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UNEMPLOYMENT COMPENSATION IN IOWA: A PRIMER FOR PRACTITIONERS*

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I. Introduction

Two recent economic and political trends have contributed to a near critical situation in maintaining the viability and equity of the federal-state system of unemployment insurance and compensation in this country. The recent economic trend is the extremely high unemployment rates nationally[1] and in Iowa,[2] coupled with long-term inflation, high interest rates, and recessionary economic activity.[3] In Iowa, the high unemployment rate and the inadequate unemployment taxation of Iowa employers over the last few years has resulted in the insolvency of the unemployment trust fund.[4] The

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1. The United States unemployment rate, not seasonally adjusted, for calendar year 1980 was 7.1%, for 1981 was 7.6%, for January through December, 1982, was respectively 9.4%, 9.6%, 9.5%, 9.2%, 9.1%, 9.8%, 9.8%, 9.6%, 9.7%, 9.9%, 10.4%, and 10.5%, and for January and February, 1983, 11.4% and 11.3%, from national rates prepared by the United States Department of Labor, Bureau of Labor Statistics. Interview with Larry Venenga, Labor Market Analyst, Iowa Department of Job Service, Des Moines, Iowa (March 11, 1983).

2. The Iowa unemployment rate, incorporating the current population survey, for calendar year 1980 was 5.7%, for 1981 was 6.9%, and for January through December, 1982, was respectively 9.9%, 9.2%, 9.7%, 8.3%, 7.5%, 8.4%, 8.4%, 8.1%, 7.5%, 7.7%, 8.5%, and 9.3%, and for January, 1983, 10.9%, from Iowa rates prepared in cooperation with the United States Department of Labor, Bureau of Labor Statistics, by the Research & Analysis Department of the Iowa Department of Job Service. Interview with Larry Venenga, Labor Market Analyst, Iowa Department of Job Service, Des Moines, Iowa (March 11, 1983).

3. The increases in consumer prices averaged 9.0%, 13.3%, 12.4%, and 8.9% respectively for calendar years 1978 through 1981, as reported by the United States Department of Labor, Bureau of Labor Statistics; the average effective prime interest rate charged by banks was 9.06%, 12.67%, 15.27%, and 18.87% respectively for calendar years 1978 through 1981, as reported by the United States Department of Treasury and the Board of Governors of the Federal Reserve System; new private housing units (in thousands) started during calendar years 1978 through 1981 were respectively 2,020.3, 1,745.1, 1,292.2, and 1,084.2. Council of Economic Advisors, Economic Indicators 19, 24, & 30 (Dec. 1982).

4. As of March 12, 1983, Iowa's unemployment trust fund had an outstanding federal loan balance of approximately $128.5 million and owed interest on the loan balance of approximately $2.9 million. Inter-office communication from Ralph Hoksbergen, Actuary, Actuarial Research Section, Audit & Analysis Department, to James Hunsaker III, Administrative Officer, Iowa Department of Job Service, Des Moines, Iowa (March 14, 1983).

The outstanding federal loan balance is projected to reach between $224.8 million and $383.5 million by the end of calendar year 1984 if Iowa's unemployment law is not amended by the Iowa General Assembly before that time. Inter-office communication from Al Van Winkle, Chief, Tax & Trust Fund Department, to Colleen Shearer, Director, Iowa Department of Job

recent political trend is the systematic dismantling of free legal services to low-income persons in this country through major reductions in the federal budget of the Legal Services Corporation.[5]

As access to free legal services to low-income Iowans becomes more difficult, as more Iowans of all income levels experience unemployment, and as Iowa employers experience higher unemployment taxation rates, members of the private bar will need to become better acquainted with Iowa's statutory, administrative, and case law relating to the unemployment insurance and compensation system. Clients who formerly engaged members of the private bar in the preparation of taxation returns, deeds, or wills may now be calling upon the private bar to aid them in obtaining unemployment compensation benefits or in minimizing unemployment taxation rates.

This article comprehensively covers the subject of unemployment compensation law in Iowa[6] and is intended to enable the legal practitioner, whether or not he or she has previously worked with the law, to quickly acquaint himself or herself with the broad outline of the unemployment law, as well as to gain insight into specific portions of the substantive or procedural unemployment law relevant to the needs of the practitioner's clients. This article is divided into three major sections dealing with the history, procedural law, and substantive law relating to the unemployment insurance and compensation system.

The history section examines the legislative history of the original unemployment insurance and compensation legislation at the federal level and at the state level in Iowa, and presents the major amendments, by subject area, to the federal and Iowa unemployment laws. The section is intended to enable the practitioner, as well as the Iowa courts, to gain insight into the legal principles and legislative policies and trends of the federal and Iowa unemployment laws.

The procedural law section presents Iowa's procedural law applicable to cases involving the awarding of unemployment compensation benefits and the determination of employer taxation rates and charges. The section is

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Service, Des Moines, Iowa (Jan. 24, 1983).

5. The budget of the Legal Services Corporation of Iowa is estimated to have been reduced by approximately 47% in real purchasing power over the last two years. National Legal Services Corporation allocations to the Iowa Corporation have been reduced by approximately 25%; the loss of funds to the Iowa Corporation due to Federal Comprehensive Employment and Training Act (CETA) fund reductions and due to the reduction of private and other governmental funding has been at least 10% of the Iowa Corporation's budget; the cost increases in doing business has been approximately 12% of the Iowa Corporation's budget. Approximately 15% of the Iowa Corporation's caseload deals with Iowa's unemployment law. Interview with John C. Barrett, Executive Director of the Legal Services Corporation of Iowa, Des Moines, Iowa (June 15, 1982).

6. The latest law review article relating to Iowa's unemployment law was published in 1962 and dealt only with the issues of employer and employee status, benefit disqualifications, and procedural requirements relating to claims for benefits. Brick, *The Iowa Employment Security Act*, 11 Drake L. Rev. 125 (1962).

intended to assist the practitioner in avoiding jurisdictional pitfalls, in effectively communicating with the Department of Job Service regarding a client's problem, and in moving a client's case along expeditiously. Time limitations and administrative procedures imposed by statute, rule, and case law, from Iowa and the surrounding jurisdictions, and dictated as a matter of practice are discussed.

The substantive law section presents Iowa's substantive law applicable to cases involving the awarding of unemployment compensation benefits and the determination of employer taxation rates and charges. The section is intended to identify pertinent statutory and administrative law and to digest the corresponding case law, from Iowa and the surrounding jurisdictions, in order to enable the practitioner to assess whether a client is likely to prevail on the merits of the client's case.

II. History of Unemployment Insurance and Compensation Legislation

This section of the article discusses the history of unemployment insurance and compensation legislation and is divided into four parts: (1) the federal unemployment insurance and compensation legislation, (2) the major amendments to the federal unemployment law, (3) Iowa's unemployment insurance and compensation legislation, and (4) the major amendments to Iowa's unemployment law.

A. *The Federal Unemployment Insurance and Compensation Legislation*

1. *The Legislative Climate*

The earliest unemployment benefit plans in the United States were voluntary plans developed by trade unions and private companies between 1920 and 1935.[7] Although many European countries had enacted compulsory unemployment insurance legislation in the 1920's, early attempts by the United States Congress and various state legislatures to enact unemployment insurance legislation were unsuccessful.[8] Major opposition to the passage of state legislation came from employer groups arguing that the legislation was too costly for employers, especially during the Depression. Additionally, the legislation would be competitively disadvantageous to an enacting state's employers in comparison to employers in other states which had not enacted comparable legislation.[9] In 1932, however, Wisconsin passed a compulsory unemployment insurance compensation bill which established

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7. Larson & Murray, *The Development of Unemployment Insurance in the United States*, 8 Vand. L. Rev. 181, 183 (1955).
8. *Id.* at 182-186.
9. *Id.* at 185.

individual employer contribution rates according to a ratio of the employer's reserve in the state fund to the employer's payroll.[10] Benefits were deferred for two years and ultimately until 1936 because of congressional activity in the area of federal unemployment legislation.[11]

2. *Congressional Activity*

Congressional activity had actually begun in 1916 with the introduction of a resolution to create a committee to draft a national unemployment insurance bill, but this and other attempts in Congress garnered little support.[12] In 1931 the Senate Committee on Education and Labor endorsed compulsory unemployment legislation which would have allowed a federal tax credit against the federal income taxes of employers which contributed to state unemployment reserve funds.[13] The Wagner-Lewis bill, which was introduced in both houses of Congress in 1934, would have established a federal-state system of unemployment insurance and a five percent federal payroll tax on employers with ten or more employees.[14] A tax credit was allowed under the bill for contributions to a federally certified state unemployment plan.[15] President Franklin D. Roosevelt endorsed the bill,[16] but believing that further study was necessary, appointed the Committee on Economic Security to study problems concerning the economic security of individuals and to recommend proposals to promote greater economic security.[17]

The Committee reported in January 1935 that the first objective of a program of economic security should be maximum employment provided through the stimulation of private employment and the provision of public employment.[18] The Committee recommended the imposition of a uniform, federal payroll tax on employers which could be offset by employer contributions to a compulsory state unemployment compensation plan.[19] The recommendation supported federal responsibility for the safeguarding of all reserve funds but also gave the states discretion in developing their state eligibility standards.[20]

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10. *Id.* at 184.
11. *Id.*
12. R. STEVENS, STATUTORY HISTORY OF THE UNITED STATES: INCOME SECURITY 31-32 (1970).
13. Larson & Murray, *supra* note 7, at 186.
14. *Id.*
15. *Id.*
16. R. STEVENS, *supra* note 12, at 59-60.
17. *Id.* at 64-65 (established by Executive Order 6757 (June 1934)). The Committee was composed of the Secretaries of Labor, Treasury, and Agriculture, the Attorney General, and the Federal Emergency Relief Administrator. *Id.*
18. *Id.* at 91.
19. *Id.*
20. *Id.* at 88, 91 (REPORT OF THE COMMITTEE ON ECONOMIC SECURITY, SOCIAL SECURITY IN AMERICA (1935)).

3. *Enactment of the Federal Legislation*

a. The Federal Tax and Federal Tax Credit. Identical bills adopting the recommendations of the Committee were introduced and passed by both houses of Congress, and in August 1935, President Roosevelt signed the final version of the bill.[21] The bill, popularly known as the Social Security Act of 1935,[22] established a federal payroll tax as a flat percentage of wages on employers with eight or more employees.[23] A federal tax credit of up to ninety percent was allowed for employer contributions to a federally certified state unemployment compensation fund[24] and state experience rating of employers was allowed after three years of coverage.[25] Major conditions placed on the receipt of the federal tax credit were federal possession and safeguarding of state unemployment compensation funds, prohibition of state-law creation of vested rights which would prevent legislative amendment or repeal of the state unemployment law, and adherence to the so-called labor standard which sought to insulate the unemployment law from unionization.[26]

b. Federal Grants for Administrative Costs. A portion of the federal payroll tax not eligible for the tax credit was indirectly returned to the states through grants to finance the costs of the administration of the states' unemployment compensation systems.[27] Significant federal requirements were the payment of unemployment compensation benefits solely through public employment offices, opportunity for a fair hearing before an impartial tribunal upon a denial of benefits, required reporting to the federal govern-

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21. Larson & Murray, *supra* note 7, at 187.

22. Ch. 531, 49 Stat. 620 (1935) (codified as amended at I.R.C. §§ 3301-3311 and 42 U.S.C. §§ 501-503, 1101-1103 (1976)). The Act contained three major components: (1) a federal social security program of compulsory old-age assistance, (2) a federal-state public assistance program of limited federal support for state general assistance programs to the categorically needy (aged, blind, and dependent children), and (3) a federal-state unemployment compensation program consisting of a state-controlled unemployment insurance system compelled into being by a federal tax incentive and grant for administrative costs.

23. Social Security Act of 1935, ch. 531, §§ 901, 907, 49 Stat. 620, 639, 642-43 (1935) (codified as amended at I.R.C. §§ 3301, 3306 (1976)). Employment was defined more by exception than by rule, excluding agricultural, domestic, governmental, nonprofit and other specialized services. By defining employment, employer, and wages, the federal law practically coerced state coverage of those employers who paid wages taxed by the federal law.

24. Social Security Act of 1935, ch. 531, § 902, 49 Stat. 620, 639-40 (1935) (codified as amended at I.R.C. § 3302 (1976)).

25. Social Security Act of 1935, ch. 531, § 910, 49 Stat. 620, 644 (1935) (codified as amended at I.R.C. § 3303 (1976)).

26. Social Security Act of 1935, ch. 531, § 903, 49 Stat. 620, 640 (1935) (codified as amended at I.R.C. § 3304 (1976)). The labor standard prohibits any state disqualification for benefits on the grounds of a refusal to accept work: (1) vacant due directly to a strike, lockout, or labor dispute, (2) if the wages, hours, or other conditions are substantially less favorable than those prevailing for similar work in the locality, or (3) requiring or prohibiting union or labor organization membership.

27. Social Security Act of 1935, ch. 531, §§ 301-02, 49 Stat. 620, 626 (1935) (codified as amended at 42 U.S.C. §§ 501-02 (1976)).

ment, and availability of recipient information to federal agencies charged with the administration of public works or assistance through public employment.[28]

c. State Benefit Eligibility Determinations. While the Federal Social Security Act extensively regulated the financing elements of state plans, the Act allowed the states almost unlimited discretion in determining benefit eligibility, amount, duration, and disqualifications.[29] The so-called labor standard was the only significant benefit requirement in the Act.[30]

4. *Constitutional Challenges*

The significance of state control over determining benefit eligibility and the magnitude of the national unemployment problem proved to be major factors in two United States Supreme Court cases, *Steward Machine Co. v. Davis*[31] and *Carmichael v. Southern Coal & Coke Co.*[32] These cases upheld the constitutionality of the employer taxation provisions of the Act.

a. Federal Law Challenge. In the *Steward* case, which challenged the federal law, Justice Cardozo, writing for the five-member majority, found the federal payroll tax to be a valid excise or impost within the taxing power of Congress, levied to allow the federal government to adequately deal with the unemployment problem.[33] Justice Cardozo reasoned that the tax on the business relation of employment, a natural right, was just as valid as a tax on rights of less importance, and as written, the tax met the requirement of geographical uniformity and was not arbitrary in its coverage and exceptions.[34]

b. State Law Challenge. In the *Carmichael* case, which challenged a state law, Justice Stone, also writing for a five-member majority, upheld the constitutionality of the Alabama unemployment compensation law, finding the relief of unemployment, as a public problem, to be a valid exercise of the state's taxing power.[35] Justice Stone stated that the exceptions in coverage were not arbitrary and not in violation of the due process and equal protection guarantees.[36] The court also rejected the theory that the state was coerced into passing the legislation by federal law.[37]

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28. Social Security Act of 1935, ch. 531, § 303, 49 Stat. 620, 626-27 (1935) (codified as amended at 42 U.S.C. § 503 (1976)).

29. Social Security of 1935, ch. 531, § 903, 49 Stat. 620, 640 (1935) (codified as amended at I.R.C. § 3304 (1976)).

30. *Id.*

31. 301 U.S. 548 (1937).

32. 301 U.S. 495 (1937).

33. Steward, 301 U.S. at 578-83.

34. Steward, 301 U.S. at 580-85.

35. Carmichael, 301 U.S. at 514-21.

36. Carmichael, 301 U.S. at 509-13.

37. Carmichael, 301 U.S. at 525-26.

5. *Principles Underlying the Federal-State System*

The year 1937 was a milestone. The constitutionality of both federal and state unemployment compensation legislation was upheld; every state, as well as the District of Columbia, Hawaii, and Alaska, had passed certified legislation.[38] The basic framework of the federal-state cooperative system was established and the broad principles were forged. Even after frequent amendment these principles have remained unchanged. Unemployment compensation continues to be a federal-state system, consisting of individual state trust funds built by employer payroll taxes, with compensation benefits limited in amount and duration but related to an employee's previous earnings, and designed to provide a partial offset to the loss of wages experienced by the employees, who are unemployed through no fault of their own and who genuinely intend to reattach themselves to the labor force.[39]

B. *Major Amendments to the Federal Unemployment Law*

Even though the broad underlying principles have remained unchanged, frequent amendments have modified and expanded the scope of the federal unemployment law.

1. *Taxation Amendments*

a. The Federal Tax and Federal Tax Credit. A 1939 amendment restricted payroll taxes to the first $3,000 of wages paid each year to each covered employee.[40] Two subsequent amendments raised the amount of taxable wages to $6,000.[41] A 1982 amendment raised the federal taxable wage base to $7,000 for 1983.[42] The gross federal payroll tax was also raised from the original 3% to 3.4% of taxable wages, and to 3.5% for 1983 and 1984.[43] The federal tax credit of approximately 2.7% has remained constant, with some variations in the additional tax credit given to experience-rated employers.[44] Beginning in 1985, however, the gross federal payroll tax is scheduled to rise to 6.2% and the maximum federal tax credit is scheduled to rise

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38. Larson & Murray, *supra* note 7, at 189.

39. M. Gordon & R. Amerson, Unemployment Insurance 15-16 (1957).

40. Social Security Act Amendments of 1939, ch. 666, § 606, 53 Stat. 1360, 1383-84 (1939).

41. Employment Security Amendments of 1970, Pub. L. No. 91-373, § 302, 84 Stat. 695, 713 (1970), and Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, § 211, 90 Stat. 2667, 2676 (1976) (codified as amended at I.R.C. § 3306 (1976)).

42. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 271(a), 1982 U.S. Code Cong. & Ad. News (96 Stat.) 324 (to be codified at I.R.C. § 3306(b)(1)).

43. Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, § 211, 90 Stat. 2667, 2676-77 (1976) (codified at I.R.C. § 3301 (1976)); Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 271(b)(1), 1982 U.S. Code Cong. & Ad. News (96 Stat.) 324 (to be codified at I.R.C. § 3301(1)).

44. Social Security Act Amendments of 1954, ch. 736, ch. 23, 68A Stat. 439, 439-43 (1954) (codified as amended at I.R.C. §§ 3302-3303 (1976)).

to 5.4%, maintaining the 1983 and 1984 net federal payroll tax of 0.8%.[45] The escalation of the federal payroll tax and tax credit is intended to create an incentive for states to establish experience tax rates of up to 5.4%.[46]

b. Federal Advances and Federal Tax Credit Reductions. Federal law allows a state to obtain advances from the federal government for the payment of state unemployment compensation benefits when the state's unemployment trust funds are insufficient to pay all valid unemployment compensation benefits.[47] Currently, employers in a state with an outstanding federal advance balance on a second consecutive January 1 are subject to an incremental 0.3% annual decrease in the employer's federal tax credits.[48] This decrease in the federal tax credit was limited by a 1981 amendment to a maximum decrease of 0.6% for calendar years 1983 through 1987 for the employers in a state which has not already had its employer's tax credits reduced by more than 0.6%.[49] The limitation, however, applies only if the state complies with the following four conditions: (1) the state may not take action to reduce the state's unemployment tax effort; (2) the state may not take action to decrease the solvency of the state's unemployment compensation system; (3) the state's benefit financing system must be capable of providing sufficient funds to cover at least the average annual benefit costs incurred in the preceding five years; and (4) the state's current outstanding federal advance balance on September 30 must not be greater than the outstanding balance on September 30 of the third preceding year, except that the September 30, 1983 balance is to be compared to the September 30, 1981 balance.[50] A 1982 amendment waives the fifth year reduction in the federal tax credit if a state has taken no action to reduce the solvency of its unemployment trust fund.[51]

c. Interest Payments on Federal Advances. The 1981 federal legislation requires a state to pay interest on advances received from the federal government on and after April 1, 1982, for the payment of state unemployment compensation benefits, except for an advance repaid in full before September 30 of the calendar year in which the advance was made, provided no other advance is made to the state in the same calendar year and after

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45. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 271(c)(1), 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 324 (to be codified at I.R.C. § 3301)).

46. HOUSE CONF. REP. 97-760, 97th Cong., 2d Sess. 654-55, *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 646-47.

47. 42 U.S.C. § 1321 (1976), as amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2407, 95 Stat. 357, 880 (1981).

48. I.R.C. § 3302(c)(2) (1976 & Supp. III 1979).

49. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2406, 95 Stat. 357, 876-78 (1981).

50. *Id.*

51. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 273, 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 324 (to be codified at I.R.C. § 3302(c)).

the date of repayment.[52] Payments of interest on federal advances cannot be made, directly or indirectly, from a state's unemployment trust fund.[53] A 1982 amendment allowed states with high unemployment rates to extend the payment of federal interest charges over four years instead of one year.[54]

2. *Coverage*

The most significant federal amendments have extended the coverage of the federal unemployment law. A 1954 amendment reduced the minimum number of employees, from eight to four.[55] The number of employees was reduced to one by a 1970 amendment, which also brought employers within the definition if wages of $1,500 were paid in any calendar quarter.[56] Another significant 1970 amendment required state coverage of nonprofit organizations with four or more employees, allowing the entities to elect either contributory or reimbursable status.[57] In 1976, coverage was again greatly extended through the federal taxation of government entities and certain agricultural and domestic employers.[58] A 1982 federal amendment exempts from the federal payroll tax wages paid to students enrolled full-time in a work-study program without regard to the student's age.[59]

3. *Benefit Eligibility*

a. Eligibility for Regular Benefits. Perhaps less significant than the coverage amendments, but undoubtedly important in terms of the evolution

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52. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2407(a), 95 Stat. 357, 879-80 (1981). The interest is generally due no later than September 30 following the federal fiscal year in which the advance was made, and is payable at a rate which is the lower of ten percent or the applicable rate paid in the last calendar quarter of the immediately preceding calendar year on state accounts in the federal unemployment trust fund. *Id.*

53. *Id.*

54. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 274, 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 324 (to be codified at 42 U.S.C. § 1322).

55. Act of September 1, 1954, ch. 1212, § 1, 68 Stat. 1130 (1954) (codified as amended at I.R.C. § 3306(a) (1976)).

56. Employment Security Amendments of 1970, Pub. L. No. 91-373, § 101, 84 Stat. 695, 696 (1970) (codified as amended at I.R.C. § 3306(a) (1976)).

57. Employment Security Amendments of 1970, Pub. L. No. 91-373, § 104, 84 Stat. 695, 697-99 (1970) (codified as amended at I.R.C. § 3309 (1976)). This mandatory coverage by state law was a new approach at federal inclusion since all other employees had previously been brought under the federal law, and hence under most state laws, by the federal payroll taxation of the employees' employers. Reimbursable status requires the employer, in lieu of contributions usually at an assigned experience rate, to pay to the state fund an amount equal to the amount of benefits paid to recipients attributable to services rendered in the employ of the employer.

58. Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, §§ 111-15, 90 Stat. 2667, 2667-71 (1976) (codified as amended at I.R.C. §§ 3306, 3309 (1976)).

59. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 276(a), 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 324 (to be codified at I.R.C. § 2306(c)(10)(C)).

of the federal unemployment law, the 1970 federal amendments affected the states' control of benefit eligibility, amount, and disqualifications. As a condition to certification of the state law by the United States Secretary of Labor, the 1970 amendments prohibited: (1) discriminatory benefit eligibility requirements for nonprofit organizations and certain governmental employees and the payment of benefits to certain employees of educational institutions for periods between academic terms, (2) benefit eligibility for a second benefit year if an employee has not worked subsequent to the beginning of a first benefit year, (3) denial of benefits to persons in state-approved job training, (4) denial of benefits to employees who file for benefits in other states or who file for benefits while residents of other states, and (5) cancellation of wage credits or total reduction of benefits for any cause other than misconduct or fraud.[60] Subsequent amendments prohibited the denial of benefits solely on the basis of pregnancy or termination of pregnancy, prohibited the payment of benefits to employees participating in sports or athletic events or training for periods between successive sport seasons, and to alien employees not lawfully admitted for permanent residence in the United States or not permanently residing in the United States under color of law, and required the reduction of benefits by the amount of governmental or other pension, retirement, annuity, or other similar periodic payments.[61] In addition, these amendments required that wage information contained in the records of the State agency administering the unemployment compensation law be made available to the state agency administering the aid to families with dependent children program.[62]

A 1980 amendment modified the requirement that states offset benefits with pension, retirement, annuities, or other similar periodic payments, including social security payments, and allowed the states to limit the offset by taking into account contributions made by the individual for the pension, retirement, annuity, or other similar periodic payment.[63]

Federal legislation in 1981 required the state unemployment compensation agency to work with state and local child support recovery agencies to withhold and deduct child support obligations from unemployment compensation benefits and authorized the garnishment and attachment of the benefits if voluntary withholding agreements could not be reached.[64] The same legislation also prohibited the denial of benefits to individuals participating

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60. Employment Security Amendments of 1970, Pub. L. No. 91-373, §§ 104(a), 121(a), 84 Stat. 695, 697, 701-02 (1970) (codified as amended at I.R.C. § 3304(a)(6-10), (12) (1976)).

61. Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, §§ 312(a), 314(a), 90 Stat. 2667, 2679-80 (1976) (codified as amended at I.R.C. § 3304(a)(12-15) (1976)).

62. Social Security Amendments of 1977, Pub. L. No. 95-216, § 403(b), 91 Stat. 1509, 1561 (1977) (codified at I.R.C. § 3304(a)(16)(A) (Supp. III 1979)).

63. Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, § 414(a), 94 Stat. 1208, 1310 (1980) (to be codified at I.R.C. § 3304(a)(15)).

64. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2335(a-b), 95 Stat. 357, 863-64 (1981).

in approved trade readjustment training under the Federal Trade Act of 1974.[65]

Federal legislation enacted in 1982 required both regular and extended benefit amounts to be rounded to the next lower multiple of one dollar.[66] The same legislation allowed the denial of benefits to nonprofessional employees of educational institutions between academic terms if the employees have reasonable assurance that they will be employed at the beginning of the next academic term.[67]

b. Eligibility for Extended Benefits. The 1970 federal amendments required state participation in the federally sponsored extended unemployment compensation program.[68] The program generally provides benefits to unemployed persons after regular state benefits have been exhausted, up to a maximum of thirty-nine weeks for both regular state benefits and extended benefits.[69] The federal government and the state generally share the cost of the extended benefits equally.[70]

Several recent federal amendments have modified the states' participation in the extended unemployment compensation program. A 1980 amendment adopted a specific eligibility requirement relating to interstate extended benefit claims.[71] Another 1980 amendment provided that a state without a one-week waiting period before benefit payments were made is not entitled to the normal fifty percent federal share in the cost of extended benefits for that one week and adopted specific extended benefit disqualification requirements relating to the acceptance of an offer of suitable work.[72]

A 1981 amendment imposed an additional extended benefit eligibility requirement of either base period earnings exceeding one and one-half times the highest base period quarterly wages or forty times the weekly benefit amount.[73] The same legislation reduced the number of weeks for which an individual could receive extended benefits beyond the end of the benefit

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65. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2506, 95 Stat. 357, 884-85 (1981).

66. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 191, 1982 U.S. Code Cong. & Ad. News (96 Stat.) 324 (to be codified at I.R.C. § 3304).

67. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 192, 1982 U.S. Code Cong. & Ad. News (96 Stat.) 324 (to be codified at I.R.C. § 3304(a)(6)(A)).

68. Employment Security Amendments of 1970, Pub. L. No. 91-373, § 206, 84 Stat. 695, 712 (1970) (codified at I.R.C. § 3304(a)(11) (1976)).

69. Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91-373, § 202, 84 Stat. 695, 708-09 (1970).

70. Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91-373, § 204, 84 Stat. 695, 711 (1970).

71. Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, § 416(a), 94 Stat. 1208, 1310-11 (1980).

72. Omnibus Reconciliation Act of 1980, Pub. L. No. 96-499, § 1022(a), 94 Stat. 2599, 2656, 2658-60 (1980).

73. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2404(a), 95 Stat. 357, 875-76 (1981).

year by the number of weeks for which the individual received federal trade readjustment allowances.[74]

The 1981 federal legislation also eliminated the so-called national trigger for the payment of extended benefits and required that the state triggers for extended benefits be changed from four percent to five percent of the rate of insured unemployment.[75] The requirement of a 120% difference in the average rate for the corresponding period of the preceding two calendar years was retained.[76] In addition, the legislation excluded extended benefit claims in determining the rate of insured unemployment for purposes of computing the state triggers for extended benefits.[77]

4. *Federal Supplemental Programs*

In 1974, Congress enacted an emergency unemployment compensation program to provide temporary supplemental benefits, financed by the federal government, for individuals who had exhausted both regular and extended benefits.[78] The federal supplemental benefit program was in effect from January 5, 1975 to January 31, 1978 and provided supplemental benefits for a maximum duration of twenty-six weeks.[79]

In 1982, federal legislation established a temporary six-month federal supplemental compensation program to provide additional unemployment compensation benefits of up to ten weeks for those unemployed individuals in states, including Iowa, with very high unemployment rates.[80] The benefits were totally financed by the federal government and were available to unemployed individuals who exhausted either their regular or extended benefits after June 1, 1982.[81] Federal legislation enacted in 1982 also directed the United States Department of Labor to develop model state legislation to

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74. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2505(a), 95 Stat. 357, 883-84 (1981).

75. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §§ 2401(a-b), 2403(a), 95 Stat. 357, 874-75 (1981).

76. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2403(a), 95 Stat. 357, 875 (1981).

77. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2402(a), 95 Stat. 357, 875 (1981).

78. Emergency Unemployment Compensation Act of 1974, Pub. L. No. 93-572, 88 Stat. 1869 (1974).

79. Emergency Unemployment Compensation Act of 1974, Pub. L. No. 93-572, 88 Stat. 1869 (1974); Tax Reduction Act of 1975, Pub. L. No. 94-12, § 701(a), 89 Stat. 26, 65 (1975); Emergency Compensation and Special Unemployment Assistance Extension Act of 1975, Pub. L. No. 94-45, §§ 101(a-f), 102(a), 103(a), 106, 89 Stat. 236, 236-39 (1975); Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, § 116(d)(3), 90 Stat. 2667, 2672 (1976); Emergency Unemployment Compensation Extension Act of 1977, Pub. L. No. 95-19, §§ 101(a), 102(a-c), 103(a), 104(a), 105(a), 107(a), 91 Stat. 39, 39-43 (1977).

80. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, §§ 601-05, 1982 U.S. Code Cong. & Ad. News (96 Stat.) 324.

81. *Id.*

establish short-term compensation or worksharing programs, and to evaluate the operation and impact of such programs.[82]

C. *Iowa's Unemployment Insurance and Compensation Legislation*

Iowa, like all other states, took advantage of the tax credits and administrative grants under the federal legislation and the Iowa Legislature enacted federally certified unemployment insurance and compensation legislation at a special session in December 1936.[83]

1. *Coverage*

The legislation established a compulsory state unemployment insurance and compensation system covering employers with eight or more employees.[84] Governmental, agricultural, domestic, and nonprofit employees, and full-time students were not covered by the Act.[85]

2. *Taxation*

The state unemployment trust fund was to be built from employer contributions. Deduction of the contributions from employee wages was prohibited.[86] Employers were initially required to contribute to the fund at a flat rate.[87] After 1941 an employer, who had been liable for benefits for three calendar years, could receive a reduced contribution rate if the employer's account contained an excess of contributions over benefits equaling at least 7.5% of the employer's average annual payroll.[88] As a condition to the re-

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82. Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 194, 1982 U.S. CODE CONG. & AD. NEWS (96 Stat.) 324.

83. Unemployment Compensation Law, ch. 4, 1936 Iowa Acts 513. The legislation was amended and reenacted in 1937. Unemployment Compensation Law, ch. 102-03, 1937 Iowa Acts 144-72. It was again amended in 1939. Unemployment Compensation, ch. 64-70, 1939 Iowa Acts 92-101. It was codified for the first time in the 1939 Code of Iowa. IOWA CODE (1939).

84. The eight or more employees must have been in employment for some portion of a day in each of fifteen different weeks within the current or the preceding calendar year. IOWA CODE § 1551.25(F)(1) (1939).

85. IOWA CODE § 1551.25(E), (G)(7)(d), (e), (h), (i) (1939).

86. IOWA CODE § 1551.13(A)(1) (1939).

87. For the last half of 1936 and for 1937 the contribution rate was 1.8% of the total payroll paid by the employer. For 1938 through 1941 the rate was 2.7%. IOWA CODE § 1551.13(B) (1939).

88. IOWA CODE § 1551.13(C) (1939). The normal rate was 2.7% of total payroll. The reduced rate was 1.8% of total payroll if the excess was 7.5% to 10%; the rate was 0.9% if the excess was 10% or above. The average annual payroll was computed as the average of the annual total payable wages for the last three or five years, whichever average was higher. IOWA CODE § 1551.25(A)(2) (1939). *See also* Hansen v. Iowa Employment Sec. Comm'n, 239 Iowa 1139, 34 N.W.2d 203 (1948) (for contruction of phrase "three calendar years after . . . he becomes liable for contribution " in section 96.7(c) of 1946 Iowa Code).

duced rate, however, the total trust fund had to exceed certain levels.[89] If the employer's account showed a negative balance the rate was increased.[90]

3. *Employer Accounts and Charges*

Base period[91] employers' accounts were charged with employee benefit payments in inverse chronological order, *i.e.*, the most recent employers were charged first, with the charges not to exceed the wage credits earned by employees.[92] Employees earned wage credits at a rate of one-sixth of the total wages payable during the two-year base period, subject to a $65 maximum for each calendar quarter.[93] In the case of a double allowance of benefit eligibility by either a deputy and an appeal tribunal or an appeal tribunal and the Iowa Unemployment Compensation Commission, and final reversal of the benefit eligibility on appeal, the benefits were not recovered and the employer's account was relieved of charges by transfer of the charges to the unemployment trust fund.[94]

4. *Benefit Eligibility*

The Iowa legislation provided benefits for both totally and partially unemployed individuals.[95] The legislation voided any agreements by individuals to waive, release, or commute rights to benefits, as well as voiding any assignments, pledges, or encumbrances of benefit rights.[96] The legislation also prohibited the charging of certain fees to individuals claiming benefits and the levy, execution, or attachment of benefits.[97] State liability for the payment of benefits was limited to the moneys available in the unemployment trust fund.[98]

a. Basic Eligibility Requirements. The major eligibility requirements under the Iowa legislation were: (1) the filing of a claim and registration for work at a state employment office, (2) earned wages of at least fifteen times the individual's weekly benefit amount within the last year of the base pe-

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89. For the reduction to 1.8% the assets of the trust fund had to exceed the total benefits paid from the fund in the preceding calendar year, and for the reduction to 0.9% the assets had to exceed two times the total benefits paid in the preceding calendar year. IOWA CODE § 1551.13(C)(5) (1939).

90. IOWA CODE § 1551.13(C)(4)(b) (1939). If the balance was negative for all past periods or for the last five years the rate was 3.6%. *Id.*

91. The base period was the first eight out of the last nine completed calendar quarters immediately preceding the first day of the benefit year, *i.e.*, preceding the filing date of the claim for benefits. IOWA CODE § 1551.25(Q) (1939).

92. IOWA CODE § 1551.13(C)(1) (1939).

93. IOWA CODE § 1551.09(E) (1939).

94. IOWA CODE § 1551.12(B) (1939).

95. IOWA CODE § 1551.09(C) (1939).

96. IOWA CODE § 1551.21(A), (C) (1939).

97. IOWA CODE § 1551.21(B), (C) (1939).

98. IOWA CODE § 1551.24 (1939).

riod (the so-called attachment-to-the-labor-force requirement), (3) ability to and availability for work, and (4) fulfillment of the two-week waiting period.[99]

b. Weekly Benefit Amount and Duration of Benefits. The weekly benefit amount for total unemployment was computed at fifty percent of full-time weekly wages, subject to a maximum of fifteen dollars per week and a minimum of five dollars per week or the full-time weekly wage, whichever was less.[100] The weekly benefit amount for partial unemployment was computed at fifty percent of an individual's last highest base period weekly wage, decreased by the individual's actual less-than-full-time wages above two dollars.[101] The maximum duration of benefits during one benefit year was fifteen weeks at the weekly benefit amount, but only up to the amount of wage credits earned in the two-year base period.[102]

c. Benefit Disqualifications. The Iowa legislation disqualified individuals for benefits due to: (1) a voluntary quit without good cause attributable to the employer, (2) a stoppage of work caused by participation or direct interest in a labor dispute, (3) a failure, without good cause, to apply for available, suitable work when directed to do so by the employment office or the state agency, or to accept suitable work or to return to customary self-employment, and (4) the receipt of other compensation, such as wages in lieu of notice, workers' compensation, old-age social security benefits, or retirement pay.[103] A limited disqualification of two to nine weeks was included for a discharge for misconduct.[104]

5. *Administration and Judicial Review*

Administration of Iowa's unemployment law was the responsibility of the three-member Iowa Unemployment Compensation Commission.[105] This Commission was appointed by the Governor and confirmed by the Senate, with one member representing labor, one member representing employers, and one member representing the public.[106] Determinations of benefit eligibility, amount, duration, and disqualifications were initially made by a representative of the Commission.[107] Successive appeals could then be made to a salaried examiner,[108] to the Commission,[109] to the Iowa District Court,[110]

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99. Iowa Code § 1551.10 (1939).
100. Iowa Code § 1551.09(B) (1939).
101. Iowa Code § 1551.09(C) (1939).
102. Iowa Code § 1551.09(E) (1939).
103. Iowa Code § 1551.11(A), (C), (D), (E) (1939).
104. Iowa Code § 1551.11(B) (1939).
105. Iowa Employment Sec. Law, ch. 98, 1941 Iowa Acts 103 (codified at Iowa Code ch. 96 (1946)) (the name of the Iowa Unemployment Compensation Commission was subsequently changed to the Iowa Employment Security Commission).
106. Iowa Code § 1551.16(A) (1939).
107. Iowa Code § 1551.12(B) (1939).
108. Iowa Code § 1551.12(B), (C), (D) (1939). The Commission could also establish a

and finally to the Iowa Supreme Court.[111] Determinations of charges against employer accounts were initially made by the Commission.[112] For those employers not properly notified of the allowance of benefits, an appeal could be taken to the Commission with the Commission or an appeal tribunal holding a hearing.[113] Determinations of employer contribution rates based on experience were initially made by the Commission.[114] Successive appeals could then be made to the Commission for the revision of the contribution rates, to an Iowa District Court, and finally to the Iowa Supreme Court.[115]

6. *Penalties and Interest*

a. Fraud and Misrepresentation. Iowa's legislation provided penalties for: fraud which included knowingly making a false statement or representation to obtain or increase benefits, to prevent or reduce the payment of benefits, or to avoid or reduce employer contributions; for wilfully failing or refusing to make employer contributions, to permit inspections, or to produce records; and for other wilfull violations of the unemployment law or the rules adopted pursuant to the law.[116] A separate provision provided for the recovery of benefits received by reason of the nondisclosure or misrepresentation of a material fact.[117]

b. Overdue Employer Contributions. Iowa's legislation also required the payment of interest on overdue employer contributions, and provided for the collection of the overdue contributions and interest by civil action.[118]

D. *Major Amendments to Iowa's Unemployment Law*

Like the federal law, Iowa's unemployment compensation law has been amended frequently, although the basic framework and the broad principles have remained intact. The following discussion outlines by subject the major amendments to the Iowa law from its implementation in 1937[119] through the

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tribunal of a salaried examiner, a representative of employers, and a representative of employees to hear the initial appeal. IOWA CODE § 1551.12(D) (1939).

109. IOWA CODE § 1551.12(E), (F) (1939).

110. IOWA CODE § 1551.12(H), (I), (J), (K) (1939).

111. IOWA CODE § 1551.12(L) (1939).

112. Employment Security, ch. 74, § 2, 1947 Iowa Acts 103-04 (codified at IOWA CODE § 96.7(3)(a)(6) (1950)).

113. *Id.*

114. Unemployment Compensation, ch. 103 § 1, 1941 Iowa Acts 112-14 (codified at IOWA CODE § 96.7(4) (1946)); Unemployment Compensation, ch. 73, §§ 2-4, 1943 Iowa Acts 90-91 (codified at IOWA CODE § 96.7(3) (a-b) (1946)).

115. IOWA CODE § 96.7(6)(a-c) (1946).

116. IOWA CODE § 1551.22(A-C) (1939).

117. IOWA CODE § 1551.22(D) (1939).

118. IOWA CODE § 1551.20(A,B) (1939).

119. Unemployment Compensation Law, ch. 102-03, 1937 Iowa Acts 144-72 (codified at IOWA CODE ch. 77.2 (1939)).

enactment of Senate File 2273[120] and House File 2347[121] in 1982.

1. *Coverage*

Significant amendments have extended the law's coverage to include: employers covered by the Federal Unemployment Tax Act,[122] employers with four employees and employers with one employee for at least part of one day in each of twenty weeks during the year,[123] and employers paying wages of $1500 or more in one quarter,[124] employers of corporate officers, common law employees, and certain commissioned drivers,[125] state political subdivision and nonprofit organization employees,[126] public elementary and secondary school employees and employees of hospitals and institutions of higher education operated by state political subdivisions,[127] most agricultural and domestic service employees and certain nonpublic elementary and secondary school employees.[128]

Several other amendments have either restricted or clarified the scope of the law's coverage. Two amendments proscribed the payment of benefits to certain individuals employed by educational institutions for periods between academic terms[129] and during periods of paid sabbatical leave provided for in the individuals' contracts.[130] A 1977 amendment proscribed the payment of benefits to employees participating in sports or athletic events or training for periods between successive sport seasons, and to alien employees unlawfully residing in the United States.[131]

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120. Unemployment Compensation Temporary Tax, ch. 1126, 1982 Iowa Acts 227.

121. Changes in State Unemployment Compensation Law requested by the Federal Dep't of Labor, ch. 1030, 1982 Iowa Acts 54.

122. Employment Security, ch. 74, § 6, 1947 Iowa Acts 105 (codified at IOWA CODE § 96.19(6)(g) (1950)).

123. Employment Sec. Coverage, ch. 82, §§ 1, 2, 1955 Iowa Acts 103 (codified at IOWA CODE §§ 96.8(2), 96.19(6)(a) (1958)).

124. Federal-State Unemployment Program, ch. 113, § 19, 1971 Iowa Acts 218 (codified at IOWA CODE § 96.19(6)(a) (1973)).

125. Federal-State Unemployment Program, ch. 113, § 23, 1971 Iowa Acts 219-21 (codified at IOWA CODE §§ 96.19(6)(h), (i), (j), 96.19(7)(a)(1), (2), (3) (1973)).

126. Federal-State Unemployment Program, ch. 113, §§ 13, 15, 19-28, 30, 31, 1971 Iowa Acts 211-26 (codified at IOWA CODE §§ 96.7(8-14), 96.8(3)(c), 96.19(6)(a-c), (e), (g-k), 96.19(7)(a), (b), (g), 96.19(21), (23-36) (1973)).

127. Employment Sec., ch. 92, §§ 16, 18, 19, 27-30, 1975 Iowa Acts 224-30 (codified at IOWA CODE §§ 96.7(8), 96.19(5), 96.19(7)(a-c), 96.19(7)(a)(7), 96.19(7)(g)(1) (1977)).

128. Unemployment Compensation, ch. 54, §§ 11-14, 16-23, 25-29, 36, 1977 Iowa Acts 156-64 (codified at IOWA CODE §§ 96.19(6)(a), (h), (l), (m), 96.19(7)(a), (g), 96.19(13), (36-38) (1979)).

129. Federal-State Unemployment Program, ch. 113, § 3, 1971 Iowa Acts 205-06 (codified at IOWA CODE § 96.4(6) (1973)). *See supra* text accompanying note 60.

130. Unemployment Compensation, ch. 33, § 7, 1979 Iowa Acts 172 (codified at IOWA CODE § 96.4(5)(b) (1981)).

131. Unemployment Compensation, ch. 54, § 3, 1977 Iowa Acts 151-52 (codified at IOWA CODE § 96.5(9-10) (1979)). *See supra* text accompanying note 61.

2. *Taxation and Rates*

a. Taxable Wages. The original Iowa law required employer contributions to be paid as a percentage of total payroll.[132] A 1941 amendment limited employer contributions to the first $3,000 of wages paid to each employee.[133] Subsequent amendments raised that amount to $6,000.[134] A 1977 amendment replaced the flat amount with a variable taxable wage base of 66⅔% of the statewide average annual wage paid to employees in covered employment, as calculated annually by the Department.[135]

b. Early Employer Contribution Rates. The earliest employer contribution rates were 1.8% and 2.7% of the employers' taxable wage bases, with modified rates dependent upon the existence and amount of excess contributions over benefits in individual employer accounts.[136] Frequent amendments varied the rates according to the amount of an employer's annual payroll,[137] according to the amount of excess contributions over benefits in an employer's account,[138] and according to the relative monetary value of the unemployment trust fund.[139] Provisions were also adopted which allowed employers to make voluntary contributions in excess of those contributions required of the employers,[140] and which required successor employers to assume the predecessor employers' positions with respect to employer accounts and contribution rates.[141]

c. Contribution Rate Tables. Beginning in 1961, amendments to the Iowa law increasingly abandoned flat contribution rates in favor of more so-

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132. IOWA CODE ch. 77.2, § 1551.13(B) (1939).

133. Unemployment Compensation, ch. 100, § 1, 1941 Iowa Acts 108 (codified at IOWA CODE § 96.7(1)(a) (1946)).

134. Employment Sec., ch. 93, § 3, 1975 Iowa Acts 231 (codified at IOWA CODE § 96.19(21) (1977)).

135. Unemployment Compensation, ch. 55, § 5, 1977 Iowa Acts 169-70 (codified at IOWA CODE § 96.19(20) (1979)).

136. IOWA CODE ch. 77.2, § 1551.13 (1939).

137. *See, e.g.*, Unemployment Compensation, ch. 71, § 1, 1943 Iowa Acts 87 (not codified); Unemployment Compensation, ch. 37, § 2, 1945 Iowa Acts 72 (not codified).

138. Unemployment Compensation, ch. 73, § 3, 1947 Iowa Acts 104 (codified at IOWA CODE §§ 96.7(3)(d)(2-5) (1950)); Unemployment Compensation, ch. 61, § 2, 1951 Iowa Acts 91 (codified at IOWA CODE §§ 96.7(3)(d)(1-5) (1954)); Employment Sec., ch. 85, § 1, 1961 Iowa Acts 112 (codified at IOWA CODE § 96.7(3)(d) (1962)); Employment Sec. Benefits, ch. 110, § 3, 1965 Iowa Acts 184-85 (codified at IOWA CODE § 96.7(3)(d) (1966)).

139. Unemployment Compensation, ch. 61, § 2, 1951 Iowa Acts 91 (codified at IOWA CODE § 96.7(3)(d)(1-5) (1954)); Employment Sec., ch. 85, § 1, 1961 Iowa Acts 112 (codified at IOWA CODE § 96.7(3)(d) (1962)); Federal-State Unemployment Program, ch. 113, § 7, 1971 Iowa Acts 207-08 (codified at IOWA CODE § 96.7(3)(a)(2) (1973)); Employment Sec., ch. 93, § 1, 1975 Iowa Acts 231 (codified at IOWA CODE § 96.7(3)(e) (1977)).

140. Unemployment Compensation Contributions, ch. 87, § 1, 1945 Iowa Acts 112 (codified at IOWA CODE § 96.7(3)(a) (1946)).

141. Unemployment Compensation Contributions, ch. 88, § 1, 1945 Iowa Acts 113 (codified at IOWA CODE § 96.7(3)(b) (1946)).

phisticated contribution rate schedules and tables.[142] Strict adherence to the rate schedules, however, was found to be undesirable and therefore the rates were surcharged.[143] This development of sophisticated rate schedules culminated in a 1977 amendment which adopted an elaborate rate schedule of nine tables and twenty-one percentage-of-excess ranks.[144] The use of a specific table depends upon a comparison of three systemic factors: (1) the current level of the unemployment trust fund, (2) the highest total benefits paid in any of the preceding ten years, and (3) the current amount of total wages paid in covered employment.[145] The percentage of excess ranks are derived from a comparison of three factors specifically related to individual employer accounts: (1) total contributions paid, (2) total benefits charged, and (3) the average of individual employers' last three annual payrolls.[146]

The three systemic factors used to determine the applicable rate table, however, have not been used since the 1977 amendment mandated the use of table two for calendar years 1978 and 1979,[147] and two subsequent amendments have mandated the use of table three for calendar years 1980 through 1983.[148]

d. New Contributing Employer Rates. A 1971 amendment established a flat contribution rate of 1.5% for eight chargeable quarters for a contributing employer newly subject to the payment of contributions and not previously qualified for a computed rate based on experience.[149] A 1977 amendment increased the flat rate for new employers to not less than 1.8%.[150] A 1981 amendment retained the flat rate of not less than 1.8% and extended its applicability from eight to twenty chargeable quarters, unless an employer had a negative balance in the employer's account after eight chargeable quarters and the account had been charged with benefit payments of

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142. Employment Sec., ch. 85, § 1, 1961 Iowa Acts 112 (codified at IOWA CODE § 96.7(3)(d) (1962)); Employment Sec. Benefits, ch. 110, § 3, 1965 Iowa Acts 184 (codified at IOWA CODE § 96.7(3)(d) (1966)); Federal-State Unemployment Program, ch. 113, § 7, 1971 Iowa Acts 207-08 (codified at IOWA CODE § 96.7(3)(a)(2) (1973)).

143. Employment Sec., ch. 93, § 2, 1975 Iowa Acts 231 (codified at IOWA CODE § 96.7(15) (1977)); Job Serv. Dep't, ch. 1068, § 16, 1976 Iowa Acts 104 (codified at IOWA CODE § 96.7(16) (1977)).

144. Unemployment Compensation, ch. 55, §§ 2, 3, & 6, 1977 Iowa Acts 165-68, 170 (codified at IOWA CODE §§ 96.7(3)(c), (d) (1979)).

145. Unemployment Compensation, ch. 55, § 3, 1977 Iowa Acts 166-68 (codified at IOWA CODE § 96.7(3)(d)(1), (2) (1979)).

146. *Id.* (codified at IOWA CODE § 96.7(3)(d) (1979)).

147. *Id.*

148. Unemployment Compensation, ch. 33, § 17, 1979 Iowa Acts 177 (codified at IOWA CODE § 96.7(3)(d) (1981); Unemployment Compensation, ch. 19, § 6, 1981 Iowa Acts 113 (to be codified at IOWA CODE § 96.7(3)(d) (1983)).

149. Federal-State Unemployment Program, ch. 113, § 10, 1971 Iowa Acts 209 (codified at IOWA CODE § 96.7(3)(c) (1973)).

150. Unemployment Compensation, ch. 55, § 2, 1977 Iowa Acts 165-66 (codified at IOWA CODE § 96.7(3)(c) (1979)).

more than twenty-six times the highest maximum weekly benefit amount during the past four calendar quarters immediately preceding the computation date.[151]

e. Zero Contribution Rates. The 1977 legislation which adopted the current system of contribution rate tables and percentage-of-excess ranks deviated from the new rate tables in providing that an employer assigned a contribution rate under tables four through nine would, nevertheless, not be required to contribute to the unemployment compensation trust fund if the employer's percentage-of-excess was at least 7.5% (excess of total contributions paid over total benefits charged, divided by the average of the employer's last three annual payrolls), and the employer had not been charged with benefit payments within the forty calendar quarters immediately preceding the rate computation date.[152] A 1981 amendment expanded this special zero contribution rate to allow zero rates when table three is in effect and where the employer had not been charged with benefit payments for the twenty-four, instead of forty, preceding calendar quarters.[153] The amendment also limited the computed contribution rate to 1.8% for the first year for which an employer no longer qualified for the zero contribution rate.[154]

f. Rates for Employers with Negative-Balance Accounts. A 1981 amendment surcharged the contribution rates of those employers qualified for experience rates whose accounts show negative balances on the last two rate computation dates.[155] The surcharge is 0.5% of taxable wages and is cumulative, up to a maximum of three percent, for each subsequent and consecutive year in which an employer's account still has a negative balance.[156]

g. Temporary Emergency Tax. A 1982 amendment requires the collection of a temporary emergency tax of not more than 0.1% of taxable wages for any or all calendar quarters of 1983 if the emergency tax is necessary for the payment of interest accrued on advances received from the federal government for the payment of Iowa unemployment compensation benefits.[157]

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151. Unemployment Compensation, ch. 19, § 5, 1981 Iowa Acts 111-12 (to be codified at IOWA CODE § 96.7(3)(c) (1983)).

152. Unemployment Compensation, ch. 55, § 3, 1977 Iowa Acts 166-68 (codified at IOWA CODE § 96.7(3)(d) (1979)).

153. Unemployment Compensation, ch. 19, § 6, 1981 Iowa Acts 170 (to be codified at IOWA CODE § 96.7(3)(d) (1983)).

154. *Id.*

155. Unemployment Compensation, ch. 19, § 7, 1981 Iowa Acts 170 (to be codified at IOWA CODE § 96.7(3)(d) (1983)).

156. *Id.*

157. Unemployment Compensation Temporary Tax, ch. 1126, § 1, 1982 Iowa Acts 227 (to be codified at IOWA CODE § 96.7(15) (1983)). The emergency tax applies to all employers except government entities, nonprofit organizations, and employers with zero contribution rates. The emergency tax is to be maintained separately from the unemployment trust fund and can only be used to repay the interest on the federal advances. *Id.* Federal law prohibits the use of trust fund money to repay the interest. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-

If the unemployment trust fund becomes insolvent, the state would be required to borrow the funds necessary to meet current benefit payments from the federal government.[158]

h. Early Payments of Employer Contributions. The 1982 legislation also authorized the Department to require early payments of employer contributions for the first calendar quarter of 1983 if the trust fund fell below a specified level.[159] The early payment provision was designed to eliminate, delay, or reduce the need to borrow from the federal government to meet current benefit payments.

i. Government Entities. The 1971 legislation, which required the coverage of employees of certain state and state wholly owned instrumentalities, required that the state and state instrumentality employers reimburse the unemployment trust fund for actual benefits paid to their employees, in lieu of making contributions to the trust fund.[160] A 1975 amendment extended the coverage to employees of the state's political subdivisions.[161] A 1977 amendment redefined the state and state instrumentalities as government entities and allowed them to choose reimbursable or contributory status.[162] Flat contribution rates were established for government entities for 1978 and 1979[163] and a flat contribution rate, based on experience in 1978, was established for government entities for 1980.[164] For calendar years after 1980 a schedule of seven percentage-of-excess ranks was established to determine government entity contribution rates above or below a base rate, calculated annually by the Department after considering the historical experience of contributing government entities since 1980, compared to the taxable wages of contributing government entities in the previous calendar year.[165]

35, § 2407(a), 95 Stat. 357, 879-80 (1981). The 1982 legislation also allows the special unemployment security contingency fund to continue to grow, rather than be transferred automatically by statute, in order that interest on the federal advances can be paid from the contingency fund. Unemployment Compensation Temporary Tax, ch. 1126, § 2, 1982 Iowa Acts 227 (to be codified at IOWA CODE § 96.13(3) (1983)).

158. 42 U.S.C. § 1321 (1976) (as amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2407, 95 Stat. 357, 880 (1981)).

159. Unemployment Compensation Temporary Tax, ch. 1126, § 1, 1982 Iowa Acts 227 (to be codified at IOWA CODE § 96.7(16) (1983)).

160. Federal-State Unemployment Program, ch. 113, § 13, 1971 Iowa Acts 211-12 (codified at IOWA CODE § 96.7(8) (1973)).

161. Employment Sec., ch. 92, §§ 16, 18, 19, 27, 29, 1975 Iowa Acts 224-29 (codified at IOWA CODE §§ 96.7(8), 96.19(5), 96.19(7)(a)(7) (1977)).

162. Unemployment Compensation, ch. 54, §§ 4-7, 16, 20, 21, 36, 40, 41, 1977 Iowa Acts 152-64 (codified at Iowa Code §§ 96.7(8), 96.7(9)(b)(1), 96.7(12), (13), 96.19(7)(a)(4), 96.19(7)(a)(6)(g), 96.19(38) (1979)).

163. Unemployment Compensation, ch. 54, § 4, 1977 Iowa Acts 192 (codified at IOWA CODE § 96.7(8)(b) (1979)).

164. Unemployment Compensation, ch. 33, § 22, 1979 Iowa Acts 179 (codified at IOWA CODE § 96.7(8)(b)(3), (4) (1981)).

165. *Id.*

j. Nonprofit Organizations. The 1971 amendment, which required the coverage of employees of nonprofit organizations and state-owned hospitals or institutions of higher education, authorized the financing of benefits to employees either through regular employer contributions to the trust fund or through employer reimbursements to the trust fund for actual benefits paid.[166]

3. *Employer Accounts and Charges*

a. Wage Credit Limitation on Charges. Employer accounts were originally charged with regular benefit payments up to the amount of quarterly, employee-earned wage credits,[167] and later with extended benefit payments up to an additional fifty percent of wage credits.[168] Amendments frequently modified the computation of wage credits by redefining the base period as a one-year period[169] and by raising the dollar maximum of quarterly wage credits which could be earned from $65 to $200.[170] Subsequent amendments modified the wage credit limitation by establishing a quarterly maximum of 7.2 times an individual's weekly benefit amount[171] and by adopting an annual maximum of one-third of the individual's base period wages in covered employment,[172] later increased to one-half of the individual's base period wages.[173] The most recent amendment reduced the limitation on the earning of wage credits from one-half to one-third of base period wages, except for individuals laid off due to an employer going out of business.[174]

b. Transfers of Charges. While specific employer accounts are still generally charged with benefit payments, several significant amendments have either transferred charges to another employer or to the unemployment trust fund. The first amendment, passed in 1951, charged the trust fund and relieved base period employers of charges where the employers

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166. Federal-State Unemployment Program, ch. 113, § 13, 1971 Iowa Acts 211-12 (codified at IOWA CODE § 96.7(9) (1973)).

167. IOWA CODE § 1551.13(C)(4)(b) (1939).

168. Federal-State Unemployment Program, ch. 113, §§ 7 & 8, 1971 Iowa Acts 207-08 (codified at IOWA CODE § 96.7(3)(a)(2), (3) (1973)).

169. Unemployment Compensation, ch. 86, § 7, 1945 Iowa Acts 111 (codified at IOWA CODE § 96.19(17) (1946)).

170. Unemployment Compensation, ch. 86, §§ 2, 5, 1945 Iowa Acts 111 (codified at IOWA CODE §§ 96.3(5), 96.7(3)(a) (1946)); Unemployment Compensation, ch. 73, § 6, 1947 Iowa Acts 102-03 (codified at IOWA CODE § 96.3(5) (1950); Employment Sec., ch. 79, § 3, 1955 Iowa Acts 101 (codified at IOWA CODE § 96.3(5) (1958)).

171. Employment Sec., ch. 112, § 1, 1959 Iowa Acts 151 (codified at IOWA CODE § 96.3(5) (1962)).

172. Employment Sec. Benefits, ch. 110, § 2, 1965 Iowa Acts 184 (codified at IOWA CODE § 96.3(5) (1966)).

173. Employment Sec., ch. 92, § 3, 1975 Iowa Acts 220 (codified at IOWA CODE § 96.3(5) (1977)).

174. Unemployment Compensation, ch. 33, § 3, 1979 Iowa Acts 170-71 (codified at IOWA CODE § 96.3(5) (1981)).

were still employing partially unemployed individuals in the same base period employment.[175] A 1981 amendment applied the transfer of charges to reimbursable as well as contributing employers.[176]

A 1971 amendment transferred wage credits from the employer, from whom an individual voluntarily quit in good faith, to the employer from whom the individual accepted better employment and remained continuously in that employment for at least six weeks.[177] The subsequent employer's account was charged with any benefit payments to the individual, except that the former employer charges were transferred to the trust fund if the better employment was in another state.[178] A 1975 amendment applied the 1971 amendment transfers of charges to *other* employment rather than *better* employment. The 1975 amendment provided for the transfer of all employer charges to the trust fund where the individual accepted better employment in good faith and the better employment was terminated or the individual was laid off after one week but prior to the expiration of six weeks.[179] The amendment also transferred charges from the former employer to the succeeding employer where the individual voluntarily quit the former employment but requalified for benefits by earning the required wages in covered employment.[180] Finally, a 1979 amendment retained the transfer of charges to the succeeding employer in voluntary quit requalification cases, but allowed the transfer of ten weeks of charges from the succeeding employer to the trust fund if the charges were due to wage credits earned by the individual from the former employer.[181]

The same 1979 amendment transferred charges from the former employer to the succeeding employer with whom an individual requalified for benefits by earning the required wages in covered employment, where the former employer discharged the individual for misconduct, or where the individual's employment was terminated and the individual failed without good cause, either to apply for available, suitable work or to accept suitable work or to return to customary self-employment.[182] The amendment also provided, in cases of misconduct but not in cases of failure to apply for or

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175. Employment Sec., ch. 62, § 1, 1951 Iowa Acts 92, (codified at IOWA CODE § 96.7(3)(a)(2) (1954)).

176. Unemployment Compensation, ch. 19, § 3, 1981 Iowa Acts 110-11 (to be codified at IOWA CODE § 96.7(3)(a)(2) (1983)).

177. Federal-State Unemployment Program, ch. 113, § 4, 1971 Iowa Acts 206 (codified at IOWA CODE § 96.5(1)(b) (1973)).

178. *Id.*

179. Employment Sec., ch. 92, § 5, 1975 Iowa Acts 221 (codified at IOWA CODE § 96.5(1)(a) (1981)).

180. Employment Sec., ch. 92, § 13, 1975 Iowa Acts 223-24 (codified at IOWA CODE § 96.7(3)(a)(2) (1977)).

181. Unemployment Compensation, ch. 33, § 15, 1979 Iowa Acts 176-77 (codified at IOWA CODE § 96.7(3)(a)(2) (1981)).

182. *Id.*

accept suitable work, for the transfer of ten weeks of charges from the succeeding employer to the trust fund if the charges were due to wage credits earned by the individual from the former employer.[183]

Several other transfers of charges to the trust fund have been required by amendment. A 1975 amendment transferred charges to the trust fund for unemployed individuals in approved training.[184] A 1979 amendment transferred charges to the trust fund from an employer's account where the charges were due to an erroneous overpayment and the overpayment was not recovered within two years of the last date of the overpayment.[185]

c. Government Entity and Nonprofit Organization Accounts. The accounts of reimbursable government entities and nonprofit organizations were originally charged with 100% of regular benefit payments and fifty percent of extended benefit payments, subject to the wage credit limitation.[186] A 1977 amendment and a 1979 conforming amendment required government reimbursable employers to pay 100% of extended benefits, and charged their accounts with 100% of the extended benefit payments.[187] A 1978 amendment required all reimbursable employers, whether government entities or nonprofit organizations, to pay all extended benefits, and charged their accounts with all extended benefit payments.[188] Finally, a 1981 amendment required both reimbursable and contributing government entities to pay all extended benefits, and charged their accounts with all extended benefit payments.[189]

4. *Benefit Eligibility*

a. Basic Requirements. 1. *Attachment to the labor force.* The attachment-to-the-labor-force eligibility requirement was first increased from earned base period wages of fifteen times the individual's weekly benefit amount to twenty times the weekly benefit amount.[190] This was later modi-

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183. *Id.*

184. Employment Sec., ch. 92, § 4, 1975 Iowa Acts 220-21 (codified at IOWA CODE § 96.4(7) (1981)).

185. Unemployment Compensation, ch. 33, § 4, 1979 Iowa Acts 171 (codified at IOWA CODE § 96.3(7) (1981)).

186. Federal-State Unemployment Program, ch. 113, § 13, 1971 Iowa Acts 211-16 (codified at IOWA CODE § 96.7(12) (1973)).

187. Unemployment Compensation, ch. 54, §§ 4-6, 1977 Iowa Acts 152-54 (codified at IOWA CODE §§ 96.7(8), 96.7(9)(b)(1), 96.7(12) (1979)); Unemployment Compensation, ch. 33, § 16, 1979 Iowa Acts 177 (codified at IOWA CODE § 96.7(3)(a)(3) (1981)).

188. Unemployment Compensation Contributions, ch. 1059, § 1, 1978 Iowa Acts 257-58 (codified at IOWA CODE § 96.8(5) (1979)).

189. Unemployment Compensation, ch. 19, § 4, 1981 Iowa Acts 111 (to be codified at IOWA CODE § 96.7(3)(a)(3) (1983)).

190. Unemployment Compensation, ch. 86, § 2, 1945 Iowa Acts 110 (codified at IOWA CODE § 96.4(5) (1946)); Unemployment Compensation, ch. 73, § 2, 1947 Iowa Acts 102 (codified at IOWA CODE § 96.4(5) (1950)).

fied to require earned wages in the individual's highest-paid base period quarter of $200 and wages of $100 in another base period quarter.[191] The attachment requirements were most recently raised to $400 and $200,[192] and an additional base period earning requirement of one and one-quarter times the highest base period quarterly wages was imposed.[193]

2. *Reattachment to the labor force.* A 1959 amendment added the reattachment-to-the-labor-force requirement of $100 in quarterly wages earned subsequent to the beginning of the first benefit year as a condition for eligibility in a second benefit year.[194] The reattachment requirement was later increased to $200[195] and subsequently modified to require earned wages in covered employment totalling at least ten times the weekly benefit amount.[196]

3. *Waiting period.* Benefit eligibility amendments were enacted which reduced the waiting period from two weeks to one week,[197] made the one-week waiting period compensable after benefits had been payable for five consecutive weeks,[198] struck the requirement that the five weeks be consecutive,[199] and finally abolished the waiting period altogether.[200]

4. *Earnestly and actively seeking work.* A 1959 amendment added the requirement of *earnestly and actively seeking work* to the *able to work* and *available for work* requirements.[201]

b. Expanded Benefit Eligibility. 1. *Job training.* A 1971 amendment provided benefit eligibility for individuals in state-approved job training.[202]

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191. Employment Sec., ch. 112, § 2, 1959 Iowa Acts 154 (codified at IOWA CODE § 96.4(5) (1962)).

192. Job Serv. Dep't, ch. 1068, § 6, 1976 Iowa Acts 100 (codified at IOWA CODE § 96.4(4) (1977)).

193. Unemployment Compensation, ch. 33, § 6, 1979 Iowa Acts 172 (codified at IOWA CODE § 96.4(4) (1981)).

194. Employment Sec., ch. 112, § 2, 1959 Iowa Acts 154 (codified at IOWA CODE § 96.4(5) (1962)).

195. Job Serv. Dep't, ch. 1068, § 6, 1976 Iowa Acts 100 (codified at IOWA CODE § 96.4(4) (1977)).

196. Unemployment Compensation, ch. 33, § 6, 1979 Iowa Acts 172 (codified at IOWA CODE § 96.4(4) (1981)).

197. Unemployment Compensation, ch. 73, § 5, 1947 Iowa Acts 102 (codified at IOWA CODE § 96.4(4) (1950)).

198. Employment Sec. Waiting Period, ch. 111, § 1, 1965 Iowa Acts 186 (codified at IOWA CODE § 96.4(4) (1966)).

199. Employment Sec., ch. 92, § 4, 1975 Iowa Acts 220-21 (codified at IOWA CODE § 96.4(4) (1977)).

200. Job Serv. Dep't, ch. 1068, § 5, 1976 Iowa Acts 100 (not codified). The state is therefore ineligible for the normal 50% federal share in the first-week costs of extended benefits. *See supra* text accompanying note 72.

201. Employment Sec., ch. 112, § 2, 1959 Iowa Acts 154 (codified at IOWA CODE § 96.4(3) (1962)) (emphasis added).

202. Federal-State Unemployment Program, ch. 113, § 3, 1971 Iowa Acts 205-06 (codified at IOWA CODE § 96.4(6) (1981)). Enacted to comply with Employment Security Amendments of

A 1982 amendment provided benefit eligibility for individuals in approved trade readjustment training under the Federal Trade Act of 1974.[203]

2. *Temporary unemployment.* A 1975 amendment provided benefit eligibility for individuals temporarily unemployed for not more than four weeks.[204] The amendment also waived the work registration requirement and the requirements relating to ability to work, availability for work, and earnestly and actively seeking work for temporarily unemployed individuals.[205]

3. *Extended benefits.* State legislation enacted in 1971 to conform with federal law established Iowa's participation in the federally sponsored extended unemployment compensation program.[206] Amendments passed in 1981 and 1982 brought the state's law into conformity with federal law concerning the maximum two-week extended benefit eligibility for individuals filing interstate claims.[207] Amendments passed in 1981 and 1982 conformed to federal law and disqualified individuals for extended benefits for failure to apply for or refusal to accept an offer of suitable work.[208] A 1982 amendment, in order to comply with federal law, adopted an attachment-to-the-labor-force eligibility requirement for extended benefits of base period earnings exceeding one and one-half times the highest base period quarterly wages.[209] Another 1982 amendment limited extended benefits to be received beyond the end of an individual's benefit year by the number of weeks for which the individual received trade readjustment allowances under the Federal Trade Act of 1974.[210]

1970, Pub. L. No. 91-373, § 104(a), 84 Stat. 697 (1970) (codified at I.R.C. § 3304(a)(8) (1976)).

203. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 2, 1982 Iowa Acts 54-55 (to be codified at IOWA CODE § 96.4(6)(b) (1983)). *See supra* text accompanying note 65.

204. Employment Sec., ch. 92, § 33, 1975 Iowa Acts 230 (codified at IOWA CODE § 96.19(9)(c) (1981)).

205. Employment Sec., ch. 92, § 4, 1975 Iowa Acts 220-21 (codified at IOWA CODE § 96.4(1, 3) (1981)).

206. Federal-State Unemployment Program, ch. 113, §§ 7, 8, 16, 31, 33, 1971 Iowa Acts 207-28 (codified at IOWA CODE §§ 96.7(3)(a)(2), (3), 96.11(11), 96.19(4-13), 96.29 (1973)). *See supra* text accompanying note 65.

207. Unemployment Compensation, ch. 19, § 11, 1981 Iowa Acts 113-14 and Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(4) (1983)). *See supra* text accompanying note 70.

208. Unemployment Compensation, ch. 19, § 10, 1981 Iowa Acts 113 and Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(2) (1983)). *See supra* text accompanying note 71.

209. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(1)(c) (1983)). *See supra* text accompanying note 72.

210. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(6)

The so-called state trigger for extended benefits was amended in 1977 to provide an optional state trigger at the five percent rate of insured unemployment.[211] A 1979 amendment, however, repealed the optional five percent state trigger.[212] A 1982 amendment brought the extended benefit triggers into conformity with federal law by eliminating the national trigger, by raising the state trigger from four percent to five percent of the rate of insured unemployment, and by excluding extended benefit claims in the determination of the rate of insured unemployment.[213]

c. Weekly Benefit Amount and Duration of Benefits.

1. *Total and temporary unemployment.* Frequent amendments have modified the computation of the weekly benefit amount for both total and temporary unemployment. The computation of fifty percent of the full-time weekly wages was changed to a computation of one-twenty-third of an individual's highest base period quarterly wages, subject to a weekly maximum of eighteen dollars and a minimum of five dollars.[214] The maximum was subsequently increased from eighteen dollars to thirty dollars,[215] and the computation modified to one-twentieth of an individual's highest base period quarterly wages.[216] A 1959 amendment replaced the computation with an elaborate schedule of individual weekly benefit amounts, each subject to a maximum varying from thirty dollars to forty-four dollars and conditioned on the number of the individual's dependents.[217] The benefit schedule, however, was abandoned a few years later in favor of the computation of the weekly benefit amount at one-twenty-second of an individual's highest base period quarterly wages, subject to a maximum of fifty percent of the state-

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(1983)). *See supra* text accompanying note 73.

211. Unemployment Compensation, ch. 54, §§ 33, 34, 1977 Iowa Acts 162-63 (codified at IOWA CODE § 96.19(28, 29) (1979)).

212. Unemployment Compensation, ch. 33, §§ 31, 32, 1979 Iowa Acts 184-85 (codified at IOWA CODE § 96.19(28, 29) (1981)).

213. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, §§ 3-9, 1982 Iowa Acts 55-57 (to be codified at IOWA CODE §§ 96.19(25), (28), (30), 96.29(5) (1983)). *See supra* text accompanying notes 74-76.

214. Unemployment Compensation, ch. 86, § 1, 1945 Iowa Acts 110 (codified at IOWA CODE § 96.3(4) (1946)).

215. Unemployment Compensation, ch. 73, § 1, 1947 Iowa Acts 102 (codified at IOWA CODE § 96.19(6)(a) (1958)); Unemployment Compensation, ch. 67, § 1, 1949 Iowa Acts 87 (codified at IOWA CODE § 96.3(4) (1950)); Unemployment Compensation, ch. 61, § 1, 1951 Iowa Acts 91 (codified at IOWA CODE § 96.3(4) (1954); Employment Sec., ch. 79, § 1, 1955 Iowa Acts 101 (codified at IOWA CODE § 96.3(4) (1958)).

216. Unemployment Compensation, ch. 67, § 2, 1949 Iowa Acts 87 (codified at IOWA CODE § 96.3(4) (1950)).

217. Employment Sec., ch. 112, § 1, 1959 Iowa Acts 151-54 (codified at IOWA CODE § 96.3(4) (1962)). Dependency status was determined generally by provision of over one-half of the cost of support. A nonworking spouse was essentially treated as a dependent; however, the fact that a spouse worked did not, in most instances, significantly reduce the individual's maximum benefit. *Id.*

wide average weekly wage.[218] The computation was subsequently modified to one-twentieth of the highest base period quarterly wages, subject to a maximum of fifty-five percent of the state-wide average weekly wage.[219] This was later changed to a maximum of 66⅔% of the state-wide average weekly wage.[220] The most recent amendment affecting the computation of the weekly benefit amount established five separate weekly-benefit-amount computations and maximums for individuals with different numbers of dependents.[221] For an individual with no dependents the weekly benefit amount is computed at one-twenty-third of the highest base period quarterly wages, subject to a maximum of fifty-eight percent of the state-wide average weekly wage.[222] The other four computations apply to individuals with one, two, three, four or more dependents. The applicable fractions of wages are respectively one-twenty-second, one-twenty-first, one-twentieth, and one-nineteenth and the applicable state-wide average weekly wage maximums are respectively sixty, sixty-two, sixty-five, and seventy percent.[223]

The maximum duration of benefits, always subject to the wage credit limitation, was gradually increased by five different amendments from fifteen to thirty-nine weeks.[224] The most recent amendment reduced the maximum duration of benefits to twenty-six weeks, except for individuals laid off due to an employer going out of business.[225]

2. *Partial unemployment.* The weekly benefit amount for partial unemployment has also been modified frequently. The original law was amended to compute the partial benefit at the individual's weekly benefit amount for total unemployment reduced by the individual's actual less-than-full-time wages over a dollar amount which gradually reached six dollars.[226] The effect of the intentional disregard of the six dollars of actual

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218. Employment Sec. Benefits, ch. 110, § 1, 1965 Iowa Acts 183-84 (codified at IOWA CODE § 96.3(4) (1966)).

219. Federal-State Unemployment Program, ch. 113, § 1, 1971 Iowa Acts 205 (codified at IOWA CODE § 96.3(4) (1973)).

220. Employment Sec., ch. 92, § 2, 1975 Iowa Acts 219-20 (codified at IOWA CODE § 96.3(4) (1977)).

221. Unemployment Compensation, ch. 33, § 2, 1979 Iowa Acts 170 (codified at IOWA CODE § 96.3(4) (1981)). Dependent is defined as a dependent under the Federal Internal Revenue Code of 1954, as amended, except that dependent includes a spouse who does not earn more than $120 in gross wages in one week. *Id.*

222. *Id.*

223. *Id.*

224. Unemployment Compensation, ch. 86, §§ 2, 3, 1945 Iowa Acts 110 (codified at IOWA CODE § 96.3(5) (1946)); Unemployment Compensation, ch. 73, § 1, 1947 Iowa Acts 102 (codified at IOWA CODE § 96.3(5) (1950)); Employment Sec., ch. 79, § 2, 1955 Iowa Acts 101 (codified at IOWA CODE § 96.3(5) (1958)); Employment Sec., ch. 112, § 1, 1959 Iowa Acts 151-54 (codified at IOWA CODE § 96.3(5) (1962)); Employment Sec., ch. 92, § 3, 1975 Iowa Acts 220 (codified at IOWA CODE § 96.3(5) (1977)).

225. Unemployment Compensation, ch. 33, § 3, 1979 Iowa Acts 170-71 (codified at IOWA CODE § 96.3(5) (1981)).

226. Unemployment Compensation, ch. 86, § 1, 1945 Iowa Acts 110 (codified at IOWA

less-than-full-time wages was a relative bonus to partially unemployed individuals.[227]

A 1975 amendment increased the incentives to seek less-than-full-time employment by intentionally disregarding a greater portion of a partially unemployed individual's less-than-full-time wages.[228] A portion of the definition of partial unemployment was repealed, however, to make individuals working less than the regular full-time week at their regular jobs ineligible for partial benefits, thus limiting the incentives to those individuals who were partially unemployed and working less than full time at odd jobs.[229] The amendment, instead of intentionally disregarding the first six dollars of actual less-than-full-time wages, intentionally disregarded both the first fifteen dollars of actual less-than-full-time wages at odd jobs and an additional one-half of those wages above fifteen dollars.[230] A 1976 amendment, however, readopted the repealed portion of the definition of partial unemployment and thus broadened the incentives to those individuals working less than the regular full-time week at their regular jobs.[231] The incentives to seek less-than-full-time employment were most recently modified in 1979 to disregard only those wages received during partial unemployment equal to one-fourth of the individual's weekly benefit amount.[232] Wages above that amount reduce the partial benefit amount dollar for dollar.[233] The effect of the amendment in the majority of the cases is to disregard a smaller portion of a partially unemployed individual's wages.[234]

d. Deductions from Weekly Benefit Amount. Although characterized

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CODE § 96.3(3) (1946)); Employment Sec., ch. 112, § 1, 1959 Iowa Acts 151-54 (codified at IOWA CODE § 96.3(3) (1962)).

227. The bonus was an incentive to seek less-than-full-time employment, as opposed to remaining totally unemployed, since the partially unemployed individual could receive a combination of partial unemployment benefits and wages from less-than-full-time employment which would be greater than the amount of total unemployment benefits. The incentive decreased after the individual earned an amount equal to the individual's weekly benefit amount and disappeared when the individual earned an amount equal to the individual's weekly benefit amount plus the amount intentionally disregarded.

228. Employment Sec., ch. 92, §§ 1, 32, 1975 Iowa Acts 219, 230 (codified at IOWA CODE §§ 96.3(3), 96.19(10)(b) (1977)).

229. Employment Sec., ch. 92, § 31, 1975 Iowa Acts 230 (not codified).

230. Employment Sec., ch. 92, § 1, 1975 Iowa Acts 219 (codified at IOWA CODE § 96.3(3) (1977)).

231. Job Serv. Dep't, ch. 1068, § 25, 1976 Iowa Acts 109 (codified at IOWA CODE § 96.19(10)(b) (1977)).

232. Unemployment Compensation, ch. 33, § 1, 1979 Iowa Acts 169 (codified at IOWA CODE § 96.3(3) (1981)).

233. *Id.*

234. The average weekly benefit amount for both totally and partially unemployed individuals in calendar year 1980 was $113.97. IOWA DEPARTMENT OF JOB SERVICE, A RESOURCE HANDBOOK OF FACTS AND FIGURES (July 1981). The 1979 amendment would disregard $28.49 (¼ of $113.97), while the prior law would have disregarded $71.98 ($15 + ½) ($113.97 + $14.99) - $15)) for an individual earning the maximum allowable wages during partial unemployment.

by statute as a disqualification for benefits, the receipt of other compensation or vacation pay actually reduces the weekly benefit amount, but not below zero.[235] If the other compensation or vacation pay is less than the weekly benefit amount, the difference is payable to the individual.[236]

1. *Other compensation.* Three recent amendments have affected the reduction of benefits by other compensation in the form of social security or other retirement benefits. A 1975 amendment provided that only fifty percent of old-age social security payments were to reduce benefits.[237] A 1979 amendment expanded the reduction to include all social security payments as well as all governmental or other pension, retirement, annuity, or similar periodic payments based on previous work.[238] A 1981 amendment limited the reductions by periodic payments to those periodic payments affected by the base period employment and to that portion of the periodic payments attributable to contributions made by the employer, resulting once again in the reduction of only fifty percent of old-age social security payments.[239]

A 1979 amendment included other compensation in the form of separation allowances, severance pay, and dismissal pay in the category of wages in lieu of notice and required their reduction from benefits.[240]

2. *Vacation pay.* A significant amendment was adopted in 1959 requiring the reduction of benefits by regular vacation pay or designated vacation pay which an individual receives or is entitled to receive in connection with a separation or layoff from employment.[241] The provision was later amended to subtract only that vacation pay actually received.[242] A 1976 amendment narrowed the vacation pay disqualification to a one-week period for those individuals separated from employment and not scheduled to return to work within a period of four consecutive weeks or less,[243] but the

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235. IOWA CODE § 96.5(5), (7) (1981).

236. *Id.*

237. Employment Sec., ch. 92, § 10, 1975 Iowa Acts 222 (codified at IOWA CODE § 96.5(5)(c) (1977).

238. Unemployment Compensation, ch. 33, § 12, 1979 Iowa Acts 174-75 (codified at IOWA CODE § 96.5(5)(c), (d) (1981)). Enacted to comply with Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, § 314(a), 90 Stat. 2667, 2680 (1976). *See supra* text accompanying note 61.

239. Unemployment Compensation, ch. 19, § 2, 1981 Iowa Acts 109-10 (to be codified at IOWA CODE § 96.5(5)(d) (1983)). Enacted pursuant to the authorization in Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, § 414(a), 94 Stat. 1208, 1310 (1980). *See supra* text accompanying note 63.

240. Unemployment Compensation, ch. 33, § 12, 1979 Iowa Acts 174-75 (codified at IOWA CODE § 96.5(5)(a) (1981)).

241. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (codified at IOWA CODE § 96.5(7) (1962)).

242. Employment Sec., ch. 92, § 9, 1975 Iowa Acts 222 (codified at IOWA CODE § 96.5(5) (1977)).

243. Job Serv. Dep't, ch. 1068, § 9, 1976 Iowa Acts 101 (codified at IOWA CODE § 96.5(7)(d) (1977)).

one-week limitation was subsequently repealed in 1979.[244]

3. *Child support obligations.* Although unlike other compensation and vacation pay, which are income to the individual, child support obligations are owed by the individual to dependents. A 1982 amendment required child support obligations to be deducted from unemployment compensation benefits and paid to dependents, either through voluntary agreements or through garnishment and attachment of the benefits.[245] The amendment conforms to a federal law requirement.[246]

e. Benefit Disqualifications. The original disqualification provisions of the Iowa law have been amended frequently.

1. *Voluntary quits.* Numerous voluntary quit savings clauses have been adopted which maintains an individual's eligibility after leaving work for a specific reason and then returning or offering to return when the specific reason for quitting no longer exists. These savings clauses relate to a quit of temporary employment in order to return to regular employment,[247] to a necessary quit for the purpose of taking care of an injured or ill member of the immediate family,[248] to a quit because of illness, injury, or pregnancy upon the advice of a physician,[249] to a quit for the purpose of taking a family member to a place having a different climate upon the advice of a physician,[250] and to a quit for compelling personal reasons for no more than ten working days.[251]

The most significant amendments in this area, however, have dealt with the savings clause maintaining an individual's eligibility after leaving employment in good faith for the sole purpose of accepting better employment, which the individual did accept, remaining continuously in the better employment for at least twelve weeks.[252] Subsequent amendments reduced the requirement of twelve weeks in the better employment to six weeks.[253] A significant 1975 amendment broadened the application of the savings clause

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244. Unemployment Compensation, ch. 33, § 34, 1979 Iowa Acts 185 (not codified).

245. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 1, 1982 Iowa Acts 54 (to be codified at IOWA CODE § 96.3(9) (1983)).

246. *See supra* note 64 and accompanying text.

247. Unemployment Compensation, ch. 86, § 4, 1945 Iowa Acts 110-11 (codified at IOWA CODE § 96.5(1)(b) (1946)).

248. Unemployment Compensation, ch. 86, § 4, 1945 Iowa Acts 110-11 (codified at IOWA CODE § 96.5(1)(c) (1946)).

249. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (codified at IOWA CODE § 96.5(1)(d) (1962)); Employment Sec., ch. 92, § 6, 1975 Iowa Acts 221-22 (codified at IOWA CODE § 96.5(1)(d) (1977)).

250. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (codified at IOWA CODE § 96.5(1)(e) (1962)).

251. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (codified at IOWA CODE § 96.5(1)(f) (1962)).

252. IOWA CODE § 1551.11(A) (1939).

253. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (codified at IOWA CODE § 96.5(1)(a) (1962)).

by substituting *other* employment for *better* employment.[254] Thus, a voluntary quit to accept *other* employment and actual employment in the *other* employment for at least six weeks erases the taint of a voluntary quit.[255] The 1975 amendment also added a savings clause which maintained eligibility for those individuals who voluntarily quit to accept *better* employment, who did accept the *better* employment, and whose employment was terminated or who were laid off after one week but prior to the expiration of six weeks.[256]

In addition to the savings clause amendments, the voluntary quit disqualification has also been amended by the adoption of a requalification provision for the so-called true voluntary quit without good cause attributable to the employer. The first provision provided that an individual principally responsible for the individual's own or the individual's family's support could requalify for subsequent benefits after a voluntary quit by working in covered employment as long as the voluntary quit had occurred ninety days prior to the date the individual filed for benefits.[257] The provision was subsequently modified to allow any individual to requalify by working in covered employment but required the forfeiture of those wage credits earned during the period of employment that was quit.[258] The forfeiture provision was later repealed, however, and a requalification requirement added that the individual earn an amount equal to the individual's weekly benefit amount subsequent to the quit.[259] The earnings requalification requirement was later repealed and replaced by a requirement that the individual work in covered employment for at least six consecutive weeks.[260] The weekly work requirement was then repealed and replaced by an earnings requalification requirement of ten times the weekly benefit amount.[261]

2. *Misconduct.* The original and limited disqualification of two to nine weeks for a discharge for misconduct was subsequently amended twice to require a minimum disqualification of four weeks and then only one week.[262] A disqualification of ten weeks to forfeiture of all wage credits was provided

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254. Employment Sec., ch. 92, § 5, 1975 Iowa Acts 221 (codified at IOWA CODE § 96.5(1)(a) (1977)) (emphasis added).

255. *Id.* (emphasis added).

256. *Id.* (emphasis added).

257. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (not codified).

258. Employment Sec., ch. 84, § 1, 1961 Iowa Acts 111 (codified at IOWA CODE § 96.5(1)(g) (1962)).

259. Federal-State Unemployment Program, ch. 113, § 5, 1971 Iowa Acts 206-07 (codified at IOWA CODE § 96.5(1)(g) (1973)).

260. Job Serv. Dep't, ch. 1068, § 8, 1976 Iowa Acts 100-01 (codified at IOWA CODE § 96.5(1)(g) (1977).

261. Unemployment Compensation, ch. 33, § 9, 1979 Iowa Acts 173 (codified at IOWA CODE § 96.5(1)(g) (1981)).

262. Employment Sec., ch. 112, § 3, 1959 Iowa Acts 154-56 (codified at IOWA CODE § 96.5(2) (1962)); Employment Sec., ch. 92, § 8, 1975 Iowa Acts 222 (codified at IOWA CODE § 96.5(2) (1977)).

for a discharge for gross misconduct.[263] A 1979 amendment repealed the limited disqualifications, completely disqualified an individual for simple misconduct but allowed requalification by earning ten times the weekly benefit amount in covered employment subsequent to the discharge, and completely disqualified an individual for gross misconduct by forfeiting all wage credits earned by the individual prior to the discharge.[264]

3. *Refusal to apply for or accept suitable work.* The original disqualification for failure, without good cause, to apply for available, suitable work if so directed by the employment office or the state agency, or to accept suitable work has been amended significantly only once. A 1979 amendment required unemployed individuals to apply to and obtain signatures of employers designated by the Department.[265] The amendment also deleted the factor of experience in the determination of suitable work for any unemployed individual and defined work as suitable if the work meets all other criteria in the subsection and the gross weekly wages for the work during the first five weeks of unemployment equal 100% of the individual's average weekly wage during the base period quarter in which the individual's wages were highest.[266] For the sixth through the twelfth week of unemployment work is suitable if the gross weekly wages equal or exceed seventy-five percent of the individual's average weekly wage, for the thirteenth through the eighteenth week the wages need only equal or exceed seventy percent, and after the eighteenth week the wages need only equal or exceed sixty-five percent.[267] The wages must not be below the federal minimum wage, however.[268] The amendment disqualified an individual for failure to apply to and obtain employer signatures as required or to accept suitable work as defined but allowed requalification by earning ten times the weekly benefit amount in covered employment subsequent to the disqualification.[269]

4. *Fraud.* A 1975 amendment disqualified an individual for benefits for up to the remainder of the benefit year if the individual made a fraudulent misrepresentation within the last three years to obtain benefits not available to the individual.[270]

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263. *Id.*

264. Unemployment Compensation, ch. 33, § 10, 1979 Iowa Acts 173 (codified at IOWA CODE § 96.5(2) (1981)).

265. Unemployment Compensation, ch. 33, § 11, 1979 Iowa Acts 173-74 (codified at IOWA CODE § 96.5(3) (1981)).

266. *Id.* (codified at IOWA CODE § 96.5(3)(a) (1981)).

267. *Id.*

268. *Id.*

269. *Id.* (codified at IOWA CODE § 96.5(3) (1981)).

270. Employment Sec., ch. 92, § 11, 1975 Iowa Acts 223 (codified at IOWA CODE § 96.5(8) (1977)).

5. *Penalties*

a. Fraud and Misrepresentation. A 1976 amendment modified the penalties for fraud to conform to the comprehensive criminal code revision enacted in that year.[271] A 1979 amendment clarified that the value of benefits, contributions, or payments involved in a fraudulent act determines the degree of fraudulent practice and the applicable maximum penalty.[272]

The original provision relating to the receipt of benefits through nondisclosure or misrepresentation was amended in 1941 to include benefits received through error, thereby requiring the overpayment, whether made due to error or fraud, to be repaid or deducted from future benefits.[273] A 1978 amendment struck the clause in the misrepresentation provision relating to the receipt of benefits through error[274] and created a separate provision allowing repayment or deduction from future benefits of overpayments received by an individual acting in good faith and without fault, but not requiring the repayment or deduction if contrary to equity or good conscience.[275]

The nondisclosure and misrepresentation provision was again amended in 1979 to allow recovery of an overpayment by filing a lien on the individual's property.[276] The same legislation struck the 1978 overpayment provision which allowed for no recovery if contrary to equity or good conscience[277] and replaced it with a requirement of recovery either through repayment or deduction from future benefits.[278]

b. Overdue Employer Reports and Contributions. A 1961 amendment and a 1975 rewrite of the amendment provided a penalty for failure to file timely or sufficient employer reports of employee wages.[279] A penalty of fifty percent of an overdue contribution was also provided in cases of fraud.[280] A

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271. Iowa Criminal Code, ch. 1245, ch. 4, § 60, 1976 Iowa Acts 682-83 (codified at IOWA CODE § 96.16(1-3) (1979)).

272. Unemployment Compensation, ch. 33, §§ 26, 27, 1979 Iowa Acts 183 (codified at IOWA CODE § 96.16(1), (2) (1981)).

273. Unemployment Compensation, ch. 104, § 1, 1941 Iowa Acts 115-16 (codified at IOWA CODE § 96.16(4) (1946)).

274. Unemployment Compensation Contributions, ch. 1059, § 2, 1978 Iowa Acts 258 (codified at IOWA CODE § 96.16(4) (1979)).

275. Unemployment Compensation Contributions, ch. 1059, § 3, 1978 Iowa Acts 258 (codified at IOWA CODE § 96.3(7) (1979)).

276. Unemployment Compensation, ch. 33, § 28, 1979 Iowa Acts 183-84 (codified at IOWA CODE § 96.16(4) (1981)).

277. Unemployment Compensation Contributions, ch. 1059, § 3, 1978 Iowa Acts 258 (codified at IOWA CODE § 96.3(7) (1979)). *See supra* note 276 and accompanying text.

278. Unemployment Compensation, ch. 33, § 4, 1979 Iowa Acts 171 (codified at IOWA CODE § 96.3(7) (1981)).

279. Employment Sec., ch. 85, § 2, 1961 Iowa Acts 112-13 (codified at IOWA CODE § 96.14(2) (1962)); Employment Sec. ch. 92, § 22, 1975 Iowa Acts 226-27 (codified at IOWA CODE § 96.14(2) (1977)).

280. *Id.*

1979 amendment provided for computations of an employer's contribution rate where the employer is delinquent in the filing of one or more quarterly payroll reports.[281]

A 1941 amendment allowed the filing of liens in favor of the state on the property of employers owing delinquent contributions.[282] A 1977 amendment allowed the deduction of unpaid contributions from moneys due delinquent political subdivision employers from the state.[283] A 1979 amendment allowed a levy against any state funds due delinquent government entities as well as the entities' bank accounts.[284]

A 1975 amendment allowed an Iowa District Court to enjoin a delinquent employer from operating the employer's business until the delinquent contributions, interest, and penalties were made or paid.[285]

6. *Back Pay*

The receipt of a back pay award after the receipt of benefits for the same period of unemployment is treated similarly to an overpayment under a 1979 amendment.[286] The provision allows for the recovery of the benefits through an agreement between the employer and the individual that calls for the employer to remit an amount equal to the benefits received by the individual to the unemployment trust fund in lieu of payment to the individual.[287] If the agreement is not reached or implemented, the benefits are to be recovered through repayment by the individual or reduction of the individual's future benefits.[288]

7. *Administration and Judicial Review*

Legislation creating the Iowa Administrative Procedure Act was enacted in 1974 and included requirements relating to the Iowa Employment Security Commission's rulemaking and procedural duties and judicial review of the Commission's actions.[289] Legislation enacted in 1976, which reorga-

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281. Unemployment Compensation, ch. 33, § 18, 1979 Iowa Acts 178 (codified at IOWA CODE § 96.7(3) (1981)).

282. Unemployment Compensation, ch. 103, § 2, 1941 Iowa Acts 114-15 (codified at IOWA CODE § 96.14(2) (1946)).

283. Unemployment Compensation, ch. 54, § 10, 1977 Iowa Acts 156 (codified at IOWA CODE § 96.14(3) (1979)).

284. Unemployment Compensation, ch. 33, § 25, 1979 Iowa Acts 182-83 (codified at IOWA CODE § 96.14(3) (1981)).

285. Employment Sec., ch. 92, § 24, 1975 Iowa Acts 227, (codified at IOWA CODE § 96.14(16) (1977)).

286. Unemployment Compensation, ch. 33, § 5, 1979 Iowa Acts 171-72 (codified at IOWA CODE § 96.3(8) (1981)).

287. *Id.*

288. *Id.*

289. Admin. Procedures, ch. 1090, 1974 Iowa Acts 165 (codified at IOWA CODE ch. 17A (1975)).

nized the administration of Iowa's unemployment law, further integrated the procedural duties under Iowa's unemployment law with the Iowa Administrative Procedure Act.[290]

The 1976 reorganization legislation replaced the three-member Iowa Employment Security Commission with the Iowa Department of Job Service and its chief executive officer, the Director of Job Service, who is appointed by the Governor and confirmed by the Senate.[291] The legislation also created an appeal board consisting of three members, with individual members representing employers, employees, and the general public.[292] Determinations of benefit eligibility, amount, duration, and disqualifications were to be made by a representative of the Department.[293] Successive appeals could then be made to a hearing officer,[294] then to the appeal board,[295] then to an Iowa District Court, and finally to the Iowa Supreme Court.[296] Determinations of charges against employer accounts were to be made by the Department.[297] For those employers not properly notified of the allowance of benefits, an appeal could be made to the Director of Job Service for a hearing before a hearing officer.[298] Determinations of employer contribution rates were to be made by the Department. Successive appeals, for revision of the contribution rates by a hearing officer, could then be made to the Department, then to an Iowa District Court, and then finally to the Iowa Supreme Court.[299]

III. Procedural Law

A. *Overview of Department Procedures*

As mentioned in the history section, three administrative stages are in-

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290. Job Serv. Dep't, ch. 1068, §§ 10, 12, 1976 Iowa Acts 101-03 (codified at Iowa Code §§ 96.6(3), (5), (6) (1977)).

291. Job Serv. Dep't, ch. 1068, § 18, 1976 Iowa Acts 104-05 (codified at Iowa Code § 96.10 (1977)).

292. Job Serv. Dep't ch. 1068, § 11, 1976 Iowa Acts 102 (codified at Iowa Code § 96.6(4) (1977)).

293. Job Serv. Dep't, ch. 1068, § 10, 1976 Iowa Acts 101 (codified at Iowa Code § 96.6(2) (1977)).

294. *Id.* (codified at Iowa Code § 96.6(2), (3) (1977)).

295. Job Serv. Dep't, ch. 1068, § 12, 1976 Iowa Acts 102 (codified at Iowa Code § 96.6(5) (1977)).

296. Job Serv. Dep't, ch. 1068, § 12, 1976 Iowa Acts 102 (codified at Iowa Code § 96.6(8) (1977)).

297. Job Serv. Dep't, ch. 1068, § 14, 1976 Iowa Acts 103 (codified at Iowa Code § 96.7(3)(a)(6) (1977)).

298. *Id.*

299. Admin. Procedures, ch. 1090, §§ 62, 63, 1974 Iowa Acts 195-97 (codified at Iowa Code §§ 96.6(8), 96.7(3)(f), 96.7(6) (1975)); Job Serv. Dep't, ch. 1068, § 40, 1976 Iowa Acts 112-14 (codified at Iowa Code § 96.7(3)(f) (1977)); Unemployment Compensation, ch. 33, § 19, 1979 Iowa Acts 178 (codified at Iowa Code § 96.7(4)(d) (1981)).

volved when seeking unemployment compensation benefits from the "unemployment trust fund"[300] administered by the job insurance division of the Iowa Department of Job Service (hereinafter referred to as the Department). The "initial determination"[301] is made by a claims representative for the Department.[302] The losing party can then appeal to a hearing officer.[303] Decisions for final appeal can be taken to the Department's Appeal Board.[304] Once the Appeal Board makes its decision, the losing party can file an application for rehearing in accordance with the Iowa Administrative Procedure Act (IAPA),[305] or file directly in the Iowa District Court in accordance with the IAPA.[306] The denial of an application for rehearing, whether by a written decision or by non-action,[307] constitutes final agency action.

B. *Rules Adopted by the Department*

1. *Validity of Rules*

The Department has adopted numerous rules regulating procedural and substantive matters before the Department.[308] For instance, the term "misconduct" as found in the Iowa Code[309] is defined by a Department rule because the General Assembly failed to define this term.[310] Rules, of course, have the force of law.[311] If a rule is not within the Department's statutory authority to adopt, however, it is invalid or ultra vires.[312] To be valid, a rule cannot be inconsistent with either statutory language or legislative intent.[313] A party attacking the validity of a Department rule has the burden to make a clear and convincing showing that the rule is ultra vires.[314] A rule will be

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300. 370 IOWA ADMIN. CODE § 4.1(51)(g) (1980)).
301. 370 IOWA ADMIN. CODE § 4.1(38)(d) (1981).
302. IOWA CODE § 96.6(2) (1981).
303. IOWA CODE § 96.6(3) (1981).
304. IOWA CODE § 96.6(4) (1981).
305. IOWA CODE 17A (1981); IOWA CODE § 17A.16(2) (1981).
306. Kedhe v. Iowa Dep't of Job Serv., 318 N.W.2d 202, 204-05 (Iowa 1982). *See* IOWA CODE § 17A.19 (1981).
307. Ford Motor Co. v. Iowa Dep't of Transp., 282 N.W.2d 701, 702-03 (Iowa 1979).
308. 370 IOWA ADMIN. CODE.
309. IOWA CODE § 96.5(2) (1981).
310. 370 IOWA ADMIN. CODE § 4.32(1)(a) (1981).
311. Davenport Community School Dist. v. Iowa Civil Rights Comm'n, 277 N.W.2d 907, 909 (Iowa 1979); Young Plumbing and Heating Co. v. Iowa Natural Resources Council, 276 N.W.2d 377, 382 (Iowa 1979).
312. Milholin v. Vorhies, 320 N.W.2d 552, 554 (Iowa 1982) (a 5-4 majority upheld a rule adopted by the Iowa Real Estate Comm'n with the Iowa court applying a rational agency standard in so doing; the dissenters asserted that the rule was invalid because it was beyond the scope of the rule-making power); Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue, 301 N.W.2d 760, 762 (Iowa 1981); Hiserote Homes, Inc. v. Riedemann, 277 N.W.2d 911, 913 (Iowa 1979).
313. *See supra* note 312.
314. Hiserote, 277 N.W.2d at 913; Davenport Community School Dist., 277 N.W.2d at

held not to be ultra vires if the Department could rationally conclude that the rule is within its delegated authority under statute.[315] Given the results reached by the Iowa Supreme Court in *Cosper v. Iowa Department of Job Service*,[316] and in *Hiserotes Homes, Inc. v. Riedemann*,[317] a litigant should not be overly pessimistic when attacking a Department rule, even though the person or entity attacking the rule has a heavy burden of proof. Department rules were not drafted with precision,[318] and if a given rule provides an obstacle, attacking it as ultra vires could enhance the chances of prevailing, and, if such arguments are rejected, nothing is lost by making the argument. In questioning the validity of a Department rule, such an assertion should be made during the administrative process in order to avoid an assertion by the other party or later judicial holding that the error has been waived.[319] The IAPA governs the method of adopting rules and if the proper method was not utilized, a rule can be declared invalid.[320] The subject of rules is discussed at length in Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rule Making Process*.[321]

2. *Utility of Rules*

Department rules number in the hundreds and to a large extent simply paraphrase the language of chapter 96. The Iowa Supreme Court has approved the Department's definition of "misconduct" in the discharge context[322] as accurately reflecting the intent of the General Assembly.[323] Therefore, making reference to Department rules enables a practitioner to avoid some of the guesswork when attempting to ascertain the intent of the General Assembly.

The administrative rules adopted by the Department also give specific guidance on how the Department computes time periods for inter-agency

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909-10; IOWA CODE § 17A.19(8)(b) (1981).

315. *See supra* note 314.

316. 321 N.W.2d 6, 11 (Iowa 1982) (voiding Department rule regarding absenteeism and tardiness).

317. 277 N.W.2d 911, 915 (Iowa 1979).

318. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982). Mr. Yost is the supervising hearing officer for the Department of Job Service's Appeal Section and has been with the Department since October of 1974.

319. *See, e.g.*, Ames Gen. Contractors, Inc. v. Iowa Employment Sec. Comm'n, 200 N.W.2d 538 (Iowa 1972).

320. Airhart v. Iowa Dep't of Social Servs., 248 N.W.2d 83, 85 (Iowa 1976).

321. 60 IOWA L. REV. 731 (1975).

322. *See supra* note 310.

323. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6, 8 (Iowa 1982); Green v. Iowa Dep't of Job Serv., 299 N.W.2d 651, 655-56 (Iowa 1980); Huntoon v. Iowa Dep't of Job. Serv., 275 N.W.2d 445, 447-48 (Iowa 1979).

appeals.[324] A current set of administrative rules can be obtained for a small fee by writing the Department.[325]

C. *Petitions for Declaratory Rulings*

Section 17A.9 provides for declaratory rulings by Iowa governmental agencies. This section states that Iowa agencies "shall provide by rule for the filing and prompt dispositions of petitions for declaratory rulings."[326] The Department has adopted such a rule.[327] The Department's rule provides that petitions for declaratory rulings shall be sent to Job Service's Legal Department.[328]

Section 17A.9 further provides that rulings on a petition for a declaratory ruling shall "have the same status as agency decisions or orders in contested cases."[329] Several declaratory ruling cases have reached the Iowa Supreme Court[330] and in *Public Employment Relations Board v. Stohr*,[331] the court held that the Iowa District Court had authority to review the refusal of an agency to issue a declaratory ruling, but not to review the issues framed by the petition for rulings.[332] Declaratory rulings by the Department could save a client considerable time and resources as the statute specifically provides that an advisory opinion can be obtained regarding "the applicability of any statutory provision, rule or other written statement of law or policy, decision or order of the agency."[333] If the Department is given a concrete set of facts, which closely parallels proposed action by a party, it may enable a claimant or employer to avoid an unpleasant surprise when dealing with the Department after the proposed course of events has occurred. Of course, if your client's actions are different from the facts given to the Department in a petition for declaratory ruling, little or nothing will be gained.

D. *Initial Determination by Claims Deputy*

The "initial determination"[334] as to whether an individual is granted

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324. *See, e.g.*, 370 IOWA ADMIN. CODE § 6.2(1)(b) (1980), which reads, "The *date of receipt* of the notice of appeal in the appeal section will be used to determine the timeliness of the appeal." (emphasis added).

325. The Department's mailing address is 1000 East Grand Ave., Des Moines, IA 50319.

326. IOWA CODE § 17A.9 (1981).

327. 370 IOWA ADMIN. CODE § 1.1(3) (1981); 370 IOWA ADMIN. CODE §§ 6.5(1)-(5) (1980).

328. 370 IOWA ADMIN. CODE § 1.1(3)(a) (1980). *See supra* note 325, for mailing address of the Legal Department.

329. IOWA CODE § 17A.9 (1981).

330. Aetna Casualty & Sur. Co. v. Insurance Dep't of Iowa, 299 N.W.2d 484 (Iowa 1980); Public Employment Relations Bd. v. Stohr, 279 N.W.2d 286 (Iowa 1979).

331. Public Employment Relations Bd. v. Stohr, 279 N.W.2d 286 (Iowa 1979).

332. *Id.* at 290.

333. IOWA CODE § 17A.9 (1981).

334. *See supra* note 301.

unemployment compensation is made by a claims representative.[335] The Department refers to these intial decision-makers as claim deputies.[336] The term "claims deputy" should be used in correspondence and when making telephone contact with the Department so that confusion is avoided.[337] It is also advisable to avoid referring to a "claim deputy" as a hearing officer because your inquiry could then be routed to the wrong section in the Department.[338] Hearing officers review the determinations of claims deputies.[339]

1. Application for Benefits

The Iowa Code provides that a claims representative shall promptly review the claim "and on the basis of the facts found by the representative, shall determine whether or not such claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, and whether any disqualification shall be imposed."[340] Much of the information needed to make these decisions, particularly if a claim is not protested by an employer, is taken from an application for unemployment compensation benefits.

A benefits application is a short, relatively simple form. A claimant will need to supply his or her social security number, the claimant's dates of commencement and of separation, a characterization of the separation as, for instance, a voluntary quit, discharge, labor dispute or layoff, birthdate, and claimant's current address and last employer's address.[341] A claims deputy will help a claimant complete the form, but not having the required information could result in a second trip to a local office as the Department requires that claim forms be completed in person rather than through the mail or over the phone.[342]

At the time an individual applies for benefits a Department computer prints a transcript of wages.[343] This printout states the claimant's covered wages during the individual's "base period."[344] A claimant's "base period" is a one-year period which excludes the three-month quarter in which an application is filed and the quarter immediately prior to that quarter.[345] For

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335. *See supra* note 302.

336. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

337. *Id.*

338. *Id.*

339. IOWA CODE §§ 96.6(2), (3) (1981).

340. *See supra* note 302.

341. 370 IOWA ADMIN. CODE § 4.2(1)(b) (1980).

342. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

343. *Id.*

344. 370 IOWA ADMIN. CODE § 4.1(11) (1981).

345. *Id.*

instance, if an individual filed for benefits on April 15, 1982, the "base period" would be calendar year 1981.

The transcript of wages also displays the "base period" of the employer and the amount of covered wages for each employer. The amount of covered wages affects the claimant's weekly benefit amount and duration of benefits.[346]

As stated above, a claims deputy must determine "the week with respect to which benefits commence."[347] It is important that a claimant apply for benefits immediately after a separation from employment so that attempted backdating is not necessary. The Department rules allow for backdating only under very limited circumstances.[348]

2. Protest of Benefits by Employer

All "base period employers"[349] are sent a "notice of claim"[350] in accordance with the statutory mandate that all "interested parties" to a claim be given notice when a benefits application is filed.[351]

A "notice of claim" takes the form of a computer card with the employer's name and address printed on the face of the card. The card is mailed to the employer and on the back are boxes which allow the employer to characterize the nature of the separation as, for instance, a quit or discharge. Space is also provided for a brief written explanation of the employer's protest of benefits, if any.

Any "base period employer" may protest benefits, not just the most recent or last employer.[352] However, even if a "base period employer" established a "voluntary quit" early in the "base period," this will not adversely affect a claimant if the claimant has removed the disqualification by earning ten times the claimant's weekly benefit amount after the disqualifying separation.[353]

a. Time Limit for Protest. The statutory protest period is ten days and is mandatory or jurisdictional.[354] The ten-day period begins to run from the time that the "notice of claim" is mailed to the employer's last known address.[355] Given the slowness of the United States Postal Service,[356] an employer may have only six or seven days to protest after receiving the "notice

346. *See infra* text accompanying notes 753-83.
347. *See supra* note 302.
348. 370 IOWA ADMIN. CODE § 4.2(1)(h)(2) (1980); 370 IOWA ADMIN. CODE § 4.9(1).
349. 370 IOWA ADMIN. CODE § 4.1(12)(a) (1981).
350. 370 IOWA ADMIN. CODE 4.8(2) (1981).
351. *See supra* note 302.
352. *Id.*
353. *See infra* text accompanying notes 785, 786, 925, 973.
354. *See infra* text accompanying notes 382-89.
355. *See supra* note 302.
356. In *Eves v. Iowa Employment Security Comm'n*, 211 N.W.2d 324, 326 (Iowa 1973), the Iowa Supreme Court characterized the situation as a "national disaster."

of claim." An employer should act immediately when he or she receives a "notice of claim" or risk a statutory bar to any complaint regarding a claimant's ability to receive benefits. The protest must be postmarked within the ten-day statutory protest period,[357] and thereafter an employer does not have to check to insure that it is received in Des Moines within the ten-day period—unlike the case when an appeal is taken from an "initial determination" to a hearing officer. In short, a protest should be mailed or delivered to the Department as soon as possible after receipt of a "notice of claim" by an employer.

b. Reason for Protest. As mentioned above, the claims deputy determines whether a claimant is entitled to unemployment benefits based on the facts before the claims deputy. Even if there is no protest from an employer, a claimant can be denied unemployment benefits if the facts warrant such a conclusion.[358] A timely protest by an employer, however, generally will have a considerable impact on whether a claimant is granted unemployment benefits. The Department has limited resources and cannot ascertain all the facts without the aid of the parties. If an employer wishes to greatly enhance its chances of preventing the payment of unemployment benefits, it should always file a timely protest with a written explanation of its position.

3. Factfinding Interview

If a claim is protested, a "factfinding interview"[359] will be held.[360] The Department is starting to handle these interviews by telephone conference calls.[361] These interviews are very informal, but are crucial to the decision whether to qualify a claimant. A disqualifying decision will leave a claimant without benefits for approximately six weeks, assuming a hearing officer reverses the initial disqualifying decision.[362] In any event, a protested claim is not paid until after a claims deputy issues an "initial determination."[363]

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357. 370 IOWA ADMIN. CODE § 4.8(1)(b) (1981). On December 1, 1982, the Administrative Rules Review Committee considered a proposed rule change that would require receipt by the Department of a protest within ten days rather than a postmark within that period, but this proposed change was set for public hearing as the Committee concluded that the proposed change would not be universally applauded. Telephone interview with Joseph Royce, Staff Attorney for the Administrative Rules Review Committee, in Des Moines, Iowa (December 13, 1982).

358. The Iowa Supreme Court in *Kedhe v. Iowa Dep't of Job Serv.*, made absolutely clear that a claimant can be denied unemployment benefits even if an employer does not protest the payment of such benefits. 318 N.W.2d at 206.

359. 370 IOWA ADMIN. CODE § 4.1(48) (1980).

360. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

361. *Id.*

362. *Id.* Approximately sixty-five percent of the initial determinations appealed to a hearing officer are reviewed within thirty days of the filing of the appeal.

363. *See supra* note 302.

The Department sends out a notice of a job insurance factfinding interview to base period employers that have protested and, of course, the claimant.[364] There is space on this form for both parties to write their statements concerning the matter with instructions to return the form to the Department; additional pages can be attached.[365] The claims deputy making the initial determination will then consider these "statements of fact."[366]

In accordance with a Departmental rule, claims deputies require employers to prove misconduct in a discharge context before they will issue a misconduct disqualification pursuant to section 96.5(2).[367] In other words, if an employer simply indicates on a protest card that the claimant was discharged for misconduct, but does not send a statement of fact or appear at the factfinding interview, the claims deputy will probably qualify the claimant for benefits.[368] On the other hand, if a claimant indicates on his or her benefit application that he or she voluntarily quit, and then takes no further action to establish that the quit was for good cause attributable to the employer, a disqualifying decision will probably result.[369]

4. *Issuance of Initial Determination*

The determination of the claims deputy is printed on a computer sheet and the decision date listed thereon is the date it is mailed.[370] The Department's computer has numerous pre-written decisions which fit the vast majority of the fact situations confronting the Department,[371] however, the claims deputy will issue an individualized determination for unique factual situations.[372] A typical claims deputy decision will read in part as follows: "On April 15, 1982, you were discharged for excessive unexcused absenteeism and excessive unexcused tardiness after being warned."[373]

Initial determinations are generally specific enough to clearly indicate the reason for qualification or disqualification, but when misconduct is alleged by the employer, but not established, the decision will typically state: "Misconduct has not been established by the employer."[374]

Another thing to keep in mind is that each initial determination in a claimant's file is given a "reference number." The Department uses these

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364. *Id.*
365. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).
366. *Id.*
367. 370 IOWA ADMIN. CODE § 4.32(4) (1981).
368. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).
369. *Id.*
370. *Id.*
371. *Id.*
372. *Id.*
373. *Id.*
374. *Id.*

numbers when an appeal is taken and in other contexts. The "reference number" is in the top right-hand corner and is coded, for example, "REF=01" or "REF=02."[375] It is helpful to know and use these numbers when communicating with the Department.

5. Appeal of Initial Determination

The date of the mailing of an initial determination to a party's last known address starts the ten-day appeal period running and the notice of appeal must be received by the Department within the ten-day appeal period.[376] By rule, the Department has declared the receipt date to be the "filing" date even though this is not the case when appealing a hearing officer's decision to the Appeal Board[377] or when benefits are protested.[378] The Department has no plans to propose a change in the rule regarding appeals to a hearing officer, but may propose to the legislature that the present ten-day appeal period be changed to a fifteen-day appeal period.[379] In order, however, to avoid putting parties in such places as Sioux City or Dubuque at a disadvantage when they seek to file a timely appeal from an initial determination, the Administrator of the Job Insurance Division, Paul H. Moran, sent a letter to all job insurance managers and all placement managers at their local offices which stated in part:

> The Iowa Administrative Code Subrule 370-6.2(1)(b) requires that the notice of appeal be received in the Appeals Section within ten calendar days to be considered as being filed in timely manner. The mere mailing or postmaking of an appeal within the ten-day period is not sufficient to confer jurisdiction.
>
> The Appeal Section will only consider "receipt" of an appeal if it is actually in their hands by the tenth day after mailing.
>
> The Appeal Section will consider the appeal as "received" if it is accepted in any Job Service Local Office within the ten-day period because the Job Service Local Office would be considered as an extension of or an agent of the Appeal Section. It is important that the person who accepted the appeal in the Local Office acknowledge the receipt of the appeal by signing the appeal and dating it on the day it is received before it is forwarded to the Appeal Section.[380]

This letter was dated August 26, 1982, and if it is not challenged as an illegal rule because it was not adopted in accordance with the IAPA, it will

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375. *Id.*

376. 370 IOWA ADMIN. CODE § 6.2(1)(b) (1980). *See supra* note 325 (for mailing address of the Department's Appeal Section).

377. 370 IOWA ADMIN. CODE § 6.4(1)(b) (1980).

378. 370 IOWA ADMIN. CODE § 4.8(1)(b) (1980).

379. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

380. 370 IOWA ADMIN. CODE § 6.2(1)(b).

provide a means to file a timely appeal regardless of where a party lives in Iowa. If a party is near a deadline for filing an appeal, it may be advisable to go to a local job insurance office, or even a job placement office in smaller communities, since the mail is somewhat unreliable. It is imperative to have the local office adequately document the date of receipt so that disputes as to timeliness of the appeal can be avoided at the hearing stage or later. It should be kept in mind, however, that Mr. Moran's letter may ultimately be declared a void rule that can not be relied upon to render an appeal timely filed.

If the ten-day statutory appeal period ends on a Sunday, the period is extended to Monday under section 4.1(22) of the Iowa Code.[381] This ten-day statutory appeal period is mandatory or jurisdictional.[382] It is, therefore, advisable to notify the Department if a party moves so that the ten-day appeal period does not close before the determination is received by the moving party. It is noteworthy that the Iowa Supreme Court in *Beardslee v. Iowa Department of Job Service*[383] stated that even if a party does not receive the initial determination, the party can be foreclosed from challenging the initial determination after the running of the ten-day appeal period, if reasonable means were utilized to put the party on notice.[384] That is, notice may satisfy due process even though not received if the notice provided "is reasonably calculated to accomplish its purpose."[385]

The ten-day statutory appeal period just discussed is probably facially constitutional.[386] A party may, however, show that under the particular circumstances of his or her case, he or she was denied a reasonable opportunity to appear and assert his or her rights.[387] For instance, the Iowa Supreme Court held in *Smith v. Employment Security Commission*,[388] that a claimant was denied due process under a statute allowing seven days for the filing of an appeal where the claimant did not receive the claims deputy's initial determination until four days after it was mailed.[389] A party should determine whether *Beardslee* applies to the particular facts of their case, resulting in termination of the administrative proceedings, or whether the facts render cases such as *Smith* applicable.

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381. McConnell v. Iowa Dep't of Job Serv., 327 N.W.2d 234, 236 (Iowa 1982).

382. Franklin v. Iowa Dep't of Job Serv., 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. Iowa Dep't of Job Serv., 276 N.W.2d 373, 377 (Iowa 1979).

383. Beardslee v. Iowa Dep't of Job Serv., 276 N.W.2d at 376 (quoting Smith v. Iowa Employment Sec. Comm'n, 212 N.W.2d 471, 473 (Iowa 1973)).

384. Beardslee v. Iowa Dep't of Job Serv., 276 N.W.2d at 376.

385. Smith v. Iowa Employment Sec. Comm'n, 212 N.W.2d at 473.

386. *Id.*

387. Oliver v. Teleprompter Corp., 299 N.W.2d 683, 686 (Iowa 1980); Hendre v. Iowa Employment Sec. Comm'n, 217 N.W.2d 255, 256 (Iowa 1974); Smith v. Iowa Employment Sec. Comm'n, 212 N.W.2d at 473; Eves v. Iowa Employment Sec. Comm'n, 211 N.W.2d at 327.

388. 212 N.W.2d 471 (Iowa 1973).

389. *Id.* at 473.

E. *Appeal to Hearing Officer*

An appeal to a hearing officer renders the proceedings a "contested case" as defined by the IAPA.[390] Instructions on how to appeal from an adverse initial determination appear on the bottom of the determination. The losing party is instructed to submit either a letter or written notice of appeal directly to the Department's Appeal Section.[391] As noted above, a primary concern is time. As far as contents of the letter or notice of appeal, "we appeal" or "claimant appeals" is treated as sufficient by the Department. It is preferable, however, if a small amount of required information is given, which is: (1) your name, address, and if a claimant is involved, his or her social security number, (2) reference to the particular decision being appealed with its "reference number" if possible, (3) fact that an appeal is being made, and (4) the grounds for appeal.[392] The grounds could be as simple as "Mr. Jones, claimant, did not commit a deliberate act of misconduct" or "I had good cause to quit."[393]

1. Jurisdictional Determinations

After a notice of appeal reaches the Department's Appeal Section a "work sheet" is completed listing the applicable statutes and rules in the case.[394] The individual processing these work sheets is generally a hearing officer who checks the date that the deputy's determination was mailed and the date the notice of appeal was received by the Appeal Section to determine whether the timeliness of the appeal should be made an issue at the evidentiary hearing before a hearing officer.[395] Notice that an appeal has been filed and notice of hearing is then mailed to the parties, and, in compliance with section 17A.12(2)(d), the form gives "a short and plain statement of the matters asserted."[396] If the timeliness of the appeal is an issue to be considered at the evidentiary hearing, the notice will say so and will list section 96.6(2) as the applicable law.[397] The reason for this procedure is that the requirement of a fair hearing includes notice of an opposing party's

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390. IOWA CODE § 17A.2(2) (1981).

391. 370 IOWA ADMIN. CODE § 6.2(1) (1980). An appeal by an employer from an award of benefits by a claims deputy does not stop the payment of benefits, as such a cutoff of benefits is contrary to federal law. *See* California Dep't of Human Resources v. Java, 402 U.S. 121, 133 (1971) (the Court held that a provision of Social Security Act, see 42 U.S.C. § 503(a)(1), requires payment promptly after an initial determination of eligibility, if both parties are provided with notice and an opportunity to present their positions before such an eligibility determination).

392. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

393. *Id.*

394. *Id.*

395. *Id.*

396. *Id.*

397. *Id.*

grounds for appeal and an opportunity to contest those issues.[398]

2. Ex parte Communications

The IAPA prohibits ex parte communications with an administrative hearing officer.[399] It is only fundamentally fair that one party not state their version of a certain course of events in the absence of the opposing party.[400] It is not an ex parte communication under the IAPA, however, for a Department hearing officer assigned to a contested case to "communicate with members of the agency."[401] An exception exists when a member of the Department is prosecuting or advocating in any given case.[402] An example of a Department member advocating or prosecuting a case is when a claimant has been disqualified for not being available for work and a Department member is asserting the unavailability,[403] or when a Department member is seeking to impose an administrative penalty because of alleged fraud by a claimant.[404]

3. Biased Hearing Officer

The IAPA specifically provides that a hearing officer who is personally biased[405] or who is subject to the authority of an advocate in a case can be disqualified, generally after the filing of an affidavit asserting the specific grounds for disqualification.[406] This affidavit should be filed as soon as the grounds are discovered in order to avoid waiver of the grounds.[407]

An allegation of bias of a hearing officer is reviewed *de novo* in the courts, but the party claiming bias must rebut the presumption of regularity of agency procedures.[408] The Iowa Supreme Court has held that quasi-judicial officers, such as hearing officers, should be guided by the canons set out in the Code of Judicial Conduct and should avoid impropriety and any appearance thereof.[409] Although hearing officers are not as well paid as judges,

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398. Anderson v. Moberg Rodlund Sheet Metal Co., 316 N.W.2d 286, 289 (Minn. 1982).

399. IOWA CODE § 17A.17 (1981). *See also* Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 170 (Iowa 1982); Anstey v. Iowa State Commerce Comm'n, 292 N.W.2d 380, 391 (Iowa 1980).

400. *In re* Marriage of Meyer, 285 N.W.2d 10, 11 (Iowa 1979).

401. IOWA CODE § 17A.17(1) (1981). *See also* Rucker v. Wisconsin Dep't of Indus., Labor & Human Relations, 101 Wis. 2d 285, ___, 304 N.W.2d 169, 172-74 (Ct. App. 1981).

402. IOWA CODE § 17A.17(3) (1981).

403. IOWA CODE § 96.4(3) (1981).

404. IOWA CODE § 96.5(8) (1981).

405. Clark v. Iowa Dep't of Job Serv., 317 N.W.2d 517, 519 (Iowa Ct. App. 1981) (citing Huber Pontiac, Inc. v. Allphin, 431 F. Supp. 1168 (S.D. Ill. 1977), *vacated on other grounds*, 585 F.2d 817 (7th Cir. 1978)).

406. IOWA CODE § 17A.17(4) (1981).

407. *See supra* note 319.

408. Anstey, 292 N.W.2d at 389-90.

409. *Id.* at 390.

and generally are not held in as high esteem as judges, attempts to communicate ex parte with hearing officers should be avoided. Unfortunately, attempts to communicate ex parte with hearing officers are frequent and blatant.[410] Attorneys should refrain from this practice on ethical grounds in order to avoid actual prejudice to a party or the appearance of bias.

The Wisconsin Court of Appeals in *Guthrie v. Wisconsin Employment Relations Commission*,[411] approved of the "appearance of fairness" doctrine to determine when an "administrative judge" should be disqualified, stating "the test used to judge if the doctrine has been violated is whether a disinterested person, being apprised of the totality of a board member's personal interest in a matter acted upon, would be reasonably justified in thinking partiality may exist."[412] " 'The doctrine reaches the *appearance of impropriety*, not just its actual presence.' "[413]

4. *Grounds Considered*

As stated earlier, the party appealing the initial determination should state in the notice of appeal the grounds for appeal.[414] Also, an employer in its protest should state the grounds for the protest in concise terms.[415] Claimants and employers should avoid a claim of unfairness by the opposing party by stating their positions in specific terms at an early point in the administrative process.

In *Shontz v. Iowa Employment Security Commission*,[416] the employer's protest stated, "This man had a heart attack off the job. Do not see where I would be liable."[417] According to the Iowa Supreme Court, this language, in view of the informality of administrative proceedings, should have put the hearing officer on notice that the employer was asserting a "voluntary quit,"[418] and not just that the claimant was not able to work, subjecting him to disqualification under section 96.4(3).[419] The case was, therefore, remanded to the Department for a hearing on the "voluntary quit" grounds

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410. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

411. 107 Wis. 2d 306, 320 N.W.2d 213 (Ct. App. 1982).

412. *Id.* at ___, 320 N.W.2d at 217 (citing Hill v. Dep't of Labor & Indus., 90 Wash. 2d 276, 580 P.2d 636, 640 (1978)).

413. Guthrie v. Wisconsin Employment Relations Comm'n, 107 Wis. 2d at ___, 320 N.W.2d at 217 (quoting Hayden v. City of Port Townsend, 28 Wash. App. 192, ___, 622 P.2d 1291, 1294 (1981)).

414. *See supra* text accompanying notes 391-92.

415. *See supra* text accompanying note 350-52.

416. 248 N.W.2d 88 (Iowa 1976).

417. *Id.* at 90.

418. IOWA CODE § 96.5(1) (1981).

419. *Id.* § 96.4(3). *See also* Shontz v. Iowa Employment Sec. Comm'n, 248 N.W.2d at 90-91.

that had not been considered at the initial evidentiary hearing.[420]

If an issue is properly before a hearing officer in accordance with *Shontz*, but the issue was not properly noted on the notice of appeal, a request for a continuance at the time of the hearing or before the hearing would generally be granted.[421] It is good practice to immediately review the notice when it is received to determine if the issues raised by a party are noted on the notice. If not, request should be made that a new notice be issued to avoid cancellation of a scheduled hearing or to avoid a request for continuance at the hearing.[422]

5. *Requests for Continuance*

The Department is very reluctant to postpone or continue evidentiary hearings. The Department must meet United States Department of Labor guidelines for disposition of appeals,[423] and a continuance requires a compelling reason. Most contested case hearings are now held by telephone conference call,[424] which means that a claimant or an employer can be in Milwaukee or Portland at the time of the hearing if they provide the Department with a phone number where they can be reached.[425] This means that requests for postponements based on weather conditions or even slight illness will be rejected.[426]

The instructions on the back of the notice of the hearing read in part as follows:

> Postponement—A hearing may be postponed by the hearing officer for good cause shown, either upon his (her) own motion or upon request of a party. A party's request for postponement shall be in writing, not less than three (3) days prior to the hearing, to the Chief Clerk, Appeal Section, Iowa Department of Job Service, 1000 East Grand Avenue, Des Moines, Iowa 50319. Each party shall be granted only one postponement. *Exception*: An extreme emergency, as determined by the hearing officer.

Informing the Chief Clerk by telephone is not a bad practice when you are requesting a postponement, but a written request directed to the presiding hearing officer also must be sent because the instructions state that the request shall be made in writing.[427] The exception noted at the end of the

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420. Shontz v. Iowa Employment Sec. Comm'n, 248 N.W.2d at 92.

421. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

422. *Id.*

423. *Id.*

424. *Id.* Approximately eighty-five to ninety percent of the Department's contested case hearings are held by telephone conference calls.

425. *See infra* text accompanying notes 452-60.

426. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

427. *Id.*

postponement instruction apparently applies to the writing requirement, the three-day requirement, and the one postponement per party condition, but this is not clear.

6. Discovery

Discovery procedures applicable to civil actions are available to all parties in contested cases before the Department.[428] As a practical matter, discovery is seldom utilized because of the informal nature of the administrative hearings. The relatively small sums of money at issue in individual unemployment compensation cases, and the need to have such cases decided in an expedient manner, also mitigate against heavy reliance on discovery procedures.

a. Depositions and Interrogatories. The Department has adopted a discovery rule which deals with the taking of depositions and the utilization of interrogatories.[429] If a party desires to serve interrogatories on an opposing party or a witness, the interrogatories must be submitted to the hearing officer assigned to the case who will then serve them on the opposing party or witness.[430] Answers are to be returned to that hearing officer and made a part of the record.[431]

It is noteworthy that section 17A.13(2) specifically provides for the discovery of witness statements or reports from an agency and identifiable records of an agency, unless those statements, reports or records are expressly exempt from disclosure by constitution or statute.[432] The Department's failure or refusal to respond to discovery is "agency action" as defined in the IAPA.[433] In *Christensen v. Iowa Civil Rights Commission*,[434] the agency failed to answer the interrogatories addressed to it; the Iowa Supreme Court, however, held that the General Assembly "intended that discovery problems in administrative proceedings be settled before the agency whenever possible and . . . that judicial review ordinarily must await final agency action."[435]

b. Iowa Freedom of Information Act. The Iowa Freedom of Information Act (FOIA), otherwise referred to as the Iowa Open Records Act, mandates access to a wide range of "public records" in the custody of public

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428. IOWA CODE § 17A.13 (1981). *See also* Iowa Civil Rights Comm'n v. City of Des Moines, 313 N.W.2d 491, 496 (Iowa 1981).

429. 370 IOWA ADMIN. CODE § 6.2(6) (i) (1980).

430. *Id.*

431. *Id.*

432. IOWA CODE § 17A.13(2) (1981).

433. IOWA CODE § 17A.2(9) (1981); Christensen v. Iowa Civil Rights Comm'n, 292 N.W.2d 429, 431 (Iowa 1980).

434. 292 N.W.2d 429 (Iowa 1980).

435. *Id.* at 431.

bodies.[436] The term "public records" is broadly defined.[437] Iowa's FOIA gives citizens the right to copy, and the media the immediate right to publish, public records unless a statutory exemption or provision specifically provides otherwise or unless an injunction is entered pursuant to section 68A.8.[438] Section 17A.13(2) duplicates the provisions of Chapter 68A and renders unlawful the denial of access to Department records unless the records are classified as confidential under section 68A.7,[439] other provisions of the Iowa Code or provisions of the Iowa Constitution.[440]

Access to Department records can be particularly useful when dealing with "one-party hearings" such as when the Department is seeking to disqualify a claimant for reasons other than the nature of the separation from employment. For instance, a claimant who is not able to work is not entitled to unemployment compensation benefits.[441] The Department may have a medical report furnished by a former employer, although not a formal party to the proceedings, documenting the alleged inability to work. Access to this document, if a party learns of its existence, will enable a claimant to counter it or show it to be counterfeit. It is worth remembering that failure to comply with the provisions of Chapter 68A can be a criminal offense.[442]

c. Subpoenaes. The Department has been granted statutory subpoena power which enables a party to request that a witness or materials, or both, be subpoenaed.[443] Department subpoenaes are not "subject to the distance limitations of section 622.28."[444] It should be remembered, however, that the Department does not have contempt power and that court action is necessary to enforce an agency subpoena.[445]

7. Evidentiary Hearing

The rights of a party in a contested case are set out in *The Definition of Formal Agency Adjudication under the Iowa Administrative Procedure Act*.[446] The right to subpoena witnesses and obtain copies of prior state-

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436. IOWA CODE ch. 68A (1981). *See also* Note, *Iowa's Freedom of Information Act: Everything You Always Wanted to Know About Public Records, But Were Afraid to Ask*, 57 IOWA L. REV. 1163 (1972).

437. IOWA CODE §§ 68A.1, 68A.8 (1981).

438. *Id.* § 68A.2; Howard v. Des Moines Register & Tribune Co., 283 N.W.2d 289, 299 (Iowa 1979), *cert. denied*, 445 U.S. 904 (1980).

439. IOWA CODE § 68A.7 (1981).

440. IOWA CODE § 17A.13(2) (1981).

441. *See supra* note 403.

442. IOWA CODE § 68A.6 (1981).

443. *Id.* § 17A.13(1).

444. *Id.*

445. Wilson and Co. v. Oxberger, 252 N.W.2d 687, 688 (Iowa 1977). *See* IOWA CODE § 17A.13(1) (1981); Iowa Civil Rights Comm'n, 313 N.W.2d at 493.

446. 63 IOWA L. REV. 285, 346 (1977).

ments made by Department witnesses has already been discussed,[447] as has the right to have a decision made by a hearing officer who is not also a prosecutor or advocate in the case,[448] who is impartial,[449] and who does not engage in ex parte communications.[450] Parties to a contested case also have the right to an open hearing.[451] The remainder of a party's applicable rights will be discussed in greater detail later in this article.

a. Notice and Mode of Hearing. As mentioned previously, most hearings before Department hearing officers are held by telephone conference calls.[452] If a party desires an in-person hearing, however, instructions on how to request such a hearing and seek cancellation of the telephone hearing are on the notice of the telephone conference hearing form.[453]

Notices for telephone conference hearings state that a party wishing to participate in such a hearing is under an affirmative duty to contact or telephone the Department and state their desire to participate and the telephone number where they can be reached.[454] The Department's Appeal Section keeps a log of all such calls or contacts.[455] If there is no "call-in" from a party it is the same as failing to appear at an in-person hearing.[456] The reason for the requirement of contacting the Department is obvious—not all parties wish to participate in Department hearings for a variety of reasons, such as in the case of a claimant finding another job or in the case of an employer realizing that there is no sound basis for the employer's protest of benefits.[457] Also, the Department does not have the current telephone number of every claimant or employer.[458]

The Department has three telephone numbers listed on the notice form, one for Des Moines calls (local calls), one for long distance intrastate calls, and one for long distance interstate calls.[459] The first long distance call is free, however, subsequent calls are not.[460]

On the notice of hearing form an appeal number such as 82A-UI-2819-R appears.[461] The "82" is for the calendar year, the "A" stands for appeal, "UI" means unemployment insurance, "2819" means it is the 2819th appeal

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447. IOWA CODE § 17A.13 (1981).
448. IOWA CODE § 17A.17(3) (1981).
449. IOWA CODE § 17A.17(4) (1981).
450. IOWA CODE §§ 17A.17(1), (2) (1981).
451. IOWA CODE § 17A.12(7) (1981).
452. *See supra* note 424.
453. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).
454. *Id.*
455. *Id.*
456. *Id.*
457. *Id.*
458. *Id.*
459. *Id.*
460. *Id.*
461. *Id.*

for 1982 and "R" is the first letter of the last name of the presiding hearing officer.[462] The applicable statutory sections are on the notice,[463] as is the date and time of the hearing.[464]

b. Evidentiary Standards and Privileges. Regarding the admissiblity of evidence, only "irrelevant, immaterial, or unduly repetitious evidence" is excludable.[465] Hearsay is generally admissible as it is usually "the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs . . . even if it would be inadmissible in a jury trial."[466] It is good practice not to burden the hearing officer or prolong the proceedings by repeatedly making hearsay objections as such objections will generally be overruled.[467]

The IAPA provides that "[a]gencies shall give effect to the rules of privilege recognized by law."[468] The Iowa Supreme Court has recognized, in accordance with section 17A.14(1), that the medical records privilege of section 622.10 applies in contested case proceedings.[469]

c. Right to Cross-Examination. The IAPA provides for cross-examination of "[w]itnesses at the hearing, or persons whose testimony has been submitted in written form if available. . . ."[470] Section 17A.14(3) does not require cross-examination in all cases.[471] It is incumbent on a party to invoke its statutory right to cross-examination and a failure to do so will waive, for instance, any objection to the introduction of a written statement.[472] It is also noteworthy that the author of a written statement must be "available" in order to invoke the statutory right to cross-examine.[473]

d. Right to Counsel. The IAPA provides for representation by counsel at a party's own expense.[474] Only about five percent of the claimants in contested cases are represented by attorneys, and the percentage of employers represented by attorneys at unemployment compensation hearings is not much higher.[475]

If a party is to obtain legal counsel, it is best to do so prior to the evidentiary hearing before the hearing officer. The reason, of course, is that the

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462. *Id.*
463. *Id.*
464. *Id.*
465. IOWA CODE § 17A.14(1) (1981).
466. *Id.*
467. McConnell v. Iowa Dep't of Job Serv., 327 N.W.2d 234, 236-37 (Iowa 1982).
468. IOWA CODE § 17A.14(1) (1981).
469. Iowa Civil Rights Comm'n v. City of Des Moines, 313 N.W.2d at 496-97.
470. IOWA CODE § 17A.14(3) (1981).
471. *Id.*
472. *Cf.* Iowa Employment Sec. Comm'n v. Iowa Merit Employment Comm'n, 231 N.W.2d 854, 857 (Iowa 1975).
473. *See supra* note 470.
474. IOWA CODE § 17A.12(4) (1981).
475. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

Job Service Appeal Board and the court will review the record made before the hearing officer.[476] The Appeal Board may "direct the taking of additional evidence."[477] However, this is rarely done.[478] In short, if an attorney is retained after the record is made before a hearing officer, and the record is incomplete or unfavorable to a party, there is very little an attorney can do except present the case in the best light possible or perhaps seek an opportunity to offer additional evidence or a remand. It is also important to keep in mind that an incomplete record made before the Department without the aid of an attorney can have adverse collateral consequences if federal civil rights litigation is planned. Attorneys should make themselves familiar with the decision in *Gear v. City of Des Moines*.[479]

e. Findings of Fact Based on Formal Record. In accordance with the IAPA, the Department tape records all contested case hearings.[480] All documents offered are marked as exhibits and made a part of the formal record.[481] Findings of fact by the hearing officer are "based solely on the evidence in the record and on matters officially noticed in the record."[482]

8. *Burden of Proof*

The Iowa Supreme Court has stated on a number of occasions that the burdens of proof is on a claimant seeking unemployment compensation benefits.[483] The court, however, recently approved a Departmental rule which places the burden of proving misconduct in a discharge situation on the employer. The court stated that this "principle prevails generally in other jurisdictions in situations involving alleged disqualification from receiving unemployment compensation."[484] Also, the Iowa Court of Appeals in *Gipson v. Iowa Department of Job Service*,[485] held that the Department has the burden of proof when seeking to impose an administrative penalty pursuant to section 96.5(8).[486] "[T]he burden of proof generally rests . . . [on] the party asserting an affirmative issue,"[487] that is, "the general civil rule . . . imposes

476. IOWA CODE §§ 17A.19, .20, § 96.6(5) (1981).
477. IOWA CODE § 96.6(5) (1981).
478. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).
479. 514 F. Supp. 1218 (S.D. Iowa 1981).
480. IOWA CODE § 17A.12(7) (1981).
481. IOWA CODE § 17A.12(6) (1981).
482. IOWA CODE § 17A.12(8) (1981).
483. Davoren v. Iowa Employment Sec. Comm'n, 277 N.W.2d 602, 603 (Iowa 1979); Walles v. Iowa Employment Sec. Comm'n, 219 N.W.2d 539, 540 (Iowa 1974); Ritchey v. Iowa Employment Sec. Comm'n, 216 N.W.2d 580, 584 (Iowa 1974); Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa 1161, 1172, 34 N.W.2d 211, 217 (1948).
484. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d at 11.
485. 315 N.W.2d 834 (Iowa Ct. App. 1981).
486. *Id.* at 836.
487. *Id.*

the burden of proof on an issue upon the party who would suffer loss if the issue were not established."[488] Nonetheless, "when the party having such a burden has made out a prima facie case . . . the opposite party . . . [must] go forward with his [or her] proof to meet the prima facie case so made."[489]

In the following cases the Iowa Supreme Court determined that the claimant had the burden of proof. In *Davoren v. Iowa Employment Security Commission*,[490] the claimant asserted that he was available for work even though he was a full-time student.[491] In *Walles v. Iowa Employment Security Commission*,[492] the claimant was found to have voluntarily quit, but did not meet his burden of proof that the quit was for good cause attributable to his former employer.[493] In *Ritchey v. Iowa Employment Security Commission*,[494] the claimant attempted to demonstrate a legitimate reason for filing a late claim.[495] The claimant, in *Moulton v. Iowa Employment Security Commission*,[496] was also found to have voluntarily quit without good cause attributable to her employer.[497]

As can be seen from *Cosper v. Iowa Department of Job Service*,[498] and *Gipson*, the burden of proof in unemployment compensation cases is not invariably on the claimant, as the particular issue before the Department must first be ascertained when determining who has the burden of proof. Finally,"[s]eldom does a party having the burden of proving a proposition establish it as a matter of law."[499]

9. *Decision of the Hearing Officer*

A proposed or final Department decision must include separate findings of fact and conclusions of law.[500] The Iowa Supreme Court expressed extreme displeasure when the statutorily mandated separate findings of fact and conclusions of law were not set out by the Industrial Commissioner af-

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488. *See supra* note 484.

489. Johnson v. Bd. of Adjustment, 239 N.W.2d 873, 885 (Iowa 1976) (quoting Howard & Harper v. Chicago, B. & Q. R. Co., 196 Iowa 1378, 1383-84, 195 N.W. 153, 155 (1923)).

490. *See supra* note 483.

491. Daveron v. Iowa Employment Sec. Comm'n, 277 N.W.2d at 605. *See* IOWA CODE § 96.4(3) (1981).

492. *See supra* note 483.

493. Walles v. Iowa Employment Sec. Comm'n, 219 N.W.2d at 543. *See* IOWA CODE § 96.5(1) (1981).

494. *See supra* note 483.

495. Ritchey v. Iowa Employment Sec. Comm'n, 216 N.W.2d at 583. *See* IOWA CODE §§ 96.4(1), (3) (1981).

496. *See supra* note 483.

497. Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa at 1165, 34 N.W.2d at 213. *See* IOWA CODE § 96.5(1) (1981).

498. 321 N.W.2d 6 (Iowa 1982).

499. Ritchey v. Iowa Employment Sec. Comm'n, 216 N.W.2d at 585.

500. IOWA CODE § 17A.16(1) (1981).

ter a prior admonition by the court.[501] Department hearing officers follow a Department format when issuing their decisions, which includes among other things, a "Statement of the Case," "Findings of Fact," "Reasoning and Conclusions of Law," and a "Decision."[502] On occasion, however, findings of fact are set out under the conclusions of law category and vice versa.[503] Each conclusion of law is supposed to be "supported by legal authority or a reasoned opinion."[504]

Hearing officer decisons are generally issued a week to ten days after the evidentiary hearing.[505] In fact, a Department rule requires that a decision be issued "within seven days after a hearing."[506] The decision is sent by first class mail to the parties and their attorneys.[507] Hearing officers, on occasion, issue *nunc pro tunc* orders to correct clerical errors. The losing party, however, should treat the date of the mailing of the initial decision as the date which triggers the running of the appeal period.[508]

10. Appeal of Hearing Officer's Decision

A party has fifteen days to appeal a hearing officer's decision to the Job Service Appeal Board.[509] Instructions on how to appeal appear on the upper right-hand corner of the hearing officer's decision.[510] Essentially, all that is necessary is that an appealing party state its name, address, and social security number, a reference to the decision being appealled, the fact that an

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501. Ward v. Iowa Dep't of Transp., 304 N.W.2d 236, 238 (Iowa 1981).

502. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

503. Ellis v. Iowa Dep't of Job Serv., 285 N.W.2d 153, 157 (Iowa 1979).

504. IOWA CODE § 17A.16(1) (1981).

505. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

506. 370 IOWA ADMIN. CODE § 6.3(3)(a) (1980). The failure of a hearing officer to issue his or her decision within the seven day time frame would not be a basis for setting aside agency action if the substantial rights of a party are not prejudiced by the delay. *See* IOWA CODE § 17A.19(8) (1981); Ashland v. South Dakota Dep't of Labor, Unemployment Ins. Div., 321 N.W.2d 103, 106 (S.D. 1982).

507. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

508. *Id.* A hearing officer can change his or her decision prior to the expiration of the statutory appeal period or the taking of an appeal. *See* Huntzinger v. Moore Business, Inc., 320 N.W.2d 545, 547 (Iowa 1982).

509. *See supra* note 303. 370 IOWA ADMIN. CODE § 6.4(1)(b) (1980) provides that the postmark date is the "filing" date. On December 1, 1982, however, the Administrative Rules Review Committee considered a proposed rule change that would require receipt by the Department of an appeal within the fifteen-day appeal period rather than a postmark within that period. This proposed change was set for public hearing as the Committee concluded that the proposed change would not be universally applauded. Interview with Joseph Royce, Staff Attorney for the Iowa Administrative Rules Review Committee, in Des Moines, Iowa (December 13, 1982).

510. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

appeal is taken, and the grounds upon which the appeal is based.[511] A claimant will also want to appeal any notice of overpayment imposed in the hearing officer's decision because of the reversal of a qualifying decision made by a claims deputy.[512] The Iowa General Assembly has statutorily mandated the recovery of benefits paid in error, without regard to whether the Department or the claimant committed the error, and the recovery of benefits awarded because of fraud or misrepresentation.

The statutory authorization for recovering benefits paid will be discussed under the substantive law section.[513]

11. Effect of "Double Allowance"

Section 96.6(2) reads in part:

> If a hearing officer affirms a decision of the representative, or the appeal board affirms a decision of the hearing officer, allowing benefits, *such benefits shall be paid regardless of any appeal which may thereafter be taken,* but if such decision is finally reversed, no employers' account shall be charged with benefits so paid.[514]

In other words, if a claimant secures an affirmation of a claims deputy's qualifying decision from a hearing officer, or secures an affirmation of a qualifying decision of a hearing officer's decision by the Appeal Board, the claimant may retain all benefits received.[515] Moreover, if the Appeal Board reverses a qualifying decision of a hearing officer that affirmed a qualifying deputy's decision, benefits will be cut off at the time the Appeal Board issues its decision, but no notice of overpayment seeking to recover benefits received will be issued.[516]

In practical terms, if a claimant secures two favorable decisions from a claims deputy and a hearing officer, the claimant has effectively prevailed because benefits are generally exhausted in the individual's case by the time the Appeal Board issues its decision.[517] The reversal by the Appeal Board relieves the employer's account from liability, but it is of no consequence to the claimant, although the unemployment trust fund is charged with these benefits.[518] In any event, a reversal of a qualifying hearing officer's decision by the Appeal Board does not relieve the account of a reimbursable employer.[519]

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511. *Id.*
512. *Id.*
513. IOWA CODE §§ 96.3(7), 16(4) (1981).
514. IOWA CODE § 96.6(2) (1981) (emphasis added).
515. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).
516. *Id.*
517. *Id.*
518. *Id.*
519. Reimbursable employers are governed primarily by sections 96.7(8) and (9) of the

F. Appeal Board Review

As previously mentioned, the Job Service Appeal Board is a three-member board appointed by the Governor and confirmed by the Senate.[520] One member represents employers, one represents employees, and one member "shall be impartial and shall represent the general public."[521] The ban against ex parte communications contained in the IAPA applies to the Appeal Board.[522]

1. Jurisdictional Determinations

Just as a hearing officer will ascertain at the outset whether there is jurisdiction to review a claims deputy's decision, the Appeal Board will ascertain if it has jurisdiction to review a hearing officer's decision. The appeal period commences "after the day of notification or mailing of such decision."[523] A party's notice of appeal to the Appeal Board must be "filed" within fifteen days, but mailing is deemed filing in accordance with a Department rule.[524] The Department has authority to declare the mailing or postmark date as the filing date[525] and has done so for this stage of the administrative process. As noted earlier, the receipt date and not the mailing or postmark date is the date of "filing" when appealing a claims deputy's initial determination to a hearing officer.[526]

Iowa Code.

520. IOWA CODE § 96.6(4) (1981).

521. *Id.* It is open to serious question whether this portion of the statute could withstand a constitutional challenge under the Due Process Clauses of the United States and Iowa Constitutions since a majority of the Appeal Board is by statute charged with being partial. That is, a majority of the Board is charged with representing employers or employees and only one member of the Board "shall be impartial." This portion of section 96.6(4) is being challenged on due process grounds in the Iowa District Court for Iowa County. Amana Refrigeration, Inc. v. Iowa Dep't of Job Service, No. 19340 (Iowa County, Iowa filed May 20, 1982) (submitted to the Iowa District Court in December, 1982). *See also* Murray v. Wilner, 118 Mich. App. ___, ___, 325 N.W.2d 422, 425-28 (1982)(the court digests the cases holding that due process requires an impartial decision maker). In order to satisfy the jurisdictional requirement that all adequate adminstrative remedies be exhausted, but avoid an assertion of waiver regarding this due process challenge, a party should appeal to the Appeal Board and simultaneously request that the Board disqualify itself from deciding the case. The disqualification of the Board members should be sought on the basis that all action taken by the Board is void as the Board is acting under the authority of a partially unconstitutional statute. Perhaps it would be constitutionally permissible for the one "impartial" Board member to decide the case.

522. IOWA CODE § 17A.17 (1981). *See* Carr v. Iowa Employment Sec. Comm'n, 256 N.W.2d 211, 216 (Iowa 1977); Hanselman v. Killeen, 112 Mich. App. 275, ___, 316 N.W.2d 237, 240-41 (1982).

523. *See supra* note 303.

524. 370 IOWA ADMIN. CODE § 6.4(1)(b). This rule is cited in *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d at 8.

525. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d at 8.

526. *See supra* text accompanying notes 377-89.

2. Review on the Record

When a party appeals a hearing officer's decision, a transcript of the proceedings before the hearing officer is typed free of charge by the Department.[527] Review by the Appeal Board is on the "basis of the evidence previously submitted in such case."[528] The Appeal Board, like the hearing officer, considers all matters in the "administrative file," whether they are or are not formally introduced at the evidentiary hearing, and such matters include the application for benefits, wage credits, protests by employers, statements to a claims deputy, the claims deputy's determination, notice of appeal, and notice of the evidentiary hearing, as well as the hearing transcript.[529]

The Appeal Board can direct the taking of additional evidence before a hearing officer, but has no authority to take additional evidence itself.[530] If a party requests that it be permitted to offer additional evidence, it would seem that initially "good reasons" for failure to present this additional evidence before the hearing officer would have to be shown.[531]

3. Issuance of Decision

Traditionally, Appeal Board members have not been attorneys and have had little or no experience or exposure to the law. A former state senator who is an attorney was, however, recently appointed to the Appeal Board to "represent" employers.[532] As a result of their lack of formal training in the law, the decisions of the Appeal Board often incorporate by reference the decision of the hearing officer. This is also a time saving measure. When the Appeal Board reverses, it attempts to set out separate findings of fact and conclusions of law but often combines them. This requires a reviewing court to sort out the findings of fact and conclusions of law on review.[533] The Appeal Board often substitutes its judgment for that of the hearing officers on

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527. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982). IOWA CODE section 17A.12 provides that the "requesting party" must pay for the cost of a transcript, but the Department apparently does not treat an appealing party as a "requesting party." This may change if state revenues continue to shrink.

528. *See supra* note 477.

529. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

530. *Id.* This is analogous to section 17A.19(7) which authorizes a remand by the Iowa District Court to an agency for the taking of additional evidence, but does not authorize the court itself to "hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding." IOWA CODE § 17A.19(7) (1981).

531. IOWA CODE § 17A.19(7) (1981).

532. Former Senator Dick Ramsey was appointed by Governor Robert D. Ray for a six-year term that commenced in May, 1982.

533. Ward v. Iowa Dep't of Transp., 304 N.W.2d at 239.

issues turning exclusively on credibility of witnesses.[534] A recent Wisconsin case held, however, that "[d]ue process requires that the commission have the benefit of the examiner's personal impressions of the material witness before rejecting the examiner's recommendations."[535]

The Appeal Board occasionally will submit appeals to two of its three members if one Appeal Board member is absent for any reason, so as not to postpone decisions. If the two reviewing members divide on a given case, the decision of the hearing officer is allowed to stand;[536] this result is particularly common when the "impartial" member of the Board is absent. The parties are notified of the Appeal Board's decision by regular mail in all cases.[537]

4. *Application for Rehearing*

An application for rehearing is not mandatory and an appeal can be taken directly to the Iowa District Court.[538] A party has twenty days to file an application for rehearing.[539] The application is deemed denied unless granted within twenty days after its filing.[540] The Appeal Board almost always rules upon an application for rehearing within twenty days of filing.[541] The Appeal Board usually states that the application for rehearing is denied for "lack of evidence other than that which has already been presented."[542] Filing an application before the Job Service Appeal Board therefore can be a waste of time and effort.

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534. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

535. Rucker v. Wisconsin Dep't of Indus., Labor & Human Relations, 101 Wis. 2d 285, ___, 304 N.W.2d 169, 172 (Ct. App. 1981).

536. This has been recently challenged on constitutional grounds in the Iowa District Court for Iowa County. Amana Refrigeration, Inc. v. Iowa Dep't of Job Serv., No. 19340 (Iowa County, Iowa filed May 20, 1982). It would seem that a stronger argument could be made that this practice is contrary to the intent of the legislature, *see* Iowa Code §§ 17A.19(8)(a), (d) (1981), and therefore agency action can be set aside on that basis. Since the legislature charged a majority of the Appeal Board with being biased, it follows that the legislature contemplated that the biased members and the "impartial" member should review each case submitted to the Board so that, for instance, employers are not left "unrepresented" in a significant number of cases.

537. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

538. *See supra* note 306.

539. Iowa Code § 17A.16(2) (1981). Mailing is deemed filing in accordance with 370 Iowa Administrative Code section 4.35(1), which is cited with approval in *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d at 8. 370 Iowa Administrative Code section 4.35(1) (1980) is concerned with Department filing requirements generally and not just applications for rehearing before the Appeal Board.

540. Ford Motor Co., v. Iowa Dep't of Transp., 282 N.W.2d 701, 703 (Iowa 1979).

541. Interview with Iowa Dep't of Job Serv. Chief Hearing Officer William J. Yost, in Des Moines, Iowa (June 5, 1982).

542. *Id.*

In *Cunningham v. Iowa Department of Job Service*,[543] the Iowa Supreme Court held that it was mandatory under section 17A.16(2) to mail a copy of the application for rehearing to all parties of record, if such a non-mandatory application is filed.[544] *Cunningham* contains a discussion on how to determine when a duty or requirement is mandatory rather than directory,[545] as does *Foods, Inc. v. Iowa Civil Rights Comm'n*.[546] In *Cunningham* the Iowa Supreme Court held that the mailing requirement of section 17A.16(2) is mandatory, but not jurisdictional.[547] The sustenance of a special appearance, however, was upheld because of the claimant's failure to comply with the statute's mandatory notice requirement.[548]

5. *Statutory Appeal Period for Judicial Review*

A petition for judicial review of an Appeal Board decision "must be filed within thirty days after the issuance of the" decision.[549] If your application for rehearing has been deemed denied by the passage of twenty days, the thirty days runs from the date the application is deemed denied, even though the Appeal Board issues its rehearing denial in writing after the twenty days.[550]

G. Judicial Review by District Court

Seeking judicial review of the final decision of the Appeal Board may be advisable if you are convinced of the validity of your position and you are not in a hurry. It is not unusual for one or two years to pass after a petition for judicial review is filed before a decision is rendered by the Iowa District Court.[551] In order to avoid unnecessary delay, it is advisable to bring to the attention of the Iowa District Court, by motion or otherwise, that the Iowa Code provides that petitions for judicial review involving unemployment compensation benefits "shall be given precedence over all other civil cases except cases arising under the worker's compensation law of this state."[552] Of course, some delay is inevitable given the heavy caseload of the Iowa District Courts.[553] Handling Iowa District Court reviews by telephone con-

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543. 319 N.W.2d 202 (Iowa 1982).
544. *Id.* at 204.
545. *Id.*
546. 318 N.W.2d 162, 170 (Iowa 1982).
547. Cunningham v. Iowa Dep't of Job Serv., 319 N.W.2d at 204.
548. *Id.*
549. IOWA CODE § 17A.19(3) (1981). *See* Oliver v. Teleprompter Corp., 299 N.W.2d 683, 686-87 (Iowa 1980).
550. *See supra* note 540.
551. Interview with General Counsel for the Iowa Dep't of Job Serv., Walter F. Maley, in Des Moines, Iowa (June 5, 1982). Mr. Maley was appointed General Counsel on August 1, 1965.
552. IOWA CODE § 96.6(8) (1981).
553. Blair, *Attacking the Case Load Dilemma: An Open Letter to the Bench and Bar of*

ference calls, with the courts' approval, is an efficient way to handle these cases. The review is on the record made before the Department and briefing schedules are often imposed by the court, with the result that all parties and the court have all briefs in hand at the time a case is orally submitted.

1. *Applicability of Rules of Civil Procedure*

The Iowa Rules of Civil Procedure are applicable to IAPA judicial reveiw proceedings, "except to the extent the rules are inconsistent with any provision of the Iowa Administrative Procedure Act, . . . or with the rules specifically set forth in this division."[554] An example of a rule of civil procedure that does not apply to IAPA proceedings is rule 237, governing summary judgment, as the Iowa Supreme Court has twice held that a motion for summary judgment is not available when the Iowa District Court is reviewing agency action pursuant to section 17A.19.[555]

2. *Venue Provisions of Chapter 96*

Proper venue, in accordance with section 17A.19(2), is a jurisdictional requirement when seeking judicial review of agency action pursuant to the IAPA.[556] Section 96.6(8), however, mentions the IAPA by name and provides that venue is also proper in the county in which the claimant was last employed or resides. Nonresidents, however, must always file in Polk County District Court.[557]

3. *Application for Additional Evidence*

If the record made by the Department is deficient in some manner from a party's perspective, the party may want to consider making an application to the Iowa District Court to permit the taking of additional evidence before the Department pursuant to section 17A.19(7). An application presenting evidence, in addition to that in the record in the contested case before the Department, must allege materiality and "good reasons for failure to present the evidence earlier."[558] These elements must then be shown to the satisfaction of the Iowa District Court.[559]

Iowa, 27 DRAKE L. REV. 319, 319 (1978).

554. IOWA R. CIV. P. 331.

555. Dillehay v. Iowa Dep't of Job Serv., 280 N.W.2d 422, 424 (Iowa 1979); Young Plumbing & Heating Co. v. Iowa Natural Resources Council, 276 N.W.2d 377, 381 (Iowa 1979).

556. Iowa Pub. Serv. v. Iowa State Commerce Comm'n, 263 N.W.2d 766, 768-70 (Iowa 1978).

557. IOWA CODE § 96.6(8) (1981). *See* Green v. Iowa Dep't of Job Serv., 299 N.W.2d 651, 654 (Iowa 1980).

558. Reiter v. Iowa Dep't of Job Serv., 327 N.W.2d 763, 765 (Iowa Ct. App. 1982); Cedar Valley Leasing v. Iowa Dep't of Revenue, 274 N.W.2d 357, 362 (Iowa 1979).

559. Cedar Valley Leasing v. Iowa Dep't of Revenue, 274 N.W.2d at 362.

4. *Request for Stay*

If a notice of overpayment has been issued by the Department, it may be advisable to request a stay pursuant to section 17A.19(5) so that the Department is prevented from collecting or attempting to collect the overpayment.

5. *"Naming" Requirement of Chapter 96*

Section 96.6(8) requires that all parties before the Job Service Appeal Board be named in a petition for judicial review. The parties need not be named in the caption of the peititon, however.[560] Failure to name the Appeal Board parties anywhere in the petition will result in the Iowa District Court's lack of subject matter jurisdiction.[561] Several Iowa District Court decisions have not permitted amendments pursuant to Iowa Rule of Civil Procedure 88 to satisfy the "naming" requirement once the time for service of the petition has run.[562] In addition to the "naming" requirement of chapter 96, the IAPA requires that the Department be named as a respondent in a petition for judicial review.[563] When naming the unemployment compensation agency as a respondent in such a petition, remember that the Iowa Employment Security Commission has been abolished and in its place the Department of Job Service was created.[564] In *Frost v. S.S. Kresge Co.*,[565] the Iowa Supreme Court held that misnaming an agency in a petition for judicial review did not result in the lack of subject matter jurisdiction of the Iowa District Court, since the agency actually received notice of the proceeding and no prejudice occurred.[566] Potential litigation, however, can be avoided by naming the Iowa Department of Job Service as the respondent agency in unemployment compensation cases.

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560. Green v. Iowa Dep't of Job Serv., 299 N.W.2d at 654.

561. Ball v. Iowa Dep't of Job Serv., 308 N.W.2d 54, 56 (Iowa 1981). The Department's special appearance in *Ball* was filed after its answer as the lack of subject matter jurisdiction can be raised at any point in the proceedings; subject matter jurisdiction cannot be conferred by waiver, estoppel or consent. *See* Qualley v. Chrysler Credit Corp., 261 N.W.2d 466, 468 (Iowa 1978). Of course the preferred practice is to raise lack of subject matter jurisdiction by a special appearance prior to the filing of an answer.

562. In *Weber v. Iowa Dep't of Job Serv.*, No. 12163 (Mitchell County, Iowa, filed May 20, 1982), the Iowa District Court sustained the Department's special appearance and overruled Ms. Weber's motion to amend which was filed 39 days after her petition was filed. In *Craft v. Iowa Dep't of Job Serv.*, No. 4-11-81 (58-13) (Chickasaw County, Iowa, filed Dec. 16, 1981), the Iowa District Court took a similar position.

563. IOWA CODE § 17A.19(4) (1981).

564. IOWA CODE § 96.10 (1981).

565. 299 N.W.2d 646 (Iowa 1980).

566. *Id.* at 647-48.

H. *Judicial Review by Appellate Courts*

An adverse adjudication by the Iowa District Court in a chapter 96 case can be appealed to the Iowa Supreme Court pursuant to section 17A.20. The Iowa Supreme Court in *Lerdall Construction Co., Inc. v. City of Ossian,*[567] established the principles governing the appealability of an adjudication to the Iowa District Court.[568] It cannot be assumed that a remand by the Iowa District Court to the Department is an interlocutory adjudication because it often is not.[569] On appeal the Iowa Supreme Court or Iowa Court of Appeals will perform the same task as the Iowa District Court, rather than just reviewing the Iowa District Court's decision for reasonableness.[570] Therefore, if you have the time and money you might as well appeal, if the sums or principles at issue are substantial.

Most unemployment compensation cases appealed to the Iowa Supreme Court are transferred to the Iowa Court of Appeals pursuant to Iowa Rule of Appellate Procedure 401.[571] The Iowa Supreme Court "focus[es] on the minority of cases that affect the development of the law."[572]

If you are on the same side as the Department at the Iowa District Court level, check with the Department's Legal Department prior to appealing because the Department may plan on appealing the adjudication. The Department has considerable resources and a legal staff fully acquainted with this area of the law. The Department may be able to vindicate a party's position at no cost to the party.

I. *Procedures Applicable to Employer Liability*

Iowa's unemployment law establishes procedural requirements relating to questions of employer liability in five major areas: (1) coverage, (2) contributory or reimbursable status, (3) contribution rates, (4) employer

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567. 318 N.W.2d 172 (Iowa 1982). *See also* Davenport Bank & Trust v. City of Davenport, 318 N.W.2d 451, 453-54 (Iowa 1982).

568. Lerdall Const. Co., Inc. v. City of Ossian, 318 N.W.2d at 174-76.

569. *Ball v. Iowa Dep't of Job Serv.*, 308 N.W.2d 54 (Iowa 1981) is a good example of a remand order being a final adjudication. The Iowa District Court overruled the Department's special appearance and then entered a remand order mandating a new hearing before a hearing officer other than the hearing officer who presided over the original contested case proceeding. The Department appealed this remand order and the order overruling its special appearance. The Iowa Supreme Court resolved the controversy without making any mention of the appealability of the remand. Therefore, it is implicit that the Iowa Supreme Court determined that the remand order was a final adjudication. *See also* Reiter v. Iowa Dep't of Job Serv., 327 N.W.2d at 765.

570. Jackson County Pub. Hosp. v. Public Employees Relations Bd., 280 N.W.2d 426, 429 (Iowa 1979); Hoffman v. Iowa Dep't of Transp., 257 N.W.2d 22, 25 (Iowa 1977).

571. Interview with General Counsel for the Iowa Dep't of Job Serv., Walter F. Maley, in Des Moines, Iowa (June 5, 1982).

572. McCormick, *Appellate Congestion in Iowa: Dimensions and Remedies*, 25 DRAKE L. REV. 133, 157 (1975).

charges, and (5) interest and penalties. Most of the requirements apply to both contributory and reimbursable employers in general while several more specific requirements are directed to reimbursable government entities and nonprofit organizations.

1. *Employers Generally*

The Department initially determines all questions relating to coverage, contribution rate, contribution amount, employer charges, and interest and penalties.[573] A copy of the initial determination must be sent by regular mail by the Department to the employer.[574] The employer may appeal the Department's initial determination by filing in writing with the Department within thirty days of the mailing of the initial determination by the Department to the employer.[575] "If an appeal is not filed within the thirty days, the initial determination . . . [is] final and conclusive."[576] In addition, an employer which has not previously been notified of the allowance of benefits may, within thirty days after the receipt of the quarterly statement of charges against the employer's account, appeal the benefit eligibility determination to the Department.[577] It is of course a question of fact whether the quarterly statement of charges was the first notification of allowance of benefits and the Department may ultimately find that the quarterly statement of charges was not the first notification.

Upon appeal of a question of employer liability, the Department must hold a hearing.[578] A copy of the hearing officer's decision must be sent by regular mail by the Department to the employer.[579] If, however, the decision involves a redetermination of contribution rate, a determination of additional contributions found due, or a revision of assessed contribution and interest, the Department's notification must be by certified mail to the employer.[580]

The decision issued by the Department after hearing may be appealed to the "district court of the county in which the employer resides or in which the employer's principal place of business is located, or, for a nonresident employer, . . . either in a county in which the wages payable for employment were earned or paid, or in Polk County. . . ."[581] The appeal must

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573. IOWA CODE §§ 96.7(3)(a)(6), .7(3)(e), .7(4)(a) & (d), .7(9)(a)(6) (1981).
574. IOWA CODE § 96.7(4)(d) (1981).
575. IOWA CODE §§ 17A.15(3), 96.7(3)(e), .7(4)(d), .7(5), .7(9)(a)(6) (1981).
576. IOWA CODE § 96.7(4)(d) (1981).
577. IOWA CODE § 96.7(3)(a)(6) (1981).
578. IOWA CODE §§ 17A.12(1), 96.7(3)(e), .7(4)(d), .7(5), .7(9)(a)(6) (1981).
579. IOWA CODE §§ 17A.12(1), .16(1), 96.7(4)(d) (1981).
580. IOWA CODE §§ 17A.12(1), .16(1), 96.7(3)(e), .7(4)(a), .7(5), .7(9)(a)(6) (1981).
581. IOWA CODE §§ 96.7(6), .7(9)(a)(6) (1981). One of the administrative rules of the Department provides for appeal board review. 370 IOWA ADMIN. CODE § 6.7(1) (1980). That rule is contrary to section 96.7(4)(d) of the 1981 Iowa Code and the intent of the legislation enacting that provision. As a result, it is probably void. *See* 1979 IOWA ACTS, 69th G.A., ch. 33, § 19.

be filed in an Iowa District Court within thirty days after the date of notice, (*i.e.*, the date of mailing[582]) to the employer; the employer must also file an appeal bond.[583] If an appeal to the Iowa District Court is not filed within the thirty days, the Department's decision after the hearing is final and conclusive.[584] The employer may also appeal the Iowa District Court's decision to the Iowa Supreme Court.[585]

Several other provisions relate to employer liability. The Department may file a lien on the property of an employer for unpaid contributions,[586] may issue a distress warrant,[587] or apply to the Iowa District Court to enjoin a delinquent employer from operating any business in the state.[588] A five-year limitation exists on the Department's redetermination that additional employer contributions are owed.[589]

2. *Reimbursable Government Entities and Nonprofit Organizations*

Specific procedural requirements apply to reimbursable government entities and nonprofit organizations. The amount of reimbursements billed by the Department to a reimbursable employer is conclusive, unless the employer files, not later than fifteen days following the date the bill was mailed to the employer, an application for redetermination by the Department.[590] The redetermination is conclusive on the employer unless the employer files an appeal to the Iowa District Court no later than thirty days after the redetermination was mailed to the employer.[591]

IV. Substantive Law

This section of the article discusses Iowa's statutory law, administrative rules, and the corresponding case law applicable to the awarding of unemployment compensation benefits and the determination of employer taxation rates, reimbursements, and charges. The section is divided into seven parts: (1) coverage, (2) benefit eligibility, (3) weekly benefit amount and duration of benefits, (4) benefit disqualifications, (5) penalties, (6) back pay,

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582. Iowa Code § 96.7(4)(d) (1981).

583. Iowa Code §§ 96.7(6), .7(9)(a)(6) (1981). One of the administrative rules of the Department is inconsistent and probably void. 370 Iowa Admin. Code § 3.61 (1980).

584. Iowa Code § 96.7(4)(d) (1981).

585. Iowa Code §§ 96.7(6), .7(9)(a)(6) (1981).

586. Iowa Code §§ 96.7(4)(a), (b), .7(7), .7(9)(b)(5), 96.14(3) (1981).

587. Iowa Code § 96.7(7) (1981).

588. Iowa Code § 96.14(16) (1981).

589. Iowa Code § 96.7(4)(b) (1981).

590. Iowa Code § 96.7(8)(c), (d), .7(9)(b)(4) (1981).

591. Iowa Code §§ 96.7(6), .7(8)(c), (d), .7(9)(b)(4) (1981). Although Iowa Code section 96.7(9)(b)(4) allows an appeal to the Iowa District Court within sixty days, the section also refers to the thirty-day appeal period required in section 96.7(6), which takes precedence over Chapter 17A of the Iowa Code.

(7) constitutional considerations, and (8) employer liability.

A. *Coverage*

Coverage under Iowa's unemployment law is compulsory for employers.[592] To understand the required coverage of employers under the law, three important definitions must be considered.

1. Definitions of Employer, Employing Unit, and Employment

a. Employer Defined. The term "employer" generally includes any employing unit which had in employment, for some portion of a day in each of twenty different calendar weeks, whether or not consecutive, in the current or preceding calendar year, one individual irrespective of whether the same individual was employed each day, and any employing unit which paid wages, for services other than domestic services, of $1500 or more in any calendar quarter of the current or preceding calendar year.[593] The term also includes employing units enumerated in the following paragraphs.

1. *Successor employers and multiple employing units treated as a single employer.* The term "employer" includes any employing unit which acquired the organization, trade, or business, or substantially all of the assets of the organization, trade, or business, of another employing unit,[594] as well as certain multiple employing units treated as a single employing unit[595] and multiple employing units, owned or controlled directly or indirectly by the same interests, which are treated as a single employing unit.[596] In *Spagnola v. Iowa Employment Security Commission*,[597] the Iowa Supreme Court held that an individual who purchased the merchandise and fixtures of a retail grocery business from a trustee for the benefit of creditors, but did not purchase the business's accounts receivable, did not substantially acquire all of the assets of the business, and therefore, was neither a successor employer nor an employer under Iowa's unemployment law.[598]

2. *Elective employers.* The term "employer" includes any employing unit, which is not otherwise covered under the definition of employer, but which elects voluntary coverage under the unemployment law.[599]

3. *Federally taxed employers.* The term "employer" includes any employing unit taxed under the Federal Unemployment Tax Act or required to be considered an employer under state law in order to receive the full state

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592. Iowa Code § 96.7(1) (1981).
593. Iowa Code § 96.19(5)(a) (1981).
594. Iowa Code § 96.19(5)(b) (1981).
595. Iowa Code § 96.19(5)(c) (1981).
596. Iowa Code § 96.19(5)(d) (1981).
597. 237 Iowa 645, 23 N.W.2d 433 (1946).
598. *Id.* at 645-47, 23 N.W.2d at 434-35.
599. Iowa Code §§ 96.8(3), 96.19(5)(e), (f) (1981).

tax credit for the taxes imposed by the Federal Unemployment Tax Act.[600]

4. *Government entities.* The term "employer" includes any government entity not specifically excluded from the definition of employment.[601] "Government entity" is defined as the state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding.[602]

5. *Nonprofit organizations.* The term "employer" includes any employing unit which is a nonprofit organization not specifically excluded under the definition of employment.[603] Nonprofit organizations are those religious, charitable, educational, or other organizations exempt from income tax under the Federal Internal Revenue Code.[604]

6. *Agricultural labor.* The term "employer" includes agricultural labor if performed for an employing unit which paid cash[605] wages of $20,000 or more during any calendar quarter of the current or preceding calendar year, or which employed ten or more individuals on each of twenty days, each day being in a different calendar week, during the current or preceding calendar year.[606] "Agricultural labor" is defined as remunerated service performed on a farm in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including livestock, bees, poultry, or fur-bearing animals and wildlife, or remunerated service performed to prepare such a commodity in its unmanfuactured state for storage or market, but not for commercial canning or freezing. If more than one-half of the commodity is produced by the farm operator or group of farm operators, a remunerated service is performed for a farm operator or owner in connection with the farm operation if the major part of the service is performed on a farm, or if the remunerated service is performed in connection with the production or harvesting of certain agricultural commodities defined by federal law or the ginning of cotton, or in connection with the operation and maintenance of farm water sources. A remunerated service is performed on a farm operated for profit if the service is not in the course of the employer's trade or business.[607] "The term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards."[608]

7. *Domestic Service.* The term "employer" includes "domestic service in a private home, local college club, or local chapter of a college fraternity

600. Iowa Code § 96.19(5)(g) (1981).
601. Iowa Code § 96.19(5)(h) (1981).
602. Iowa Code § 96.19(38) (1981).
603. Iowa Code §§ 96.19(5), 96.19(6)(a)(5) (1981).
604. Iowa Code § 96.19(6)(a)(5) (1981); I.R.C. § 501 (a), (c)(3) (1976).
605. Iowa Code § 96.19(6)(a)(7)(a) (1981).
606. Iowa Code § 96.19(5)(1) (1981).
607. Iowa Code § 96.19(6)(g)(3)(a), (d)(i-iii) (1981).
608. Iowa Code § 96.19(6)(g)(3)(f) (1981).

or sorority" if performed for an employing unit which paid cash wages of $1,000 or more in any calendar quarter in the current or preceding calendar year to individuals employed in the domestic service.[609] "Domestic service" is defined as "service . . . in the operations and maintenance of a private household, . . . college club . . ., fraternity, or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise, or vocation."[610]

b. Employing Unit Defined. The term "employing unit" is defined as essentially any legal entity, including any individual person or governmental entity, which had in its employ one or more individuals performing services for it within the state.[611] An employing unit which maintains more than one separate establishment is deemed to be a single employing unit.[612] An employing unit contracting with any contractor or subcontractor for work which is part of the employing unit's "usual trade, occupation, profession, or business" is deemed to employ individuals in the employ of the contractor or subcontractor, unless the contractor or subcontractor is itself an employer.[613] In a 1945 case, *Glidden Rural Electric Co-operative v. Iowa Employment Security Commission*,[614] a five-member majority of the Iowa Supreme Court held that where a rural co-operative organized to manufacture, purchase, and distribute electricity, and to construct buildings and transmission lines, but did not construct most of the co-operative's transmission lines because it had contracted out for the construction of the transmission lines, the construction was not part of the co-operative's usual trade, occupation, or business.[615] Therefore, the contractor's employees could not be deemed the co-operative's employees under the statutory provision.[616] The court reasoned that the word "usual" should be interpreted to mean the regular business of the co-operative in distributing electricity, and not to mean "essential to" or a "necessary part of" the business of distributing electricity.[617] The four-member minority in the case advocated the latter interpretation and vigorously argued that the proper liberal construction of the unemployment law dictated coverage by the co-operative under the statutory provision.[618]

An "individual employed to perform or assist in performing the work of an agent or employee of an employing unit" is deemed to employ the individual, provided the employing unit had actual or constructive knowledge of

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609. Iowa Code § 96.19(5)(m) (1981).
610. Iowa Code § 96.19(36) (1981).
611. Iowa Code § 96.19(4) (1981).
612. *Id.*
613. *Id.*
614. 236 Iowa 910, 20 N.W.2d 435 (1945).
615. *Id.* at 911-21, 20 N.W.2d at 436-40.
616. *Id.* at 921, 20 N.W.2d at 440.
617. *Id.* at 915, 20 N.W.2d at 437.
618. *Id.* at 921-32, 20 N.W.2d at 440-45.

the work which was at least eight hours in duration in any calendar week.[619]

c. Employment Defined. The term "employment" is defined as service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied,[620] and the term specifically includes service performed by officers of a corporation,[621] common-law employees, and certain agent or commission drivers.[622]

1. *Exclusions from employment of nonprofit organizations and government entities.* The term "employment" does not include service performed in the employ of a church, church organization, convention or association of churches, or an organization of a convention or association of churches, including service performed by a duly ordained, commissioned, or licensed minister of a church or member of a religious order, service performed in a sheltered work facility, service performed as part of a governmental work relief or work training program, service performed by an inmate of a custodial or penal institution; or service performed for a government entity by an elected official, member of a legislative body or of the judiciary, or member of the state national guard or air national guard.[623]

2. *Other exclusions from employment.* The term "employment" does not include service in the employ of a state other than Iowa or the other state's political subdivisions or instrumentalities, or of the United States government or its instrumentalities,[624] service with respect to which unemployment compensation is payable under a system established exclusively by Congress,[625] service performed by an individual in the employ of the individual's child or spouse, or by an individual under the age of eighteen in the employ of the individual's parent,[626] service performed in the employ of a school, college, or university by a regularly enrolled student or student's spouse,[627] service performed by an individual under the age of twenty-two enrolled in a full-time accredited program at a nonprofit or public educational institution which combines academic instruction with an integrated work experience,[628] and service performed in the employ of a hospital by a patient of the hospital.[629]

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619. Iowa Code § 96.19(4) (1981).
620. Iowa Code § 96.19(6)(a) (1981).
621. Iowa Code § 96.19(6)(a)(1) (1981). *See* 370 Iowa Admin. Code § 3.3(2)(f) (1978).
622. Iowa Code § 96.19(6)(a)(2), (3) (1981).
623. Iowa Code § 96.19(6)(a)(6)(a), (b), (d-g) (1981).
624. Iowa Code § 96.19(6)(g)(1) (1981).
625. Iowa Code § 96.19(6)(g)(2) (1981).
626. Iowa Code § 96.19(6)(g)(5) (1981).
627. Iowa Code § 96.19(6)(g)(6) (1981).
628. *Id.*
629. *Id.*

2. *Exclusions from Coverage*

a. Independent Contractors. The term "independent contractor" is not defined in the unemployment law and the law does not explicitly exclude independent contractors from coverage. If an individual receives wages, however, the services performed by the individual are deemed by Iowa's unemployment law to be employment, unless and until it is shown to the satisfaction of the Department that the individual has been and will continue to be free from control or direction over the performance of the services, both under the contract of service and in fact.[630] The term "wages" is defined as all "remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash."[631]

The Iowa Supreme Court has applied the common-law concept of independent contractor to the unemployment law, distinguishing independent contractors from employees and excluding independent contractors from coverage.[632] An "independent contractor" is generally defined in the common law as "one who carries on an independent business and contracts to do a piece of work according to his own methods, subject to the employer's control only as to results."[633] Thus the Iowa Supreme Court has meshed the statutory test of "free from control or direction" with the common law concept of independent contractor and has held that an individual subject to direction or control is covered as an employee under Iowa's unemployment law, while an individual not subject to direction or control, who is also an independent contractor, is excluded from Iowa's unemployment law.[634] The Iowa court has also ruled that the burden of proof is on the party alleging independent contractor status to overcome the statutory presumption that the receipt of wages deems the services performed "employment" by a showing that the services were performed free from direction and control, both as a matter of contract and in fact.[635]

In a 1941 case, *Moorman Manufacturing Co. v. Iowa Unemployment Compensation Commission*,[636] the Iowa Supreme Court reasoned that a commissioned salesman for a manufacturing company who was instructed on how to approach a sale effectively, who was required to file reports, who was offered bonuses and subjected to inspection to induce greater effort, was nevertheless free from control or direction, both under contract and in fact,

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630. IOWA CODE § 96.19(6)(f) (1981). *See* 370 IOWA ADMIN. CODE § 3.19 (1980).

631. IOWA CODE § 96.19(12) (1981). *See* 370 IOWA ADMIN. CODE § 3.3 (1982).

632. Meredith Pub. Co. v. Iowa Employment Sec. Comm'n, 232 Iowa 666, 676-77, 6 N.W.2d 6, 12-13 (1942).

633. Moorman Mfg. Co. v. Iowa Unemployment Compensation Comm'n, 230 Iowa 123, 136, 296 N.W. 791, 797 (1941).

634. Meredith, 232 Iowa at 682, 6 N.W.2d at 15.

635. *Id.* at 684, 6 N.W.2d at 16.

636. *See supra* note 633.

since the salesman could use his own judgment in his sales efforts, could have had other employment, and because he was only subjected to stimulation by the company in order to improve his sales.[637] The Iowa court held that the salesman was not entitled to unemployment compensation benefits due to the absence of the relationship of employer and employee.[638] In a 1942 case, *Meredith Publishing Co. v. Iowa Employment Security Commission*,[639] the Iowa Supreme Court similarly reasoned that a commissioned salesman was free from the exercise or right to exercise control or direction over him as to time, place, method, or character of his work, and consequently held that the salesman was not an employee but rather an independent contractor not covered under Iowa's unemployment law.[640]

By contrast, the Wisconsin Court of Appeals recently held in *Stafford Trucking, Inc. v. Department of Industry, Labor & Human Relations*,[641] that the owner-operators of semi-tractors were employees of a trucking company, and not independent business operators because the leasing agreements and business practices demonstrated that the trucking company unquestionably had the right and power to direct and control the owner-operators' conduct, and that the economic dependence of the owner-operators on the trucking company's customers, trailers, insurance, and operating authority was too pervasive to conclude that they had any business independent of the trucking company.[642] The statute construed in that case differed significantly from Iowa's unemployment law in that the Wisconsin exclusion required services to have been performed in an independently established trade, business, or profession in which the individual was customarily engaged.[643]

b. Agricultural Labor. Three important Iowa Supreme Court cases have interpreted the agricultural labor exclusion. The 1942 case of *Equitable Life Insurance Co. v. Iowa Employment Security Commission*,[644] established the parameters of the exclusion. The Iowa court held that a crew of men engaged to repair, improve, and replace buildings on farms repossessed through foreclosure by Equitable Life Insurance Company, were engaged principally in carpentry and not in cultivating the soil, harvesting crops, or building fences, and therefore did not come within the provision excluding agricultural labor from Iowa's unemployment law.[645]

In 1976 the Iowa Supreme Court held in *DeKalb Agre-search, Inc. v.*

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637. Moorman, 230 Iowa at 125-26, 137-41, 296 N.W. at 792, 798-800.
638. *Id.*
639. *See supra* note 632.
640. Meredith, 232 Iowa at 668-72, 685, 6 N.W.2d at 8-10, 16.
641. 102 Wis.2d 256, 306 N.W.2d 79 (Ct. App. 1981).
642. *Id.* at 257-66, 306 N.W.2d at 81-85.
643. *Id.* at 259-60, 306 N.W.2d at 82.
644. 231 Iowa 889, 2 N.W.2d 262 (1942).
645. *Id.* at 890-98, 2 N.W.2d at 263-67.

Iowa Employment Security Commission,[646] that the employees of a seed corn manufacturer who were working on a 160-acre tract of land used to grow various hybrids of corn for testing commercial pesticides and weed killers and other demonstration purposes, were engaged in agricultural labor and excluded from coverage under Iowa's unemployment law.[647] The Iowa court reasoned that the employees were primarily engaged in cultivating the soil and raising and harvesting crops, even though they also tested crops, packeted seed corn, stored harvested crops, kept records, performed supervisory functions, and assisted in the annual field day.[648] The Iowa court declined to distinguish between employees more involved with raising crops from those employees more involved in field day activities, record keeping, and supervisory functions; the court stated it was committed to a broad interpretation of the agricultural exemption.[649]

The Iowa Court of Appeals in 1977 dealt with another seed company case, *O's Gold Seed Co. v. Iowa Employment Security Commission*,[650] but this time the activity was the "husking, sorting and grading of hybrid seed corn," all of which are post-harvesting activities not performed "in the employ of a farm operator." While the court disposed of the case by holding that corn was not an "agricultural commodity" as defined under federal and state law, as alleged by the seed company, the court in dicta bolstered its result in the case by stressing the fact that the post-harvesting activities involving the corn would only be excluded as agricultural labor if performed in the employ of a farm operator, which was not the factual situation in the case.[651]

c. School Personnel. A limited but important exclusion in Iowa's unemployment law provides that school personnel, including teachers, administrators, and other staff of elementary and secondary schools, are ineligible for unemployment compensation benefits between successive academic terms, for vacation periods and holiday recesses, and during paid sabbatical leaves for teachers and administrators "if there is a contract or reasonable assurance that [the] individual[s] will perform services" for the school in the next academic term.[652] A similar exclusion is provided for teachers and administrators in post-secondary institutions of higher education.[653]

The Minnesota Supreme Court in *Olson v. Special School District No. 1*[654] held that a tenured teacher did not have a contract and did not have

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646. 248 N.W.2d 101 (Iowa 1976).
647. *Id.* at 103-05.
648. *Id.*
649. *Id.* at 105.
650. 259 N.W.2d 549 (Iowa 1977).
651. *Id.* at 550-52.
652. Iowa Code § 96.4(5)(b-d) (1981). *See* 370 Iowa Admin. Code §§ 3.83, 3.84 (1980). *See also* Simpson v. Iowa Dep't of Job Serv., 327 N.W.2d 775 (Iowa Ct. App. 1982).
653. Iowa Code § 96.4(5)(a), (e) (1981).
654. 309 N.W.2d 325 (Minn. 1981).

reasonable assurance of employment for the coming school year because the teacher had received a letter from the school district informing her that she was one of the teachers who was likely to be recommended for discharge due to the lack of funds and students.[655] The court ordered the payment of unemployment compensation benefits to the teacher, who was in fact hired for the coming school year and lost no wages, and acknowledged the disturbing result of the case and of the discontinuance by the school districts of their practice of informing its teachers of the likelihood of terminations due to the lack of funds or students prior to actually instituting termination proceedings.[656] Iowa school districts face a similar dilemma since Iowa's statutory law requires the nrotification of teachers not later than March 15 that a recommendation to terminate their continuing contracts will be made to the school board by March 31.[657]

A recent Wisconsin case, *City of Milwaukee v. Department of Industry, Labor and Human Relations,*[658] held that the school crossing guards employed by the city were not employees who perform services for an educational institution and were not, therefore, rendered ineligible for unemployment compensation benefits during the summer recess by the statutory ineligibility provision for school employees.[659] The Wisconsin Supreme Court relied heavily upon federal legislative intent from a guide to the drafting of state conforming legislation published by the United States Department of Labor.[660]

A Nebraska case, *Hanlon v. Boden,*[661] also addressed the statutory ineligibility period for educational institution employees. The Nebraska Supreme Court, liberally construing the beneficient provisions of the Nebraska unemployment law, rejected the argument that a professional symphony musician, employed under contract for the nine-month season, was an employee of an educational institution, and held that the musician was not ineligible for unemployment compensation benefits in the off-season, even though the musician had a contract for the coming season.[662]

d. Athletes. Another limited exclusion in Iowa's unemployment law provides that athletes participating in sports events or training are ineligible for unemployment compensation benefits between successive sport seasons if there is reasonable assurance that the individual will participate in the next sport season.[663]

e. Aliens. Iowa's unemployment compensation law provides that aliens

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655. *Id.* at 326.
656. *Id.*
657. IOWA CODE § 279.15 (1981).
658. 106 Wis. 2d 254, 316 N.W.2d 367 (1982).
659. *Id.* at 255-62, 316 N.W.2d at 368-71.
660. *Id.* at 259-62, 316 N.W.2d at 370-71.
661. 209 Neb. 169, 306 N.W.2d 858 (1981).
662. *Id.* at 170-74, 306 N.W.2d at 859-61.
663. IOWA CODE § 96.5(9) (1981).

not "lawfully admitted for permanent residence" in the United States, not "lawfully present for the purpose of performing . . . services" in the United States, or not "permanently residing in the United States under color of law" are ineligible for unemployment compensation benefits.[664]

f. Religious Organizations. An important statutory provision in Iowa's unemployment law excludes from coverage service performed "[i]n the employ of a church or convention or association of churches" or in the employ of an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches."[665] The Iowa Supreme Court applied this exclusion to a child day care center in *Sugar Plum Tree Nursery School v. Iowa Department of Job Service,*[666] despite the use of a different name for the enterprise and the separation of its financial records and accounts from those of the church, finding that the workers in the center were employees of the church because the church did not establish a separate organization or entity to operate the center, the articles and bylaws of the church governed the center, and "the church's board of elders was the center's board of directors."[667] In applying the exclusion the court cited federal legislative history as evidence of the intent of the Iowa General Assembly in enacting the exclusion[668] and noted the Iowa administrative rule's agreement with the federal history of the exclusion.[669] In dicta, the Iowa court agreed with the administrative rule's extention of coverage under Iowa's unemployment law to the employees of a child day care center where the center is operated by an organization other than a church.[670] Under the administrative rule, day care center employees were not automatically excluded from coverage since the rule declared that an organization operating a day care center is not operated for religious purposes.[671]

The United States Supreme Court in 1981 arrived at a similar result in *St. Martin Evangelical Lutheran Church v. South Dakota,*[672] which involved an elementary school financed and operated by a local church and a secondary school owned, supported, and controlled by a synod. One of the issues in the case was the 1976 congressional repeal of a specific federal exclusion for service performed in the employ of an elementary or secondary school and the effect of that repeal on the exclusion for service in the employ of a church or church association.[673]

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664. Iowa Code § 96.5(10) (1981).
665. Iowa Code § 96.19(6)(a)(6)(a) (1981). *See* 370 Iowa Admin. Code § 3.27 (1981).
666. 285 N.W.2d 23 (Iowa 1979).
667. *Id.* at 26-27.
668. *Id.* at 24.
669. *Id.* at 25.
670. *Id.*
671. *Id. But see* 370 Iowa Admin. Code § 3.27 (1981).
672. 451 U.S. 772 (1981).
673. *Id.* at 775-77.

In a letter made public in 1978, the United States Secretary of Labor interpreted the repeal as " 'clearly intended to result in State coverage of church-related schools . . . .' "[674] The Court discounted the Secretary's interpretation and gleaned from the legislative history of the original federal enactment of the exclusions that Congress intended to exclude a school's employees from coverage if the school had no separate legal existence from a church, but intended to require coverage of a separately incorporated school, unless it was operated primarily for religious purposes and was operated, supervised, controlled, or principally supported by a church or convention or association of churches.[675]

The Supreme Court also found that the 1976 federal amendment, repealing the specific school employee exclusion, did not alter, directly or by implication, the exclusion for church or church association employees but was concerned with "secular educational institutions, particularly the public schools."[676] Finally, the Court concluded that no affirmative and convincing showing had been made of an implied repeal of the exclusion for church or church association employees and held that the employees of the parochial elementary and secondary schools were excluded from the unemployment law's coverage.[677]

In a separate opinion, Justice Stevens rejected the majority's conclusion that Congress did not intend to require coverage of parochial school employees but concluded that Congress failed to give effect to the intention to cover parochial school employees by leaving in place the plain statutory language excluding church and church association employees.[678] Justice Stevens concurred in the Court's judgment, however, finding the church employee exclusion unambiguous and invoking the statutory rule of construction "that resort to legislative history is appropriate only when the statute itself is ambiguous."[679]

In 1982 in *Community Lutheran School v. Iowa Department of Job Service*,[680] the Iowa Supreme Court interpreted the statutory exclusion for religious organizations. The religious organizations in question were three separately incorporated parochial schools affiliated with the Lutheran Church-Missouri Synod. The court applied the two-prong statutory test requiring that the schools be operated primarily for a religious purpose and be

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674. *Id.* at 778 (quoting letter from Secretary of Labor Marshall to Most Reverand Thomas C. Kelley, O.P., General Secretary, United States Catholic Conference (Apr. 8, 1978)).

675. *Id.* at 780-82. Furthermore, the Court concluded that the term "church" should not be interpreted to mean a physical building that is a house of worship but rather should be interpreted to refer to the congregation or church hierarchy which hires, discharges, and directs church employees. *Id.* at 783-84.

676. *Id.* at 785-86.

677. *Id.* at 787-88.

678. *Id.* at 788-91 (Stevens, J., concurring).

679. *Id.* at 791 (Stevens, J., concurring).

680. 326 N.W.2d 286 (Iowa 1982).

operated, supervised, controlled, or principally supported by a church or convention or association of churches.[681] The court did not consider the second prong of the test as its applicability was not questioned.[682] The court held in a five-to-three decision that the schools, as a matter of law, were operated primarily for religious purposes.[683] The court relied upon several United States Supreme Court cases recognizing the religious purpose of parochial schools, particularly two recent court cases from Massachusetts and Pennsylvania.[684] As a result, the Iowa Supreme Court held that the parochial schools were operated primarily for religious purposes, basing their decision on testimony that stated that the purpose of the parochial schools were to rear children in the Christian faith "in all their schooling," and that tenets of this faith were incorporated into every aspect of all classes, with teachers working religion into all the subjects they taught.[685] The dissenting opinion concluded that the schools were operated primarily for an educational purpose, reasoning that parochial schools are required to be state-certified and could not exist otherwise since their students would be compelled to attend state-certified public schools.[686]

B. *Benefit Eligibility*

The basic requirements for benefit eligibility under Iowa's unemployment law are: (1) the filing of a claim,[687] (2) registration for work,[688] (3) a record of employment and wage earnings,[689] and (4) ability to work, availability for work, and an earnest and active search for work.[690] Failure to meet a benefit eligibility requirement generally makes an individual ineligible for benefits only for the week in which the eligibility requirement is not met.[691] This weekly determination of ineligibility does not require a subsequent period of work and earnings in covered employment in order for the individual to requalify for benefits, and is, therefore, unlike the disqualifications in cases involving a voluntary quit, misconduct, or failure to apply for or accept suitable work.[692] The individual has the burden of proof to establish

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681. *Id.* at 289.
682. *Id.* at 291.
683. *Id.*
684. *See* Ursiline Academy v. Director of the Div. of Employment Sec., 81 Mass. 1082, 420 N.E.2d 326 (1981); Christian School Ass'n of Greater Harrisburg v. Commonwealth Dep't of Labor & Indus., 55 Pa. Commw. 555, 423 A.2d 1340 (1980).
685. Community Lutheran School v. Iowa Dep't of Job Serv., 326 N.W.2d at 291.
686. *Id.* at 293 (McGiverin, J., dissenting).
687. IOWA CODE §§ 96.4(2), 96.6(1) (1981).
688. IOWA CODE § 96.4(1) (1981).
689. IOWA CODE. § 96.4(4) (1981).
690. IOWA CODE § 96.4(3) (1981).
691. IOWA CODE § 96.4 (1981).
692. IOWA CODE § 96.5(1)(g) (1981). *See, e.g.*, IOWA CODE § 96.5(2)(a), (3) (1981).

the individual's right to benefits under Iowa's unemployment law.[693]

1. *Filing of Claim*

The statutory filing provision specifically delegates to the Department of Job Service the responsibility for determining the procedures for filing a claim for unemployment compensation benefits.[694] Departmental rules require that an individual report in person between the hours of eight o'clock a.m. and four o'clock p.m., Monday through Friday, to the nearest office of the Department.[695] The report must include the individual's social security number, the name and address of the individual's last employer, the last day of work, "[t]he reason for separation from work," and the "[n]umber, name and relationship of any dependents claimed" by the individual.[696] Special departmental rules govern the filing procedures for mass separations from employment,[697] such as a factory closing, and for claims for partial benefits.[698]

The benefit claim is effective as of the first day of the calendar week in which the individual actually reports in person to the Department;[699] backdating of the claim is limited to a very few specified circumstances.[700] A claim for partial benefits, however, may be backdated one to four weeks at the option of the claimant.[701] The first day of the calendar week in which the individual reports to the Department constitutes the beginning of the individual's "benefit year" and determines the time period designated as the individual's "base period."[702] The benefit year remains effective even though the individual experiences several episodes of employment, unemployment, and reemployment during the next twelve months.

2. *Registration for Work*

The statutory work registration provision specifically delegates to the Department the responsibility for determining both the initial and continuing requirements of registering for work with and reporting to the Department's employment office.[703] Departmental rules require that an individual

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693. Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa 1161, 1172, 34 N.W.2d 211, 217 (1948).

694. Iowa Code §§ 96.4(2), 96.6(1) (1981).

695. 370 Iowa Admin. Code § 4.2(1)(a)(1) (1980).

696. 370 Iowa Admin. Code §§ 4.2(1)(b), 4.3 (1980).

697. 370 Iowa Admin. Code § 4.5 (1980).

698. 370 Iowa Admin. Code § 4.6 (1980).

699. 370 Iowa Admin. Code § 4.2(1)(h) (1980).

700. 370 Iowa Admin. Code § 4.9(1) (1980).

701. 370 Iowa Admin. Code § 4.6(2)(b) (1980).

702. Iowa Code §§ 96.19(15),(16) (1981); 370 Iowa Admin. Code §§ 4.1(11), (21), 4.20 (1981).

703. Iowa Code § 96.4(1) (1981); 370 Iowa Admin. Code § 4.2(1) (1980).

"continue to report by mail or in person at the time directed to do so by an authorized representative of the department" all information relating to the individual's eligibility, as well as reporting the employers contacted for work and any job offers received by the individual.[704]

3. *Attachment to the Labor Force*

Iowa's unemployment law requires, as a prerequisite to benefit eligibility, that an individual earn wages of at least $400 in the individual's highest-paid, base period quarter and at least $200 in another base period quarter, and that the individual's total base period wages equal at least one and one quarter times the individual's actual highest, base period quarterly wages.[705]

4. *Reattachment to the Labor Force*

As a prerequisite to benefit eligibility in a second benefit year, Iowa's unemployment law requires that an individual earn, during or subsequent to the individual's first benefit year, wages in covered employment totaling at least ten times the individual's weekly benefit amount.[706]

5. *Ability to Work, Availability for Work, and Work Search Requirements*

Under Iowa's unemployment statute, an individual must be able to work, be available for work, and be earnestly and actively seeking work in order to be initially and continually eligible for benefits.[707] The individual claiming benefits has the burden of proof on these issues.[708]

a. Ability to Work. Departmental rules interpret the "able to work" eligibility provision to require that an unemployed individual "be physically and mentally able to work, in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment," which is not necessarily in the individual's customary occupation but "which is engaged in by others as a means of livelihood" and which "is generally available in the labor market in which the individual resides."[709] In a recent Michigan case, *McKentry v. Michigan Employment Security Commission*,[710] a teacher's aide was temporarily off work for treatment of thrombophlebitis. Though the claimant was unable to work again as a teacher's aide because she could not stand on her feet all day, she was able to work at the type of job she had held prior to being a teacher's aide and, therefore, was eligible for benefits.[711]

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704. 370 IOWA ADMIN. CODE §§ 4.2(1)(e), (g)(3), (g)(5) (1980).
705. IOWA CODE § 96.4(4) (1981).
706. *Id.*
707. IOWA CODE § 96.4(3) (1981).
708. Davoren v. Iowa Employment Sec. Comm'n, 277 N.W.2d 602, 603 (Iowa 1979).
709. 370 IOWA ADMIN. CODE §§ 4.22(1)(a), (w) (1979).
710. 99 Mich. App. 277, 297 N.W.2d 652 (1980).
711. *Id.* at 279, 297 N.W.2d at 652-53.

b. Availability for Work. Departmental rules interpret the "available for work" eligibility provision to require that an individual be at all times "willing, able, and ready to accept suitable work[712] during periods when such work is normally performed."[713] Suitable work for purposes of determining availability is the types of services offered by a particular individual "in the geographical area in which the individual offers them," provided that the types of services are generally performed in the geographical area even though job vacancies currently may not exist.[714] Restrictions placed on availability by the individual, such as "type of work, hours, wages, location of work," or physical handicaps will violate the availability requirement if the restrictions leave the individual with "no reasonable expectancy of securing work."[715] Time restrictions, however, will generally not be considered unreasonable if the individual "is available for the major portion of the workweek."[716]

Departmental rules also provide that as an individual's length of unemployment increases and the individual has not found work in the individual's customary employment, the individual, in order to continue to meet the availability requirement, "may be required to seek work in some other occupation in which job openings exist, or . . . to accept counseling for possible retraining or a change in occupation."[717] The individual must be warned and instructed, however, to expand his or her search beyond his or her customary employment.[718] In a 1980 case, *Brumley v. Iowa Department of Job Service*,[719] the Iowa Supreme Court held that an unemployed school teacher's benefits could not be terminated for failure to meet the availability requirement, until after the teacher was notified of the requirement to expand her search for work beyond her customary occupation of schoolteaching.[720] In *New Homestead v. Iowa Department of Job Service*,[721] the Iowa Supreme Court, in a six to three decision, held that substantial evidence supported the Department's finding that an unemployed United States Postal Service worker was not unduly limiting her availability, even though the worker had refused to take a job she had previously held as a nurse's aide, at forty percent less pay than her pay as a postal worker.[722]

Several other departmental rules relating to availability are important to note. A corporate officer must meet the same availability requirements as

712. 370 IOWA ADMIN. CODE § 4.22(1)(b) (1979).
713. 370 IOWA ADMIN. CODE § 4.22(1)(u) (1979).
714. 370 IOWA ADMIN. CODE § 4.22(1)(b) (1979).
715. 370 IOWA ADMIN. CODE § 4.22(1)(x) (1982).
716. 370 IOWA ADMIN. CODE § 4.22(1)(q) (1982).
717. 370 IOWA ADMIN. CODE § 4.22(1)(u) (1979).
718. 370 IOWA ADMIN. CODE § 4.23(28) (1981).
719. 292 N.W.2d 126 (Iowa 1980).
720. *Id.* at 129.
721. 322 N.W.2d 269 (Iowa 1982).
722. *Id.* at 270-72. *See* Hendrickson v. Northfield Cleaners, 295 N.W.2d 384 (Minn. 1980).

other unemployed individuals, and must be desirous of work for himself or herself, as distinguished from looking for work for the corporation, as well as being free from serious work limitations.[723] A fulltime student is generally deemed to be unavailable for work since a student has no reasonable expectancy of securing employment, unless the student is actually available to the same degree and to the same extent when the student worked and accrued wage credits.[724]

Other important departmental rules interpret unavailability in cases of personal illness or injury,[725] imprisonment,[726] inadequate transportation[727] or child care,[728] self-imposed restrictions on employability relating to wages,[729] type of work,[730] hours or days of work,[731] geographical area of work,[732] potential employers,[733] participation in training,[734] physical absence from the local labor market,[735] voluntary withdrawal from specific employment or from the labor market,[736] a voluntary leave of absence from employment,[737] pursuit of self-employment[738] or other full-time employment,[739] and failure to remain in contact with the Department.[740]

c. Earnest and Active Search for Work. Departmental rules interpret the "earnestly and actively seeking work" eligibility provision to require that an individual personally and diligently seek work by a methodical and systematic canvass of the labor market, as a normal, prudent person would.[741] The specific number of required employer contacts varies with each unemployed individual and depends upon the conditions of the local labor market, the duration of benefit payments, changes in the individual's characteristics, job prospects in the community, and other factors deemed relevant and necessary by the area claims office.[742]

In *New Homestead*, a majority of the Iowa Supreme Court held that

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723. 370 IOWA ADMIN. CODE § 4.22(1)(y) (1982).
724. 370 IOWA ADMIN. CODE §§ 4.22(1)(o) (1982), 4.23(5) (1980). *See* Davoren v. Iowa Employment Sec. Comm'n, 277 N.W.2d 602 (Iowa 1979).
725. 370 IOWA ADMIN. CODE §§ 4.22(1)(e) (1982), 4.23(1), (2), (6), (34), (35) (1981).
726. 370 IOWA ADMIN. CODE §§ 4.22(1)(p) (1982), 4.23(12) (1980).
727. 370 IOWA ADMIN. CODE § 4.23(4) (1982).
728. 370 IOWA ADMIN. CODE § 4.23(8) (1980).
729. 370 IOWA ADMIN. CODE § 4.23(3), (15), (22) (1980).
730. 370 IOWA ADMIN. CODE §§ 4.22(1)(i) (1982), 4.23(19) (1980).
731. 370 IOWA ADMIN. CODE §§ 4.22(1)(d), (t), 4.23(16), (17) (1980).
732. 370 IOWA ADMIN. CODE § 4.23(18) (1980).
733. 370 IOWA ADMIN. CODE § 4.23(20),(21) (1980).
734. 370 IOWA ADMIN. CODE § 4.23(30) (1981).
735. 370 IOWA ADMIN. CODE § 4.23(13), (25), (31), (32), (36) (1981).
736. 370 IOWA ADMIN. CODE §§ 4.22(1)(k) (1982), 4.23(9), (29), (33), (37), (38) (1981).
737. 370 IOWA ADMIN. CODE §§ 4.22(1)(s), 4.23(10), (24) (1980).
738. 370 IOWA ADMIN. CODE § 4.23(7) (1980).
739. 370 IOWA ADMIN. CODE § 4.23(23) (1980).
740. 370 IOWA ADMIN. CODE § 4.23(11), (14) (1980).
741. 370 IOWA ADMIN. CODE § 4.22(1)(c), (n) (1982).
742. 370 IOWA ADMIN. CODE § 4.22(c), (f) (1982).

substantial evidence supported the Department's finding that an unemployed postal worker had met the job search requirement by seeking work commensurate with the worker's customary occupation.[743] The three-member minority dissented, maintaining that the record indicated that the worker wanted to wait to go back to work for the postal service in six months, and that the worker had made only three employer contacts over a nine-week period, one of which the worker felt could not lead to employment and one of which led to a job offer which was rejected because the pay was just at or above the minimum wage.[744]

Registration and active contact by members of unions or professional organizations with the union's or organization's hiring or placement office will generally meet the work search requirement.[745] An individual, however, cannot be denied benefits solely on the ground that the individual failed or refused to register with a private employment agency or at any other placement facility which charges the job seeker a fee for its services.[746]

In order to maintain eligibility for benefits while partially unemployed, an individual must earnestly and actively search for work during each week that the individual earns no wages and the search must be with employers other than a partial employer.[747] The individual, however, is not required to search for work during any week in which the individual earns wages from a partial employer.[748]

6. *Extended Benefit Eligibility Requirements*

In order to conform with federal law requirements, Iowa's unemployment law provides extended benefit eligibility requirements beyond those eligibility requirements for regular benefits. The major requirement is an attachment-to-the-labor-force earnings requirement of one and one-half times an individual's highest, base period quarterly wages.[749] Other major requirements include a distinct disqualification and requalification standard for failure to actively seek work, for failure to apply for suitable work, and for a refusal to accept an offer of suitable work.[750] There is also a maximum two-week extended benefit eligibility period for individuals filing interstate

743. New Homestead, 322 N.W.2d at 270-71.

744. *Id.* at 272-73 (LeGrand, J., dissenting).

745. 370 IOWA ADMIN. CODE § 4.22(1)(c), (g) (1982), (v) (1979).

746. 370 IOWA ADMIN. CODE § 4.22(1)(c)(3) (1982).

747. 370 IOWA ADMIN. CODE § 4.6(7)(b) (1980).

748. 370 IOWA ADMIN. CODE § 4.6(8)(a) (1982).

749. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(1)(c) (1983)).

750. Unemployment Compensation, ch. 19, § 10, 1981 Iowa Acts 113 and Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(2) (1983)).

claims,[751] and a special extended benefit limitation for those individuals receiving federal trade readjustment allowances.[752]

C. *Weekly Benefit Amount and Duration of Benefits*

1. *Total Unemployment*

An individual is totally unemployed in any week for which no wages are payable to the individual and in which the individual performs no services.[753] If the individual meets all eligibility requirements, the individual's weekly benefit amount is computed by multiplying the individual's highest, base period quarterly wages by a stipulated fraction, the product of which is limited by a stipulated maximum benefit amount.[754] The weekly benefit amount and the maximum benefit amount are both rounded to the higher multiple of one dollar.[755] Both the fraction multiplier and the stipulated maximum vary with the number of dependents.[756] The stipulated fraction is one-twenty-third and the stipulated maximum is fifty-eight percent of the statewide average weekly wage for an individual with no dependents.[757] The fraction and the maximum increase in four increments to one-nineteenth and seventy percent for an individual with four or more dependents.[758] A dependent is defined as a person treated for such purposes under the Internal Revenue Code, except that a dependent also includes a spouse who does not earn more than $120 in gross wages in one week.[759]

An individual's maximum benefits in the individual's benefit year are also limited to an amount equal to the individual's base period wage credits or to twenty-six times the individual's weekly benefit amount, whichever is less.[760] Wage credits generally equal one-third of the individual's base period wages earned in covered employment.[761] If an individual is laid off due to an employer going out of business, the wage credits are equal to one-half of the individual's base period wages earned in covered employment, and the individual's maximum benefits in the individual's benefit year are limited by that amount of wage credits or an amount equal to thirty-nine times the

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751. Unemployment Compensation, ch. 19, § 11, 1981 Iowa Acts 113-14 and Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(4) (1983)).

752. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(6) (1983)).

753. IOWA CODE § 96.19(9)(a) (1981).

754. IOWA CODE § 96.3(2), (4), (5) (1981).

755. IOWA CODE § 96.3(3), (4) (1981).

756. IOWA CODE § 96.3(2), (4), (5) (1981).

757. IOWA CODE § 96.3(4) (1981).

758. *Id.*

759. *Id.*

760. IOWA CODE § 96.3(5) (1981).

761. *Id.*

individual's weekly benefit amount, whichever is less.[762] In *McClellan v. Northwest Airlines, Inc.*,[763] the Minnesota Supreme Court held that wage credits are to be computed by including as wages the amount of an arbitration award of back pay for a period of wrongfully caused involuntary unemployment.[764]

2. *Partial Unemployment*

An individual is partially unemployed in any week in which the individual works less than the regular full-time week at the individual's regular job and earns less than the individual's weekly benefit amount plus fifteen dollars, or in any week in which the individual is separated from the individual's regular job and earns less than the individual's weekly benefit amount plus fifteen dollars.[765] A partially unemployed individual should not be confused with a part-time worker. A part-time worker's working hours are not the customary scheduled full-time hours prevailing in the worker's employment.[766]

If the individual meets all the eligibility requirements, the individual's weekly benefits for partial unemployment are computed by subtracting from the individual's regular weekly benefit amount those weekly wages payable to the individual in excess of one-fourth of the individual's regular weekly benefit amount, rounded to the higher multiple of one dollar.[767] Maximum partial benefits in an individual's benefit year are also limited by the amount of the individual's base period wage credits and by an amount equal to twenty-six or thirty-nine times the individual's weekly benefit amount, whichever is applicable.[768]

3. *Temporary Unemployment*

An individual is temporarily unemployed if, for a period not to exceed four consecutive weeks, the individual is laid off from regular full-time employment in which the individual will again work full-time. An individual may be temporarily unemployed due to a plant shutdown, vacation, inventory, lack of work, or an emergency.[769] During a period of temporary unemployment, the work registration, ability to work, availability for work, and work search requirements are waived.[770] Maximum temporary benefits in an individual's benefit year are limited by the amount of the individual's base

762. *Id.*; *see* 370 IOWA ADMIN. CODE § 4.22(4) (1982).
763. 304 N.W.2d 35 (Minn. 1981).
764. *Id.* at 38.
765. IOWA CODE § 96.19(9)(b) (1981).
766. IOWA CODE § 96.3(6) (1981).
767. IOWA CODE § 96.3(3) (1981); *see* 370 IOWA ADMIN. CODE § 4.6 (1982).
768. IOWA CODE § 96.3(5) (1981).
769. IOWA CODE § 96.19(9)(c) (1981).
770. IOWA CODE § 96.4(1), (3) (1981).

period wage credits and by an amount equal to twenty-six times the individual's weekly benefit amount.[771]

4. *Deductions from Weekly Benefit Amount*

Although characterized by statute as a disqualification for benefits, the receipt of the following payments actually reduces the weekly benefit amount, but not below zero: severance pay, worker's compensation, periodic retirement pay under an employer-supported plan, including old-age social security payments, and vacation pay.[772] If the amount received is less than the weekly benefit amount, the difference is payable to the individual.[773]

a. Social Security Payments and Other Periodic Retirement Benefits. Under the current Iowa unemployment statute and due to a recent federal law change,[774] the weekly benefit amount is reduced only by that portion of old-age social security and other retirement benefits affected by the base period employment and attributable to contributions made by base period employers.[775] For example, only fifty percent of old-age social security payments will reduce the weekly benefit amount, provided the base period or chargeable employers contributed to the social security system.[776] Departmental rules also specify the required deductions from the weekly benefit amount for other types of retirement benefits, including military retirement pay.[777]

b. Vacation and Holiday Pay. The weekly benefit amount is also reduced by regular vacation pay or designated vacation pay which an individual receives or is entitled to receive in connection with a separation or layoff from employment.[778] The reduction applies to all individuals totally, partially, or temporarily unemployed.[779] Departmental rules treat holiday pay in the same manner as vacation pay.[780]

c. Child Support Obligations. Under the current Iowa unemployment statute and due to a recent change in federal law,[781] the weekly benefit

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771. IOWA CODE § 96.3(5) (1981).

772. IOWA CODE § 96.5(5), (7) (1981). Departmental rules also specify certain payments which are considered wages and are therefore deductible from the weekly benefit amount. 370 IOWA ADMIN. CODE § 4.13 (1982).

773. *Id.*

774. Multiemployer Pension Plan Amendment Act of 1980, Pub. L. No. 96-364, § 414(a), 94 Stat. 1310 (1980).

775. Unemployment Compensation, ch. 19, §2, 1981 Iowa Acts 109-10 (to be codified at IOWA CODE § 96.5(5)(d) (1983)).

776. 370 IOWA ADMIN. CODE § 4.13(1)(o) (1981).

777. 370 IOWA ADMIN. CODE § 4.13(1)(j-r) (1981).

778. IOWA CODE § 96.5(7) (1981).

779. 370 IOWA ADMIN. CODE §§ 4.16, 4.17 (1979).

780. 370 IOWA ADMIN. CODE §§ 4.13(1)(a), 4.17 (1980).

781. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2335(a-b), 95 Stat. 357, 863-64 (1981).

amount can be reduced by the child support obligations of an unemployed individual, with the amount of the reduction paid to the individual's dependents.[782] The reductions are accomplished through a voluntary agreement with the individual or through garnishment and attachment of the individual's benefits.[783]

D. *Benefit Disqualifications*

Iowa's unemployment law provides disqualifications for benefits for four types of acts: (1) voluntary quits without good cause attributable to the employer, (2) misconduct, (3) failure to apply for, or to accept suitable work, and (4) involvement in labor disputes.[784] The first three benefit disqualifications require requalification through subsequent earnings in covered employment and the last benefit disqualification applies on a weekly basis only.[785] It is important to note that a period of unemployment following a termination of employment is compensable if all eligibility requirements are met and no disqualification applies. The employer's characterization of the termination, whether a discharge, dismissal, firing, layoff, or termination, does not control compensability under the unemployment law, and even contractual employment provisions relating to termination may be nondeterminative on the question of benefit eligibility.

1. *Voluntary Quits Without Good Cause Attributable to the Employer*

An individual who leaves work voluntarily without good cause attributable to the individual's employer is disqualified for benefits until the individual requalifies for benefits by earning wages in covered employment of at least an amount equal to ten times the individual's weekly benefit amount.[786] Several statutory savings clauses will maintain an individual's eligibility if the individual leaves to accept other or better employment, or leaves for a specific reason and returns or offers to return when the specific reason for leaving no longer exists.[787]

a. Savings Clauses. Even though an individual may be considered to have left work voluntarily without good cause attributable to the individual's employer, the individual is not disqualified for benefits for a subsequent period of unemployment if the following statutorily mandated conditions are met.[788]

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782. Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 1, 1982 Iowa Acts 54 (to be codified at IOWA CODE § 96.3(9) (1983)).
783. *Id.*
784. IOWA CODE § 96.5(1-4) (1981).
785. IOWA CODE § 96.5(1)(g), (2)(a), (3), (4) (1981).
786. IOWA CODE § 96.5(1) (1981); 370 IOWA ADMIN. CODE § 4.28(1), (2) (1979).
787. IOWA CODE § 96.5(1)(a-f), (h) (1981).
788. *Id.*

1. *Other employment.* If an individual left employment in good faith for the sole purpose of accepting other employment, which the individual accepted and worked in continuously for at least six weeks, the individual is not disqualified for subsequent benefits.[789]

2. *Better employment.* If an individual left employment in good faith for the sole purpose of accepting better employment, which the individual accepted, and which was terminated by the employer, or from which the individual was laid off after one week but prior to the expiration of six weeks, the individual is not disqualified for benefits.[790] In *Raffety v. Iowa Employment Security Commission,*[791] the Iowa Supreme Court held that the acceptance by an injured worker of lighter work at higher pay with another employer constituted better employment within the letter and spirit of the statute.[792] The Iowa court again construed the amended "better employment" provision in *Wood v. Iowa Department of Job Service,*[793] and held that an individual was not disqualified for benefits even though the individual left work to accept better employment which was terminated by the new employer before the individual could actually perform services for pay.[794] The court reasoned that the operative language of the statute did not require that services be performed for pay in the better employment.[795] The court did not apply the one-week to six-week work requirement to the employment termination, implying, therefore, that the work requirement only applies to situations where the individual is laid off after actually beginning the better employment.[796]

3. *Return to regular employment.* If an individual was laid off from regular employment and was temporarily employed after notifying the temporary employer of the expectation of returning to regular employment when it became available, the individual is not disqualified for subsequent benefits for quitting the temporary employment to return to regular employment.[797]

4. *Caring for injured or ill immediate family members.* If an individual left employment for the necessary and sole purpose of taking care of an injured or ill member of his or her immediate family, and if work is not available when the individual returns and offers his or her services to the employer, the individual is not disqualified for benefits provided that the individual did not accept any other employment during the period.[798] De-

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789. Iowa Code § 96.5(1)(a) (1981); 370 Iowa Admin. Code § 4.28(4) (1979).
790. Iowa Code § 96.5(1)(a) (1981); 370 Iowa Admin. Code § 4.28(5) (1979).
791. 247 Iowa 896, 76 N.W.2d 787 (1956).
792. *Id.* at 900, 76 N.W.2d at 789.
793. 312 N.W.2d 579 (Iowa 1981).
794. *Id.* at 579-80.
795. *Id.*
796. *Id.*
797. Iowa Code § 96.5(1)(b) (1981).
798. Iowa Code § 96.5(1)(c) (1981); 370 Iowa Admin. Code § 4.26(8) (1980).

partmental rules define the persons who are considered immediate family members.[799]

5. *Necessary absence due to illness, injury or pregnancy.* An individual who leaves employment necessarily because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician and with his or her employer's notification and consent, will not be disqualified for benefits if regular or comparable suitable work is not available when the individual returns and offers to perform services for the employer.[800] Departmental rules waive the physician's certification of recovery if the absent employee has been replaced by the employer. In this case the employee would not be disqualified for benefits unless ineligible due to inability to work or unavailability for work.[801]

The Iowa Supreme Court applied the illness savings clause in *Wilson Trailer Co. v. Iowa Employment Security Commission,*[802] and held that substantial evidence supported the Commission's finding that a welder was not disqualified for benefits subsequent to his hospitalization for the removal of his teeth because the welder had notified the employer of his absence due to illness and had returned and offered to perform services for his employer at the time advised in writing by his regular physician.[803] The court reached its conclusion even though the employer had only granted the welder a limited leave of absence and had contacted the office of the welder's dentist which informed the employer that the welder had been released for work shortly after returning home from the hospital.[804]

In *Area Residential Care, Inc. v. Iowa Department of Job Service,*[805] the court held that a dormitory staff member in a residential care facility for mentally retarded adults, who quit employment after becoming pregnant and after her employer refused either to give her an unpaid leave of absence or to transfer her to work where her abdomen would not be subject to trauma, would not be disqualified for benefits after termination of her pregnancy if her employer failed to rehire her.[806] The court reasoned that the pregnancy savings clause applied since the staff member left her employment as a result of the advice of her physician and notified her employer as required under the statute by requesting a leave of absence.[807] Although the staff worker was not eligible for benefits during her pregnancy, she was eligible upon her return or offer to return to work and was not then disqualified

799. 370 IOWA ADMIN. CODE § 4.26(8) (1980).
800. IOWA CODE § 96.5(1)(d) (1981); 370 IOWA ADMIN. CODE § 4.26(7), (24) (1980).
801. 370 IOWA ADMIN. CODE § 4.26(6) (1980).
802. 168 N.W.2d 771 (Iowa 1969).
803. *Id.* at 773-76.
804. *Id.*
805. 323 N.W.2d 257 (Iowa 1982).
806. *Id.* at 258-59.
807. *Id.* at 259.

from receiving benefits for quitting voluntarily.[808]

6. *Absence due to moving a family member to a different climate.* If an individual left employment upon the advice of a licensed and practicing physician for the sole purpose of moving a family member to a different climate, and if regular or comparable work is not available when the individual returns and offers services to the individual's regular employer, the individual is not disqualified from receiving benefits, notwithstanding the fact that the individual secured temporary employment during the absence.[809]

7. *Limited absence due to compelling personal reasons.* If an individual is the principal supporter of the individual's family, is widowed, legally separated, or single, and left employment, for no more than ten working days or for a longer period if allowed by the employer, for personal reasons found to be compelling by the Department, after notifying the individual's employer of the reason for the absence, the individual is not disqualified for benefits if the individual returns and offers services to the regular employer, immediately after the compelling personal reasons cease to exist, and regular or comparable work is not available.[810]

b. Voluntary Quits. In Iowa, the unemployed individual has the burden of proof to establish the individual's right to unemployment compensation benefits, and thus to establish that the termination of employment was not a voluntary quit without good cause attributable to the employer.[811] Departmental rules define "voluntary quit," as a discontinuation of employment by an individual who no longer desires to remain in the employment relationship with the employer from which the individual has separated.[812] Cases have applied the term as a legal term of art and generally have addressed the voluntary quit issue in two parts: first, whether the employee's quitting was voluntary, and second, whether the quitting was without good cause attributable to the employer.[813]

1. *Voluntary.* The Iowa Supreme Court clarified the meaning of voluntary in *Moulton v. Iowa Employment Security Commission.*[814] There, the court distinguished a voluntary quit from a discharge, dismissal, or lay-off by the employer or other action by the employer severing the employment relationship.[815] The court accepted as the proper definition of "voluntary"

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808. *Id. See also* Butts v. Iowa Dep't of Job Serv., 328 N.W.2d 515, 516-18 (Iowa 1983).

809. IOWA CODE § 96.5(1)(e) (1981); 370 IOWA ADMIN. CODE § 4.26(9) (1980).

810. IOWA CODE § 96.5(1)(f) (1981); 370 IOWA ADMIN. CODE §§ 4.25(5), (20), 4.26(16) (1982).

811. Shontz v. Iowa Employment Sec. Comm'n, 248 N.W.2d 88, 91 (Iowa 1976); Walles v. Iowa Employment Sec. Comm'n, 219 N.W.2d 539, 539-40 (Iowa 1974); Spence v. Iowa Employment Sec. Comm'n, 249 Iowa 154, 159, 86 N.W.2d 154, 156 (1957); Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa 1161, 1172, 34 N.W.2d 211, 217 (1948).

812. 370 IOWA ADMIN. CODE § 4.25 (1982).

813. Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa at 1165, 34 N.W.2d at 213.

814. *Id.*

815. *Id.* at 1166, 34 N.W.2d at 213.

the phrases "of one's own motion" or of one's "volition or choice" and rejected the notion that the employee's disability due to pregnancy was somehow beyond her control and therefore not voluntary within the meaning of the statute.[816] The court recognized that the Act was enacted to benefit those individuals who were "unemployed through no fault of their own"[817] and rejected the argument that benefits should be provided under the statute unless the employee who voluntarily quit was somehow at fault or, in other words, blameworthy, culpable, or wrongful.[818] Rather, the court construed "fault" to mean failure or volition, and not something worthy of censure.[819]

The South Dakota Supreme Court recently came to the same conclusion in *Red Bird v. Meierhenry*.[820] There, a woman quit her job after being unable to find adequate housing within her family's means, in order to move her large family and unemployed and ill husband back to a former residence where the husband could receive medical treatment.[821] The court concluded that the woman's decision to quit her job was "voluntary without good cause" even though the quit may very well have been an involuntary act that was brought about by a force beyond her control.[822] However, in *Brown v. Port of Sunnyside Club, Inc.*,[823] the Minnesota Supreme Court found that an employee's termination was not voluntary where the employer told the employee to keep on walking after the employee turned and walked away during a heated argument.[824]

Several Department rules further interpret the meaning of voluntary. Although not precedential in nature,[825] the Iowa Court of Appeals recently decided an interesting case, *Findley v. Iowa Department of Job Service*.[826] This case involved the mutual termination of a school teacher's contract by the teacher and the school district. The court concluded that the evidence in the case indicated that the teacher still desired to be employed by the school district but that the teacher had realistically been apprised that she was being forced to leave her teaching position and that reinstatement after suspension, termination, and appeal would be untenable.[827] The teacher did not provide the school district with an oral or written resignation, but instead

816. *Id.*
817. IOWA CODE § 96.2 (1981).
818. Moulton, 239 Iowa at 1172-73, 34 N.W.2d at 217.
819. *Id.*
820. 314 N.W.2d 95 (S.D. 1982).
821. *Id.* at 96.
822. *Id.* at 97.
823. 304 N.W.2d 877 (Minn. 1981).
824. *Id.* at 878-79. A Minnesota employer has the burden of proving the employee terminated the employment voluntarily. *Id.* at 879.
825. IOWA S. CT. R. 10(e).
826. 11 Iowa Ct. App. 341 (1981).
827. *Id.* at 344.

withdrew her request for a private hearing and entered into a written agreement with the school district.[828] In the agreement she consented to the termination of her employment contract, and both parties agreed that the termination did not preclude them from filing or defending any claims brought under the Employment Security Benefits law.[829] The court held that the termination more closely resembled an involuntary discharge, rather than a voluntary quit, even though the termination was effective before the school board could act on the superintendent's recommendation for discharge.[830] The court cited a Department rule which stated that a termination shall not be considered a voluntary quit if the employee is given the choice of resigning or being discharged and the employee elects to resign.[831] The court reasoned that the rule should apply to the teacher's situation where discharge was reasonably likely, although not assured.[832] Two judges dissented from the awarding of benefits to the teacher, finding that the teacher had voluntarily quit when she entered into the termination agreement prior to any school board action on the superintendent's recommendation.[833] The dissenting minority evidently would only allow the administrative rule's application in cases where the employer formally decides to discharge an employee.

In a remarkably similar case, *School District No. 20 v. Commissioner of Labor*,[834] the Nebraska Supreme Court held that a school superintendent, who desired to retain his employment but resigned because the school board members who had the power to reelect him intended not to do so, had not left his employment voluntarily within the meaning of the Nebraska statute.[835] The court construed "voluntary" to mean of one's own volition, choice, or free will and concluded that the superintendent's resignation was contrary to his stated desire to remain in his position as superintendent.[836]

Another Department rule states that the granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit.[837] The employee would generally be ineligible for benefits for not meeting the availability for work requirements, however.[838] Leaving a job because of pregnancy upon the advice of a physician is not considered a voluntary quit but the worker will not be considered able to work or available for work and therefore will be

828. *Id.* at 342.
829. *Id.*
830. *Id.* at 344-45.
831. 370 IOWA ADMIN. CODE § 4.26(21) (1980).
832. *See supra* note 826, at 345.
833. *See supra* note 826, at 346.
834. 208 Neb. 663, 305 N.W.2d 367 (1981).
835. *Id.* at 667-68, 305 N.W.2d at 370.
836. *Id.*
837. 370 IOWA ADMIN. CODE § 4.26(11) (1980).
838. *Id.*; Iowa Code § 96.4(3) (1981).

ineligible for benefits.[839]

2. *Good cause attributable to the employer.* Even if a quit is voluntary, the quit is not disqualifying unless it is without good cause attributable to the employer. Conversely, if the voluntary quit is with good cause attributable to the employer it is not a disqualifying quit.

The Iowa Supreme Court has construed the phrase "good cause attributable to the employer" to mean that the good cause for voluntarily quitting must ordinarily be connected with the employment in order for the voluntary quit disqualification not to apply.[840] Whether the required connection with the employment derives merely from the conditions of the employment or from an employer's fault or wrongdoing varies with the case involved.

In an early case, *Gatewood v. Iowa Iron & Metal Co.*,[841] the court stated that good cause for voluntarily quitting work must involve some fault of the employer.[842] The court found substantial evidence that the employer had agreed to rehire an employee after the employee resolved his personal affairs pertaining to his wage assignment, but that the employee never attempted to return to work as the employer expected.[843] The court concluded that no fault could be ascribed to the employer and that the employee had voluntarily left work without good cause attributable to the employer.[844] In *Ellis v. Iowa Department of Job Service*,[845] the court ascribed fault to the employer and found that an employee's voluntary quit was for good cause attributable to the employer because the employer, knowing of the employee's intolerable allergy to natural Christmas trees, nevertheless erected such a tree in the employee's area of ordinary work.[846]

In several other cases the Iowa court did not ascribe fault or wrongdoing to the employer, but found voluntary quits attributable to the employer merely due to the conditions or consequences of the employment. In *Raffety v. Iowa Employment Security Commission*[847] the court held that an employee's back injury, suffered on the job, was an employment-connected disability making the employee's voluntary quit attributable to the employer.[848] Likewise, in *McComber v. Iowa Employment Security Commision*,[849] the court found the employee's voluntary quit attributable to the employer because the employee's allergic disability was caused by una-

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839. 370 IOWA ADMIN. CODE § 4.26(26) (1980).

840. Moulton v. Iowa Employment Sec. Comm'n, 239 Iowa 1161, 1171, 34 N.W.2d 211, 216 (1948).

841. Gatewood v. Iowa Iron & Metal Co., 251 Iowa 639, 102 N.W.2d 146 (1960).

842. *Id.* at 645, 102 N.W.2d at 150.

843. *Id.*

844. *Id.* at 645-46, 102 N.W.2d at 150-51.

845. 285 N.W.2d 153 (Iowa 1979).

846. *Id.* at 154-57.

847. 247 Iowa 896, 76 N.W.2d 787 (1956).

848. *Id.* at 897-900, 76 N.W.2d at 787-89.

849. 254 Iowa 957, 119 N.W.2d 792 (1963).

voidable contact with woolen materials on the job.[850] In a more recent case, *Walles v. Iowa Employment Security Commission*,[851] an employee's voluntary quit was held not to be attributable to the employer but rather union-connected.[852] The court found that the employee's union had prohibited the employee from working for nonpayment of dues and that the union's work prohibition could not be attributed to the employer because it had not been shown that the employer imposed any requirement of union membership on its employees or had arranged to employ only union members.[853]

Department rules outline many reasons to presume that voluntary quits are without good cause attributable to the employer. If an employee leaves work because of an injury or illness not attributable to the employer or because of pregnancy, and the leave is not upon the advice of a licensed and practicing physician or the employee does not return and offer services to the employer upon recovery, in order to bring the quit within the prescriptions of the illness, injury, or pregnancy savings clause,[854] the leave is presumed to be without good cause attributable to the employer.[855] Several Iowa Supreme Court cases are in accord with this presumption. In *Wolf's v. Iowa Employment Security Commission*,[856] the court declared that leaving work due to illness not directly incident to the employment disqualifies the employee for benefits and further held that the employee's chronic sinus condition, present before as well as during her employment in Des Moines, was not the result of her employment and that she was rightfully disqualified for voluntarily quitting the employment.[857] In the *Moulton* case, the court disqualified an employee who quit work because of sickness and discomfort due to pregnancy, finding that the cause of the quit was in no way attributable to the employer.[858]

Several other Department rules deal with resignation and scheduled layoffs. If an employee gives notice of the intention to resign and the resignation is accepted, the employee is considered to have voluntarily left the employment.[859] A refusal by an employee of an educational institution to accept a new contract or reasonable assurance of employment for a successive academic term or year is considered a voluntary quit if the offer of employment was within the purview of the employee's training and experience.[860] If an employee quits in advance of a scheduled layoff, the voluntary

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850. *Id.* at 960-63, 119 N.W.2d at 795-96.
851. 219 N.W.2d 539 (1974).
852. *Id.* at 543.
853. *Id.* at 542-43.
854. IOWA CODE § 96.5(1)(d) (1981).
855. 370 IOWA ADMIN. CODE § 4.25(14), (15), (35), (36), (39) (1982).
856. 244 Iowa 999, 59 N.W.2d 216 (1953).
857. *Id.* at 1002-03, 59 N.W.2d at 218.
858. 239 Iowa at 1162-63, 1172, 34 N.W.2d at 212, 217.
859. 370 IOWA ADMIN. CODE § 4.25(37) (1980).
860. *Id.*

quit disqualification is imposed until the date of the scheduled layoff.[861]

Other Department rules presume that the following reasons for voluntarily quitting are without good casue attributable to the employer: absence for three days without notice to the employer,[862] a quit without notice to the employer during a mutually agreed upon trial period,[863] absence due to incarceration,[864] an employee's move to a different locality[865] or to accompany a spouse to a new locality,[866] a refusal to accept a customary transfer to another location,[867] the seeking of other employment[868] or the entering of self-employment,[869] failure to return to work upon release from military service,[870] a quit to accept voluntary retirement[871] or to keep from earning wages adversely affecting the receipt of federal old-age social security benefits,[872] lack of child care[873] or transportation,[874] a quit to get married[875] or due to family responsibilities or serious family needs,[876] a quit to go to school[877] or to take a vacation,[878] a refusal to perform an assigned task,[879] dislike of the shift,[880] dissatisfaction with the wages[881] or work environment,[882] personality conflict with a supervisor[883] or inability to work with other employees,[884] a quit due to commuting distance[885] or because work was "irregular due to weather conditions . . . not unusual to the employment,"[886] or a "quit after being reprimanded"[887] or due to an employee's feeling of unsatisfactory job performance.[888]

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861. 370 Iowa Admin. Code §§ 4.25(29), (40), 4.26(13) (1982).
862. 370 Iowa Admin. Code § 4.25(4) (1981).
863. 370 Iowa Admin. Code § 4.25(12) (1982).
864. 370 Iowa Admin. Code § 4.25(16) (1982).
865. 370 Iowa Admin. Code § 4.25(2) (1981).
866. 370 Iowa Admin. Code § 4.25(10) (1982).
867. 370 Iowa Admin. Code § 4.25(32) (1982).
868. 370 Iowa Admin. Code § 4.25(3) (1981).
869. 370 Iowa Admin. Code § 4.25(19) (1982).
870. 370 Iowa Admin. Code § 4.25(8) (1982).
871. 370 Iowa Admin. Code § 4.25(24) (1982).
872. 370 Iowa Admin. Code § 4.25(31) (1982).
873. 370 Iowa Admin. Code § 4.25(17) (1982).
874. 370 Iowa Admin. Code § 4.25(1) (1982).
875. 370 Iowa Admin. Code § 4.25(11) (1982).
876. 370 Iowa Admin. Code § 4.25(23) (1982).
877. 370 Iowa Admin. Code § 4.25(26) (1982).
878. 370 Iowa Admin. Code § 4.25(25) (1982).
879. 370 Iowa Admin. Code § 4.25(27) (1982).
880. 370 Iowa Admin. Code § 4.25(18) (1982).
881. 370 Iowa Admin. Code § 4.25(13) (1982).
882. 370 Iowa Admin. Code § 4.25(21) (1982).
883. 370 Iowa Admin. Code § 4.25(22) (1982).
884. 370 Iowa Admin. Code § 4.25(6) (1982).
885. 370 Iowa Admin. Code § 4.25(30) (1982).
886. 370 Iowa Admin. Code § 4.25(34) (1982).
887. 370 Iowa Admin. Code § 4.25(28) (1982).
888. 370 Iowa Admin. Code § 4.25(33) (1982).

Department rules outline many reasons for leaving employment which constitute good cause. One of the most important is the compulsion to leave employment due to an injury on the job or because of an illness or allergy attributable to the employment.[889] Several Iowa Supreme Court cases have held that employees' injuries or illnesses were caused or aggravated by the employment and that the employees therefore voluntarily quit for good cause. In *Raffety v. Iowa Employment Security Commission*,[890] the court construed "good cause attributable to the employer" to require only that the employee's back injury and jaundice be attributable to the employer under whose direction the employee was working; the court did not require that the back injury be attributable to some fault or wrong of the employer.[891] In *McComber v. Iowa Employment Security Commission*,[892] the court quoted from the *Raffety* case and held that an employee's dermatitis and ill health were, in part, caused by unavoidable contact with woolen materials at her work, and therefore that the employee's termination of employment was involuntary and for good cause attributable to the employer, even though the employer was free from all negligence or wrongdoing.[893] In a more recent case, *Shontz v. Iowa Employment Security Commission*,[894] the court remanded the case to the Commission to allow a full hearing on the employee's claim that his voluntary quit and disability, due to a heart attack suffered off the job, was actually caused or aggravated by factors and circumstances associated with the employment.[895] Additionally, the court held in *Ellis v. Iowa Department of Job Service*[896] that a housekeeper left employment for good cause attributable to her employer.[897] The court found that the housekeeper had an allergy to natural Christmas trees, a fact that had been conveyed to the employer at the time of her hiring and periodically during the employment. Knowing this, the employer erected a natural Christmas tree in the area of the housekeeper's ordinary work causing the working conditions to be intolerable for her.[898]

Another important Department rule states that a voluntary quit is not a disqualifying quit and is for good cause attributable to the employer if precipitated by a substantial change in the contract of hire.[899] If a willful breach of an employment contract jeopardizes a worker's safety, health, or morals, the rule deems the breach a substantial change in the contract of

889. 370 Iowa Admin. Code § 4.26(17, (18) (1980).
890. 247 Iowa 896, 76 N.W.2d 787 (1956).
891. *Id.* at 898-900, 76 N.W.2d at 788-89.
892. 254 Iowa 957, 119 N.W.2d 792 (1963).
893. *Id.* at 960-63, 119 N.W.2d at 795-96.
894. 248 N.W.2d 88 (Iowa 1976).
895. *Id.* at 89, 91.
896. 285 N.W.2d 153 (Iowa 1979).
897. *Id.* at 157.
898. *Id.*
899. 370 Iowa Admin. Code § 4.26(1) (1980).

hire.[900] In an early unemployment compensation case, *Forrest Park Sanitarium v. Miller*,[901] the Iowa Supreme Court found that a nurse was hired as a day nurse and not for the night shift which involved working with the more dangerous patients.[902] The court held that the nurse had not quit work but that the employer had terminated her day work and that her refusal to work the night shift did not disqualify her for unemployment benefits because the night assignment violated the employment agreement.[903] Conversely, in a recent Iowa Court of Appeals case, *Woods v. Iowa Department of Job Service*,[904] a worker was held to have voluntarily quit his employment without good cause attributable to the employer when the worker was reassigned to another work shift in apparent violation of the contract of hire and a seniority rule.[905] The court found that the contract of hire included an emergency exception to the seniority rule, that the worker knew the work shift assignment was unusual, and that the worker had an affirmative duty to inquire as to the reason for the apparent change in the contract of hire and the unusual work shift assignment. Since the worker made no inquiry as to the apparent change in the contract of hire, the court held that the worker had himself tendered his resignation and that the voluntary quit was not attributable to the employer.[906] Similarly, the Michigan Court of Appeals in *Cooper v. University of Michigan*,[907] held that a university employee's voluntary quit was without good cause attributable to the employer, where the employee terminated the employment due to her determination that the quantity of work assigned to her was insufficient and dissatisfying.[908]

Two Department rules are closely related to the rule dealing with a substantial change in the contract of hire. A voluntary quit by an employee who left employment because "the type of work was misrepresented to the employee at the time of acceptance of the work assignment," is for good cause attributable to the employer.[909] If an uncustomary transfer to another work locality would cause the employee considerable personal hardship, the employee's voluntary quit is for good cause attributable to the employer.[910] The Michigan Court of Appeals in *Laya v. Cebar Construction Co.*,[911] held that a previously unemployed worker was not disqualified from receiving benefits for voluntarily quitting a job 272 miles away from his home which was con-

900. *Id.*
901. 233 Iowa 1341, 11 N.W.2d 582 (1943).
902. *Id.* at 1343, 11 N.W.2d at 583.
903. *Id.*
904. 315 N.W.2d 838 (Iowa Ct. App. 1981).
905. *Id.* at 842.
906. *Id.* at 839-42.
907. 100 Mich. App. 99, 298 N.W.2d 677 (1980).
908. *Id.* at 105, 298 N.W.2d at 680.
909. 370 IOWA ADMIN. CODE § 4.26(23) (1980).
910. 370 IOWA ADMIN. CODE §§ 4.25(32), 4.26(20) (1982).
911. 101 Mich. App. 26, 300 N.W.2d 439 (1980).

tributing to problems with the worker's family life.[912]

Other Department rules deem a voluntary quit for good cause attributable to the employer if the employee left due to unsafe,[913] unlawful,[914] or intolerable[915] working conditions, or if the employee was laid off by the employer for being pregnant.[916]

The voluntary quit disqualification also will not be imposed if an employee is mandatorily retired as of a certain age because of a company policy or union agreement.[917] If an employee gives an advance notice of resignation and the employer discharges the employee prior to the proposed resignation date, the voluntary quit disqualification will not be imposed until the proposed date of resignation.[918]

Department rules also clarify that the fulfillment of a contract of hire for a specified duration of time or for temporary spot jobs or casual labor does not constitute a voluntary quit disqualifying the employee for benefits.[919] Any denial of benefits to the employee would have to be based on a failure to meet an eligibility requirement or on a disqualifying act other than a voluntary quit.[920] Absence from work due to temporary active duty in the national guard or military reserves also is not a disqualifying voluntary quit according to Department rules.[921]

If an employee voluntarily quits supplemental employment while remaining in a full-time job, the employee is disqualified from receiving benefits based on the supplemental employment. If, however, the employee subsequently becomes unemployed from the full-time job, the earlier quit of supplemental employment does not disqualify the employee for benefits, and the employee, if otherwise eligible for benefits, is entitled to benefits based on the full-time employment.[922] The employee is disqualified, however, from receiving benefits based on the supplemental employment, unless the employee requalified by earning ten times the employee's weekly benefit amount subsequent to voluntarily quitting the supplemental employment.[923] If the employee has requalified, wage credits are transferred to the employer which paid the requalifying wages and that employer's account is charged

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912. *Id.* at 28-29, 33-39, 300 N.W.2d at 440, 442-44.
913. 370 IOWA ADMIN. CODE § 4.26(2) (1980).
914. 370 IOWA ADMIN. CODE § 4.26(3) (1980).
915. 370 IOWA ADMIN. CODE 4.26(4) (1980).
916. 370 IOWA ADMIN. CODE § 4.26(5) (1980).
917. 370 IOWA ADMIN. CODE § 4.26(10) (1980).
918. 370 IOWA ADMIN. CODE §§ 4.25(38), 4.26(12) (1980).
919. 370 IOWA ADMIN. CODE § 4.26(19), (22) (1980). *See* Loftis v. Legionville School Safety Patrol, 297 N.W.2d 237 (Minn. 1980); Commissioner of the Minn. Dep't of Economic Sec. v. Duluth, 297 N.W.2d 239 (Minn. 1980).
920. *See, e.g.*, Smith v. Employers' Overload Co., 314 N.W.2d 220, 222-24 (Minn. 1981).
921. 370 IOWA ADMIN. CODE § 4.26(25) (1980).
922. *See* McCarthy v. Iowa Employment Sec. Comm'n, 247 Iowa 760, 763-65, 76 N.W.2d 201, 202-04 (1956); Berzac v. Marsden Bldg. Maintenance Co., 311 N.W.2d 873 (Minn. 1981).
923. 370 IOWA ADMIN. CODE §§ 4.26(15), 4.27(1) (1980).

with the benefit payments.[924]

2. *Misconduct*

An individual who is discharged for misconduct in connection with the individual's employment is disqualified for benefits until the individual requalifies for benefits by earning wages in covered employment of at least an amount equal to ten times the individual's weekly benefit amount.[925] Department rules require employers to furnish available evidence corroborating allegations of individual employee misconduct.[926] The Iowa Supreme Court also has held that the employer has the burden of establishing an employee's misconduct.[927]

a. Ordinary Misconduct. Department rules define "misconduct" as a "deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment."[928] The act or omission must evince a "willful or wanton disregard of an employer's interest," such as a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees," or recurring carelessness or negligence which either manifests culpability, wrongful intent, or evil design or demonstrates an intentional and substantial disregard to the employer's interests or of the employee's duties and obligations.[929] Mere inefficiency, unsatisfactory conduct, performance inabilities or incapacities, isolated instances of ordinary negligence, or good faith errors in judgment or discretion do not constitute misconduct.[930]

The Iowa Supreme Court has adopted the definition of misconduct contained in the Department's rules.[931] The court has also consistently drawn a legal distinction between a discharge for misconduct and a voluntary quit and has declined to deny benefits on the theory of a constructive voluntary quit.[932] Applying the definition of misconduct in *Clark v. Iowa Department*

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924. *Id.*

925. IOWA CODE § 96.5(2) (1981).

926. 370 IOWA ADMIN. CODE § 4.32(4) (1981).

927. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6, 11 (Iowa 1982). *See* Woods v. Iowa Dep't of Job Serv., 327 N.W.2d 768, 770 (Iowa Ct. App. 1982).

928. 370 IOWA ADMIN. CODE § 4.32(1) (1981).

929. *Id.*

930. *Id.*; 370 IOWA ADMIN. CODE § 4.32(5) (1979).

931. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6, 8-9 (Iowa 1982); Green v. Iowa Dep't of Job Serv., 299 N.W.2d 651, 655 (Iowa 1980); Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 447-48 (Iowa), *cert. denied*, 444 U.S. 852 (1979). *See also* Wehr Steel Co. v. Dep't of Indus., Labor and Human Relations, 106 Wis. 2d 111, 116, 315 N.W.2d 357, 360 (1982) and Boyton Cab Co. v. Neubeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941) (Wisconsin Supreme Court's definition of misconduct substantially adopted by 370 IOWA ADMIN. CODE § 4.32(1) (1981)).

932. Green v. Iowa Dep't of Job Serv., 299 N.W.2d 651, 652-53, 655, 656 (Iowa 1980); Cook v. Iowa Dep't of Job Serv., 299 N.W.2d 698, 701-02 (Iowa 1980).

of Job Service,[933] the Iowa Court of Appeals found an employee's absence to be misconduct where the employer had denied the employee's request to be absent and had warned the employee that any absence would be considered unexcused.[934] The Wisconsin Supreme Court, however, recently held in *Wehr Steel Co. v. Department of Industry, Labor and Human Relations,*[935] that leaving work without the employer's permission does not constitute statutory misconduct if the work environment is a hazard to the employee's health or safety, provided that an objective, rather than a subjective standard, is used to determine if a reasonable person would reasonably believe that the working conditions present a hazard to health or safety.[936]

The Minnesota Supreme Court, in *Auger v. Gillette Co.,*[937] construed its definition of misconduct and found a single incident of an employee sleeping on the job to be a willful disregard of the standards of employee behavior.[938] The court stated that the employer had a right to expect that the employee would obey the employer's standards of conduct when the employee worked at a night job with little supervision, thus "making noncompliance largely undetectable."[939]

The portion of the statutory disqualification which states that the misconduct must be in connection with the individual's employment was interpreted in *Cook v. Iowa Department of Job Service.*[940] The Iowa Supreme Court held that an employee truck driver's uninsurability, due to the receipt of repeated traffic citations, bore directly on his ability to work for his employer and constituted a material breach of his employment obligations.[941] The court upheld the employee's disqualification for benefits finding that the connection between the employee's receipt of the traffic citations and his employment obligations was sufficient to constitute misconduct, even though most of the citations were received off the job and in his personal car.[942]

Sometimes a connection with employment is not sufficiently related to an employer's interest to reasonably require specific employee behavior in relation to the connection. For example, the Nebraska Supreme Court recently held in *Snyder Industries, Inc. v. Otto,*[943] that an employment rule which forbade all contact between current employees and former employees, in order to prevent leaks of production secrets, did not have a reasonable

933. 317 N.W.2d 517 (Iowa Ct. App. 1982).
934. *Id.* at 518.
935. 106 Wis. 2d 111, 315 N.W.2d 357 (1982).
936. *Id.* at 119-22, 315 N.W.2d 362-63.
937. 303 N.W.2d 255 (Minn. 1981).
938. *Id.* at 257.
939. *Id.* at 256-58.
940. 299 N.W.2d 698, 702 (Iowa 1980).
941. *Id.* at 702.
942. *Id.*
943. 212 Neb. 40, 321 N.W.2d 77 (1982).

relationship to the employer's interest, therefore violation of the unreasonable rule did not constitute misconduct under the Nebraska law.[944] The Nebraska court quoted from the Wisconsin Supreme Court which stated that only a violation of a reasonable employment rule constitutes misconduct and that a rule which relates to employee conduct during off-duty hours must bear a reasonable relationship to the employer's interest in order to be reasonable.[945]

The rule which provides that failure in good performance resulting from inability or incapacity does not constitute misconduct was the subject of litigation in *Huntoon v. Iowa Department of Job Service*.[946] The Iowa Supreme Court construed the definitional rule to mean that a failure in good performance resulting from a deputy sheriff's alcoholism would not constitute misconduct if the failure was nonvolitional.[947] The court avoided any determination as to whether the alcoholism was a disease or an involuntary condition and focused only on the voluntary nature of the deputy sheriff's alleged act of misconduct.[948] The court found that the record did not provide a sufficient basis to fairly infer that the deputy sheriff's actions were involuntary or the result of incapacity.[949]

In determining whether misconduct has occurred, only a current act can be considered under Department rules.[950] Past acts and warnings can be used to determine the magnitude of a current act of misconduct, but a disqualifying discharge cannot be based on those past acts or warnings because those past acts are considered condoned by subsequent or continued employment.[951] The rules also treat a suspension or disciplinary layoff as a discharge by the employer, necessitating the resolution of the issue of misconduct in order to award or deny benefits.[952]

Department rules also define several acts which constitute misconduct. Excessive absenteeism, as an intentional disregard of a duty owed to the employer, is considered misconduct.[953] The rule, however, has been interpreted by the Iowa Supreme Court in *Cosper v. Iowa Department of Job Service*[954] to mean that excessive absences are misconduct only if they are

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944. *Id.* at ___, 321 N.W.2d at 80.

945. *Id.* at ___, 321 N.W.2d at 79-80.

946. 275 N.W.2d 445 (Iowa 1979).

947. *Id.* at 448.

948. The alleged misconduct was to engage two county jail trustees in an evening of alcoholic beverage drinking rather than taking them to a movie and dinner as authorized by the sheriff. *Id.* at 446-47, 448.

949. *Id.* at 447.

950. 370 IOWA ADMIN. CODE § 4.32(8) (1979).

951. *Id.*

952. 370 IOWA ADMIN. CODE § 4.32(9) (1979).

953. 370 IOWA ADMIN. CODE § 4.32(7) (1979).

954. 321 N.W.2d 6 (Iowa 1982).

unexcused.[955] The court found the rule to be stated as a result rather than a definition and determined that it was in conflict with the definitional rule which states that failure in good performance as the result of incapacity is not disqualifying misconduct.[956] Moreover, the court concluded that the failure to distinguish between excused and unexcused absences violated both earlier Iowa court applications of the law[957] and the general rule in other jurisdictions.[958] In the *Cosper* case the Department and the trial court had not distinguished between excused and unexcused absences of a data entry clerk despite the clerk's continued contentions that her absences were excused.[959] The court reversed the trial court's denial of benefits and remanded the case to the Department, directing the Department to make appropriate findings relating to the clerk's contentions that her absences were excused.[960]

In a 1980 case involving absenteeism,[961] an accounting clerk refused to sign a statement of warning acknowledging her history of absences and tardiness, although she testified that she knew that the signing of the reprimand only acknowledged its receipt.[962] The Iowa Supreme Court upheld the clerk's discharge for misconduct for refusal to sign the reprimand and not for her absenteeism.[963]

The willful and deliberate falsification of a work application form is considered misconduct under Department rules if the falsification does or could endanger the health, safety, or morals of the applicant or others, expose the employer to legal liabilities or penalties, or place the employer in jeopardy.[964] The Michigan Court of Appeals in *Dunlap v. Michigan Employment Security Commission*[965] held that an "employee's failure to characterize his minor swimming accident of six years earlier as 'back trouble' or 'back injury' on an employment application and a medical history questionnaire was not misconduct."[966] In *Miller Brewing Co. v. Department of Industry, Labor and Human Relations*,[967] the Wisconsin Court of Appeals upheld a discharge for misconduct due to the falsification of an employment application where the applicant was untruthful concerning his military dis-

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955. *Id.* at 10.

956. *Id.* at 9; *see* Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 447-48 (Iowa), *cert. denied*, 444 U.S. 852 (1979).

957. Cosper, 321 N.W.2d at 10. *See* Ball v. Iowa Dep't of Job Serv., 308 N.W.2d 54 (Iowa 1981); Clark v. Iowa Dep't of Job Serv., 317 N.W.2d 517, 518 (Iowa Ct. App. 1982).

958. *See* Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d at 10.

959. *Id.* at 9.

960. *Id.* at 10, 11.

961. Green v. Iowa Dep't of Job Serv., 299 N.W.2d 651 (Iowa 1980).

962. *Id.* at 653, 655.

963. *Id.* at 656.

964. 370 IOWA ADMIN. CODE § 4.32(6) (1979).

965. 99 Mich. App. 400, 297 N.W.2d 682 (1980).

966. *Id.* at 402-03, 297 N.W.2d at 683-84.

967. 103 Wis. 2d 496, 308 N.W.2d 922 (1981).

charge and prior criminal convictions. The court reasoned that the falsification need not be material to the employee's particular job in all cases.[968]

b. Gross Misconduct. Iowa's statutory law defines "gross misconduct" as employment-connected misconduct which constitutes an indictable offense.[969] Department rules define an indictable offense as a felony or an indictable misdemeanor presented on indictment or on a county attorney's information.[970] If an individual is discharged for gross misconduct rather than ordinary misconduct, the individual is disqualified from receiving benefits, the individual's wage credits earned prior to the discharge are cancelled from all employers, and the individual can not requalify for benefits on the basis of the cancelled wage credits.[971] Before the wage credits can be cancelled for gross misconduct, however, the individual must be convicted of the employment-connected indictable offense or the individual must sign a statement admitting the commission of the indictable offense.[972]

3. *Failure to Apply For, or to Accept Suitable Work*

An individual who fails, without good cause, either to apply for available, suitable work when directed by the Department or to accept suitable work when offered, or to return to customary self-employment, is disqualified for regular benefits until the individual requalifies for benefits by earning wages in covered employment of at least an amount equal to ten times the individual's weekly benefit amount.[973]

a. Suitable Work. The statute provides that work is not suitable if the position is vacant directly due to a strike, lockout, or other labor dispute,[974] if the wages, hours, or other conditions of the work are substantially less favorable than those prevailing for similar work in the locality, or if, as a condition of employment, either membership in a company union is required or labor organization membership is prohibited.[975] An Iowa Attorney General's opinion has concluded that federal and Iowa law, which precluded the Department from making referrals to work which is vacant due to a labor dispute, controlled over any potentially conflicting provision in Iowa's right-to-work statute.[976]

In determining the suitability of work for an individual, the Department is statutorily required to consider the following factors:

(1) the degree of risk to the individual's health, safety, and morals; (2)

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968. *Id.* at 505, 308 N.W.2d at 927.
969. IOWA CODE § 96.5(2)(c) (1981).
970. 370 IOWA ADMIN. CODE § 4.32(3)(b) (1981).
971. IOWA CODE § 96.5(2)(b) (1981).
972. IOWA CODE § 96.5(2)(c) (1981).
973. IOWA CODE § 96.5(3) (1981).
974. *See* 370 IOWA ADMIN. CODE §§ 4.33(1), 4.34(2), (9-11) (1980).
975. IOWA CODE § 96.5(3)(b) (1981).
976. Op. Atty. Gen (Dec. 11, 1980).

> the individual's physical fitness; (3) the individual's prior training; (4) the individual's length of unemployment; (5) the individual's prospects for securing local work in the individual's customary occupation; (6) the distance of the available work from the individual's residence; and (7) other factors deemed reasonably relevant by the Department.[977]

In regard to the factor of length of unemployment, the statute establishes a declining schedule of wages. The wages for available work must fall within the schedule to be suitable and the wages for the work also must equal or exceed the federal minimum wage, provided the work meets all other suitable work criteria.[978] Thus, available work is suitable during the following specified weeks of unemployment if the gross weekly wages for the work equal or exceed the following percentages of an individual's average weekly wage in the individual's highest-paid base period quarter: (1) during the first five weeks, 100%, (2) during the sixth through the twelfth week, 75%, (3) during the thirteenth through the eighteenth week, 70%, and (4) during any week after the eighteenth week, 65%.[979]

Department rules require that each case involving a determination of suitable work be decided on its own merits.[980] The rules provide that a job is not suitable work if the job is not within an individual's physical capabilities or would require undue physical skill or particular training which the individual does not possess,[981] or if the job is one that the individual had previously quit and the conditions which caused the individual to quit are still present.[982] The individual may, however, still be ineligible for benefits for failure to meet the "available for work" requirement.[983]

b. Bona Fide Job Referral or Offer of Work. Department rules require that before an individual can be disqualified for failure to apply for suitable work, the individual must be referred by personal contact to an actual job opening and the individual must definitely refuse the referral.[984] If the Department notifies the individual by mail to report to the Department's employment office for a job referral and the individual fails to report without good cause, the individual can be disqualified until the individual reports to the employment office.[985]

Department rules also require that before an individual can be disqualified for failure to accept suitable work, a bona fide offer of suitable work must be made by personal contact to the individual, while the individual is

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977. IOWA CODE § 96.5(3)(a) (1981).
978. *Id.*
979. *Id.*
980. 370 IOWA ADMIN. CODE § 4.24(3) (1980).
981. 370 IOWA ADMIN. CODE § 4.24(2), (6), (16) (1982).
982. 370 IOWA ADMIN. CODE § 4.24(14)(b) (1980).
983. 370 IOWA ADMIN. CODE § 4.24(3) (1980).
984. 370 IOWA ADMIN. CODE § 4.24(1)(a) (1982).
985. 370 IOWA ADMIN. CODE § 4.24(1)(b) (1982).

unemployed and has a valid claim for benefits,[986] and the individual must definitely refuse the offer.[987] A registered letter is deemed to be sufficient personal contact when an individual is recalled to work.[988] A bulletin board notice of available work during a plant shutdown, however, is not a bona fide offer of work.[989]

c. Refusal of Suitable Work. Department rules require that an individual definitely refuse to apply for or to accept suitable work before the individual can be disqualified for benefits.[990] The rules also state that an individual who willfully follows a course of action designed to discourage prospective employers from hiring him is deemed to have refused suitable work under the statute.[991]

Each case involving a determination of good cause for alleged refusal to apply for or to accept suitable work is to be decided on its own facts.[992] Department rules provide, however, that good cause for refusal to accept an offer for work generally exists if the individual is gainfully employed elsewhere or does not reside in the area where the job was offered.[993]

d. Good Cause. Department rules do not define good cause for failure to apply for or to accept suitable work. The Iowa Supreme Court also has not construed the phrase in the suitable work context. The Minnesota Supreme Court, however, recently construed the phrase in *Reserve Mining Co. v. Gorecki*.[994] The court held that an individual's refusal of reemployment was for good cause after the individual, faced with a substantial layoff beyond her control, relocated 270 miles from her former employment in order to secure employment and had subsequently enrolled in a training program to improve her employment skills and her financial position.[995]

e. Extended Benefits. If an individual's job prospects in his or her customary occupation are good within a reasonably short time, the disqualification provisions which relate to a failure to apply for or to accept suitable work will also apply to extended benefits.[996] If the individual's job prospects are poor, the individual must be referred to suitable work by the Department or the suitable work must be offered to the individual in writing before

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986. 370 IOWA ADMIN. CODE § 4.24(8) (1980).

987. 370 IOWA ADMIN. CODE § 4.24(1)(a) (1982).

988. *Id.*

989. 370 IOWA ADMIN. CODE § 4.24(11) (1980); *see* Iowa Malleable Iron Co. v. Iowa Employment Sec. Comm'n, 195 N.W.2d 714, 718 (Iowa 1972).

990. 370 IOWA ADMIN. CODE § 4.24(1)(a) (1982).

991. 370 IOWA ADMIN. CODE § 4.24(12) (1980).

992. 370 IOWA ADMIN. CODE § 4.24(3) (1980). *See also* Reiter v. Iowa Dep't of Job Serv., 327 N.W.2d at 767-68.

993. 370 IOWA ADMIN. CODE § 4.24(7), (10), (13) (1980).

994. 316 N.W.2d 547 (Minn. 1982).

995. *Id.* at 548-49.

996. Unemployment Compensation, ch. 19, § 10, 1981 Iowa Acts 113; Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(2) (1983)).

the individual can be disqualified for extended benefits for refusal to apply for or to accept the suitable work.[997] The statutory extended benefit provision considers available work suitable only if the gross weekly wage for the available work exceeds "the individual's weekly extended benefit amount plus any weekly supplemental unemployment compensation benefits which the individual is receiving."[998]

An individual requalifies for extended benfits, after a refusal to apply for or to accept suitable work, by earning at least four times the individual's weekly benefit amount and by working in each of four weeks, which need not be consecutive, subsequent to disqualification.[999] The same requalification requirement applies to an individual disqualified for extended benefits for failure to actively seek work.[1000]

4. *Involvement in Labor Disputes*

An individual who is totally or partially unemployed due to a work stoppage, resulting from a labor dispute at the factory, establishment, or other premises where the individual was last employed, is generally disqualified for benefits.[1001] Unlike the other disqualifications, however, the labor dispute disqualification is a weekly disqualification and requalification through subsequent earnings in covered employment is not required.

a. Labor Disputes. Departmental rules define "labor dispute" as "any controversy concerning . . . the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[1002] The definition is similar to the federal definition of labor dispute in the National Labor Relations Act.[1003]

The Iowa Supreme Court in *Dallas Fuel Co. v. Horne*,[1004] applying this

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997. *Id.*; *see* 370 IOWA ADMIN. CODE § 4.24(17) (1982).

998. Unemployment Compensation, ch. 19, § 10, 1981 Iowa Acts 113; Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(2) (1983)); *see* 370 IOWA ADMIN. CODE § 4.24(15)(b)(1) (1982).

999. Unemployment Compensation, ch. 19, § 10, 1981 Iowa Acts 113; Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(2)(a) (1983)); 370 IOWA ADMIN. CODE § 4.24(17) (1982).

1000. Unemployment Compensation, ch. 19, § 10, 1981 Iowa Acts 113; Changes in State Unemployment Compensation Law Requested by the Federal Dep't of Labor, ch. 1030, § 8, 1982 Iowa Acts 56-57 (to be codified at IOWA CODE § 96.29(2)(a) (1983)); 370 IOWA ADMIN. CODE § 4.23(40) (1982).

1001. IOWA CODE § 96.5(4) (1981).

1002. 370 IOWA ADMIN. CODE § 4.33(1) (1979).

1003. 29 U.S.C. § 152(9) (1976).

1004. 230 Iowa 1148, 300 N.W. 303 (1941).

definition, held that Iowa miners who terminated their work were involved in a labor dispute, even though the termination was ordered by national labor union officials.[1005] The court so ruled because of the state of negotiations for mining contracts in the Appalachian coal fields, even though the Iowa miners were not directly participating in the Appalachian labor dispute.[1006]

Departmental rules also provide that a lockout is a labor dispute.[1007] In a 1981 case, *Smith v. Michigan Employment Security Commission*,[1008] the Michigan Supreme Court held that a lockout upon the expiration of a labor contract was a labor dispute,[1009] and that the lockout was the substantial contributing cause of the workers' unemployment, though not the sole cause since some evidence did support the contention that the lockout was actually a disguised layoff caused by deteriorating economic conditions in 1975.[1010] Although the workers were willing to continue working during contract negotiations, the court found that the workers were nonetheless directly interested in the labor dispute, because the dispute involved a change in the terms and conditions of employment and that the workers' voluntary stoppage of work was not necessary to disqualify them for benefits for their direct interest in the labor dispute.[1011]

In a 1948 case, *Johnson v. Iowa Employment Security Commission*,[1012] the Iowa Supreme Court held that miners' unemployment was due to a labor dispute when a stoppage of work was ordered by union officials after the old contract had expired and the employer failed to enter into a new contract.[1013] The miners were therefore ineligible for benefits.[1014] Thus, a labor dispute is broader than a strike.[1015]

b. Stoppage of Work. The labor dispute disqualification must involve a stoppage of work at the plant or establishment for the disqualification to apply.[1016] If a stoppage of work does not occur, an individual who leaves work is deemed to have voluntarily quit the employment.[1017] Similarly, if an individual, rather than a group of employees or union members, leaves work voluntarily in an unauthorized strike in protest against the discharge of a fellow employee, the individual is deemed to have voluntarily quit the em-

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1005. *Id.* at 1154, 300 N.W. at 306.
1006. *Id.* at 1153-54, 300 N.W. at 306.
1007. 370 IOWA ADMIN. CODE § 4.34(8) (1980).
1008. 301 N.W.2d 285 (Mich. 1981).
1009. *Id.* at 290.
1010. *Id.* at 291-93.
1011. *Id.* at 287, 296.
1012. 239 Iowa 816, 32 N.W.2d 786 (1948).
1013. *Id.* at 825-26, 32 N.W.2d at 790-91.
1014. *Id.* at 825-27, 32 N.W.2d at 790-91.
1015. *Id.* at 827, 32 N.W.2d at 791.
1016. 370 IOWA ADMIN. CODE § 4.34(a) (1980).
1017. *Id.*

ployment.[1018] In either case, however, the issue of whether the voluntary quit was attributable to the employer can still be raised.

The Iowa Supreme Court in *Galvin v. Iowa Beef Processors, Inc.*[1019] held that a work stoppage existed because of a labor dispute where employees were laid off due to unfavorable beef market conditions, were then called to return to work, and subsequently went on strike.[1020] The court refused to attribute the continued period of unemployment to the prior layoff and disqualified the employees for benefits during the strike period.[1021]

c. Involvement Requiring Disqualification. The statutory labor dispute disqualification does not apply, if it is shown to the Department's satisfaction, that the individual is not participating in or financing or directly interested in the labor dispute, and that the individual is not a member of a grade or class of workers whose members were previously employed at the same place as the individual and are not presently participating in or financing or directly interested in the labor dispute.[1022] Department rules provide that union membership alone does not constitute participation in, financing, or direct interest in a labor dispute.[1023] Whereas departmental procedure requires the taking of individual statements on the labor dispute issue when union representation is not present, individual statements are not required when union representation is present.[1024] Departmental rules deem an individual who fails or refuses to cross a picket line during a labor dispute to be involved in the labor dispute.[1025] An individual who fails to report to work, however, because of the fear of violence on the picket line is deemed to have voluntarily quit the employment.[1026] The issue of whether the voluntary quit was attributable to the employer can still be raised.

During the period of a labor dispute disqualification, the disqualified individual's benefit claim is processed by the Department as though no separation from the employer has occurred, and the relationship between the employer and the employee is deemed to continue, unless otherwise severed.[1027] If severed by the employer, a determination of benefit eligibility or disqualification will be made under the discharge for misconduct provi-

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1018. 370 IOWA ADMIN. CODE § 4.34(10) (1980).

1019. 261 N.W.2d 701 (Iowa 1978).

1020. *Id.* at 703.

1021. *Id.*

1022. IOWA CODE § 96.5(4) (1981); *but see* Jenks v. Wisconsin Dep't of Indus., Labor and Human Relations, 107 Wis. 2d 714, 321 N.W.2d 347 (1982) (benefits denied to nonstriking employees who were unemployed at establishment where a strike by other employees was in active progress).

1023. 370 IOWA ADMIN. CODE § 4.34(2) (1978).

1024. 370 IOWA ADMIN. CODE § 4.33(2)(g-i) (1979).

1025. 370 IOWA ADMIN. CODE § 4.34(5) (1980).

1026. 370 IOWA ADMIN. CODE § 4.34(7) (1980).

1027. 370 IOWA ADMIN. CODE § 4.34(3) (1980).

sion.[1028] If severed by the employee, a determination of benefit eligibility or disqualification will be made under the voluntary quit provision.[1029]

If the labor dispute is terminated and an individual has accepted employment elsewhere and fails or refuses to return to work for the previous employer, the individual is subject to a determination of disqualification for voluntarily quitting the previous employment.[1030] If the labor dispute is terminated and an individual is still unemployed, a new claim for benefits must be filed, and the individual is either laid off and generally eligible for benefits or disqualified for benefits under the voluntary quit or discharge for misconduct provisions.[1031] In *Central Foam Corp. v. Barrett*,[1032] the Iowa Supreme Court held that unemployed workers should not have been disqualified for benefits for voluntarily quitting employment, because termination occurred when the workers were replaced for failure to come back to work and not when the workers went on strike.[1033] The court declined to decide whether the workers were justifiably terminated, holding that the termination issue was preempted by the National Labor Relations Act.[1034]

E. *Penalties*

1. *Fraud and Misrepresentation*

Iowa's unemployment law provides criminal penalties for knowingly making a false statement or failing to disclose a material fact in order to increase benefits.[1035] The offense is a fraudulent practice and the applicable penalty is determined by the value of benefits involved in the fraudulent act.[1036] Other willful violations of the unemployment law or the rules adopted pursuant to the law are simple misdemeanors.[1037] The Department has established a special unit to investigate cases of fraud and misrepresentation, to submit appropriate cases to county attorneys for prosecution, and to recover benefit overpayments.[1038]

Benefits received by reason of the nondisclosure or misrepresentation of a material fact are to be recovered by the Department either through repayment or deduction from future benefits.[1039] The Department is given the

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1028. 370 IOWA ADMIN. CODE § 4.34(3)(a) (1980).
1029. 370 IOWA ADMIN. CODE § 4.34(3)(b) (1980).
1030. 370 IOWA ADMIN. CODE § 4.34(4) (1980).
1031. 370 IOWA ADMIN. CODE § 4.33(2)(1) (1978).
1032. 266 N.W.2d 33 (Iowa 1978).
1033. *Id.* at 35-36.
1034. *Id.*
1035. IOWA CODE § 96.16(1) (1981).
1036. *Id.*
1037. IOWA CODE § 96.16(3) (1981).
1038. IOWA CODE § 96.11(1) (1981); 370 IOWA ADMIN. CODE ch. 5 (1982).
1039. IOWA CODE § 96.16(4) (1981); *see* 370 IOWA ADMIN. CODE §§ 5.7, 5.10 (1981).

discretion to require either method of repayment.[1040] If the Department seeks to recover benefits through the repayment procedure, it may file a lien in favor of the state on the real or personal property of the individual involved.[1041]

An administrative penalty disqualifying an individual for benefits for the remainder of the individual's benefit year applies if the individual made a fraudulent misrepresentation within the last three years in order to obtain benefits not due the individual.[1042]

2. *Innocent Misrepresentation*

Benefits received by an individual subsequently determined to be ineligible are to be recovered by the Department even though the individual acted in good faith and was not otherwise at fault.[1043] The Department, in its discretion, may recover the overpayment either through required repayment by the individual or through deduction from the individual's future benefits.[1044]

F. *Back Pay*

If an individual receives a back pay award after receipt of unemployment compensation benefits for the same period of unemployment, the Department is required to recover the benefits.[1045] The Department, in its discretion, may recover the benefits either through an agreement to remit an amount equal to the benefits received from the employer's back pay award to the unemployment trust fund or through repayment by the individual or reduction of the individual's future benefits.[1046]

G. *Constitutional Considerations*

Although not a prime area for constitutional argument, the federal and state unemployment laws have been challenged constitutionally, principally under the establishment, free exercise, and free speech clauses of the First Amendment of the United States Constitution, and under the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution.

1040. *Id.*
1041. *Id.*
1042. IOWA CODE § 96.5(8) (1981); *see* 370 IOWA ADMIN. CODE §§ 4.23(39), 4.56, 5.9 (1982).
1043. IOWA CODE § 96.3(7) (1981); 370 IOWA ADMIN. CODE § 4.55 (1982).
1044. *Id.*
1045. IOWA CODE § 96.3(8) (1981).
1046. *Id.*

1. *Benefits Not Vested*

The Federal Unemployment Tax Act requires, as a condition to federal certification of a state's unemployment law, that all the rights, privileges, and immunities conferred by the state unemployment law remain subject to the power of the legislature to amend or repeal the law at any time.[1047] Thus, the Iowa Supreme Court has stated that "so far as any constitutional question is involved, no vested rights exist and the legislature may amend, modify or repeal such legislation at will."[1048]

2. *First Amendment Considerations*

The establishment and free exercise of religion clauses and the free speech guarantee of the First Amendment to the United States Constitution have received the attention of several courts.

a. Establishment and Free Exercise Clauses. The United States Supreme Court held in *Sherbert v. Verner*,[1049] that South Carolina's unemployment law, denying unemployment compensation benefits to a member of the Seventh-day Adventist Church due to her failure to accept suitable work, (including work on Saturday, the Sabbath Day of her faith) abridged her right to the free exercise of her religion.[1050] The Court reasoned that to condition the availability of benefits on the member's willingness to violate a cardinal principle of her religious faith penalized "the free exercise of her constitutional liberties,"[1051] and that no compelling state interest justified the substantial infringement of the member's free exercise of her religion.[1052] Department administrative rules recognize this infringement on the free exercise of religion.[1053]

In *Thomas v. Review Board of the Indiana Employment Security Division*,[1054] the United States Supreme Court followed the *Sherbert* ruling and held that the denial of unemployment compensation benefits to a member of the Seventh-day Adventist Church, who left his employment after being transferred to a job involving the production of military weapons, violated his first amendment right to free exercise of religion.[1055] The Court reasoned that, even though not all members of the Seventh-day Adventist Church shared the view that employment in the production of weapons was forbid-

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1047. I.R.C. § 3304(a)(17) (1976).

1048. Needham Packing Co. v. Iowa Employment Sec. Comm'n, 255 Iowa 437, 441, 123 N.W.2d 1, 3 (1963). *See* Kemp v. Day & Zimmerman, Inc., 239 Iowa 829, 861-62, 33 N.W.2d 569, 586 (1948).

1049. 374 U.S. 398 (1963).

1050. *Id.* at 399-04, 409-10.

1051. *Id.* at 406.

1052. *Id.* at 406-09.

1053. 370 IOWA ADMIN. CODE § 4.22(1)(t) (1979).

1054. 450 U.S. 707 (1981).

1055. *Id.* at 716, 718-20.

den, that particular member's conviction was honest and religiously based.[1056] As a result, the denial of unemployment compensation benefits substantially infringed on the member's right to free exercise of his religion.[1057] The Court found no compelling state interest to justify the burden placed on the member's free exercise of religion and rejected the contention that the payment of benefits would foster a religious faith in violation of the establishment clause.[1058]

As the United States Supreme Court held in *St. Martin Evangelical Lutheran Church v. South Dakota*,[1059] the North Dakota Supreme Court had earlier held,[1060] on statutory grounds, that the employees of a parochial school were excluded from the coverage of North Dakota's unemployment law as church employees.[1061] Although the court avoided a constitutional holding in the case, the court expressed its views on the applicability of the establishment clause to the coverage of parochial school employees.[1062] The court set out three tests for constitutionality.

The first two tests presented no problem in the case since extending unemployment compensation to all elementary and secondary schools had the secular purpose of avoiding hardship for individuals temporarily without employment and afforded no basis for concluding that the legislative intent was to advance or inhibit religion.[1063] The third test, avoiding excessive governmental entanglements, did present a problem. The court noted that, first, the church school had a "religious purpose, *i.e.*, to educate its youth according to the 'confessional standards' of the congregation."[1064] Secondly, it would require extensive surveillance to enforce the coverage of church school employees, such as extensive record keeping to separate exempt and non-exempt teaching duties.[1065] Thirdly, benefit eligibility decisions based on the voluntary quit standard of good cause attributable to the employer could involve the state unemployment agency in determinations of whether or not a teacher had failed to adhere to the religious tenets of the church as required in the teacher's contract.[1066] The court concluded that including the coverage of church schools under the unemployment law raised serious questions concerning excessive governmental entanglement with religion.[1067]

1056. *Id.* at 716.
1057. *Id.* at 718.
1058. *Id.* at 719-20.
1059. 451 U.S. 772, 787-88.
1060. Grace Lutheran Church v. North Dakota Employment Sec. Bureau, 294 N.W.2d 767 (N.D. 1980).
1061. *Id.* at 771-72.
1062. *Id.* at 772-74.
1063. *Id.* at 773.
1064. *Id.*
1065. *Id.*
1066. *Id.* at 774.
1067. *Id.*

b. Freedom of Speech. The United States Supreme Court has also addressed the first amendment's guarantee of free speech in the context of public employment. In *Pickering v. Board of Education,*[1068] the Supreme Court held that a school teacher's dismissal for making erroneous public statements concerning a public issue and his employer, the school board and superintendent, violated the teacher's right of free speech.[1069] The Court used a two prong test, first balancing the employee's interest, as a citizen, in commenting on matters of public concern against the public employer's interest in promoting the efficiency of the public services it performs,[1070] and secondly, determining whether the false public statements interfered with the employee's employment duties.[1071] The Court found that the subject of a school tax rate increase was of public concern upon which the teacher, as a member of the general public, should be able to speak freely,[1072] that it was not proven that the false statements were knowingly or recklessly made,[1073] and that the teacher's speech did not impede the teacher's performance of his daily duties and did not interfere with the regular operation of the schools.[1074]

In *Atcherson v. Siebenmann,*[1075] the United States Court of Appeals for the Eighth Circuit held that the coerced resignation of a juvenile probation officer, after the officer accused her co-workers of improperly receiving mileage reimbursements, violated the officer's free speech rights.[1076] The court adopted the balancing test in *Pickering,* reasoning that the allegation of misappropriation of public funds was a matter of compelling public concern, and that even though the allegation was disruptive of working relationships, the allegation would not have greatly increased the disharmony already present and would not have prevented the satisfactory operation of the probation office because of the officers' independence in their work.[1077]

Thus, in cases of discharge for misconduct of a public employee under the employment law, the issue of the employee's constitutionally protected right of free speech could be relevant or even determinative if the speech involved a subject of public concern and did not impede the performance of the employee's duties or the regular operation of the services performed by the public employer.

1068. 391 U.S. 563 (1968).
1069. *Id.* at 564-65.
1070. *Id.* at 568.
1071. *Id.* at 570-73.
1072. *Id* at 571-73.
1073. *Id.* at 574.
1074. *Id.* at 564-65.
1075. 605 F.2d 1058 (8th Cir. 1979).
1076. *Id.* at 1062-63.
1077. *Id.* at 1063.

3. *Fourteenth Amendment Considerations*

The equal protection and due process clauses of the fourteenth amendment have received the attention of the Iowa Supreme Court and the United States Supreme Court.

a. Equal Protection. The Iowa Supreme Court has rejected two equal protection challenges to the employer taxation provisions of Iowa's unemployment law. In *Mt. Vernon Bank & Trust Co. v. Iowa Employment Security Commission,*[1078] the court found the definition of employer, which included multiple employing units owned or controlled by the same interests in order to bring the required eight or more employees within the unemployment law, to be neither arbitrary nor capricious.[1079] The court concluded that classifying the multiple employing units as one employer sprung from realistic considerations and was a reasonable legislative classification calculated to prevent the evasion of the law by the splitting of business establishments, even though the classification included those businesses not actually engaged in any evasive practice.[1080] Although the current Iowa unemployment law generally includes employers with only one employee,[1081] the court's analysis of equal protection may be relevant to other employer taxation classifications under the unemployment law, such as employer taxation rates, employer industry classifications, and employers newly subject to the unemployment law.

In the second case, *Merchants Supply Co. v. Iowa Employment Security Commission,*[1082] the court rejected a constitutional challenge to the determination of experience taxation rates based on the gross payrolls rather than the taxable payrolls of employers.[1083] The court stated that the legislature has wide discretion in classifying and distributing the tax burden. The Iowa court relied on *Carmichael v. Southern Coal & Coke Co.,*[1084] where the United States Supreme Court upheld the constitutionality of the Alabama unemployment law and rejected the imposition upon the state of any rigid rule of equality of taxation, even though the law failed to distinguish between employers with low and high unemployment experience.[1085]

In the area of benefit eligibility, the United States Supreme Court and the Iowa Supreme Court have each rejected an equal protection challenge. In *Idaho Department of Employment v. Smith,*[1086] the United States Su-

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1078. 233 Iowa 1165, 11 N.W.2d 402 (1943).
1079. *Id.* at 1171-76, 11 N.W.2d at 405-07.
1080. *Id.*
1081. IOWA CODE § 96.19(5)(a) (1981).
1082. 235 Iowa 372, 16 N.W.2d 572 (1944).
1083. *Id.* at 382-85, 16 N.W.2d at 578-79.
1084. 301 U.S. 495 (1937).
1085. Merchant Supply Co. v. Iowa Employment Sec. Comm'n, 235 Iowa at 384-85, 16 N.W.2d at 579.
1086. 434 U.S. 100 (1977).

preme Court held that an Idaho statute, which provided that "no person shall be deemed to be unemployed while attending a regular established school excluding night school," did not violate the equal protection clause.[1087] An unemployed retail clerk challenged the statute when she was denied benefits under the statute after enrolling in weekday summer school classes from seven to nine o'clock in the morning.[1088] The Court found that the night school exception, which did not include early morning classes, was a classification with a reasonable basis in that the Idaho Legislature could conclude that daytime employment was far more plentiful than nighttime work and that daytime school attendance imposed a greater restriction on obtaining full-time employment.[1089] Moreover the classification served as a predictable and convenient means for distinguishing between those unemployed individuals likely to be students primarily and part-time workers only secondarily from those individuals likely to be full-time workers primarily and part-time students only secondarily, "without the necessity of making costly individual determinations which would deplete available agency resources."[1090]

The Iowa Supreme Court, in *Davoren v. Iowa Employment Security Commission*,[1091] used the traditional equal protection analysis, rather than close judicial scrutiny, to reject a full-time law student's claim that he was denied equal protection of the law by the administrative rule which declared full-time students to be unavailable for work and not earnestly and actively seeking work in violation of the statutory requirement.[1092] The Iowa court placed the burden of proof on the student, requiring him to show there was no reasonable basis for the classification in the statute,[1093] and cited extensively from the United States Supreme Court's decision in *Idaho Department of Employment v. Smith*.[1094] The court held that the administrative rule was not unconstitutional, was properly applied, and that the student had failed to rebut the presumption of unavailability for work.[1095]

b. Due Process. In a celebrated United States Supreme Court case, *International Shoe Co. v. Washington*,[1096] the Court held that the systematic and continuous activities of salesmen within the state constituted sufficient contacts or ties to the state to make it reasonable and just, in conformity with the due process requirements of the Fourteenth Amendment of the United States Constitution, for the state to enforce an obligation arising out

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1087. *Id.* at 101-02.
1088. *Id.* at 102.
1089. *Id.* at 101.
1090. *Id.*
1091. 277 N.W.2d 602 (Iowa 1979).
1092. *Id.* at 603.
1093. *Id.* at 604.
1094. 434 U.S. 100 (1977) (cited in Davoren, 277 N.W.2d at 605).
1095. Davoren, 277 N.W.2d at 605.
1096. 326 U.S. 310 (1945).

of the activities against the salesmen's foreign employer.[1097] The obligations imposed were amenability to suit based on the activities of the salesmen in the state and the payment by the foreign employer of the state unemployment compensation tax, a constitutional tax on the privilege of employing salesman within the state.[1098]

The United States Supreme Court also considered the constitutionality of a Utah statute, which made pregnant women ineligible for unemployment compensation benefits for a period extending from twelve weeks before the expected childbirth until a date six weeks after childbirth, in *Turner v. Department of Employment Security*.[1099] The Supreme Court concluded that the disqualification was based on a conclusive presumption, and not on an individualized determination of ineligibility, "that women are unable to work during the eighteen-week period because of pregnancy and childbirth."[1100] Relying on its decision in *Cleveland Board of Education v. La Fleur*,[1101] where the Court had held that a school board's mandatory maternity leave rule violated the freedom of personal choice in matters of marriage and family life protected by the due process clause of the fourteenth amendment, the *Turner* Court concluded that the "conclusive presumption of incapacity during so long a period before and after childbirth is constitutionally invalid" under principles announced in *La Fleur*.[1102] The *Turner* Court stated that the fourteenth amendment required that the Utah Department of Employment Security "achieve legitimate state ends through more individualized means when basic human liberties are at stake."[1103] Department administrative rules require an individualized determination of the ability of pregnant women to work.[1104]

H. *Employer Liability*

Employer liability under Iowa's unemployment law involves the determination of employer taxation or contribution rates, required reimbursements to the unemployment trust fund for benefit payments, and charges for benefit payments against employer accounts.

1. *Contributory Status*

a. Employers Generally. 1. *Experience rates.* Employers eligible for an experience rating, other than nonprofit organizations, state-owned hospitals, and institutions of higher education which elect reimbursable status,

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1097. *Id.* at 320.
1098. *Id.* at 320-21.
1099. 423 U.S. 44 (1975).
1100. *Id.* at 45.
1101. 414 U.S. 632 (1974).
1102. Turner, 423 U.S. at 46.
1103. *Id.*
1104. 370 IOWA ADMIN. CODE § 4.22(1)(l) (1979).

are generally required to contribute to the unemployment trust fund according to their percentage of excess ranking on the contribution rate table applicable for the current calendar year.[1105]

Employer experience rates are transferable to successor employers.[1106] In *Burlington Truck Lines, Inc. v. Iowa Employment Security Commission*,[1107] the Iowa Supreme Court ruled that the transfer of a separate truck division of a railroad's subsidiary to another subsidiary of the railroad, where there was no change in officers, employees, or operating policies, was a transfer to a successor employer, and that the successor employer was entitled to a reduced contribution rate based on the experience of the predecessor employer.[1108] The Iowa Supreme Court reached an opposite result in *Dahl Enterprises v. Iowa Employment Security Commission*,[1109] rejecting the argument that two corporations should be considered one employer for determining the second corporation's contribution rate, since the corporations were controlled by the same stockholders.[1110] The court found that the second corporation was not a successor corporation to the first corporation in the absence of a sale of the first corporation's property to the second or a merger of the first into the second.[1111] Therefore, the second corporation was not entitled to the first corporation's reduced, experience-based contribution rate.[1112]

2. *Assigned rates.* Several categories of employer contribution rates deviate from the experience rates provided by the contribution tables and are assigned by statute.

Beginning in 1982, employers newly subject to Iowa's unemployment law and not eligible for an experience rate, are assigned the rate specified in the ninth percentage of excess rank, but no less than 1.8% of taxable wages, for five years, after which the employers are assigned an experience rate under the tables.[1113] If after two years the employers have negative account balances and have been charged with twenty-six times the highest maximum weekly benefit amount in the last year, the employers are assigned an experience rate under the rate tables.[1114] Construction employers newly subject to the unemployment law and not eligible for an experience rate, are assigned the rate specified in the twenty-first percentage of excess rank, the highest rate in the tables, for three years, after which the employers are

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1105. IOWA CODE § 96.7(3)(d) (1981).
1106. IOWA CODE § 96.7(3)(b) (1981).
1107. 239 Iowa 752, 32 N.W.2d 792 (1948).
1108. *Id.* at 754-61, 32 N.W.2d at 794-97.
1109. 249 Iowa 318, 86 N.W.2d 922 (1957).
1110. *Id.* at 323-24, 86 N.W.2d at 925.
1111. *Id.*
1112. *Id.*
1113. Unemployment Compensation, ch. 19, § 5, 1981 Iowa Acts 111-12 (to be codified at IOWA CODE § 96.7(3)(c) (1983)).
1114. *Id.*

assigned an experience rate under the tables.[1115]

When the lower seven rate tables are in effect, employers free from chargeable benefit payments for six years and with a percentage of excess of at least 7.5% are assigned a zero contribution rate.[1116] An experience rate, not to exceed 1.8%, is assigned for the first year for which the employers are no longer qualified for the zero rate, with an experience rate assigned in subsequent years.[1117]

Beginning in 1982, the experience rates of employers whose accounts showed negative balances on July 1 of each of the two previous years are surcharged.[1118] The surcharge is 0.5% annually and is cumulative but cannot exceed 3.0%.[1119]

b. Government Entities. 1. *Experience rates.* Government entities may elect to contribute to the unemployment trust fund in lieu of reimbursing the trust fund for actual benefit payments.[1120] Contribution rates for government contributing employers are established above or below a base rate calculated by the Department according to the employers' percentage of excess ranking.[1121]

2. *Assigned rates.* A rate below 0.1% cannot be established for government contributing employers unless the employers have positive percentages of excess greater than five percent.[1122] Government contributing employers not yet eligible for an experience rating are assigned the base rate calculated by the Department.[1123]

2. *Reimbursable Status*

Government entities which do not elect to pay contributions to the unemployment trust fund and nonprofit organizations, state-owned hospitals, and institutions of higher education which do elect to reimburse the trust fund for actual benefit payments, are required to pay an amount equal to all regular and extended benefits attributable to their employment to the trust fund.[1124] Reimbursable employers are generally billed at the end of each calendar quarter.[1125] Reimbursable nonprofit organizations are required to secure future reimbursements by executing and filing with the Department a

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1115. IOWA CODE § 96.7(3)(c) (1981). *See* 370 IOWA ADMIN. CODE § 3.82 (1980).

1116. Unemployed Compensation, ch. 19, § 6, 1981 Iowa Acts 112 (to be codified at IOWA CODE § 96.7(3)(d) (1983)).

1117. *Id.*

1118. Unemployment Compensation, ch. 19, § 7, 1981 Iowa Acts 112-13 (to be codified at IOWA CODE § 96.7(3)(d) (1983)).

1119. *Id.*

1120. IOWA CODE § 96.7(8)(a) (1981).

1121. IOWA CODE § 96.7(8)(b)(4) (1981).

1122. *Id.*

1123. *Id.*

1124. IOWA CODE §§ 96.7(9)(a), 96.8(5) (1981).

1125. IOWA CODE § 96.7(9)(b)(1) (1981).

surety bond or by depositing money or securities with the Department.[1126]

3. *Employer Accounts and Charges*

a. Contributing Employers Generally. Contributing employer accounts are generally charged in inverse chronological order by quarter with 100% of regular benefit payments and fifty percent of extended benefit payments, subject to the limitations on the earning of employee wage credits.[1127] Government contributing employers, however, are charged with 100% of extended benefit payments.[1128]

b. Reimbursable Employers Generally. Reimbursable employer accounts are generally charged in inverse chronological order by quarter with 100% of both regular and extended benefits, subject to the limitations on the earning of employee wage credits.[1129]

c. Transfer of Charges. Employer accounts are relieved of charges in certain circumstances by either transferring the charges to another employer's account or to the unemployment trust fund.

1. *Charges transferred to another employer's account.* Charges are transferred to a succeeding employer's account in cases of requalification with a succeeding employer after a voluntary quit, a discharge for misconduct, or a failure to apply for or accept suitable work.[1130] Charges are also transferred to a succeeding employer's account in cases of a voluntary quit for the purpose of accepting and working in other employment for at least six weeks.[1131]

2. *Charges transferred to the trust fund.* The accounts of both reimbursable and contributing employers still employing partially unemployed individuals in the same base period of employment are relieved of charges due to payment of partial unemployment compensation benefits; the trust fund as a whole bears the charges.[1132]

When charges are transferred to a succeeding employer's account in cases of requalification after a voluntary quit or a discharge for misconduct, the succeeding employer's account is relieved of ten weeks of charges due to wage credits earned in the employ of the former employer and the trust fund bears the charges.[1133] Charges which would normally be transferred to

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1126. IOWA CODE § 96.7(10) (1981).

1127. Unemployment Compensation ch. 19, §§ 3-4, 1981 Iowa Acts 110-11 (to be codified at IOWA CODE § 96.7(3)(a)(2), (3) (1983)). *See* 370 IOWA ADMIN. CODE § 3.43(2) (1981).

1128. Unemployment Compensation, ch. 19, § 4, 1981 Iowa Acts 111 (to be codified at IOWA CODE § 96.7(3)(a)(3) (1983)).

1129. Unemployment Compensation, ch. 19, §§ 3-4, 1981 Iowa Acts 110-11 (to be codified at IOWA CODE §§ 96.7(3)(a)(2), (3) (1983)).

1130. IOWA CODE § 96.7(3)(a)(2) (1981).

1131. IOWA CODE § 96.5(1)(a) (1981).

1132. Unemployment Compensation, ch. 19, § 3, 1981 Iowa Acts 110-11 (to be codified at IOWA CODE § 96.7(3)(a)(2) (1983)).

1133. IOWA CODE § 96.7(3)(a)(2) (1981).

a succeeding employer's account in cases of a voluntary quit for the purpose of accepting and working in other employment for at least six weeks are transferred to the trust fund if the succeeding employer is in another state.[1134] In cases of a voluntary quit to accept and work in better employment for less than six weeks, charges are transferred to the trust fund.[1135]

The trust fund, rather than an employer's account, is also charged in cases where an unemployed individual is in approved training,[1136] where an erroneous overpayment has not been recovered within two years,[1137] and where benefits have been allowed by a claims deputy and a hearing officer or a hearing officer and the appeal board (so-called rule of double allowance) and the allowance is finally reversed.[1138] In a recent Iowa Supreme Court case, *Hiserote Homes, Inc. v. Riedemann*,[1139] the rule of double allowance was invoked to relieve the employer's account of charges.[1140]

4. *Penalties and Interest*

Iowa's unemployment law provides penalties for knowingly making a false statement or representation to prevent or reduce the payment of benefits, or to avoid or reduce employer contributions,[1141] and for willfully failing or refusing to make employer contributions, to furnish reports, or to produce records.[1142] The unemployment law requires the payment of interest on overdue employer contributions,[1143] provides penalties for failure to file timely or sufficient employer wage reports[1144] and for failure to pay overdue employer contributions with intent to defraud the Department.[1145]

V. Conclusion

Iowa's unemployment law declares, "[e]conomic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state."[1146] Unemployment compensation legislation emerged to prevent the spread of involuntary unemployment and to lighten unemployment's burden, which often falls with crushing force upon the unem-

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1134. Iowa Code § 96.5(1)(a) (1981).
1135. *Id.*
1136. Iowa Code § 96.4(6) (1981).
1137. Iowa Code § 96.3(7) (1981).
1138. Iowa Code § 96.6(2) (1981).
1139. 277 N.W.2d 911 (Iowa 1979).
1140. *Id.* at 915.
1141. Iowa Code § 96.16(2) (1981).
1142. *Id.*
1143. Iowa Code § 96.14(1) (1981).
1144. Iowa Code § 96.14(2) (1981).
1145. *Id.*
1146. Iowa Code § 96.2 (1981).

ployed individual and the individual's family.[1147] The courts in Iowa, as well as in other states, have consistently held that unemployment compensation legislation is to be liberally construed to effectuate the purposes of the remedial legislation.[1148] Courts may not, however, exceed limits of statutory intent. Individuals will not be able to obtain the benefits available under Iowa's unemployment law, nor will employers be able to effectively protect their rights under the law unless careful attention is given to both the procedural and substantive law applicable to benefit eligibility and employer liability determinations made by the Department of Job Service and the courts.

Regarding Iowa's procedural unemployment law, the Iowa Supreme Court has addressed numerous questions and has described in clear language the path to follow when seeking unemployment compensation benefits.[1149] Future legislative changes in the procedural law could include modifications of the various appeal periods and the abolishment of the Appeal Board, actions recommended by the Governor's Economy Committee in 1979 to eliminate the redundancy of two non-judicial reviews.[1150]

In regard to Iowa's substantive unemployment law, this article has attempted to give the practitioner an overview as well as an in-depth analysis of the most important substantive issues involved in benefit eligibility and employer liability determinations. The major 1979 amendments to Iowa's unemployment law[1151] attempted to strike a balance between the competing interests of Iowa employers and employees. Although legislation is likely to be enacted in the near future to deal with the insolvency of the unemployment trust fund, it appears less likely that the balance between the competing interests of employers and employees will be dramatically shifted in the near future through legislation. Significant legislative changes affecting both employers and employees are possible, however, and the reader is advised to review all amendments to Iowa's unemployment law which may be passed by the Seventieth General Assembly as well as subsequent general assemblies.

This article is intended to better acquaint practitioners with Iowa's statutory, administrative, procedural, and case law relating to unemployment compensation. It is hoped that the broad outline and the in-depth analysis of Iowa's unemployment law presented in the article will result in

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1147. *Id.*

1148. Brumley v. Iowa Dep't of Job Serv., 292 N.W.2d 126, 129 (Iowa 1980); Smith v. Employers' Overload Co., 314 N.W.2d 220, 221-22 (Minn. 1981); Red Bird v. Meierhenry, 314 N.W.2d 95, 96-97 (S.D. 1982).

1149. *See, e.g.*, Ball v. Iowa Dep't of Job Serv., 308 N.W.2d 54 (Iowa 1981).

1150. Governor's Economy Committee 1979, State of Iowa: Findings and Recommendations, recommendation 255 at 94 (1979).

1151. Unemployment Compensation, ch. 33, 1979 Iowa Acts 169.

more efficient and effective client representation of both employers and employees before the Department of Job Service and the Iowa courts.