

SENATE BILL No. 78

By Senators Hensley, Barone, Betts, Francisco, Gilstrap, Goodwin,
Haley, Kelly, Lee and Steineger

1-12

10 AN ACT concerning unemployment compensation eligibility; the shared
11 work compensation program; eliminating the waiting week; amending
12 K.S.A. 2006 Supp. 44-703, 44-704, 44-705 and 44-757 and repealing
13 the existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2006 Supp. 44-703 is hereby amended to read as
17 follows: 44-703. As used in this act, unless the context clearly requires
18 otherwise:

19 (a) (1) "Annual payroll" means the total amount of wages paid or
20 payable by an employer during the calendar year.

21 (2) "Average annual payroll" means the average of the annual payrolls
22 of any employer for the last three calendar years immediately preceding
23 the computation date as hereinafter defined if the employer has been
24 continuously subject to contributions during those three calendar years
25 and has paid some wages for employment during each of such years. In
26 determining contribution rates for the calendar year, if an employer has
27 not been continuously subject to contribution for the three calendar years
28 immediately preceding the computation date but has paid wages subject
29 to contributions during only the two calendar years immediately preced-
30 ing the computation date, such employer's "average annual payroll" shall
31 be the average of the payrolls for those two calendar years.

32 (3) "Total wages" means the total amount of wages paid or payable
33 by an employer during the calendar year, including that part of remun-
34 eration in excess of the limitation prescribed as provided in subsection
35 (o)(1) of this section.

36 (b) "Base period" means the first four of the last five completed cal-
37 endar quarters immediately preceding the first day of an individual's ben-
38 efit year, except that the base period in respect to combined wage claims
39 means the base period as defined in the law of the paying state.

40 (1) If an individual lacks sufficient base period wages in order to es-
41 tablish a benefit year in the matter set forth above and satisfies the
42 requirements of subsection ~~(g)~~ (f) of K.S.A. 44-705 and subsection (hh)
43 of K.S.A. 44-703, and amendments thereto, the claimant shall have an

1 alternative base period substituted for the current base period so as not
2 to prevent establishment of a valid claim. For the purposes of this sub-
3 section, “alternative base period” means the last four completed quarters
4 immediately preceding the date the qualifying injury occurred. In the
5 event the wages in the alternative base period have been used on a prior
6 claim, then they shall be excluded from the new alternative base period.

7 (2) For the purposes of this chapter, the term “base period” includes
8 the alternative base period.

9 (c) (1) “Benefits” means the money payments payable to an individ-
10 ual, as provided in this act, with respect to such individual’s
11 unemployment.

12 (2) “Regular benefits” means benefits payable to an individual under
13 this act or under any other state law, including benefits payable to federal
14 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,
15 other than extended benefits.

16 (d) “Benefit year” with respect to any individual, means the period
17 beginning with the first day of the first week for which such individual
18 files a valid claim for benefits, and such benefit year shall continue for
19 one full year. In the case of a combined wage claim, the benefit year shall
20 be the benefit year of the paying state. Following the termination of a
21 benefit year, a subsequent benefit year shall commence on the first day
22 of the first week with respect to which an individual next files a claim for
23 benefits. When such filing occurs with respect to a week which overlaps
24 the preceding benefit year, the subsequent benefit year shall commence
25 on the first day immediately following the expiration date of the preceding
26 benefit year. Any claim for benefits made in accordance with subsection
27 (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a
28 “valid claim” for the purposes of this subsection if the individual has been
29 paid wages for insured work as required under subsection (e) of K.S.A.
30 44-705 and amendments thereto. Whenever a week of unemployment
31 overlaps two benefit years, such week shall, for the purpose of granting
32 waiting-period credit or benefit payment with respect thereto, be deemed
33 to be a week of unemployment within that benefit year in which the
34 greater part of such week occurs.

35 (e) “Commissioner” or “secretary” means the secretary of labor.

36 (f) (1) “Contributions” means the money payments to the state em-
37 ployment security fund which are required to be made by employers on
38 account of employment under K.S.A. 44-710, and amendments thereto,
39 and voluntary payments made by employers pursuant to such statute.

40 (2) “Payments in lieu of contributions” means the money payments
41 to the state employment security fund from employers which are required
42 to make or which elect to make such payments under subsection (e) of
43 K.S.A. 44-710 and amendments thereto.

1 (g) “Employing unit” means any individual or type of organization,
2 including any partnership, association, limited liability company, agency
3 or department of the state of Kansas and political subdivisions thereof,
4 trust, estate, joint-stock company, insurance company or corporation,
5 whether domestic or foreign including nonprofit corporations, or the re-
6 ceiver, trustee in bankruptcy, trustee or successor thereof, or the legal
7 representatives of a deceased person, which has in its employ one or more
8 individuals performing services for it within this state. All individuals per-
9 forming services within this state for any employing unit which maintains
10 two or more separate establishments within this state shall be deemed to
11 be employed by a single employing unit for all the purposes of this act.
12 Each individual employed to perform or to assist in performing the work
13 of any agent or employee of an employing unit shall be deemed to be
14 employed by such employing unit for all the purposes of this act, whether
15 such individual was hired or paid directly by such employing unit or by
16 such agent or employee, provided the employing unit had actual or con-
17 structive knowledge of the employment.

18 (h) “Employer” means:

19 (1) (A) Any employing unit for which agricultural labor as defined in
20 subsection (w) of this section is performed and which during any calendar
21 quarter in either the current or preceding calendar year paid remunera-
22 tion in cash of \$20,000 or more to individuals employed in agricultural
23 labor or for some portion of a day in each of 20 different calendar weeks,
24 whether or not such weeks were consecutive, in either the current or the
25 preceding calendar year, employed in agricultural labor 10 or more in-
26 dividuals, regardless of whether they were employed at the same moment
27 of time.

28 (B) For the purpose of this subsection (h)(1), any individual who is a
29 member of a crew furnished by a crew leader to perform service in ag-
30 ricultural labor for any other person shall be treated as an employee of
31 such crew leader if:

32 (i) Such crew leader holds a valid certificate of registration under the
33 federal migrant and seasonal agricultural workers protection act or sub-
34 stantially all the members of such crew operate or maintain tractors,
35 mechanized harvesting or cropdusting equipment or any other mecha-
36 nized equipment, which is provided by such crew leader; and

37 (ii) such individual is not in the employment of such other person
38 within the meaning of subsection (i) of this section.

39 (C) For the purpose of this subsection (h)(1), in the case of any in-
40 dividual who is furnished by a crew leader to perform service in agricul-
41 tural labor for any other person and who is not treated as an employee
42 of such crew leader:

43 (i) Such other person and not the crew leader shall be treated as the

- 1 employer of such individual; and
- 2 (ii) such other person shall be treated as having paid cash remuner-
3 ation to such individual in an amount equal to the amount of cash re-
4 munerated paid to such individual by the crew leader, either on the crew
5 leader's own behalf or on behalf of such other person, for the service in
6 agricultural labor performed for such other person.
- 7 (D) For the purposes of this subsection (h)(1) "crew leader" means
8 an individual who:
- 9 (i) Furnishes individuals to perform service in agricultural labor for
10 any other person;
- 11 (ii) pays, either on such individual's own behalf or on behalf of such
12 other person, the individuals so furnished by such individual for the serv-
13 ice in agricultural labor performed by them; and
- 14 (iii) has not entered into a written agreement with such other person
15 under which such individual is designated as an employee of such other
16 person.
- 17 (2) (A) Any employing unit which: (i) In any calendar quarter in ei-
18 ther the current or preceding calendar year paid for service in employ-
19 ment wages of \$1,500 or more, or (ii) for some portion of a day in each
20 of 20 different calendar weeks, whether or not such weeks were consec-
21 utive, in either the current or preceding calendar year, had in employment
22 at least one individual, whether or not the same individual was in em-
23 ployment in each such day.
- 24 (B) Employment of individuals to perform domestic service or agri-
25 cultural labor and wages paid for such service or labor shall not be con-
26 sidered in determining whether an employing unit meets the criteria of
27 this subsection (h)(2).
- 28 (3) Any employing unit for which service is employment as defined
29 in subsection (i)(3)(E) of this section.
- 30 (4) (A) Any employing unit, whether or not it is an employing unit
31 under subsection (g) of this section, which acquires or in any manner
32 succeeds to (i) substantially all of the employing enterprises, organization,
33 trade or business, or (ii) substantially all the assets, of another employing
34 unit which at the time of such acquisition was an employer subject to this
35 act;
- 36 (B) any employing unit which is controlled substantially, either di-
37 rectly or indirectly by legally enforceable means or otherwise, by the same
38 interest or interests, whether or not such interest or interests are an em-
39 ploying unit under subsection (g) of this section, which acquires or in any
40 manner succeeds to a portion of an employer's annual payroll, which is
41 less than 100% of such employer's annual payroll, and which intends to
42 continue the acquired portion as a going business.
- 43 (5) Any employing unit which paid cash remuneration of \$1,000 or

1 more in any calendar quarter in the current or preceding calendar year
2 to individuals employed in domestic service as defined in subsection (aa)
3 of this section.

4 (6) Any employing unit which having become an employer under this
5 subsection (h) has not, under subsection (b) of K.S.A. 44-711, and amend-
6 ments thereto, ceased to be an employer subject to this act.

7 (7) Any employing unit which has elected to become fully subject to
8 this act in accordance with subsection (c) of K.S.A. 44-711 and amend-
9 ments thereto.

10 (8) Any employing unit not an employer by reason of any other par-
11 agraph of this subsection (h), for which within either the current or pre-
12 ceding calendar year services in employment are or were performed with
13 respect to which such employing unit is liable for any federal tax against
14 which credit may be taken for contributions required to be paid into a
15 state unemployment compensation fund; or which, as a condition for ap-
16 proval of this act for full tax credit against the tax imposed by the federal
17 unemployment tax act, is required, pursuant to such act, to be an “em-
18 ployer” under this act.

19 (9) Any employing unit described in section 501(c)(3) of the federal
20 internal revenue code of 1986 which is exempt from income tax under
21 section 501(a) of the code that had four or more individuals in employ-
22 ment for some portion of a day in each of 20 different weeks, whether or
23 not such weeks were consecutive, within either the current or preceding
24 calendar year, regardless of whether they were employed at the same
25 moment of time.

26 (i) “Employment” means:

27 (1) Subject to the other provisions of this subsection, service, includ-
28 ing service in interstate commerce, performed by

29 (A) Any active officer of a corporation; or

30 (B) any individual who, under the usual common law rules applicable
31 in determining the employer-employee relationship, has the status of an
32 employee; or

33 (C) any individual other than an individual who is an employee under
34 subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services
35 for remuneration for any person:

36 (i) As an agent-driver or commission-driver engaged in distributing
37 meat products, vegetable products, fruit products, bakery products, bev-
38 erages (other than milk), or laundry or dry-cleaning services, for such
39 individual’s principal; or

40 (ii) as a traveling or city salesman, other than as an agent-driver or
41 commission-driver, engaged upon a full-time basis in the solicitation on
42 behalf of, and the transmission to, a principal (except for side-line sales
43 activities on behalf of some other person) of orders from wholesalers,

1 retailers, contractors, or operators of hotels, restaurants, or other similar
2 establishments for merchandise for resale or supplies for use in their
3 business operations.

4 For purposes of subsection (i)(1)(D), the term “employment” shall in-
5 clude services described in paragraphs (i) and (ii) above only if:

6 (a) The contract of service contemplates that substantially all of the
7 services are to be performed personally by such individual;

8 (b) the individual does not have a substantial investment in facilities
9 used in connection with the performance of the services (other than in
10 facilities for transportation); and

11 (c) the services are not in the nature of a single transaction that is not
12 part of a continuing relationship with the person for whom the services
13 are performed.

14 (2) The term “employment” shall include an individual’s entire serv-
15 ice within the United States, even though performed entirely outside this
16 state if,

17 (A) The service is not localized in any state, and

18 (B) the individual is one of a class of employees who are required to
19 travel outside this state in performance of their duties, and

20 (C) the individual’s base of operations is in this state, or if there is no
21 base of operations, then the place from which service is directed or con-
22 trolled is in this state.

23 (3) The term “employment” shall also include:

24 (A) Services performed within this state but not covered by the pro-
25 visions of subsection (i)(1) or subsection (i)(2) shall be deemed to be
26 employment subject to this act if contributions are not required and paid
27 with respect to such services under an unemployment compensation law
28 of any other state or of the federal government.

29 (B) Services performed entirely without this state, with respect to no
30 part of which contributions are required and paid under an unemploy-
31 ment compensation law of any other state or of the federal government,
32 shall be deemed to be employment subject to this act only if the individual
33 performing such services is a resident of this state and the secretary ap-
34 proved the election of the employing unit for whom such services are
35 performed that the entire service of such individual shall be deemed to
36 be employment subject to this act.

37 (C) Services covered by an arrangement pursuant to subsection (l) of
38 K.S.A. 44-714, and amendments thereto, between the secretary and the
39 agency charged with the administration of any other state or federal un-
40 employment compensation law, pursuant to which all services performed
41 by an individual for an employing unit are deemed to be performed en-
42 tirely within this state, shall be deemed to be employment if the secretary
43 has approved an election of the employing unit for whom such services

1 are performed, pursuant to which the entire service of such individual
2 during the period covered by such election is deemed to be insured work.

3 (D) Services performed by an individual for wages or under any con-
4 tract of hire shall be deemed to be employment subject to this act unless
5 and until it is shown to the satisfaction of the secretary that: (i) Such
6 individual has been and will continue to be free from control or direction
7 over the performance of such services, both under the individual's con-
8 tract of hire and in fact; and (ii) such service is either outside the usual
9 course of the business for which such service is performed or that such
10 service is performed outside of all the places of business of the enterprise
11 for which such service is performed.

12 (E) Service performed by an individual in the employ of this state or
13 any instrumentality thereof, any political subdivision of this state or any
14 instrumentality thereof, or in the employ of an Indian tribe, as defined
15 pursuant to section 3306(u) of the federal unemployment tax act, any
16 instrumentality of more than one of the foregoing or any instrumentality
17 which is jointly owned by this state or a political subdivision thereof or
18 Indian tribes and one or more other states or political subdivisions of this
19 or other states, provided that such service is excluded from "employment"
20 as defined in the federal unemployment tax act by reason of section
21 3306(c)(7) of that act and is not excluded from "employment" under
22 subsection (i)(4)(A) of this section. For purposes of this section, the ex-
23 clusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also
24 be applicable to services performed in the employ of an Indian tribe.

25 (F) Service performed by an individual in the employ of a religious,
26 charitable, educational or other organization which is excluded from the
27 term "employment" as defined in the federal unemployment tax act solely
28 by reason of section 3306(c)(8) of that act, and is not excluded from
29 employment under paragraphs (I) through (M) of subsection (i)(4).

30 (G) The term "employment" shall include the service of an individual
31 who is a citizen of the United States, performed outside the United States
32 except in Canada, in the employ of an American employer (other than
33 service which is deemed "employment" under the provisions of subsec-
34 tion (i)(2) or subsection (i)(3) or the parallel provisions of another state's
35 law), if:

36 (i) The employer's principal place of business in the United States is
37 located in this state; or

38 (ii) the employer has no place of business in the United States, but

39 (A) The employer is an individual who is a resident of this state; or

40 (B) the employer is a corporation which is organized under the laws
41 of this state; or

42 (C) the employer is a partnership or a trust and the number of the
43 partners or trustees who are residents of this state is greater than the

- 1 number who are residents of any other state; or
- 2 (iii) none of the criteria of paragraphs (i) and (ii) above of this sub-
- 3 section (i)(3)(G) are met but the employer has elected coverage in this
- 4 state or, the employer having failed to elect coverage in any state, the
- 5 individual has filed a claim for benefits, based on such service, under the
- 6 law of this state.
- 7 (H) An “American employer,” for purposes of subsection (i)(3)(G),
- 8 means a person who is:
- 9 (i) An individual who is a resident of the United States; or
- 10 (ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of the
- 11 United States; or
- 12 (iii) a trust, if all of the trustees are residents of the United States; or
- 13 (iv) a corporation organized under the laws of the United States or
- 14 of any state.
- 15 (I) Notwithstanding subsection (i)(2) of this section, all service per-
- 16 formed by an officer or member of the crew of an American vessel or
- 17 American aircraft on or in connection with such vessel or aircraft, if the
- 18 operating office, from which the operations of such vessel or aircraft op-
- 19 erating within, or within and without, the United States are ordinarily and
- 20 regularly supervised, managed, directed and controlled is within this state.
- 21 (J) Notwithstanding any other provisions of this subsection (i), service
- 22 with respect to which a tax is required to be paid under any federal law
- 23 imposing a tax against which credit may be taken for contributions re-
- 24 quired to be paid into a state unemployment compensation fund or which
- 25 as a condition for full tax credit against the tax imposed by the federal
- 26 unemployment tax act is required to be covered under this act.
- 27 (K) Domestic service in a private home, local college club or local
- 28 chapter of a college fraternity or sorority performed for a person who
- 29 paid cash remuneration of \$1,000 or more in any calendar quarter in the
- 30 current calendar year or the preceding calendar year to individuals em-
- 31 ployed in such domestic service.
- 32 (4) The term “employment” shall not include: (A) Service performed
- 33 in the employ of an employer specified in subsection (h)(3) of this section
- 34 if such service is performed by an individual in the exercise of duties:
- 35 (i) As an elected official;
- 36 (ii) as a member of a legislative body, or a member of the judiciary,
- 37 of a state, political subdivision or of an Indian tribe;
- 38 (iii) as a member of the state national guard or air national guard;
- 39 (iv) as an employee serving on a temporary basis in case of fire, storm,
- 40 snow, earthquake, flood or similar emergency;
- 41 (v) in a position which, under or pursuant to the laws of this state or
- 42 tribal law, is designated as a major nontenured policymaking or advisory
- 43 position or as a policymaking or advisory position the performance of the

1 duties of which ordinarily does not require more than eight hours per
2 week;

3 (B) service with respect to which unemployment compensation is
4 payable under an unemployment compensation system established by an
5 act of congress;

6 (C) service performed by an individual in the employ of such indi-
7 vidual's son, daughter or spouse, and service performed by a child under
8 the age of 21 years in the employ of such individual's father or mother;

9 (D) service performed in the employ of the United States govern-
10 ment or an instrumentality of the United States exempt under the con-
11 stitution of the United States from the contributions imposed by this act,
12 except that to the extent that the congress of the United States shall
13 permit states to require any instrumentality of the United States to make
14 payments into an unemployment fund under a state unemployment com-
15 pensation law, all of the provisions of this act shall be applicable to such
16 instrumentalities, and to services performed for such instrumentalities, in
17 the same manner, to the same extent and on the same terms as to all
18 other employers, employing units, individuals and services. If this state
19 shall not be certified for any year by the federal security agency under
20 section 3304(c) of the federal internal revenue code of 1986, the payments
21 required of such instrumentalities with respect to such year shall be re-
22 funded by the secretary from the fund in the same manner and within
23 the same period as is provided in subsection (f) of K.S.A. 44-717, and
24 amendments thereto, with respect to contributions erroneously collected;

25 (E) service covered by an arrangement between the secretary and
26 the agency charged with the administration of any other state or federal
27 unemployment compensation law pursuant to which all services per-
28 formed by an individual for an employing unit during the period covered
29 by such employing unit's duly approved election, are deemed to be per-
30 formed entirely within the jurisdiction of such other state or federal
31 agency;

32 (F) service performed by an individual under the age of 18 in the
33 delivery or distribution of newspapers or shopping news, not including
34 delivery or distribution to any point for subsequent delivery or
35 distribution;

36 (G) service performed by an individual for an employing unit as an
37 insurance agent or as an insurance solicitor, if all such service performed
38 by such individual for such employing unit is performed for remuneration
39 solely by way of commission;

40 (H) service performed in any calendar quarter in the employ of any
41 organization exempt from income tax under section 501(a) of the federal
42 internal revenue code of 1986 (other than an organization described in
43 section 401(a) or under section 521 of such code) if the remuneration for

1 such service is less than \$50. In construing the application of the term
2 “employment,” if services performed during $\frac{1}{2}$ or more of any pay period
3 by an individual for the person employing such individual constitute em-
4 ployment, all the services of such individual for such period shall be
5 deemed to be employment; but if the services performed during more
6 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
7 such individual do not constitute employment, then none of the services
8 of such individual for such period shall be deemed to be employment. As
9 used in this subsection (i)(4)(H) the term “pay period” means a period
10 (of not more than 31 consecutive days) for which a payment of remunera-
11 tion is ordinarily made to the individual by the person employing such
12 individual. This subsection (i)(4)(H) shall not be applicable with respect
13 to services with respect to which unemployment compensation is payable
14 under an unemployment compensation system established by an act of
15 congress;

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

21 (J) service performed by a duly ordained, commissioned, or licensed
22 minister of a church in the exercise of such individual’s ministry or by a
23 member of a religious order in the exercise of duties required by such
24 order;

25 (K) service performed in a facility conducted for the purpose of car-
26 rying out a program of:

27 (i) Rehabilitation for individuals whose earning capacity is impaired
28 by age or physical or mental deficiency or injury, or

29 (ii) providing remunerative work for individuals who because of their
30 impaired physical or mental capacity cannot be readily absorbed in the
31 competitive labor market, by an individual receiving such rehabilitation
32 or remunerative work;

33 (L) service performed as part of an employment work-relief or work-
34 training program assisted or financed in whole or in part by any federal
35 agency or an agency of a state or political subdivision thereof or of an
36 Indian tribe, by an individual receiving such work relief or work training;

37 (M) service performed by an inmate of a custodial or correctional
38 institution;

39 (N) service performed, in the employ of a school, college, or univer-
40 sity, if such service is performed by a student who is enrolled and is
41 regularly attending classes at such school, college or university;

42 (O) service performed by an individual who is enrolled at a nonprofit
43 or public educational institution which normally maintains a regular fac-

1 ulty and curriculum and normally has a regularly organized body of stu-
2 dents in attendance at the place where its educational activities are carried
3 on as a student in a full-time program, taken for credit at such institution,
4 which combines academic instruction with work experience, if such serv-
5 ice is an integral part of such program, and such institution has so certified
6 to the employer, except that this subsection (i)(4)(O) shall not apply to
7 service performed in a program established for or on behalf of an em-
8 ployer or group of employers;

9 (P) service performed in the employ of a hospital licensed, certified
10 or approved by the secretary of health and environment, if such service
11 is performed by a patient of the hospital;

12 (Q) services performed as a qualified real estate agent. As used in
13 this subsection (i)(4)(Q) the term “qualified real estate agent” means any
14 individual who is licensed by the Kansas real estate commission as a sa-
15 lesperson under the real estate brokers’ and salespersons’ license act and
16 for whom:

17 (i) Substantially all of the remuneration, whether or not paid in cash,
18 for the services performed by such individual as a real estate salesperson
19 is directly related to sales or other output, including the performance of
20 services, rather than to the number of hours worked; and

21 (ii) the services performed by the individual are performed pursuant
22 to a written contract between such individual and the person for whom
23 the services are performed and such contract provides that the individual
24 will not be treated as an employee with respect to such services for state
25 tax purposes;

26 (R) services performed for an employer by an extra in connection
27 with any phase of motion picture or television production or television
28 commercials for less than 14 days during any calendar year. As used in
29 this subsection, the term “extra” means an individual who pantomimes in
30 the background, adds atmosphere to the set and performs such actions
31 without speaking and “employer” shall not include any employer which
32 is a governmental entity or any employer described in section 501(c)(3)
33 of the federal internal revenue code of 1986 which is exempt from income
34 taxation under section 501(a) of the code;

35 (S) services performed by an oil and gas contract pumper. As used in
36 this subsection (i)(4)(S), “oil and gas contract pumper” means a person
37 performing pumping and other services on one or more oil or gas leases,
38 or on both oil and gas leases, relating to the operation and maintenance
39 of such oil and gas leases, on a contractual basis for the operators of such
40 oil and gas leases and “services” shall not include services performed for
41 a governmental entity or any organization described in section 501(c)(3)
42 of the federal internal revenue code of 1986 which is exempt from income
43 taxation under section 501(a) of the code;

1 (T) service not in the course of the employer's trade or business per-
2 formed in any calendar quarter by an employee, unless the cash remu-
3 nation paid for such service is \$200 or more and such service is per-
4 formed by an individual who is regularly employed by such employer to
5 perform such service. For purposes of this paragraph, an individual shall
6 be deemed to be regularly employed by an employer during a calendar
7 quarter only if:

8 (i) On each of some 24 days during such quarter such individual per-
9 forms for such employer for some portion of the day service not in the
10 course of the employer's trade or business, or

11 (ii) such individual was regularly employed, as determined under sub-
12 paragraph (i), by such employer in the performance of such service during
13 the preceding calendar quarter.

14 Such excluded service shall not include any services performed for an
15 employer which is a governmental entity or any employer described in
16 section 501(c)(3) of the federal internal revenue code of 1986 which is
17 exempt from income taxation under section 501(a) of the code;

18 (U) service which is performed by any person who is a member of a
19 limited liability company and which is performed as a member or manager
20 of that limited liability company; and

21 (V) services performed as a qualified direct seller. The term "direct
22 seller" means any person if:

23 (i) Such person:

24 (a) is engaged in the trade or business of selling or soliciting the sale
25 of consumer products to any buyer on a buy-sell basis or a deposit-com-
26 mission basis for resale, by the buyer or any other person, in the home
27 or otherwise rather than in a permanent retail establishment; or

28 (b) is engaged in the trade or business of selling or soliciting the sale
29 of consumer products in the home or otherwise than in a permanent retail
30 establishment;

31 (ii) substantially all the remuneration whether or not paid in cash for
32 the performance of the services described in subparagraph (i) is directly
33 related to sales or other output including the performance of services
34 rather than to the number of hours worked;

35 (iii) the services performed by the person are performed pursuant to
36 a written contract between such person and the person for whom the
37 services are performed and such contract provides that the person will
38 not be treated as an employee for federal and state tax purposes;

39 (iv) for purposes of this act, a sale or a sale resulting exclusively from
40 a solicitation made by telephone, mail, or other telecommunications
41 method, or other nonpersonal method does not satisfy the requirements
42 of this subsection;

43 (W) service performed as an election official or election worker, if

- 1 the amount of remuneration received by the individual during the cal-
2 endar year for services as an election official or election worker is less
3 than \$1,000; and
- 4 (X) service performed by agricultural workers who are aliens admit-
5 ted to the United States to perform labor pursuant to section 1101
6 (a)(15)(H)(ii)(a) of the immigration and nationality act.
- 7 (j) "Employment office" means any office operated by this state and
8 maintained by the secretary of labor for the purpose of assisting persons
9 to become employed.
- 10 (k) "Fund" means the employment security fund established by this
11 act, to which all contributions and reimbursement payments required and
12 from which all benefits provided under this act shall be paid and including
13 all money received from the federal government as reimbursements pur-
14 suant to section 204 of the federal-state extended compensation act of
15 1970, and amendments thereto.
- 16 (l) "State" includes, in addition to the states of the United States of
17 America, any dependency of the United States, the Commonwealth of
18 Puerto Rico, the District of Columbia and the Virgin Islands.
- 19 (m) "Unemployment." An individual shall be deemed "unemployed"
20 with respect to any week during which such individual performs no serv-
21 ices and with respect to which no wages are payable to such individual,
22 or with respect to any week of less than full-time work if the wages payable
23 to such individual with respect to such week are less than such individual's
24 weekly benefit amount.
- 25 (n) "Employment security administration fund" means the fund es-
26 tablished by this act, from which administrative expenses under this act
27 shall be paid.
- 28 (o) "Wages" means all compensation for services, including commis-
29 sions, bonuses, back pay and the cash value of all remuneration, including
30 benefits, paid in any medium other than cash. The reasonable cash value
31 of remuneration in any medium other than cash, shall be estimated and
32 determined in accordance with rules and regulations prescribed by the
33 secretary. Compensation payable to an individual which has not been
34 actually received by that individual within 21 days after the end of the
35 pay period in which the compensation was earned shall be considered to
36 have been paid on the 21st day after the end of that pay period. Effective
37 January 1, 1986, gratuities, including tips received from persons other
38 than the employing unit, shall be considered wages when reported in
39 writing to the employer by the employee. Employees must furnish a writ-
40 ten statement to the employer, reporting all tips received if they total \$20
41 or more for a calendar month whether the tips are received directly from
42 a person other than the employer or are paid over to the employee by
43 the employer. This includes amounts designated as tips by a customer

1 who uses a credit card to pay the bill. Notwithstanding the other provi-
2 sions of this subsection (o), wages paid in back pay awards or settlements
3 shall be allocated to the week or weeks and reported in the manner as
4 specified in the award or agreement, or, in the absence of such specificity
5 in the award or agreement, such wages shall be allocated to the week or
6 weeks in which such wages, in the judgment of the secretary, would have
7 been paid. The term “wages” shall not include:

8 (1) That part of the remuneration which has been paid in a calendar
9 year to an individual by an employer or such employer’s predecessor in
10 excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the cal-
11 endar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to
12 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with re-
13 spect to employment during any calendar year following 1983, except that
14 if the definition of the term “wages” as contained in the federal unem-
15 ployment tax act is amended to include remuneration in excess of \$8,000
16 paid to an individual by an employer under the federal act during any
17 calendar year, wages shall include remuneration paid in a calendar year
18 to an individual by an employer subject to this act or such employer’s
19 predecessor with respect to employment during any calendar year up to
20 an amount equal to the dollar limitation specified in the federal unem-
21 ployment tax act. For the purposes of this subsection (o)(1), the term
22 “employment” shall include service constituting employment under any
23 employment security law of another state or of the federal government;

24 (2) the amount of any payment (including any amount paid by an
25 employing unit for insurance or annuities, or into a fund, to provide for
26 any such payment) made to, or on behalf of, an employee or any of such
27 employee’s dependents under a plan or system established by an em-
28 ployer which makes provisions for employees generally, for a class or
29 classes of employees or for such employees or a class or classes of em-
30 ployees and their dependents, on account of (A) sickness or accident
31 disability, except in the case of any payment made to an employee or such
32 employee’s dependents, this subparagraph shall exclude from the term
33 “wages” only payments which are received under a workers compensation
34 law. Any third party which makes a payment included as wages by reason
35 of this subparagraph (2)(A) shall be treated as the employer with respect
36 to such wages, or (B) medical and hospitalization expenses in connection
37 with sickness or accident disability, or (C) death;

38 (3) any payment on account of sickness or accident disability, or med-
39 ical or hospitalization expenses in connection with sickness or accident
40 disability, made by an employer to, or on behalf of, an employee after the
41 expiration of six calendar months following the last calendar month in
42 which the employee worked for such employer;

43 (4) any payment made to, or on behalf of, an employee or such em-

1 ployee's beneficiary:

2 (A) From or to a trust described in section 401(a) of the federal in-
3 ternal revenue code of 1986 which is exempt from tax under section
4 501(a) of the federal internal revenue code of 1986 at the time of such
5 payment unless such payment is made to an employee of the trust as
6 remuneration for services rendered as such employee and not as a ben-
7 efiary of the trust;

8 (B) under or to an annuity plan which, at the time of such payment,
9 is a plan described in section 403(a) of the federal internal revenue code
10 of 1986;

11 (C) under a simplified employee pension as defined in section
12 408(k)(1) of the federal internal revenue code of 1986, other than any
13 contribution described in section 408(k)(6) of the federal internal revenue
14 code of 1986;

15 (D) under or to an annuity contract described in section 403(b) of
16 the federal internal revenue code of 1986, other than a payment for the
17 purchase of such contract which was made by reason of a salary reduction
18 agreement whether evidenced by a written instrument or otherwise;

19 (E) under or to an exempt governmental deferred compensation plan
20 as defined in section 3121(v)(3) of the federal internal revenue code of
21 1986;

22 (F) to supplement pension benefits under a plan or trust described
23 in any of the foregoing provisions of this subparagraph to take into ac-
24 count some portion or all of the increase in the cost of living, as deter-
25 mined by the secretary of labor, since retirement but only if such sup-
26 plemental payments are under a plan which is treated as a welfare plan
27 under section 3(2)(B)(ii) of the federal employee retirement income se-
28 curity act of 1974; or

29 (G) under a cafeteria plan within the meaning of section 125 of the
30 federal internal revenue code of 1986;

31 (5) the payment by an employing unit (without deduction from the
32 remuneration of the employee) of the tax imposed upon an employee
33 under section 3101 of the federal internal revenue code of 1986 with
34 respect to remuneration paid to an employee for domestic service in a
35 private home of the employer or for agricultural labor;

36 (6) remuneration paid in any medium other than cash to an employee
37 for service not in the course of the employer's trade or business;

38 (7) remuneration paid to or on behalf of an employee if and to the
39 extent that at the time of the payment of such remuneration it is reason-
40 able to believe that a corresponding deduction is allowable under section
41 217 of the federal internal revenue code of 1986 relating to moving
42 expenses;

43 (8) any payment or series of payments by an employer to an employee

1 or any of such employee's dependents which is paid:

2 (A) Upon or after the termination of an employee's employment re-
3 lationship because of (i) death or (ii) retirement for disability; and

4 (B) under a plan established by the employer which makes provisions
5 for employees generally, a class or classes of employees or for such em-
6 ployees or a class or classes of employees and their dependents, other
7 than any such payment or series of payments which would have been paid
8 if the employee's employment relationship had not been so terminated;

9 (9) remuneration for agricultural labor paid in any medium other than
10 cash;

11 (10) any payment made, or benefit furnished, to or for the benefit of
12 an employee if at the time of such payment or such furnishing it is rea-
13 sonable to believe that the employee will be able to exclude such payment
14 or benefit from income under section 129 of the federal internal revenue
15 code of 1986 which relates to dependent care assistance programs;

16 (11) the value of any meals or lodging furnished by or on behalf of
17 the employer if at the time of such furnishing it is reasonable to believe
18 that the employee will be able to exclude such items from income under
19 section 119 of the federal internal revenue code of 1986;

20 (12) any payment made by an employer to a survivor or the estate of
21 a former employee after the calendar year in which such employee died;

22 (13) any benefit provided to or on behalf of an employee if at the
23 time such benefit is provided it is reasonable to believe that the employee
24 will be able to exclude such benefit from income under section 74(c), 117
25 or 132 of the federal internal revenue code of 1986;

26 (14) any payment made, or benefit furnished, to or for the benefit of
27 an employee, if at the time of such payment or such furnishing it is rea-
28 sonable to believe that the employee will be able to exclude such payment
29 or benefit from income under section 127 of the federal internal revenue
30 code of 1986 relating to educational assistance to the employee; or

31 (15) any payment made to or for the benefit of an employee if at the
32 time of such payment it is reasonable to believe that the employee will
33 be able to exclude such payment from income under section 106(d) of
34 the federal internal revenue code of 1986 relating to health savings
35 accounts.

36 Nothing in any paragraph of subsection (o), other than paragraph (1),
37 shall exclude from the term "wages": (1) Any employer contribution un-
38 der a qualified cash or deferred arrangement, as defined in section 401(k)
39 of the federal internal revenue code of 1986, to the extent that such
40 contribution is not included in gross income by reason of section 402(a)(8)
41 of the federal internal revenue code of 1986; or (2) any amount treated
42 as an employer contribution under section 414(h)(2) of the federal inter-
43 nal revenue code of 1986.

1 Any amount deferred under a nonqualified deferred compensation
2 plan shall be taken into account for purposes of this section as of the later
3 of when the services are performed or when there is no substantial risk
4 of forfeiture of the rights to such amount. Any amount taken into account
5 as wages by reason of this paragraph, and the income attributable thereto,
6 shall not thereafter be treated as wages for purposes of this section. For
7 purposes of this paragraph, the term “nonqualified deferred compensa-
8 tion plan” means any plan or other arrangement for deferral of compen-
9 sation other than a plan described in subsection (o)(4).

10 (p) “Week” means such period or periods of seven consecutive cal-
11 endar days, as the secretary may by rules and regulations prescribe.

12 (q) “Calendar quarter” means the period of three consecutive cal-
13 endar months ending March 31, June 30, September 30 or December
14 31, or the equivalent thereof as the secretary may by rules and regulations
15 prescribe.

16 (r) “Insured work” means employment for employers.

17 (s) “Approved training” means any vocational training course or
18 course in basic education skills approved by the secretary or a person or
19 persons designated by the secretary.

20 (t) “American vessel” or “American aircraft” means any vessel or air-
21 craft documented or numbered or otherwise registered under the laws
22 of the United States; and any vessel or aircraft which is neither docu-
23 mented or numbered or otherwise registered under the laws of the
24 United States nor documented under the laws of any foreign country, if
25 its crew performs service solely for one or more citizens or residents of
26 the United States or corporations organized under the laws of the United
27 States or of any state.

28 (u) “Institution of higher education,” for the purposes of this section,
29 means an educational institution which:

30 (1) Admits as regular students only individuals having a certificate of
31 graduation from a high school, or the recognized equivalent of such a
32 certificate;

33 (2) is legally authorized in this state to provide a program of education
34 beyond high school;

35 (3) provides an educational program for which it awards a bachelor’s
36 or higher degree, or provides a program which is acceptable for full credit
37 toward such a degree, a program of postgraduate or postdoctoral studies,
38 or a program of training to prepare students for gainful employment in a
39 recognized occupation; and

40 (4) is a public or other nonprofit institution.

41 Notwithstanding any of the foregoing provisions of this subsection (u),
42 all colleges and universities in this state are institutions of higher educa-
43 tion for purposes of this section, except that no college, university, junior

1 college or other postsecondary school or institution which is operated by
2 the federal government or any agency thereof shall be an institution of
3 higher education for purposes of the employment security law.

4 (v) "Educational institution" means any institution of higher educa-
5 tion, as defined in subsection (u) of this section, or any institution, except
6 private for profit institutions, in which participants, trainees or students
7 are offered an organized course of study or training designed to transfer
8 to them knowledge, skills, information, doctrines, attitudes or abilities
9 from, by or under the guidance of an instructor or teacher and which is
10 approved, licensed or issued a permit to operate as a school by the state
11 department of education or other government agency that is authorized
12 within the state to approve, license or issue a permit for the operation of
13 a school or to an Indian tribe in the operation of an educational institution.
14 The courses of study or training which an educational institution offers
15 may be academic, technical, trade or preparation for gainful employment
16 in a recognized occupation.

17 (w) (1) "Agricultural labor" means any remunerated service:

18 (A) On a farm, in the employ of any person, in connection with cul-
19 tivating the soil, or in connection with raising or harvesting any agricul-
20 tural or horticultural commodity, including the raising, shearing, feeding,
21 caring for, training, and management of livestock, bees, poultry, and fur-
22 bearing animals and wildlife.

23 (B) In the employ of the owner or tenant or other operator of a farm,
24 in connection with the operating, management, conservation, improve-
25 ment, or maintenance of such farm and its tools and equipment, or in
26 salvaging timber or clearing land of brush and other debris left by a hur-
27 ricane, if the major part of such service is performed on a farm.

28 (C) In connection with the production or harvesting of any commod-
29 ity defined as an agricultural commodity in section (15)(g) of the agri-
30 cultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. 1141j)
31 or in connection with the ginning of cotton, or in connection with the
32 operation or maintenance of ditches, canals, reservoirs or waterways, not
33 owned or operated for profit, used exclusively for supplying and storing
34 water for farming purposes.

35 (D) (i) In the employ of the operator of a farm in handling, planting,
36 drying, packing, packaging, processing, freezing, grading, storing, or de-
37 livering to storage or to market or to a carrier for transportation to market,
38 in its unmanufactured state, any agricultural or horticultural commodity;
39 but only if such operator produced more than $\frac{1}{2}$ of the commodity with
40 respect to which such service is performed;

41 (ii) in the employ of a group of operators of farms (or a cooperative
42 organization of which such operators are members) in the performance
43 of service described in paragraph (i) above of this subsection (w)(1)(D),

- 1 but only if such operators produced more than $\frac{1}{2}$ of the commodity with
2 respect to which such service is performed;
- 3 (iii) the provisions of paragraphs (i) and (ii) above of this subsection
4 (w)(1)(D) shall not be deemed to be applicable with respect to service
5 performed in connection with commercial canning or commercial freez-
6 ing or in connection with any agricultural or horticultural commodity after
7 its delivery to a terminal market for distribution for consumption.
- 8 (E) On a farm operated for profit if such service is not in the course
9 of the employer's trade or business.
- 10 (2) "Agricultural labor" does not include service performed prior to
11 January 1, 1980, by an individual who is an alien admitted to the United
12 States to perform service in agricultural labor pursuant to sections 214(c)
13 and 101(a)(15)(H) of the federal immigration and nationality act.
- 14 (3) As used in this subsection (w), the term "farm" includes stock,
15 dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations,
16 ranches, nurseries, ranges, greenhouses, or other similar structures used
17 primarily for the raising of agricultural or horticultural commodities, and
18 orchards.
- 19 (4) For the purpose of this section, if an employing unit does not
20 maintain sufficient records to separate agricultural labor from other em-
21 ployment, all services performed during any pay period by an individual
22 for the person employing such individual shall be deemed to be agricul-
23 tural labor if services performed during $\frac{1}{2}$ or more of such pay period
24 constitute agricultural labor; but if the services performed during more
25 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
26 such individual do not constitute agricultural labor, then none of the serv-
27 ices of such individual for such period shall be deemed to be agricultural
28 labor. As used in this subsection (w), the term "pay period" means a
29 period of not more than 31 consecutive days for which a payment of
30 remuneration is ordinarily made to the individual by the person employ-
31 ing such individual.
- 32 (x) "Reimbursing employer" means any employer who makes pay-
33 ments in lieu of contributions to the employment security fund as pro-
34 vided in subsection (e) of K.S.A. 44-710 and amendments thereto.
- 35 (y) "Contributing employer" means any employer other than a re-
36 imbursing employer or rated governmental employer.
- 37 (z) "Wage combining plan" means a uniform national arrangement
38 approved by the United States secretary of labor in consultation with the
39 state unemployment compensation agencies and in which this state shall
40 participate, whereby wages earned in one or more states are transferred
41 to another state, called the "paying state," and combined with wages in
42 the paying state, if any, for the payment of benefits under the laws of the
43 paying state and as provided by an arrangement so approved by the

1 United States secretary of labor.

2 (aa) “Domestic service” means any service for a person in the oper-
3 ation and maintenance of a private household, local college club or local
4 chapter of a college fraternity or sorority, as distinguished from service
5 as an employee in the pursuit of an employer’s trade, occupation, pro-
6 fession, enterprise or vocation.

7 (bb) “Rated governmental employer” means any governmental entity
8 which elects to make payments as provided by K.S.A. 44-710d and
9 amendments thereto.

10 (cc) “Benefit cost payments” means payments made to the employ-
11 ment security fund by a governmental entity electing to become a rated
12 governmental employer.

13 (dd) “Successor employer” means any employer, as described in sub-
14 section (h) of this section, which acquires or in any manner succeeds to
15 (1) substantially all of the employing enterprises, organization, trade or
16 business of another employer or (2) substantially all the assets of another
17 employer.

18 (ee) “Predecessor employer” means an employer, as described in
19 subsection (h) of this section, who has previously operated a business or
20 portion of a business with employment to which another employer has
21 succeeded.

22 (ff) “Lessor employing unit” means any independently established
23 business entity which engages in the business of providing leased em-
24 ployees to a client lessee.

25 (gg) “Client lessee” means any individual, organization, partnership,
26 corporation or other legal entity leasing employees from a lessor employ-
27 ing unit.

28 (hh) “Qualifying injury” means a personal injury by accident arising
29 out of and in the course of employment within the coverage of the Kansas
30 workers compensation act, K.S.A. 44-501 *et seq.*, and amendments
31 thereto.

32 Sec. 2. K.S.A. 2006 Supp. 44-704 is hereby amended to read as fol-
33 lows: 44-704. (a) *Payment of benefits.* All benefits provided herein shall
34 be payable from the fund. All benefits shall be paid through the secretary
35 of labor, in accordance with such rules and regulations as the secretary
36 may adopt. Benefits based on service in employment defined in subsec-
37 tions (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto,
38 shall be payable in the same amount, on the same terms and subject to
39 the same conditions as compensation payable on the basis of other service
40 subject to this act except as provided in subsection ~~(e)~~ (d) of K.S.A. 44-
41 705 and subsection (e)(2) of K.S.A. 44-711, and amendments thereto.

42 (b) *Determined weekly benefit amount.* An individual’s determined
43 weekly benefit amount shall be an amount equal to 4.25% of the individ-

1 ual's total wages for insured work paid during that calendar quarter of
2 the individual's base period in which such total wages were highest, sub-
3 ject to the following limitations:

4 (1) If an individual's determined weekly benefit amount is less than
5 the minimum weekly benefit amount, it shall be raised to such minimum
6 weekly benefit amount;

7 (2) if the individual's determined weekly benefit amount is more than
8 the maximum weekly benefit amount, it shall be reduced to the maximum
9 weekly benefit amount; and

10 (3) if the individual's determined weekly benefit amount is not a mul-
11 tiple of \$1, it shall be reduced to the next lower multiple of \$1.

12 (c) *Maximum weekly benefit amount.* On July 1 of each year, the
13 secretary shall determine the maximum weekly benefit amount by com-
14 puting 60% of the average weekly wages paid to employees in insured
15 work during the previous calendar year and shall prior to that date an-
16 nounce the maximum weekly benefit amount so determined, by publi-
17 cation in the Kansas register. Such computation shall be made by dividing
18 the gross wages reported as paid for insured work during the previous
19 calendar year by the product of the average of midmonth employment
20 during such calendar year multiplied by 52. The maximum weekly benefit
21 amount so determined and announced for the twelve-month period shall
22 apply only to those claims filed in that period qualifying for maximum
23 payment under the foregoing formula. All claims qualifying for payment
24 at the maximum weekly benefit amount shall be paid at the maximum
25 weekly benefit amount in effect when the benefit year to which the claim
26 relates was first established, notwithstanding a change in the maximum
27 benefit amount for a subsequent twelve-month period. If the computed
28 maximum weekly benefit amount is not a multiple of \$1, then the com-
29 puted maximum weekly benefit amount shall be reduced to the next lower
30 multiple of \$1.

31 (d) *Minimum weekly benefit amount.* The minimum weekly benefit
32 amount payable to any individual shall be 25% of the maximum weekly
33 benefit calculated in accordance with subsection (c) and shall be an-
34 nounced by the secretary in conjunction with the published announce-
35 ment of the maximum weekly benefit, also as provided in subsection (c).
36 The minimum weekly benefit amount so determined and announced for
37 the twelve-month period beginning July 1 of each year shall apply only
38 to those claims which establish a benefit year filed within that twelve-
39 month period and shall apply through the benefit year of such claims
40 notwithstanding a change in such amount in a subsequent twelve-month
41 period. If the minimum weekly benefit amount is not a multiple of \$1 it
42 shall be reduced to the next lower multiple of \$1.

43 (e) *Weekly benefit payable.* Each eligible individual who is unem-

- 1 employed with respect to any week, except as to final payment, shall be paid
2 with respect to such week a benefit in an amount equal to such individ-
3 ual's determined weekly benefit amount, less that part of the wage, if any,
4 payable to such individual with respect to such week which is in excess
5 of the amount which is equal to 25% of such individual's determined
6 weekly benefit amount and if the resulting amount is not a multiple of
7 \$1, it shall be reduced to the next lower multiple of \$1.
- 8 (1) For the purposes of this section, remuneration received under
9 the following circumstances shall be construed as wages:
- 10 (A) Vacation pay that was attributable to a week that the individual
11 claimed benefits while work was temporarily interrupted;
- 12 (B) holiday pay that was payable with no condition of attendance on
13 other regularly scheduled day or days; and
- 14 (C) severance pay, if paid as scheduled, and all other employment
15 benefits within the employer's control, as defined in subsection (e)(3), if
16 continued as though the severance had not occurred, except as set out in
17 subsection (e)(2)(D).
- 18 (2) For the purposes of this section, remuneration received under
19 the following circumstances shall not be construed as wages:
- 20 (A) Remuneration received for services performed on a public assis-
21 tance work project;
- 22 (B) vacation pay, except as set out in subsection (e)(1)(A) above;
- 23 (C) holiday pay that was not payable unless the individual complied
24 with a condition of attendance on another regularly scheduled day or days;
- 25 (D) severance pay, in lieu of notice, under the provisions of public
26 law 100-379, the federal worker adjustment and retraining notification
27 act (29 U.S.C.A. 2101 through 2109);
- 28 (E) all other severance pay, separation pay, bonuses, wages in lieu of
29 notice or remuneration of a similar nature that is payable after the sev-
30 erance of the employment relationship, except as set out in subsection
31 (e)(1)(C); and
- 32 (F) moneys received as federal social security payments.
- 33 (3) For the purposes of this subsection (e), "employment benefits
34 within the employer's control" means benefits offered by the employer
35 to employees which are employee benefit plans as defined by section 3
36 of the federal employee retirement income security act of 1974, as
37 amended, (29 U.S.C. 1002) and which the employer has the option to
38 continue to provide to the employee after the last day that the employee
39 worked for that employer.
- 40 (f) *Duration of benefits.* Any otherwise eligible individual shall be
41 entitled during any benefit year to a total amount of benefits equal to
42 whichever is the lesser of 26 times such individual's weekly benefit
43 amount, or $\frac{1}{3}$ of such individual's wages for insured work paid during

1 such individual's base period. Such total amount of benefits, if not a mul-
2 tiple of \$1, shall be reduced to the next lower multiple of \$1.

3 (g) For the purposes of this section, wages shall be counted as "wages
4 for insured work" for benefit purposes with respect to any benefit year
5 only if such benefit year begins subsequent to the date on which the
6 employing unit by whom such wages were paid has satisfied the condi-
7 tions of subsection (h) of K.S.A. 44-703, and amendments thereto, with
8 respect to becoming an employer.

9 Sec. 3. K.S.A. 2006 Supp. 44-705 is hereby amended to read as fol-
10 lows: 44-705. Except as provided by K.S.A. 44-757 and amendments
11 thereto, an unemployed individual shall be eligible to receive benefits
12 with respect to any week only if the secretary, or a person or persons
13 designated by the secretary, finds that:

14 (a) The claimant has registered for work at and thereafter continued
15 to report at an employment office in accordance with rules and regula-
16 tions adopted by the secretary, except that, subject to the provisions of
17 subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary
18 may adopt rules and regulations which waive or alter either or both of
19 the requirements of this subsection (a).

20 (b) The claimant has made a claim for benefits with respect to such
21 week in accordance with rules and regulations adopted by the secretary.

22 (c) The claimant is able to perform the duties of such claimant's cus-
23 tomary occupation or the duties of other occupations for which the claim-
24 ant is reasonably fitted by training or experience, and is available for work,
25 as demonstrated by the claimant's pursuit of the full course of action most
26 reasonably calculated to result in the claimant's reemployment except
27 that, notwithstanding any other provisions of this section, an unemployed
28 claimant otherwise eligible for benefits shall not become ineligible for
29 benefits because of the claimant's enrollment in and satisfactory pursuit
30 of approved training, including training approved under section 236(a)(1)
31 of the trade act of 1974.

32 For the purposes of this subsection, an inmate of a custodial or cor-
33 rectional institution shall be deemed to be unavailable for work and not
34 eligible to receive unemployment compensation while incarcerated.

35 ~~(d) The claimant has been unemployed for a waiting period of one~~
36 ~~week or the claimant is unemployed and has satisfied the requirement~~
37 ~~for a waiting period of one week under the shared work unemployment~~
38 ~~compensation program as provided in subsection (k)(4) of K.S.A. 44-757~~
39 ~~and amendments thereto, which period of one week, in either case, occurs~~
40 ~~within the benefit year which includes the week for which the claimant~~
41 ~~is claiming benefits. No week shall be counted as a week of unemploy-~~
42 ~~ment for the purposes of this subsection (d).~~

43 ~~—(1) If benefits have been paid for such week,~~

- 1 ~~—(2) if the individual fails to meet with the other eligibility require-~~
2 ~~ments of this section, or~~
- 3 ~~—(3) if an individual is seeking unemployment benefits under the un-~~
4 ~~employment compensation law of any other state or of the United States,~~
5 ~~except that if the appropriate agency of such state or of the United States~~
6 ~~finally determines that the claimant is not entitled to unemployment ben-~~
7 ~~efits under such other law, this subsection (d)(3) shall not apply.~~
- 8 ~~—(e) (d)~~ For benefit years established on and after the effective date
9 of this act, the claimant has been paid total wages for insured work in the
10 claimant's base period of not less than 30 times the claimant's weekly
11 benefit amount and has been paid wages in more than one quarter of the
12 claimant's base period, except that the wage credits of an individual
13 earned during the period commencing with the end of a prior base period
14 and ending on the date on which such individual filed a valid initial claim
15 shall not be available for benefit purposes in a subsequent benefit year
16 unless, in addition thereto, such individual has returned to work and sub-
17 sequently earned wages for insured work in an amount equal to at least
18 eight times the claimant's current weekly benefit amount.
- 19 ~~(f)~~ (e) The claimant participates in reemployment services, such as
20 job search assistance services, if the individual has been determined to
21 be likely to exhaust regular benefits and needs reemployment services
22 pursuant to a profiling system established by the secretary, unless the
23 secretary determines that: (1) The individual has completed such services;
24 or (2) there is justifiable cause for the claimant's failure to participate in
25 such services.
- 26 ~~(g)~~ (f) The claimant is returning to work after a qualifying injury and
27 has been paid total wages for insured work in the claimant's alternative
28 base period of not less than 30 times the claimant's weekly benefit amount
29 and has been paid wages in more than one quarter of the claimant's
30 alternative base period if:
- 31 (1) The claimant has filed for benefits within four weeks of being
32 released to return to work by a licensed and practicing health care
33 provider.
- 34 (2) The claimant files for benefits within 24 months of the date the
35 qualifying injury occurred.
- 36 (3) The claimant attempted to return to work with the employer
37 where the qualifying injury occurred, but the individual's regular work or
38 comparable and suitable work was not available.
- 39 Sec. 4. K.S.A. 2006 Supp. 44-757 is hereby amended to read as fol-
40 lows: 44-757. *Shared work unemployment compensation program.* (a) As
41 used in this section:
- 42 (1) "Affected unit" means a specified department, shift or other unit
43 of two or more employees that is designated by an employer to participate

1 in a shared work plan.

2 (2) “Fringe benefit” means health insurance, a retirement benefit
3 received under a pension plan, a paid vacation day, a paid holiday, sick
4 leave, and any other analogous employee benefit that is provided by an
5 employer.

6 (3) “Fund” has the meaning ascribed thereto by subsection (k) of
7 K.S.A. 44-703 and amendments thereto.

8 (4) “Normal weekly hours of work” means the lesser of 40 hours or
9 the average obtained by dividing the total number of hours worked per
10 week during the preceding twelve-week period by the number 12.

11 (5) “Participating employee” means an employee who works a re-
12 duced number of hours under a shared work plan.

13 (6) “Participating employer” means an employer who has a shared
14 work plan in effect.

15 (7) “Secretary” means the secretary of labor or the secretary’s
16 designee.

17 (8) “Shared work benefit” means an unemployment compensation
18 benefit that is payable to an individual in an affected unit because the
19 individual works reduced hours under an approved shared work plan.

20 (9) “Shared work plan” means a program for reducing unemployment
21 under which employees who are members of an affected unit share the
22 work remaining after a reduction in their normal weekly hours of work.

23 (10) “Shared work unemployment compensation program” means a
24 program designed to reduce unemployment and stabilize the work force
25 by allowing certain employees to collect unemployment compensation
26 benefits if the employees share the work remaining after a reduction in
27 the total number of hours of work and a corresponding reduction in
28 wages.

29 (b) The secretary shall establish a voluntary shared work unemploy-
30 ment compensation program as provided by this section. The secretary
31 may adopt rules and regulations and establish procedures necessary to
32 administer the shared work unemployment compensation program.

33 (c) An employer who wishes to participate in the shared work un-
34 employment compensation program must submit a written shared work
35 plan to the secretary for the secretary’s approval. As a condition for ap-
36 proval, a participating employer must agree to furnish the secretary with
37 reports relating to the operation of the shared work plan as requested by
38 the secretary. The employer shall monitor and evaluate the operation of
39 the established shared work plan as requested by the secretary and shall
40 report the findings to the secretary.

41 (d) The secretary may approve a shared work plan if:

42 (1) The shared work plan applies to and identifies a specific affected
43 unit;

- 1 (2) the employees in the affected unit are identified by name and
2 social security number;
- 3 (3) the shared work plan reduces the normal weekly hours of work
4 for an employee in the affected unit by not less than 20% and not more
5 than 40%;
- 6 (4) the shared work plan applies to at least 10% of the employees in
7 the affected unit;
- 8 (5) the shared work plan describes the manner in which the partici-
9 participating employer treats the fringe benefits of each employee in the af-
10 fected unit;
- 11 (6) the employer certifies that the implementation of a shared work
12 plan and the resulting reduction in work hours is in lieu of temporary
13 layoffs that would affect at least 10% of the employees in the affected
14 unit and that would result in an equivalent reduction in work hours;
- 15 (7) the employer has filed all reports required to be filed under the
16 employment security law for all past and current periods and has paid all
17 contributions, benefit cost payments, or if a reimbursing employer has
18 made all payments in lieu of contributions due for all past and current
19 periods; and
- 20 (8) (A) a contributing employer must be eligible for a rate compu-
21 tation under subsection (a)(2) of K.S.A. 44-710a, and amendments
22 thereto, and is not a negative account employer as defined by subsection
23 (d) of K.S.A. 44-710a and amendments thereto; (B) a rated governmental
24 employer must be eligible for a rate computation under subsection (g) of
25 K.S.A. 44-710d and amendments thereto.
- 26 (e) If any of the employees who participate in a shared work plan
27 under this section are covered by a collective bargaining agreement, the
28 shared work plan must be approved in writing by the collective bargaining
29 agent.
- 30 (f) A shared work plan may not be implemented to subsidize seasonal
31 employers during the off-season or to subsidize employers who have tra-
32 ditionally used part-time employees.
- 33 (g) The secretary shall approve or deny a shared work plan no later
34 than the 30th day after the day the shared work plan is received by the
35 secretary. The secretary shall approve or deny a shared work plan in
36 writing. If the secretary denies a shared work plan, the secretary shall
37 notify the employer of the reasons for the denial.
- 38 (h) A shared work plan is effective on the date it is approved by the
39 secretary, except for good cause a shared work plan may be effective at
40 any time within a period of 14 days prior to the date such plan is approved
41 by the secretary. The shared work plan expires on the last day of the 12th
42 full calendar month after the effective date of the shared work plan.
- 43 (i) An employer may modify a shared work plan created under this

1 section to meet changed conditions if the modification conforms to the
2 basic provisions of the shared work plan as approved by the secretary.
3 The employer must report the changes made to the shared work plan in
4 writing to the secretary before implementing the changes. If the original
5 shared work plan is substantially modified, the secretary shall reevaluate
6 the shared work plan and may approve the modified shared work plan if
7 it meets the requirements for approval under subsection (d). The approval
8 of a modified shared work plan does not affect the expiration date origi-
9 nally set for that shared work plan. If substantial modifications cause the
10 shared work plan to fail to meet the requirements for approval, the sec-
11 retary shall deny approval to the modifications as provided by subsection
12 (g).

13 (j) Notwithstanding any other provisions of the employment security
14 law, an individual is unemployed and is eligible for shared work benefits
15 in any week in which the individual, as an employee in an affected unit,
16 works for less than the individual's normal weekly hours of work in ac-
17 cordance with an approved shared work plan in effect for that week. The
18 secretary may not deny shared work benefits for any week to an otherwise
19 eligible individual by reason of the application of any provision of the
20 employment security law that relates to availability for work, active search
21 for work or refusal to apply for or accept work with an employer other
22 than the participating employer.

23 (k) An individual is eligible to receive shared work benefits with re-
24 spect to any week in which the secretary finds that:

25 (1) The individual is employed as a member of an affected unit sub-
26 ject to a shared work plan that was approved before the week in question
27 and is in effect for that week;

28 (2) the individual is able to work and is available for additional hours
29 of work or full-time work with the participating employer; *and*

30 (3) the individual's normal weekly hours of work have been reduced
31 by at least 20% but not more than 40%, with a corresponding reduction
32 in wages; *and*

33 ~~(4) the individual's normal weekly hours of work and wages have been~~
34 ~~reduced as described in paragraph (3) of this subsection (k) for a waiting~~
35 ~~period of one week which occurs within the period the shared work plan~~
36 ~~is in effect, which period includes the week for which the individual is~~
37 ~~claiming shared work benefits.~~

38 (l) The secretary shall pay an individual who is eligible for shared
39 work benefits under this section a weekly shared work benefit amount
40 equal to the individual's regular weekly benefit amount for a period of
41 total unemployment multiplied by the nearest full percentage of reduc-
42 tion of the individual's hours as set forth in the employer's shared work
43 plan. If the shared benefit amount is not a multiple of \$1, the secretary

- 1 shall reduce the amount to the next lowest multiple of \$1. All shared work
2 benefits under this section shall be payable from the fund.
- 3 (m) The secretary may not pay an individual shared work benefits for
4 any week in which the individual performs paid work for the participating
5 employer in excess of the reduced hours established under the shared
6 work plan.
- 7 (n) An individual may not receive shared work benefits and regular
8 unemployment compensation benefits in an amount that exceeds the
9 maximum total amount of benefits payable to that individual in a benefit
10 year as provided by subsection (f) of K.S.A. 44-704 and amendments
11 thereto.
- 12 (o) An individual who has received all of the shared work benefits
13 and regular unemployment compensation benefits available in a benefit
14 year is an exhaustee under K.S.A. 44-704a and 44-704b, and amendments
15 thereto, and is entitled to receive extended benefits under such statutes
16 if the individual is otherwise eligible under such statutes.
- 17 (p) The secretary may terminate a shared work plan for good cause
18 if the secretary determines that the shared work plan is not being exe-
19 cuted according to the terms and intent of the shared work unemploy-
20 ment compensation program.
- 21 (q) Notwithstanding any other provisions of this section, an individual
22 shall not be eligible to receive shared work benefits for more than 26
23 calendar weeks during the 12-month period of the shared work plan,
24 except that two weeks of additional benefits shall be payable to claimants
25 who exhaust regular benefits and any benefits under any other federal or
26 state extended benefits program during the period July 1, 2003 through
27 June 30, 2004. No week shall be counted as a week for which an individual
28 is eligible for shared work benefits for the purposes of this section unless
29 the week occurs within the 12-month period of the shared work plan.
- 30 (r) No shared work benefit payment shall be made under any shared
31 work plan or this section for any week which commences before April 1,
32 1989.
- 33 (s) This section shall be construed as part of the employment security
34 law.
- 35 Sec. 5. K.S.A. 2006 Supp. 44-703, 44-704, 44-705 and 44-757 are
36 hereby repealed.
- 37 Sec. 6. This act shall take effect and be in force from and after its
38 publication in the statute book.