially maintain the social security number of each worker performing services for it in employment.
- B. If such worker does not have a social security number, the employer shall request the worker to produce a receipt issued by an office of the Social Security Administration indicating that the worker has filed an application for a number. The receipt shall be retained by the worker.
- C. Each employer shall report a worker's social security number in making any report required by the Commissioner with respect to such worker. If the worker has no such number, but has produced a receipt indicating that he or she has filed an application for one, the employer shall, in making a report required by the Commissioner with respect to such worker, report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

RULE 6. WAGE REPORTS AND CONTRIBUTIONS

- A. An employer shall, not later than the last day of the month following the close of each calendar quarter, file with the Commissioner on forms approved by the Commissioner, a wage and contribution report with respect to such calendar quarter setting forth wages paid during such calendar quarter for employment to individuals in its employ.
- B. Contributions are required of employers quarterly, and shall become due and payable on or before the last day of the month following the quarter for which such contributions have accrued, unless some other due date is specified by statute.
- C. The first contribution payment of any employing unit that becomes an employer within any calendar quarter of any calendar year shall become due and payable on or before the last day of the month following the close of the quarter in which it became a subject employer.
- D. The first contribution payment of any employing unit that elects to become an employer shall, upon written approval of such election by the Commissioner, become due and payable on or before the last day of the month following the close of the calendar quarter that includes the effective date of such election. Such first payment shall include contributions with respect to all wages for services paid on or after the effective date of becoming an employer and up to and including the last day of such calendar quarter.

- E. The Commissioner may advance the due date of an employer's report and contribution to such a date as is deemed advisable upon reasonable belief that an employer may be unwilling or unable to pay such contribution.
- F. Despite a prior written determination by the Commissioner of an employing unit's contribution rate or that an employing unit is not liable for contributions, accrued contributions shall become due and interest shall accrue thereon fifteen days after such employing unit is informed of its liability or corrected contribution rate.
- G. When the regular payment day for a contribution falls on a weekend or legal holiday such contributions shall be due and payable on the first business day thereafter.
- H. Payment of contributions received through the mail shall be deemed to have been made and received on the date shown by the postmark. Payment made by electronic fund transfer (EFT) shall be deemed to have been paid on the executed date or the advance date selected. Payments made and received after the due date will be considered delinquent and subject to interest accrual.
- I. The Commissioner shall require employing units to file all required reports and pay amounts due associated with such filing through electronic means approved by the Commissioner. Upon a showing of hardship, the Commissioner may waive the electronic filing requirement.
- J. In the event that an assessment of contributions made pursuant to 21 V.S.A. § 1330 or an administrative determination made pursuant to 21 V.S.A. § 1337a changes the amount of wages attributable to an employer in a prior rate year, such employer shall not be entitled to a recomputation of its experience rating for such prior rate year.
- K. In the event an employer fails to comply with the reporting requirements of 21 V.S.A. §§ 1314a or 1322 or this Rule 6., or if such report when filed is incorrect or insufficient and the employer fails to file a corrected or sufficient report within 30 days after which the Commissioner requires the same by written notice, the Commissioner shall determine the amount of contribution due from such employer and the amount of wages paid by such employer on the basis of such information as may be available.
- L. Payments received with a timely wage and contribution report shall be applied to the UI contributions due for that quarter, notwithstanding any outstanding amounts due by the respective employer. Untimely payments (payments received outside of the time period prescribed by 21 V.S.A. § 1314a(b)) or payments received for delinquent amounts shall be applied to the oldest quarter debt in the following order: contribution, interest, penalty, and fee and shall

proceed to subsequent outstanding quarters, applying payments in the same manner.

RULE 7. TERMINATION OF ELECTION OF REIMBURSEMENT

- A. The Commissioner may, in accordance with 21 V.S.A. § 1321(c)(2)(F), either decline to approve an election of reimbursement or terminate an employer's election of reimbursement when he or she finds that doing so would be in the best interest of the unemployment insurance trust fund.
- B. When the Commissioner terminates an election of reimbursement, the Commissioner shall notify the employer of such termination no later than 30 days prior to the beginning of the calendar quarter in which such termination will become effective.

RULE 8. CASH VALUE OF CERTAIN REMUNERATION

- A. Each employing unit required to report wages and pay contributions thereon under 21 V.S.A. Chapter 17, where such wages include remuneration paid in any medium other than cash (excepting board and/or lodging), shall estimate and determine such remuneration at the fair market value thereof at the time such remuneration became payable.
- B. The cash value of board and/or lodging payable as part or all of the wages for personal services of individuals in employment by any employer shall be reported and contributions paid thereon. Where the cash value of such board and/or lodging is agreed upon in a contract of hire, the amount so agreed upon shall be deemed to be the cash value of such payment.

In the absence of such an agreement the cash value of such lodging shall be the fair market rents (FMR), as published by the US Department of Housing and Urban Development, for the county in which the job resides. In the absence of an agreement the cash value of the board shall be based on the current rate established under the "Thrifty Food Plan" by the USDA Food and Nutrition Service.

RULE 9. EMPLOYERS' WAGE RECORDS AND SEPARATION DATA

- A. Every employing unit shall furnish to its employees, at the employee's request or at the request of the Commissioner, a written statement of the amount of wages earned and hours worked in any week.

- B. Each employer shall, within 24 hours after the worker is separated from its service for a permanent, limited, or indefinite period of time, notify the worker that such worker may be eligible for unemployment benefits through the Vermont Department of Labor
- C. If the Commissioner finds that the failure of any individual to file a claim for partial benefits was due to a failure on the part of the employer to furnish the individual with information advising him or her of his or her right to file a claim for unemployment benefits, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to the failure by the Commissioner to discharge his or her responsibilities promptly in connection with such partial unemployment, the Commissioner shall extend the period during which such claim may be filed to a date that he or she finds reasonable under the circumstances.
- D. The term “mass separation” means a separation from employment for a permanent, limited, or indefinite period of time, at or about the same time, and for the same reason, 1) of 20 or more percent of the total number of workers employed in an establishment, 2) of 50 or more percent of the total number of workers employed in any division or department of an establishment, or 3) notwithstanding either of the foregoing, of 10 or more workers employed in a single establishment. In such cases an employer shall file with the Commissioner and the Department of Labor’s Unemployment Insurance Claims Center, a notice of such mass separation. Such notice shall be filed not later than 24 hours after such separation. Upon request by the Commissioner, such employer shall furnish to the Commissioner pertinent information necessary to establish “mass separation” unemployment claims. Such information will include but is not limited to the following: individual names, social security numbers, mailing addresses, and any separation pay of the affected workers.
- E. In case of total unemployment due to strike, lockout, or other labor dispute, the employer shall, within 24 hours, file with the Commissioner and the Department of Labor’s Unemployment Insurance Claims Center, in lieu of mass separation notice, a notice setting forth the existence of such dispute and the number of workers affected. Upon request by the Commissioner, such employer shall furnish to the Commissioner the names, social security numbers, mailing addresses, and any separation pay of the workers ordinarily attached to the department or the establishment where unemployment is caused by strike, lockout, or other labor dispute.

RULE 10. SEPARATION REPORTS

- A. When an individual files a new claim, he or she shall furnish to the Commissioner

all information the Commissioner requires concerning his or her prior employment. The Commissioner, when necessary, shall request employment, separation, and wage information from the claimant's base period employer or employers on a form designed for that purpose. Every such employer shall furnish to the Commissioner employment, separation, and wage information necessary for the determination of the claimant's entitlement to benefits within 10 days of the date such written or verbal request is made of the employer by the Commissioner.

- B. When an individual files an additional claim, the Commissioner shall request employment and separation information from his or her last employer or employers, on a form designated for that purpose. When required, the employer, or employers, shall furnish to the Commissioner the information within 10 days of the date such written or verbal request is made of the employer by the Commissioner.
- C. If an employer fails to respond within 10 days of the date the Commissioner makes a written or verbal request for employment, separation, and/or wage information with respect to a claimant, or if such response is incomplete or inadequate, the Commissioner shall determine the benefit rights of the claimant upon such information as is available.
 - 1. A determination shall be final with respect to a non-complying employer as to any charges against the employer's experience-rating record for benefits paid to the claimant before the week following the receipt of the employer's reply.
 - 2. The employer's experience-rating record shall not be relieved of those charges unless the Commissioner determines that the failure to comply was due to an unavoidable circumstances.
 - 3. Any required responses to separation reports received after the tenth day from the date of the mailing or personal delivery of the request for such information will subject the employer to a penalty as prescribed under 21 V.S.A. § 1314.

RULE 11. CLAIMS FOR BENEFITS

- A. An individual seeking to claim benefits for a week of total or partial unemployment shall contact, by telephone or other approved method, the Unemployment Insurance Claims Center to file a new, additional or reopened claim for benefits. The effective date established for a new, additional, or reopened claim for benefits will be the Sunday immediately preceding the date the claim is filed. The effective date for a transitional claim filed within 13 days of the

prior claim expiring will be equal to the day following the benefit year ending date of the expired claim. Such effective date shall also be used for purposes of establishing the claimant's maximum weekly benefit amount. Once an initial claim for benefits is filed, it may only be withdrawn if the Commissioner, in his or her discretion, determines that doing so is in the best interests of justice and due process. No initial claim may be withdrawn once a weekly claim for benefits has been paid.

- B. An individual's first week of total or partial unemployment following a separation from his or her employment shall begin on the first day of the week in which the individual files a new, additional, or re-opened claim for benefits.
- C. The Commissioner may, as a condition of eligibility and/or continued eligibility for benefits, require that a totally or partially unemployed worker:
 - 1. Provide documentation sufficient to establish the worker's identity;
 - 2. Within 10 days of opening or reopening a claim, register with Vermont Job Link or other work search service as directed by the Commissioner;
 - 3. Participate in reemployment services as ordered;
 - 4. Participate in work search activities as directed;
 - 5. Provide the name, telephone number, address, contact person (if applicable), method of contact, and name of job applied for of all employers the worker contacted when searching for work during any week in which benefits are claimed;
 - 6. Provide timely responses to any Departmental requests for information;
 - 7. Keep the Department informed of any change in mailing address, telephone number, or other contact method; and
 - 8. Reside and be physically located within the United States or Canada, as further defined by Rule 13.
- D. In order to establish eligibility for benefits for weeks of total or partial unemployment, during a continuous period of total or partial unemployment, the claimant shall, except for good cause, file a continued claim for benefits within six days of the week ending date being filed.
 - 1. The Commissioner, for reasons found to constitute good cause for a

claimant's failure to file a weekly claim for unemployment benefits, may accept a continued claim for benefits for such claimant, effective as of the time specified, if such continued claim for benefits is filed at the first available opportunity but within 13 days of the last day of the week being filed.

2. A claimant who becomes ill or disabled, after filing a claim for benefits, may continue his or her claim by internet or by other approved method or through a designated representative, provided such continued claim is filed at the first available opportunity but not later than 30 days of the last day of the week being filed and provided satisfactory evidence of such illness or disability is produced.
 3. The times specified in subsections 1. and 2. above may be extended if the Commissioner, in his or her discretion, determines that doing so is in the best interests of justice and due process.
- E. A continued claim for benefits shall be made on either a form provided by the Department via the internet, or by other approved method, setting forth: 1) that the claimant continues his or her claim for benefits; 2) that the claimant was totally or partially unemployed; 3) that during the period for which the claimant files a claim he or she performed no work or earned no wages except as reported; 4) that the claimant is able to work and available for work; 5) that the claimant has looked for work as directed; and 6) such other information as is required by the Commissioner.
- F. If a weekly claim is determined to have been fraudulently filed pursuant to 21 V.S.A. § 1347(c) and (e), such weekly claim will be subject to a 15% penalty. Such weekly claim will also be subject to the imposition of a penalty week, regardless of whether the claim resulted in the payment of a benefit or not.

RULE 12. BENEFITS DUE DECEASED CLAIMANTS

Upon the death of any claimant who had filed for benefits, and in the event it is found by the Commissioner that the benefits have accrued and are due and payable to such claimant and remain wholly or partially unpaid at the time of such claimant's death, or in the event there have been issued and unpaid one or more benefit checks, such benefits shall, upon application to the Department, be paid to the duly qualified administrator or executor of the estate of the deceased claimant. If it is shown to the satisfaction of the Commissioner that there is no executor, and no administrator has been appointed, and, in all probability no administrator will be appointed, payment of such benefits may be made to the surviving spouse or next of kin of the deceased claimant upon application for receipt of such benefits, due regard being given to the following order of preference:

1. the surviving spouse or civil union partner
2. children
3. parents
4. brothers and sisters
5. other relatives, consistent with 14 V.S.A. § 314.

The Commissioner, however, is not bound to follow such order of preference if the same shall appear inequitable.

Any person, other than the duly qualified administrator or executor of the estate of a deceased claimant, claiming benefits that are due and payable to such claimant shall make written application for such benefits, which application may be supported by an affidavit setting forth the relationship of the person claiming such benefits to the deceased claimant. Said affidavit shall also set forth that said claimant died intestate, and that no administrator or executor has been appointed, and that there is no estate for administration.

Payment made in accordance with the requirements of this rule shall, for all purposes, be deemed to have been made to the person or persons entitled thereto and shall fully discharge the fund from liability for such benefits.

RULE 13. INTERSTATE BENEFIT PAYMENTS

- A. The following rule shall govern the Commissioner of Labor, to ensure cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.
- B. Definitions:
 1. "Interstate Benefit Payment Plan" means the plan approved by the National Association of State Workforce Agencies or successor organization under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.
 2. "Interstate claimant" means an individual who files an interstate claim for benefits under the unemployment insurance law of a liable state from another state, through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any individual who customarily commutes across state lines from a residence in one state to work in a liable state, unless the Commissioner finds that this exclusion would create undue hardship on such claimants in specified areas.

3. "State" includes the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.
4. "Agent State" means any state from or through which an individual files an interstate claim for benefits against another state.
5. "Liable State" means any state against which an individual files, from or through another state, an interstate claim for benefits.
6. "Benefits" means the compensation payable to an individual, with respect to his or her unemployment, under the unemployment insurance law of any state.
7. "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

C. Registration for work.

1. When Vermont acts as the agent for an interstate claimant, such interstate claimant shall be registered for work with the Vermont Department of Labor in accordance with Rule 2(R). Such registration shall be accepted as meeting the registration requirements of the liable state.
2. The Commissioner may require interstate claimants to provide evidence that they have registered for work in the labor market area in which they reside.

D. Benefit Rights of Interstate Claimants

If a claimant files a claim against Vermont, and it is determined by Vermont that the claimant has available benefit credits in Vermont, then claims shall be filed only as long as benefit credits are available. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable.

E. Eligibility Review

Interstate claimants for whom Vermont is the liable state shall meet the requirements outlined in Rule 11. C. 1. – 8. The Commissioner may require interstate claimants to provide evidence of meeting such criteria to remain eligible for benefits.

F. Claims for Benefits

1. Claims for benefits or for a waiting period filed by an interstate claimant directly with the liable state shall be filed in accordance with the liable state's procedures.
2. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept as timely any claim which is filed through the agent state within the time limit applicable to such claims under the law of the agent state.

G. Determination of Claims

1. Vermont shall, in connection with each claim filed by an interstate claimant, identify to the liable state in question any potential issue relating to the claimant's availability for work and eligibility for benefits.
2. Vermont's responsibility and authority in connection with the determination of interstate claims shall be limited to the identification of potential issues identified in connection with initial claims or weekly claims filed through Vermont and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for reemployment assistance.

H. Appellate Procedure

1. Vermont shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.
2. With respect to the time limits imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of Vermont Department of Labor.
3. The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact Vermont for assistance in special circumstances.

I. Extension of Interstate Benefit Payments to Include Claims taken in and for Canada.

This rule shall apply in all provisions to claims taken in and for Canada.

RULE 14. BENEFIT APPEAL RULES PERTAINING TO ADMINISTRATIVE LAW JUDGE (ALJ)

A. Filing of Appeal:

1. Method of Filing:

A party appealing a benefit determination must file a written notice of appeal with the Unemployment Insurance Appeals Unit of the Department. The appeal may be submitted: 1) by U.S. mail to the Department of Labor; 2) by e-mail; 3) by facsimile; 4) in person at any office of the Department of Labor; or 5) other method approved by the Commissioner.

2. Time of Filing:

The notice of appeal must be filed within 30 calendar days from the date of the benefit determination.

3. Form of Appeal:

Appropriate forms for filing such appeals shall be prescribed by the Department and may be obtained from the central office of the Department, at any office of the Vermont Department of Labor, or at <http://labor.vermont.gov>.

Use of a prescribed form is not mandatory to initiate an appeal. Any written notice that clearly identifies the appellant, contains a current telephone number and mailing address, and that may be construed as an appeal, filed within the prescribed period, shall be deemed to initiate an appeal from such determination. The Commissioner may request additional information as needed.

B. Execution of Appeal by Authorized Agent:

If a notice of appeal is filed by an appellant's authorized agent, the name, mailing address, and telephone number of the appellant shall be set forth in the appeal document followed by the signature and name of the authorized agent.

C. Multiple Appeal:

If an appeal from a benefit determination involves more than one claimant on the same issue, the appeal may be filed by the individual claimants or on their behalf by an authorized representative who shall, together with the appeal, submit a list containing the names and identifying information required by subsection A. 3.

above of all claimants who are parties to the appeal.

D. Notice of Appeal:

A copy of the notice of appeal shall be mailed by the Unemployment Insurance Appeals Unit of the Vermont Department of Labor to the other interested parties to the determination that is being appealed in accordance with subsection F. below.

E. Proceedings in the Case of Late Filing of Appeal:

If it is determined by the ALJ that the appeal was not filed within the time allowed by law, an order may be entered reciting the essential facts that establish the failure to file the appeal within the time allowed and dismissing the appeal. A copy of such order shall be mailed to each of the interested parties. Any party objecting to the order may, within ten (10) days after the date of the mailing of the order, request that the order be reconsidered and that the matter be set down for hearing on the timeliness of the appeal. If the appeal is found to be timely, a hearing on the merits shall be scheduled.

F. Notice of Hearing:

Hearing on the appeal shall be held by telephone. If the ALJ determines that an in – person appearance is required to ensure a fair hearing, the ALJ may arrange for a party or parties to appear in person. Denial of an in-person hearing request by an ALJ may be appealed to the Commissioner in writing within five days of the denial. The decision of the Commissioner shall be final.

Notice of hearing shall be mailed to all interested parties at least six days before the date of hearing.

The notice of hearing shall give the docket number of the case, address of the claimant(s) and employer(s) involved, the date and time of the hearing, and the issues to be considered on the appeal.

G. Special Notice Required:

Whenever an appeal involves the questions as to whether the services were performed by the claimant in employment or for an employer, the ALJ shall give notice of such issue to the employing unit concerned, as well as to all interested parties, and that employing unit shall be given an opportunity to participate in the appeal.

H. Non-Participation of Parties, Continuances:

If a party fails to participate in a hearing before the ALJ, the ALJ shall nevertheless proceed with the hearing. The ALJ shall review the file and record and question any party and other witnesses who may be present.

The ALJ, at his or her discretion, may continue or reopen a hearing for good cause. Notice of time, date, and place (where applicable) of the reconvening of the hearing shall be given by the ALJ to the parties or their representatives. If neither party participates in the hearing, then the ALJ shall make a decision based on the information contained in the record.

I. Hearing Before ALJ:

1. All hearings before an ALJ shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. The interested parties may present such evidence as may be pertinent. The ALJ may examine or cross-examine all parties and witnesses.
2. All parties and witnesses shall testify under oath or affirmation. Hearsay evidence shall be allowed; however, any objection to hearsay evidence shall be noted by the ALJ and addressed in the ALJ's written decision. Notes or recordings taken by the claims adjudicator or customer service representative shall also be allowed into evidence, subject to the same hearsay objection, and if objected to shall be addressed in the ALJ's written decision.
3. The parties and their representatives will be provided with any relevant documentary evidence prior to the hearing. They may examine or cross-examine any other party and witnesses and explain or rebut any evidence.
4. The ALJ may take such additional evidence as is deemed necessary, provided that where additional evidence is so taken, the parties shall be given an opportunity of examining, cross-examining, and refuting such evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made a part of the record.
5. Where a party is not represented by counsel or other agent the ALJ shall advise said party of his or her rights, aid the party in examining and cross-examining witnesses, and give the party every assistance compatible with the impartial discharge of the ALJ's duties.
6. Following the conclusion of a hearing, the ALJ shall without undue delay render and issue a decision. The decision shall be in writing and shall be signed by the ALJ. It shall set forth the findings of fact with respect to the appeal, the reasons for the decision, and the decision. A copy of the

decision shall be mailed or delivered to each party to the appeal, including the Vermont Department of Labor Unemployment Insurance and Wages Division.

7. All testimony produced at the hearing shall be recorded by the ALJ but need not be transcribed, unless the decision is appealed to the Employment Security Board. No participant in the appeal hearing is permitted to record the proceedings. The Commissioner may review audio recordings of hearings at any time.

J. Recusal of Administrative Law Judge from Participation in Hearing:

No ALJ shall participate in the hearing or disposition of any appeal in which he or she has an interest in the outcome of the proceedings, has had any direct participation in the determination appealed from, has any other interest or prejudice that will impair a fair and impartial hearing, or will give the appearance of bias. No ALJ shall participate in a hearing involving a relative, friend, or neighbor.

Challenges to the interest or prejudice of an ALJ: 1) may be presented to the Commissioner, in writing, at any time prior to the hearing or the date of final decision of the ALJ; 2) may be presented to the Employment Security Board in accordance with the pre-hearing filing requirements, and shall become a part of the record of such hearing.

Notice of any action on a challenge to interest or prejudice herein provided shall be given to all interested parties,

In the event the challenge is made prior to the hearing and is not heard immediately or is referred to the Board, the hearing of the appeal shall be continued until the disposal of such challenge.

The ALJ shall cause all parties to be notified of the new date set for such hearing by mailing a notice of continued hearing to all parties to the appeal at least six days before the date set for the new hearing.

RULE 15. BENEFIT APPEAL RULES PERTAINING TO THE BOARD

A. Appeal from Decision of the ALJ:

1. Method of Filing: A party appealing from a benefit decision of the ALJ shall, within 30 calendar days of the date of the decision, file an appeal with the Board at the Department of Labor. The appeal may be submitted: 1) by U.S. mail to the Department of Labor; 2) by e-mail; 3) by facsimile; 4)

in person at any office of the Department of Labor; or 5) by other method approved by the Commissioner.

2. Form of Appeal: Use of a prescribed form is not mandatory to initiate an appeal. Any written notice that clearly identifies the appellant, contains a current telephone number and mailing address, and that may be construed as an appeal, filed within the prescribed period, shall be deemed to initiate an appeal from such determination. The Commissioner may request additional information as needed.
3. Execution of Appeal by Authorized Agent: If a notice of appeal is filed by an appellant's authorized agent, the name, mailing address, and telephone number of the appellant shall be set forth in the appeal document followed by the signature and name of the authorized agent.
4. Acknowledgment of Appeal: A written acknowledgment of the notice of appeal shall be mailed by the Clerk of the Board to the parties interested in the decision that is being appealed.
5. Multiple Appeal: In the event of an appeal from a decision of the ALJ involving more than one claimant on the same issue, the appeal may be filed by the individual claimants or on their behalf by an authorized representative who shall, together with the appeal, submit a list containing the names and identifying information required by subsection A. 2. above of all claimants who are parties to the appeal.

B. Notice and Place of Hearing Before the Employment Security Board

Upon the scheduling of any hearing before the Board, notice specifying the time and place of hearing shall be mailed at least 10 days before the date of the hearing to all interested parties to the appeal. Hearings before the Board shall be held at Montpelier, Vermont or at such other place as the Board may designate. The Board may continue a hearing to a later date upon request of a party, if the Board finds good cause for such continuance and if the Board finds that a continuance will not unduly prejudice the non-requesting party. Upon request, and for good cause shown, the Board may allow a party to appear by phone.

C. Hearing on Appeal to Board:

Except as otherwise provided by this rule all appeals to the Board shall be heard upon evidence in the record made before the ALJ.

In the hearing of an appeal on the record by the Board, parties may present oral and written argument. Parties are encouraged to submit any written argument to

the Board at least 24 hours in advance of the hearing. No written argument will be accepted later than the close of the hearing.

The Board may remand the matter to the ALJ to take additional evidence necessary for the proper disposition of the appeal. Such evidence shall be taken by the ALJ in the manner prescribed for the conduct of hearings on appeals before him or her. Upon completion of the taking of such additional evidence, the ALJ shall, at the Board's direction, either issue a new decision or return the complete record involved in the appeal to the Board for its decision thereon.

D. Decision of the Board:

Following the conclusion of a hearing on an appeal, the Board shall, within a reasonable time, issue its decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Board who heard the appeal. It shall set forth the findings of fact of the Board, its conclusions thereon, its ruling of law, and its decision.

If a decision of the Board is not unanimous the decision of the majority shall control. The minority may file a dissent setting forth the reasons for failure to agree with the majority. Copies of any decision of the Board shall be promptly mailed or delivered to all interested parties.

Within 30 days of the Board's issuance of any order, a party may move the Board to reopen and reconsider that order. Such motions shall be granted only upon a showing of plain error, fraud, or newly discovered evidence.

E. Recusal of a Board Member:

A member of the Board shall voluntarily recuse himself or herself and withdraw from any proceeding in which he or she cannot render an impartial decision or in which he or she has an interest. Any party to a proceeding may request the recusal of a member of the Board by filing an affidavit with the Clerk of the Board stating with particularity the grounds upon which it is claimed that a fair and impartial hearing or consideration cannot be or has not been accorded or that a member of the Board has or had an interest in the proceeding. Such affidavit shall be filed no later than 24 hours prior to the hearing. The issue raised by the request shall be determined by the other members of the Board.

Any action taken on a request for recusal shall be made part of the record of the proceedings and notice thereof given the parties.

F. Initiation of Review by the Board on a Motion of Commissioner:

Upon motion made by the Commissioner a review may be initiated by the Board

of a decision of the ALJ or of a benefit determination. The Board shall make its findings of fact and conclusions based on the record. In the Board's discretion, the interested parties shall be given an opportunity to be heard, after proper notice as set forth in subsection B above.

RULE 16. WITNESS FEES AND MILEAGE

In the event a witness is subpoenaed pursuant to 21 V.S.A. § 1352 and appears in person, the ALJ or the Chair of the Board before whom the witness was called to testify shall certify as to the attendance of the witness and the amount of the witness fees to which he or she is entitled. Fees paid a witness shall be in accordance with 21 V.S.A. § 1352. Subpoenas will issue on request of a party only if, in the opinion of the ALJ or Chair of the Board, the testimony of the subpoenaed witness is likely to be relevant to a material fact at issue on appeal.

No witness fees or mileage shall be allowed a witness appearing at any hearing who has not been subpoenaed.

RULE 17. CONSOLIDATIONS

When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual, such claims may be consolidated and heard at the same time, provided, that in the judgment of the Board or the ALJ before whom the hearing is held, such consolidation would not be prejudicial to any party.

RULE 18. STIPULATIONS

The parties to an appeal, with the consent of the ALJ or the Board may stipulate in writing, or for the record at the hearing, as to the admitted facts. The ALJ or the Board may dispense with the taking of evidence and the hearing of testimony and decide the claim on the basis of such stipulated admitted facts or may take such further evidence as is deemed necessary to determine the matter.

RULE 19. NOTICE OF BENEFIT DECISIONS AND APPEAL RIGHTS

Each notice by a representative of the Commissioner, an ALJ, or the Board of a determination or decision on a claim for benefits shall, in addition to stating the determination or decision and the reasons therefor, include a notice specifying the parties' appeal rights. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the determination or decision and the period within which the appeal may be taken.

RULE 20. INVESTIGATIONS

Whenever in the course of an appeal, it develops that investigation, inquiry, payroll audit, or other examination is necessary to aid in the determination of the case, the ALJ or the Board may request such investigation, inquiry, payroll audit, or other examination to be made through the Unemployment Insurance and Wages Division. Hearings on appeal shall be continued or adjourned pending receipt of the report of such investigation, inquiry, audit, or examination. The right to be informed of and to inspect and rebut such reports and to conduct cross examination as to such evidence is preserved to all interested parties to the appeal.

RULE 21. WITHDRAWAL OF APPEALS

An appeal may be withdrawn, in writing, by an appellant at any time prior to the issuance of a decision.

RULE 22. TRANSCRIPT FURNISHING

Upon appeal from a decision of the ALJ or the Board, all interested parties to an appeal shall be furnished, without charge, with a copy of the transcript of the proceedings held before the ALJ or the Board. A party who has timely appealed a decision of the ALJ or the Board may review the audio recording of the hearing at any time thereafter.

RULE 23. PROCEDURE ON ASSESSMENT APPEALS

The Commissioner, upon receipt of a petition for hearing on assessment of contributions against an employer, shall refer the appeal to an ALJ who shall set the same for hearing and notify the petitioner and other interested parties by first class mail of the time and place of such hearing at least 10 days prior to the date set.

Except as herein otherwise provided and except as provided in 21 V.S.A. §§ 1331 and 1332, the procedure set forth in Rules 14 through 22 relating to benefit appeals shall be substantially followed whenever pertinent and applicable in the hearing and disposition of assessment appeals.

RULE 24. PROCEDURE ON APPEAL FROM ADMINISTRATION DETERMINATIONS

Upon receipt of an employing unit's petition for a hearing on an administrative

determination affecting its rate of contributions, its right to adjustments or refund of contributions paid, its coverage as an employer, or its termination of coverage, the Commissioner shall refer the appeal to an ALJ who shall set the same for hearing and notify the petitioner and other interested parties by first class mail of the time and place of such hearing at least 10 days prior to the date set.

Except as herein otherwise provided and except as provided in 21 V.S.A § 1337a, the procedures set forth in Rules 14 through 22 relating to benefit appeals shall be substantially followed whenever pertinent and applicable in the hearing and disposition of appeals from such administrative determinations.

RULE 25. DISCLOSURE OF INFORMATION

- A. Information from unemployment insurance records may only be made available as provided for in 21 V.S.A. §1314 or other applicable law. Prior to any release of information the agency seeking the information shall agree to a memorandum of understanding that will, at a minimum, include:
1. The purpose for which the request is made;
 2. The specific information needed;
 3. The names and position of all officials who will have access to the information;
 4. Methods and timing of the requests for information, including the format used, the period of time needed to furnish the requested information, and the names and positions of all officials authorized to request the information;
 5. Provisions for determining appropriate reimbursement for the costs incurred in providing information, including developmental costs associated with furnishing data to the requesting agencies and monitoring safeguards to protect the information;
 6. A description of the safeguards used to ensure the information obtained from the Department will be protected against unauthorized access or disclosure; and
 7. The requirement that any reports and/or publications utilizing confidential data from the Department will be provided to the Commissioner for review and comment prior to release to the general public.

- B. Information collected under contract or agreement with the US Bureau of Labor Statistics, including employer name, address, operational description, and employment data, is subject to the confidentiality requirements of federal law. The Commissioner may authorize the sharing of employer specific information with other state agencies as permitted by 21 V.S.A. § 1314 or other applicable law provided it has been successfully screened for confidentiality using US Bureau of Labor Statistics approved methodology. Information that does not pass the confidentiality criteria of the US Bureau of Labor Statistics shall not be released to anyone. The Commissioner will decide the feasibility of supplying such information based on the staff time available and the current workload of the Department.

RULE 26. APPROVAL OF TRAINING COURSE OR PROGRAM

- A. This Rule shall govern the administration of Training Course or Program requests as they relate to the approval of training requirements set forth in 21 V.S.A. § 1343(b).
- B. Definitions:
1. An otherwise eligible claimant, for the purposes of 21 V.S.A. § 1343(b), is a person who meets the requirements set forth in § 1343 except for the requirements of subsection (a) (3) relating to the availability and active search for work.
 2. “Training course or program” as used in this rule means
 - (a) Occupational or technical training that upon successful completion leads to a recognized certificate, or associate degree, or skills or competencies needed for a specific job or jobs, or an occupation or occupational group as recognized by employers and determined prior to training. Basic education courses, however, which are necessary as a prerequisite for skill training, may also be approved.
 - i. Except during periods when the Extended Benefit Program is triggered “on” in accordance with 21 V.S.A. § 1421, the term “training” does not include programs of instruction in a secondary school, where the individual is enrolled as a regular full-time student, intended to lead toward a secondary school diploma.
 - (b) Training conducted by an agency, educational institution, or

employing unit that has been approved by the Vermont Agency of Education to conduct training programs. Provided, however, that any agency, educational institution, or employing unit that is not subject to regulation and approval by the Agency of Education may be approved by the Commissioner.

- (c) Training directed to a high demand occupation.
- (d) The Commissioner shall also consider if the training course or program is being:
 - i. Offered by an employing unit that is other than the employing unit training workers for positions in its own establishments; or
 - ii. Funded under the Workforce Innovation & Opportunity Act.
- 3. Declining Occupation: A declining occupation is one whose total number, as measured by the Occupational Employment Statistics (OES), has declined over the last two surveys and is projected to continue to decline.
- 4. High Demand Occupation: A high demand occupation is one that is projected by the Department of Labor to have higher than average openings statewide than all occupations or have a higher-than-average growth rate.

C. Approval of Training Course or Program

- 1. A training course or program may be approved for an individual when the Commissioner determines, as a primary requisite, that:
 - (a) The individual was indefinitely separated from a declining occupation or has been involuntarily and indefinitely separated from employment as a result of permanent reduction of operations at the individual's place of employment;
 - (b) The individual is unemployed and is unable to obtain employment through core and intensive services and has been determined by Workforce Development Division staff to be in need of training services and has the skills and qualifications to successfully complete the selected training program; and
 - (c) Suitable work in the individual's usual occupation does not exist or the demand for such is substantially diminished. Usual occupation shall mean the type of work for which the individual has current

skills and which is most reasonably related to the individual's work experience and qualifications.

2. A training course or program may otherwise be approved for an individual who does not meet the above requirements if the Commissioner finds that:
 - (a) the training is funded under a WIOA program;
 - (b) the training is in a high demand occupation;
 - (c) the individual is unlikely to obtain other suitable employment based on his or her current skill levels; or
 - (d) the training will result in substantial enhancement of marketable skills and earning potential.
- D. Method of Making Application for Approval – Any claimant who desires approval of training shall make a written application to the Commissioner setting out the following:
 1. The individual's most recent employer, his or her occupation with such employer, reason he or she is no longer employed by the employer, and the last date worked for the employer;
 2. The nature of the training or retraining course he or she is attending or intends to attend;
 3. The name of the training facility or of the employing unit providing the training or retraining;
 4. The beginning and ending date of the training or retraining course; and
 5. The type of jobs for which the claimant will qualify at completion of such training.
- E. Individuals receiving unemployment benefits shall, upon request, provide the Unemployment Insurance Division with evidence of satisfactory progress in the training program.
- F. Denial of training course or program approval for a claimant by the Commissioner shall be final. However, any claimant who disagrees with a denied approval may request within 30 days of such denial a review by the Commissioner.

RULE 27. ADDITIONAL TRAINING BENEFITS

- A. This rule shall govern the administration of Additional Training Benefits (ATB) provided under 21 V.S.A. § 1471.
- B. Definitions:
 - 1. ATB: Additional training benefits (ATB) consist of up to 26 weeks of benefits available to an individual who has exhausted all benefits available under 21 V.S.A. § 1340 (regular benefits) and any other federally funded unemployment compensation or trade act benefits and is enrolled in and making satisfactory progress in an approved training course or program.
 - 2. Approved Training Program: For the purposes of ATB an approved training program consists of one that:
 - (a) Is funded through the Workforce Innovation Opportunity Act, or
 - (b) Is approved by the Commissioner or the Commissioner's designee; and
 - (c) Is preparing a UI claimant for entry into a high-demand occupation.
 - 3. Declining Occupation: A declining occupation is one whose total number, as measured by the Occupational Employment Statistics (OES), has declined over the last two surveys and is projected to continue to decline.
 - 4. High Demand Occupation: A high demand occupation is one that is projected by the Department of Labor to have higher than average openings statewide than all occupations or have a higher-than-average growth rate.
- C. Payment of Additional Training Benefits
 - 1. ATB will be granted to an individual who:
 - (a) Was separated from a declining occupation, or who was involuntarily and indefinitely separated from employment as the result of a permanent reduction in operations at the individual's place of employment.
 - (b) Filed an initial claim for ATB no later than the end of the initial benefit year or within three months following the exhaustion of all other benefit entitlements, whichever is later.

- (c) Prior to the end of his or her last benefit year, was enrolled and making satisfactory progress in a training course or program.
 - (d) Is not receiving a similar stipend or other allowance for non-training related expenses.
 - 2. ATB will be paid at the same rate as the maximum weekly benefit amount determined on the claimant's most recent eligible benefit year, for up to 26 weeks for week(s) claimed within one year of establishing the initial ATB claim.
- D. Employer Experience Rating:
- The experience rating of employers who have paid base-period wages in the most recent eligible year will be charged for ATB at the same percentage as they were during the claimant's regular eligibility period. The liability to experience rated and reimbursable employers for benefit charges associated with ATB will be treated and handled the same as charges associated with an unemployment payment made under the regular state unemployment insurance program. Employers subject to be charged for a share of ATB will be notified in writing of the ATB initial claim and their percentage of liability.
- E. Relationship to Other Rules:
- Rules, procedures, policies, and statutes associated with an unemployment insurance payment made under the regular unemployment insurance program shall apply to ATB recipients.

RULE 28. PENALTY WEEKS

As prescribed under 21 V.S.A. § 1347, claimants who have been found to commit fraud in filing claims for benefits who have not been prosecuted under the provisions of 21 V.S.A. §§ 1368 or 1373, shall be assessed one penalty week for each week such fraud was committed, provided that the claimant has not been found to commit fraud within the past three calendar years. Claimants found to have committed fraud within the past three calendar years, and who have committed fraud again, will be assessed two weeks for each week such fraud was committed. Claimants will not be assessed more than 26 penalty weeks in any one benefit year. Any claimant who is found otherwise eligible for benefits after penalty weeks have been assessed will have each week of benefit entitlement applied against his or her penalty week balance. The monetary value of each claim applied against the penalty week balance will be deducted from the maximum benefit amount in the benefit year such claim is filed.

RULE 29. CLAIMANTS WITH DISABILITIES

A claimant with a disability who is utilizing the assistance of any state agency, including but not necessarily limited to the Division of Vocational Rehabilitation, may be relieved from the requirement to actively seek employment during the period in which the agency is working with the claimant and/or on his or her behalf to help the claimant prepare for and secure new employment. The claimant must remain able to work and available for suitable work if offered, in order to continue receiving weekly benefits. The approval of the Manager of the Unemployment Insurance Claims Center is required in such cases.

RULE 30. COST SHIFTING OF AN EMPLOYER'S EXPERIENCE RATING

- A. The following rule shall govern the administration of Vermont's State Unemployment Tax Avoidance (SUTA) system, as required under 21 V.S.A. § 1325(d).
- B. Process
 - 1. On a daily basis, any new employer accounts being established will be cross matched against the existing employer data base to detect potential common ownership. The SUTA Dumping detection system, which will also pick up the potential transfer of employees where there may not be common ownership, will be run on a quarterly basis. Both of these systems will be the Department's main source of detecting potential SUTA dumping situations, which may have occurred within the past 12 completed calendar quarters, from the date of detection.
 - 2. When an employer transfers all or any portion thereof of its trade or business to another employer, where at the time of the transfer there is substantial common ownership, management, or control of the two employers, the employment experience rating attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred.
- C. Definitions
 - 1. "Trade or business" includes reorganizations or restructuring where the only significant difference is that all or any portion of the employees are being paid or reported by a different entity. "Trade or business" also includes the employer's workforce and does not require an acquisition or sale.

2. “Substantial common ownership, management, or control” is defined as common ownership, management, or control, which could include one manager that exercises pervasive control as the chief executive officer of both companies.

RULE 31. PENALTIES FOR EMPLOYEE MISCLASSIFICATION AND FALSE STATEMENT

A. This Rule shall govern the assessment of penalties for employee misclassification and false statements as provided for by 21 V.S.A. § 1314a(f)(1)(B) and 21 V.S.A. § 1369. This Rule shall also govern the period of time an employer is prohibited from contracting, directly or indirectly, with the State or any of its subdivisions as a result of employee misclassification. Any such penalties shall be in addition to any assessment for unpaid contributions and interest payments owed pursuant to 21 V.S.A. § 1329 and § 1330.

1. In assessing a misclassification penalty, the Commissioner shall adhere to the following guidelines:
 - (a) An initial violation shall subject the employer to a penalty of \$500.00 for each improperly classified employee.
 - (b) A second violation within a period of six years of the previous violation shall subject the employer to a penalty of \$1,000.00 for each improperly classified employee.
 - (c) A third or subsequent violation within a period of 10 years of the most recent violation may subject the employer to a penalty of \$5,000.00 for each improperly classified employee.

In assessing a penalty under this section, the Commissioner shall consider any relevant mitigating factors, including but not limited to, good faith or excusable neglect, and the Commissioner may modify or reduce the penalty accordingly. An administrative determination shall be issued to advise the employer of the penalty and the employer’s appeal rights.

2. In addition to the penalties listed in subsection 1. above, the Commissioner shall prohibit an employer found to be in violation of 21 V.S.A. § 1314a(f)(1)(B) from contracting, directly or indirectly, with the State or any of its subdivisions, for up to three years.

- (a) Any prohibition from contracting with the State shall only be made following consultation with the Commissioner of Buildings and General Services, the Secretary of Transportation, or other agencies as appropriate.
 - (b) An administrative determination shall be issued to advise the employer of the debarment period and the employer's appeal rights.
- 3. In establishing a debarment period under this section, the Commissioner shall adhere to the following guidelines:
 - (a) An initial violation shall subject the employer to a debarment period of up to one year.
 - (b) A second violation within a period of six years of the previous violation shall subject the employer to a debarment period of up to two years.
 - (c) A third or subsequent violation within a period of 10 years of the most recent violation shall subject the employer to a debarment period of up to three years.
 - (d) The debarment period may be reduced in the interests of public health and safety or if the employer demonstrates that the non-compliance was the result of a good faith misunderstanding of the law's requirements, excusable neglect, or other specific mitigating factors.
- B. Violation of 21 V.S.A. § 1369, making a material false statement or representation, either on one's own behalf or on behalf of another.
 - 1. An initial violation shall subject the person to a penalty of \$2,500.00.
 - 2. A second or subsequent violation within a period of three years shall subject the person to a penalty of \$5,000.00.
- C. Penalties and debarment periods imposed pursuant to this Rule may be appealed in the same manner as appeals from assessment of contributions, in accordance with Rule 23 of these Rules and with 21 V.S.A. §§ 1331 and 1332. Whenever possible, appeals of penalties and debarment periods shall be heard in conjunction with appeals of any associated assessment of contributions.

RULE 32. WAIVING REPAYMENT OF OVERPAID BENEFITS

A. Notice of Right to Request Waiver of Overpayment

1. Each determination of the Department that an overpayment of benefits has occurred shall include notice of the right to request a waiver of repayment of overpaid benefits.
2. The notice shall include clear instructions for submitting an application to waive repayment and the statutory circumstances under which a waiver may be granted.

B. Application for Waiver of Overpayment

1. Any individual who receives notice of liability to repay overpaid benefits in a determination or final order from the Department may submit an application to waive such repayment.
2. Individuals whose application to waive repayment is denied and whose appeal rights are exhausted may submit an additional application to waive repayment if they can demonstrate a material change in their circumstances such that it would be contrary to equity and good conscience to order repayment. The Department may dismiss an additional application to waive repayment if it determines that there is no material change to the individual's circumstances regarding equity and good conscience to order repayment. Any such dismissal is a final order and is not subject to appeal.

C. Determinations on Waiver Application

1. Upon receipt of an application for waiver of repayment of overpaid benefits, a determination shall be entered pursuant to 21 V.S.A. § 1348. The determination shall make findings regarding whether the overpaid individual was at fault and whether ordering repayment would be contrary to equity and good conscience. However, where the individual is found at fault, findings regarding "contrary to equity and good conscience" will not be made.
2. Each determination entered pursuant to this Rule and 21 V.S.A. § 1347(f) shall include the findings listed in subsection (C)(1) of this Rule, the amount of the overpayment, and the right to appeal, including the time requirements for filing an appeal.

D. Hearing Procedure

1. An appeal of a denied application to waive repayment of overpaid benefits shall be made within the time allowed and in accordance with Rules 14 and 15 of these Rules and 21 V.S.A. §§ 1348 and 1349.
2. An appeal of a denied application to waive repayment of overpaid benefits shall not serve as an alternative method of appeal of the underlying substantive issues creating the overpayment.
3. Individuals seeking waiver of repayment of overpaid benefits shall bear the burden of proof on appeal.