Legal Services Division
401 SW Topeka Blvd.
Topeka, KS 66603-3182

Kansas Department of Labor

Phone: (785) 296-5000 ext. 2714
Mobile: (785) 438-9891
Fax: (785) 296-0196
justin.mcfarland@dol.ks.gov
www.dol.ks.gov

Lana Gordon, Secretary

Justin McFarland
Deputy General Counsel
Labor Market Information Services Director

Sam Brownback, Governor

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An Unemployment Insurance Overview

History; Administration; Benefits; and Financing
Presented by Justin McFarland

Brief History of the Unemployment System

- Nationally, Wisconsin was the first state to enact a jobless benefit bill in 1932. Soon thereafter, the federal government, as part of the Social Security Act, enacted a national unemployment system. The system, as discussed below, was set up as a federal-state partnership comprised of the compulsory setting of employer contributions (taxes) into trust funds, and then using the funds to pay benefits for unemployed workers.
- Kansas enacted its version of an unemployment program in 1937. The program is known as the Kansas Employment Security Law, and can be found at K.S.A. 44-701, *et seq*. The public policy behind the employment security law is set forth in K.S.A. 44-702, which provides:

> *As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity, due to unemployment, is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and such worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation*

of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor-relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed. All persons and employers are entitled to a neutral interpretation of the employment security law.

Administration

- The unemployment system operates via a federal-state partnership between the State of Kansas Department of Labor and the United States Department of Labor. Two key federal acts direct the partnership, the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301, *et seq*., and the Social Security Act, Title III, 42 U.S.C. 501, *et seq*. and XII, 42 U.S.C. 1201, *et seq*. State law, sets forth benefit structure and the state tax structure.
- FUTA imposes a 6.0% federal tax on the first $7,000 of each covered employee's wages. However, employers in states who meet certain criteria are eligible to take up to a 90% credit on the tax, bringing the effective rate to 0.6%. States face a credit reduction if they do not maintain adequate trust funds and have unpaid loans. Eight states saw credit reductions for their employers in 2014, causing total unemployment costs to go up in those states.
- The Social Security Act provides administrative grants to states to operate their unemployment programs. As a condition of receiving funding, states must ensure their state laws conform to guidelines set forth in the Social Security Act. The conformity requirements include: that the trust fund only is used to pay unemployment benefits; that interested parties are afforded an opportunity for a fair hearing before an impartial tribunal; and the making of reports to the United States Secretary of Labor.
- The reports to the U.S. Secretary of Labor ensure Kansas meets performance measures dictated by USDOL. Key performance measures include: timely payment of benefits; timely appeal processing and tax performance.

- Kansas ensures parties are afforded an opportunity for a fair hearing on benefit claims by way of a three-tiered administrative decision making process. First, an examiner makes an initial determination. Parties then have 16 calendar days to appeal to an unemployment referee, who conducts a hearing – usually telephonically – and then renders a decision. From there, parties can appeal to a three-member Board of Review, which can affirm, reverse, or remand the decision of the referee. The Board of Review can also conduct a new hearing if it elects to do so. Decisions of the Board of Review are appealable to a district court pursuant to the Kansas Judicial Review Act, K.S.A. 77-601, *et seq.*
- Similarly, employers have an opportunity to appeal decisions of the contributions unit. Issues regarding worker classification are the most frequently litigated issue. Instead of the process utilized for benefit appeals, contributions matters go through the initial auditor's determination to the Chief of Contributions to the Secretary of Labor, whose designee conducts an administrative hearing, to a district court appeal under the Kansas Judicial Review Act.

<u>Benefits</u>

- "The right of the unemployed worker to receive benefits from the fund is not absolute." *National Gypsum v. State Employment Sec. Bd. of Review,* 244 Kan. 678 (1989).
- Generally, three criteria must be met before an individual may receive unemployment benefits. The individual has to be: 1) monetarily entitled; 2) eligible; and 3) not disqualified. Each of these terms, though seemingly similar, have specific meanings with the Kansas Employment Security Law.

- <u>Monetary Entitlement</u>
  - Claims are determined on a benefit year, which is defined as the first day of the first week for which an individual files a valid claim for benefits. Entitlement is determined by an individual's wages earned during a base period, which is the first four of the last five completed quarters prior to the individual's benefit year.

4th Quarter 2013	1st Quarter 2014	2nd Quarter 2014	3rd Quarter 2014	4th Quarter 2014	Benefit Year Begins	Claim filed
Base Period-Wages used	Base Period-Wages used	Base Period-Wages used	Base Period-Wages used	Not Base Period-Wages not used	1/11/15	1/16/15

- Specifically, an individual's weekly benefit amount equals 4.25% of the individual's total wages for insured work paid during the highest quarter in the base period. An individual's total benefit amount is the lesser of 26 times the individual's weekly benefit amount, or 1/3 of the individual's base period wages. Benefits are reduced by pay received during the benefit claim period.
- Benefits are subject to a few thresholds. The maximum weekly benefit amount is set each July 1, based upon 60% of the average weekly wages for the entire state. Similarly, the minimum weekly benefit amount is set each July 1 as 25% of the maximum weekly benefit amount. The current maximum weekly benefit amount is $474; and the minimum is $118.
- The maximum duration of unemployment benefits is contingent upon the State's three-month average seasonally adjusted unemployment rate.

Rate	Less than 4.5%	4.5% – 6.0%	More than 6.0%
Max weeks	16	20	26

- Eligibility

  - Individuals must also meet eligibility criteria. To be eligible, individuals must: make a valid claim each week; be able to perform the duties of such claimant's customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience; and be available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment.
  - Examples of scenarios causing ineligibility include full-time school attendance, a medical issue that limits ability to work, or an individual's not pursuing a full course of action most likely to result in reemployment.

- Qualification

  - The most frequently contested issue regarding unemployment benefits, however, is whether an individual should be disqualified. Since the program is an insurance system, and not a generic joblessness subsidy, the law only grants benefits to those individuals who are involuntarily unemployed, i.e., have been laid off due to a lack of work, or have found themselves out of work due to no fault of their own.
  - Individuals are disqualified if they voluntarily quit their job without good cause attributable to the work or the employer, if they are discharged for misconduct connected with the work, or if they refuse an offer of suitable work without good cause. There are exceptions to these disqualification provisions, however. For example, if an individual leaves work to flee a domestic violence situation, the individual will not be disqualified even

  though under the plain language of the disqualification statute, K.S.A. 44-706(a), the leaving of work was without good cause attributable to the work or the employer, because of K.S.A. 44-706(a)(12), which is one of twelve specific exceptions to the voluntary quit rule.
  - An individual can go back and forth between eligibility and ineligibility on a week to week basis. Disqualification, however, lasts until the individual returns to work and earns three times their weekly benefit amount, except in cases of gross misconduct, which increases the disqualification period to until the claimant returns to work and earns eight times the weekly benefit amount.

- Fraud

  - Individuals who commit unemployment fraud are subject to disqualification for a period of 5 years, repayment of fraudulently paid benefits plus a penalty equal to 25% of the benefits paid, and possible criminal penalties.

Financing

- Employer contributions are placed into the employment security fund, i.e., the unemployment trust fund. Federal law dictates that the fund can only be used to pay unemployment benefits. The amount that goes into the trust fund annually is determined by a yield formula, set forth in K.S.A. 44-710a, which factors in the trust fund balance, total wages paid in the state, and historical benefit payment averages. The total yield then determines employer tax rates on taxable wages. For 2015, employers pay unemployment taxes on the first $12,000 of each employee's wages.
- Employers are classified, generally, into 4 types of accounts: eligible rated; ineligible (new); reimbursing; and rated governmental.
  - Reimbursing
    - Governments and nonprofits
    - Instead of paying taxes, employers reimburse KDOL for benefits paid on a dollar for dollar basis.
  - Ineligible (new)
    - Been in business less than 24 months preceding computation date
    - Fixed rate of 6.0% for construction industry; 2.7% for non-construction
  - Eligible rated
    - Positive balance employers (historical contributions exceed benefit charges)
      - Vast majority of employers
      - Arrayed into 51 rate groups
      - Based on experience rating

        - Rates vary annually
        - 2015 rates range from 0.07% to 5.4%
    - Negative balance employers (historical benefit charges exceed contributions)
        - 20 rate groups
        - Also based on experience rating
        - Rates are generally fixed
        - 2015 rates range from 5.5 to 7.4%
- Rated governmental
    - See K.S.A. 44-710d
- Employers' experience rating is described via a reserve ratio, which considers the amount of benefits charged to their account and the employer's average taxable payroll.
- Base period employers are charged a pro-rata share of benefits unless the employer shows KDOL the claimant's most recent work for that employer ended because of a voluntary quit without good cause or a discharge due to misconduct connected with the work.