

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at
Chairperson

1:30 ~~am~~ p.m. on Monday, January 27, 1986 in room 529-S of the Capitol.

All members were present except:

Senator Joe Norvell (Excused)

Senator Bill Morris (Excused)

Committee staff present:

Gordon Self, Revisor

Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Senator Eugene Anderson

Larry Wolgast, Secretary, Human Resources

The Chairman called the meeting to order at 1:37 p.m., and asked Gordon Self to review the bills left in committee from the 1985 session.

Gordon Self distributed printed material in 3 parts to each committee member. (See Attachment A) The 1st part a print out of each of the bills that are in this committee, and the action last session on them, most were introduced and referred to this committee, and that is where they stayed. The 2nd print out sheet is just a brief synopsis of each of the bills, and the 3rd one is an attachment in reference to the 1st bill I will discuss. Mr. Self reviewed SB9, SB83, SB146, SB,232, SB322, SB324, SB325, SB376 and HB2546, with the committee.

The Chairman introduced Senator Eugene Anderson, sponsor of SB365 and SB324, and asked if he would give a review of his bills.

Senator Anderson I would like to refresh the memory of the committee members on the concept of SB232. I shared information with you last year and I believe there may be something new, as I noticed in the Governor's message he spoke very definitely on Small Businesses and I believe there are several measures now that are being drafted which will deal in the area of Small Businesses in our State and I feel we have to help through technical or economic assistance, and I can assure you that we are not doing anything that other State's are not doing. I would ask that this committee think seriously about helping these Small Businesses. (See Attachment B)

The Chairman asked Larry Wolgast if he had a particular interest in any of the left over bills?

Larry Wolgast stated the primary interest of Department of Human Resources is SB376, and passed out printed material of proposed changes to SB376, stating there were changes in the 1st paragraph in the Social Security Act in 1983 and 1984 which is changing the process of the requirements of businesses in their reporting procedures, and the Department of Human Resources is recommending the the State Regulation or Law would agree to using the same bookkeeping procedures as the Federal level, as it would be a benefit to the Small Businesses and Employers of the State. (See Attachment C) Mr. Wolgast also distributed to the members printed copies of the status of the trust fund, and the trust fund balance, which show the actual per calendar year 1985, and the projections for 1986. (See Attachment D) Mr. Wolgast stated (Attachment E & F) are for the employees and were printed after last session.

Senator Kerr moved and Senator Gordon seconded a motion to report SB9 adversely. The motion carried.

Senator Feleciano moved and Senator Werts seconded a motion to report SB323 adversely. The motion carried.

Senator Ehrlich moved and Senator Yost seconded a motion to report SB324 adversely. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY SMALL BUSINESS,
room 529-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Monday, January 27, 1986

Senator Yost moved and Senator Feleciano seconded a motion to report SB83 adversely. The motion carried.

Chairman Thiessen stated he would schedule SB376 on Monday, February 3, 1986.

The meeting adjourned at 2:13 p.m.

S 0009 Bill by Spec. Comm. on Labor & Industry
Workers' compensation, compensation for disability, appeals and
rehabilitation; Re Proposal No. 29. Effective date: 07/01/86.
12/14/84 Prefiled for introduction
01/14/85 Senate Introduced -SJ 00009
01/15/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00019

S 0083 Bill by Yost
Discrimination based on membership or nonmembership in labor
organizations prohibited. Effective date: 07/01/86.
01/25/85 Senate Introduced -SJ 00052
01/28/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00057

S 0146 Bill by Anderson
Establishing the surety bond guarantee program for small business.
Effective date: 07/01/86.
02/01/85 Senate Introduced -SJ 00090
02/04/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00093

S 0232 Bill by Anderson
Creating small contractors and businesses' revolving loan fund.
Effective date: 07/01/86.
02/13/85 Senate Introduced -SJ 00141
02/14/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00153

S 0322 Bill by Labor, Industry & Sm. Bus.
Employment security law, employer contributions. Effective date:
07/01/86.
02/27/85 Senate Introduced -SJ 00195
02/28/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00206

S 0323 Bill by Labor, Industry & Sm. Bus.
Workers' compensation fund; compensation and knowledge of impairment
by employer. Effective date: 07/01/86.
02/27/85 Senate Introduced -SJ 00195
02/28/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00206

S 0324 Bill by Labor, Industry & Sm. Bus.
Worker's compensation, vocational rehabilitation. Effective date:
07/01/86.
02/27/85 Senate Introduced -SJ 00195
02/28/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00206

S 0325 Bill by Labor, Industry & Sm. Bus.
Concerning part-time employment under employment security law.
Effective date: 07/01/86.
02/27/85 Senate Introduced -SJ 00195
02/28/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00206

S 0376 Bill by Ways & Means
Employment security law; wages defined. Effective date: 07/01/86.
04/08/85 Senate Introduced -SJ 00551
04/09/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00559

H 2546 Bill by Labor & Industry
Employment security, period of disqualification, breach of duty and
failure to apply for employment cases. Effective date: 07/01/86.
02/27/85 House Introduced -HJ 00361
02/28/85 House Referred to Labor & Industry -HJ 00364
03/13/85 House Withdrawn from Labor & Industry; Referred to Ways &
Means -HJ 00569
03/22/85 House Withdrawn from Ways & Means; Rereferred to Labor &
Industry -HJ 00623
03/26/85 House CR: Be passed by Labor & Industry -HJ 00646
03/29/85 House COW: Be passed -HJ 00679
04/01/85 House FA: Passed; Yeas 76 Nays 49 -HJ 00692
04/01/85 Senate Received and introduced -SJ 00454
04/02/85 Senate Referred to Labor, Industry & Sm. Bus. -SJ 00478
04/03/85 Senate CR: Be passed by Labor, Industry & Sm. Bus.
-SJ 00499
04/04/85 Senate COW: Be passed over and retain a place on calendar
-SJ 00533
04/08/85 Senate Withdrawn from calendar, rereferred to Ways & Means
-SJ 00557
04/09/85 Senate CR: Without recommendation by Ways & Means -SJ 00560;
Rereferred to Labor, Industry & Sm. Bus. -SJ 00560

Bills in Senate Committee on Labor, Industry & Small Business

Senate Bill No. 9.--By Special Committee on Labor & Industry. Re Proposal No. 29 (1984 Interim Study). This bill is a result of the interim committee's findings in its review of the Workmen's Compensation Act. Summary of the committee's conclusion and recommendations which resulted in changes contained in the bill is attached.

Senate Bill No. 83.--By Senator Yost. This bill specifies that it shall be an unlawful employment practice under the Kansas Act Against Discrimination for any employer to discriminate against any person because of membership or nonmembership in a labor union. In addition, the bill provides that the Commission on Civil Rights require through rules and regulations that employers post the provisions of Section 12 of Article 15 of the Kansas Constitution which provides that a person may not be denied employment based on membership or nonmembership in any labor organization and the state, individual, corporation or any association may not enter into any agreement which excludes a person from employment because of membership or nonmembership in any labor organization.

Senate Bill No. 146.--By Senator Anderson. This bill provides that the State of Kansas shall be a surety bond guarantor for certain small contractors.

Senate Bill No. 232.--By Senator Anderson. This bill provides that the Secretary of Administration may enter into agreements with small contractors and small businesses for the making of working capital loans or providing lines of credit.

Senate Bill No. 322.--By Committee on Labor, Industry & Small Business. This bill is an amendment to the Employment Security Law which provides that if an employer's account has not been charged with any benefits paid for the past 5 years, the employer's contribution rate shall not change, unless the contribution rate for all employers is increased.

Senate Bill No. 323.--By Committee on Labor, Industry & Small Business. An employer operating under the provisions of the Workmen's Compensation Act, who knowingly employs or retains a

handicapped worker shall be relieved of liability for compensation awarded. Changes made by this bill provide that knowledge of a physician who examined or treated the employee on behalf of the employer shall be imputed to the employer. In addition, the bill provides that employer's knowledge of the preexisting impairment provides a reservation in the mind of the employer when deciding to hire or retain the employee.

Senate Bill No. 324.--By Committee on Labor, Industry & Small Business. This bill is an attempt to establish vocational rehabilitation as an area of major emphasis of the Workmen's Compensation Act. The Act attempts to set out a framework whereby injured workers shall be entitled to prompt vocational rehabilitation services as may be necessary to restore the employee to comparable gainful employment.

Senate Bill No. 325.--By Committee on Labor, Industry & Small Business. This bill amends the Employment Security Act to define part-time employment as employment of an inherently repetitive nature in which the employee is subject to call by the employer. Examples include temporary employment agencies or bureaus, firemen or ambulance drivers. Such employees are deemed to be regularly employed until their relationship with their employer is permanently severed.

Senate Bill No. 376.--By Committee on Ways & Means. This bill amends the Employment Security Act to make changes in the definition of wages. These changes conform the Kansas Law to the definition of wages under the Federal Unemployment Tax Act. A new section was added to provide for the treatment of certain deferred compensation and salary reduction arrangements. A new provision provides the establishment of wage credits for individuals who have worked for an employer but have not been paid those wages due them, rather than only securing those credits after the wages have been paid.

House Bill No. 2546.--By House Committee on Labor & Industry. This bill amends the Employment Security Act by establishing total disqualification for unemployment benefits to those individuals who have been discharged for breach of duty connected with the individual's work reasonably owed to the employer. Individuals who fail to apply for suitable work would likewise be totally disqualified beginning with the week when such failure occurred. Requalification would occur when the worker, in either of these situations, becomes reemployed and has earned at least

three times the individual's weekly benefit amount.

Under present law for a worker in either of these instances, there is an 11-week disqualification period, as well as a forfeiture of benefits equal to 10 times the worker's weekly benefit amount, but no requalification requirement.

expenses and indemnity. Rehabilitation services should occur soon after medical needs of the injured worker are met. The last step should be compensation for the resultant disability.

Conclusions and Recommendations

The Committee endorses the concept that legislation should be prepared to indicate that the Kansas Workers' Compensation Act should be liberally construed in its coverage of injured workers but otherwise the Act should be impartial to both employer and employee. The evidence submitted should be considered on an impartial basis.

Self-serving and hearsay evidence, while admissible, is not sufficient to meet the employee's burden of proof but must be supported by independent, supporting, and corroborating evidence.

Matters that are recommended for further study include the following:

1. tax credit issues for employers who modify equipment or work requirements;
2. a legal advisor system, on a pilot program basis, aimed at cutting down on litigation; and
3. coverage of permanent total disabilities to extend beyond the current \$100,000 maximum, to age 65; however, work disability will terminate at age 65 but functional disability will not terminate at age 65.

Specific recommendations of the Committee are as follows:

1. Repetitive Use Conditions. Repetitive use conditions simultaneously occurring in opposite extremities shall be compensated as due for each extremity under the permanent

partial disability schedule and additional compensation not to exceed 20 percent of the total period allowed for both extremities.

2. Review. Review of workers' compensation cases at the district court level shall be stricken. The recommended review sequence from a ruling of the director of workers' compensation will be to the court of appeals.
3. Dependent Children of Majority. The Act shall be amended to allow dependent children of majority in higher education of an employee who dies to receive compensation until age 23.
4. Evaluation. Payment of benefits to an injured worker during the evaluation period shall be allowed. Any payments made during the evaluation, vocational rehabilitation, reeducation or training period will not be deducted from a final award.
5. Failure to Pay. Service of written demand, upon failure to pay medical or disability compensation, shall be required only once. Subsequent failures to pay compensation or medical expenses shall entitle the injured worker to apply for penalty without demand.
6. Awards. The maximum permanent and temporary total awards will be increased from the present 75 percent to 100 percent of the state's average weekly wage. Maximum compensation benefits when death results from an injury should be raised from the current \$100,000 to \$250,000.
7. Healing Period. There shall be an adjustment of the percentage, from the present 10 percent to 20 percent, used in formulating the healing period following scheduled injuries to allow for a maximum healing period of 40

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weeks, as contrasted with the present 15 weeks allowed.

8. Permanent Partial Disability Test. The test for permanent partial disability should be changed to include the ability to engage in work that the employee is reasonably able to perform based on age, education, training, experience, physical ability, and potential for rehabilitation.

The above recommendations are incorporated in S.B. 9 which accompanies this report.

In conclusion, the Special Labor and Industry Committee has instructed the ad hoc committee, which is composed of business and labor representatives, to meet and make recommendations to the Labor and Industry Committees regarding rehabilitation issues. In addition, the Special Committee on Labor and Industry would encourage recommendations of the ad hoc committee concerning the Workers' Compensation Fund.

Respectfully submitted,

December 4, 1984

Sen. Bill Morris, Chairperson
Special Committee on Labor
and Industry

Rep. Arthur Douville,
Vice-Chairperson
Sen. Bert Chaney
Sen. Norma Daniels
Sen. Dan Thiessen
Sen. Ben Vidricksen

Rep. Kenneth Green
Rep. Anthony Hensley
Rep. Dorothy Nichols
Rep. Lawrence Wilbert



TOPEKA

SENATE CHAMBER

TO: THE CHAIRPERSON - MEMBERS OF THE COMMITTEE

WE ARE MOST APPRECIATIVE OF THE TIME YOU HAVE ALLOWED FOR PROPONENTS OF THIS BILL, SENATE BILL 232, WHICH PROVIDES FOR THE ESTABLISHMENT OF A REVOLVING LOAN FUND TO BE ESTABLISHED TO ASSIST, SMALL BUSINESSES AND SMALL CONTRACTORS, WITH LIMITED FINANCIAL ASSISTANCE. HOWEVER, SUCH FINANCIAL ASSISTANCE WILL BE RESTRICTED TO SMALL BUSINESS AND SMALL CONTRACTORS LOCATED OR THAT AGREE TO LOCATE OR EXPAND IN AREAS HAVING BEEN IDENTIFIED AS "ENTERPRISE ZONES".

APPROXIMATELY 98 PERCENT OF ALL AMERICAN BUSINESSES ARE "SMALL". ONLY 10,000 OF THE NATION'S BUSINESSES HAVE 500 OR MORE EMPLOYEES. SMALL BUSINESS EMPLOYS 47 PERCENT OF THE NON-GOVERNMENTAL LABOR FORCE.

ALMOST 80 PERCENT OF ALL NET JOBS COME FROM FIRMS WITH FEWER THAN 100 EMPLOYEES, ACCORDING TO RESEARCH DONE AT MICHIGAN INSTITUTE OF TECHNOLOGY, BETWEEN 1969 AND 1976, AND TWO-THIRDS OF ALL NEW JOBS ARE ACCOUNTED FOR BY FIRMS WITH 20 OR FEWER EMPLOYEES. FURTHERMORE, IN THE NORTHEAST SMALL BUSINESS JOB GAINS MADE UP FOR OPPORTUNITIES LOST BY THE LARGEST CORPORATIONS DURING THE SAME PERIOD.

IN ADDITION, NATIONAL SCIENCE FOUNDATION AND COMMERCE DEPARTMENT REPORTS CONCLUDED THAT SMALL BUSINESS WAS "24 TIMES MORE INNOVATIVE PER RESEARCH AND DEVELOPMENT DOLLAR THAN LARGE FIRMS." THUS, CONTRARY TO POPULAR BELIEF, A STATE'S JOB CREATION, EVEN IN THE FARM BELT STATES, WILL COME FROM FOSTERING LOCAL BUSINESSES, NOT FROM ATTRACTING BUSINESS FROM OUT OF STATE.

Attachment B 1/27/86
Senate Labor, Industry
and Small Business

ATT
COMMITTEE ASSIGNMENTS
MEMBER CONSERVATIONS
EDUCATION
FEDERAL AND STATE AFFAIRS
PUBLIC HEALTH AND WELFARE

YET FOR SMALL BUSINESS, LACK OF ACCESS TO CAPITAL IS A MAJOR PROBLEM, AND THE ECONOMIC RECESSION HAS SEVERELY MAGNIFIED THIS PROBLEM. THE RATE OF BUSINESS FAILURES IN 1982 AND 1983 RAN FIVE TIMES AHEAD OF THE RATE IN 1981.

MOST SMALL BUSINESSES FINANCE THEIR WORKING CAPITAL WITH SHORT TERM, BANK-FINANCED DEBT. THE CYRATING INCREASES IN THE INTEREST RATES HAVE SEVERELY STRAINED THE DEBT-SERVICE CAPABILITIES OF MOST SMALL BUSINESSES. WITHOUT THE INTERNAL RESERVES TO WITHSTAND THE LONG PERIOD OF HIGH RATES, AND WITHOUT AN ABILITY TO FULLY PASS ALONG THESE INCREASED "COSTS" OF DOING BUSINESS TO THEIR CUSTOMERS, SMALL BUSINESSES ARE FORCED TO CLOSE THEIR DOORS. THE FARM SECTOR, COMPRISED MOSTLY OF SMALL BUSINESSES, HAS ALSO EXPERIENCED A STEEP ECONOMIC DECLINE.

SINCE APPROXIMATELY 80 PERCENT OF SMALL BUSINESSES RELY ON FINANCING FROM DEPOSITORY INSTITUTIONS, AN INCREASE IN THE COST OF FINANCING AND A DECREASE IN THE AVAILABILITY OF FUNDS HAS A MORE SEVERE IMPACT ON SMALLER FIRMS THAN ON LARGER FIRMS.

THE SMALL BUSINESS ADMINISTRATION'S DIRECT LOAN AND LOAN GUARANTEE PROGRAMS HAVE HELPED, BUT ARE BEING REDUCED. IN FACT, THE SBA PROGRAM IS A VERY MODEST CAPITAL CORRECTING MECHANISM THAT NEEDS EXPANSION TO COUNTER THE GOVERNMENT'S CAPITAL MARKET INTERFERENCE.

THERE IS SOME CONTROVERSY OVER WHETHER CAPITAL ACCESS IS THE MOST IMPORTANT PROBLEM OR WHETHER THE COST OF CAPITAL IS MORE IMPORTANT. BOTH ARE IMPORTANT, BUT SOME CAPITAL ACCESS PROBLEMS CAN BE SOLVED THROUGH MODEST AND INEXPENSIVE MARKET RESTRUCTURING.

PAGE THREE

SUCH AS THE ESTABLISHMENT OF A REVOLVING LOAN FUND TO ASSIST SMALL BUSINESSES AND SMALL CONTRACTORS.

THE NEW PUBLIC POLICIES BEING PROPOSED FOR SMALL BUSINESSES ARE BASICALLY ORIENTED TOWARD IMPROVING CAPITAL ACCESS, NOT REDUCING THE CAPITAL COST. THIS WILL HELP MANY BUSINESSES AT LITTLE OR NO GOVERNMENT COST, BUT WILL NOT SOLVE THE PROBLEM FOR OTHER BUSINESSES THAT REQUIRE CAPITAL TO SURVIVE OR EXPAND.

THIS PROGRAM PROPOSAL SHOULD NOT AIM EXCLUSIVELY TO SATISFY A SMALL BUSINESS CONSTITUENCY, BUT TO CREATE A CLIMATE OF ECONOMIC AND JOB GROWTH. THE POTENTIAL ENTREPRENEUR AND THE STRUGGLING, GROWING COMPANY - - NOT MATURE SMALL BUSINESSES MORE INTERESTED IN PROTECTING THEIR GAINS - - SHOULD BE TARGETED FOR AID. THE GOAL OF MAKING FINANCIAL INSTITUTIONS MORE RESPONSIVE TO THE NEEDS OF SMALL BUSINESSES WILL BE WELL RECEIVED, BUT SPECIFIC PROGRAM PROPOSALS SHOULD EXTEND BEYOND THE INTERESTS OF THE ORGANIZED SMALL BUSINESS POLITICAL CONSTITUENCIES. THEREFORE, NEW PUBLIC POLICIES SHOULD BE PURSUED AS PART OF AN OVERALL STRATEGY OF ECONOMIC GROWTH, NOT AS A SMALL BUSINESS CONSTITUENCY ISSUE.

ON THE WHOLE, SMALL BUSINESSES APPEAR TO BE AS PROFITABLE, IF NOT MORE, THAN LARGE CORPORATIONS. BETWEEN 1972 and 1976, U.S. MANUFACTURING CORPORATION WITH ASSETS UNDER \$1 BILLION RETURNED ONLY 12.91 PERCENT, ACCORDING TO THE FEDERAL TRADE COMMISSION.

BIASES IN FEDERAL POLICIES HAVE TRADITIONALLY GIVEN FIRMS AN INCENTIVE TO INVEST OUTSIDE OLDER AMERICAN CITIES AND OUTSIDE LOWER-INCOME URBAN AREAS. THE CAPITAL MARKETS ALLOW BIG BUSINESS BETTER ACCESS TO FINANCING THAN NEW,

YOUNG AND SMALL FIRMS.

SMALL AND YOUNG COMPANIES EXPLORE NEW AVENUES AND NEW COMBINATIONS OF RESOURCES MORE EASILY, MORE CREATIVELY, AND AT LESS RISK THAN LARGE INSTITUTIONS. SMALL COMPANIES ARE PARTICULARLY IMPORTANT SOURCES OF LOCAL ECONOMIC VITALITY IN TERMS OF JOB CREATION, PROFITABILITY, TECHNOLOGICAL INNOVATION, AND EQUAL OPPORTUNITY.

IN CLOSING WE WOULD LIKE TO OUTLINE SOME APPROACHES TO ASSIST SMALL BUSINESSES AND SMALL CONTRACTORS.

FIRST, THE SKILLS OF ENTREPRENEURS, BOTH IN PRIVATE AND COMMUNITY-BASED-VENTURES, NEED TO BE ENHANCED BY BETTER-COORDINATED EDUCATION, TRAINING AND TECHNICAL ASSISTANCE SERVICES. SUCH SERVICES COULD BE PROVIDED BY THE KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT, SPECIFICALLY THE MINORITY BUSINESS DIVISION. FOR EXAMPLE, THE EMPLOYMENT PLACEMENT AND TRAINING PARTNERSHIP ACT, COULD BE USED TO HELP THE UNEMPLOYED BECOME NEW BUSINESS OWNERS. THE SUCCESSFUL BE YOUR OWN BOSS PROGRAM IN BROWARD COUNTY, FLORIDA, ARRANGED LOANS FROM SEVEN LOCAL BANKS AND TRAINED CETA-ELIGIBLES TO ESTABLISH 44 NEW BUSINESSES. ANOTHER STRATEGY IS THE CREATION OF TECHNICAL ASSISTANCE OFFICES LIKE THE MASSACHUSETTS COMMUNITY ECONOMIC DEVELOPMENT ORGANIZATIONS STARTING OR EXPANDING BUSINESSES.

SECOND, HIGHER COSTS OF PRODUCTION DISCOURAGE FIRM START-UP, EXPANSION, AND RELOCATION IN MANY COMMUNITIES. THE COSTS OF LAND AND TAXES CAN ALL BE ADDRESSED BY APPROPRIATE PUBLIC POLICIES. "LAND BANKS" HAVE BEEN ESTABLISHED IN CLEVELAND, PHILADELPHIA AND MILWAUKEE TO ACQUIRE AND IMPROVE CONTIGUOUS PARCELS OF LAND. LOCAL GOVERNMENTS SHOULD USE THE URBAN IDENTIFICATION SYSTEM DEVISED BY THE COUNCIL ON NORTHEAST ACTIONS TO DETERMINE WHAT BUSINESSES ARE UNDER REPRESENTED IN THEIR COMMUNITIES. SUCH RESEARCH WILL HELP NEIGHBORHOOD GROUPS, SMALL BUSINESSPERSONS AND LENDERS IDENTIFY PROMISING BUSINESS VENTURES.

LOCAL CITIZENS ORGANIZATIONS ARE ALSO A LARGELY UNTAPPED SOURCE OF ENTRENEURSHIP. BALTIMORE, PHILADELPHIA, KANSAS CITY, (MISSOURI), NEW YORK CITY AND SAN DIEGE HAVE AIDED NEIGHBORHOOD GROUPS IN ESTABLISHING BUSINESSES FOR DELIVERING LOCAL SERVICES. URBAN DEVELOPMENT ASSISTANCE GRANTS AND COMMUNITY DEVELOPMENT BLOCK GRANT MONIES CAN BE USED FOR ENTREPRENEURIAL FINANCE, AS NEW YORK CITY HAS DONE. LOCAL GOVERNMENTS COULD ALSO EXPLORE USING COMMUNITY DEVELOPMENT BLOCK GRANT MONIES TO GUARANTEE INDUSTRIAL REVENUE BONDS FOR FIRMS MEETING CERTAIN TESTS OF SIZE AND LOCATION.

NEW ENTERPRISE DEVELOPMENT AS A REVITALIZATION STRATEGY IS NOT, OF COURSE WITHOUT PROBLEMS. THE QUALITY OF JOBS PRODUCED IN TERMS OF WAGE LEVELS, FRINGE BENEFITS AND LONGEVITY IS OFTEN LOWER THAN THE MEAN. THE CLOSURE RATE OF SMALL BUSINESS IS VERY HIGH; MORE THAN 60 PERCENT OF NEW FIRMS DO NOT SEE THEIR FIFTH BIRTHDAY, ALTHOUGH LESS THAN ONE PERCENT OF NEW BUSINESSES FAIL WITH LOSS TO CREDITORS.

THE STATE SHOULD REQUIRE FINANCIAL REGULATORS, IN THEIR ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE, TO REPORT ON THE PERFORMANCE OF THE INSTITUTIONS IN SUPPORTING PRODUCTIVE BUSINESS DEVELOPMENT.

THE STATE SHOULD DEVELOP A STATE-LEVEL EQUIVALENT OF THE 1977 FEDERAL COMMUNITY REINVESTMENT ACT, WHICH DIRECTED REGULATORS TO CONSIDER WHETHER BANKS WERE MEETING THE NEEDS OF THE COMMUNITY. SUCH AN ACT SHOULD FOCUS ON A BANK'S RECORD IN MEETING THE NEEDS OF SMALL BUSINESS AS WELL AS CONSUMERS AND MORTGAGE LOANS.

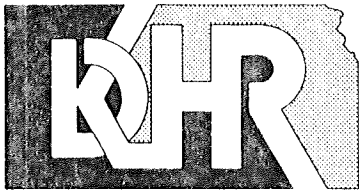
THE STATE SHOULD ENSURE THAT SMALL BUSINESSES ARE REPRESENTED ON THE BOARDS OF DIRECTORS OF MAJOR FINANCIAL INSTITUTIONS. MAJOR BANKS SELDOM HAVE SMALL BUSINESS REPRESENTATION.

THE STATE SHOULD ESTABLISH LOAN LOSS RESERVE PROGRAMS. THESE PROGRAMS DEVELOP A SPECIAL RESERVE FUND TO ALLOW BANKS TO MAKE LOANS OF MORE THAN NORMAL RISK. THEY WORK BEST IN STATES THAT HAVE A SUBSTANTIAL PERCENTAGE OF BANKING ASSETS IN LARGE BANKS, SINCE THE PROGRAM REQUIRES EACH PARTICIPATING BANK TO DEVELOP A LOSS RESERVE COVERING A BROAD PORTFOLIO OF LOANS.

THE STATE SHOULD CREATE A NEW CLASS OF COMMERCIAL LENDERS TO PROVIDE FUNDS FOR VENTURE CAPITAL FIRMS. CALIFORNIA, NEVADA AND SOME OTHER STATES HAVE CREATED "BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS" (BIDCOs) TO GENERATE MORE SOPHISTICATED FINANCING FOR VENTURE CAPITAL COMPANIES. THESE INSTITUTIONS MAKE GOVERNMENT GUARANTEED LOANS AND SELL THE GUARANTEES TO LEVERAGE THEIR FUNDS. SINCE THEY DO NOT TAKE DEPOSITS AND DO NOT HAVE FIDUCIARY RESPONSIBILITY OR FEDERAL INSURANCE, THEY CAN TAKE EQUITY POSITIONS AND DEVELOP MUCH MORE FLEXIBLE FINANCING RESPONSES THAN IS THE CASE FOR BANKS.

I HAVE COPIES OF THE INFORMATION SHARED WITH YOU AND IF YOU HAVE QUESTIONS, I WOULD ASK THAT YOU ALLOW ME TO REFER TECHNICAL QUESTIONS TO MR. McCRAY OR MR. AUGUSTO FROM THE MINORITY BUSINESS DIVISION OF THE KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT.

THANK YOU



ATT C
OFFICE OF THE SECRETARY
401 S.W. Topeka Avenue, Topeka, Kansas 66603
913-296-7474

John Carlin, Governor

Larry E. Wolgast, Secretary

SENATE BILL NO. 376
PROPOSED CHANGES TO K.S.A. 44-703(o)

The Employment Security Advisory Council recommended changes be made to K.S.A. 44-703(o) which is the definition of wages in the Kansas Employment Security Law. The proposed changes to the Kansas Law will conform to the definition of "wages" under the Federal Unemployment Tax Act (FUTA). These changes are brought about as the result of passage of P.L. 98-21 (Social Security Act Amendments of 1983) and P.L. 98-369 (The Deficit Reduction Act of 1984).

These changes will align the Kansas Employment Security Law with FUTA so that Kansas employers will not have to maintain two sets of records, one for the State government and one for the Federal government.

A new section [K.S.A. 44-703(ff)] was also added which provides for the treatment of certain deferred compensation and salary reduction arrangements. This new section is also a result of P.L. 98-21 which amends FUTA.

They also recommended one provision in the first paragraph of K.S.A. 44-703(o) which is not a result of the FUTA changes. This provision is as follows:

"Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period."

This provision will allow the Contribution Branch to establish wage credits for individuals who have worked for an employer but have not been paid those wages due them. Under our current statute, we are unable to secure these wage credits until the wages are actually paid.

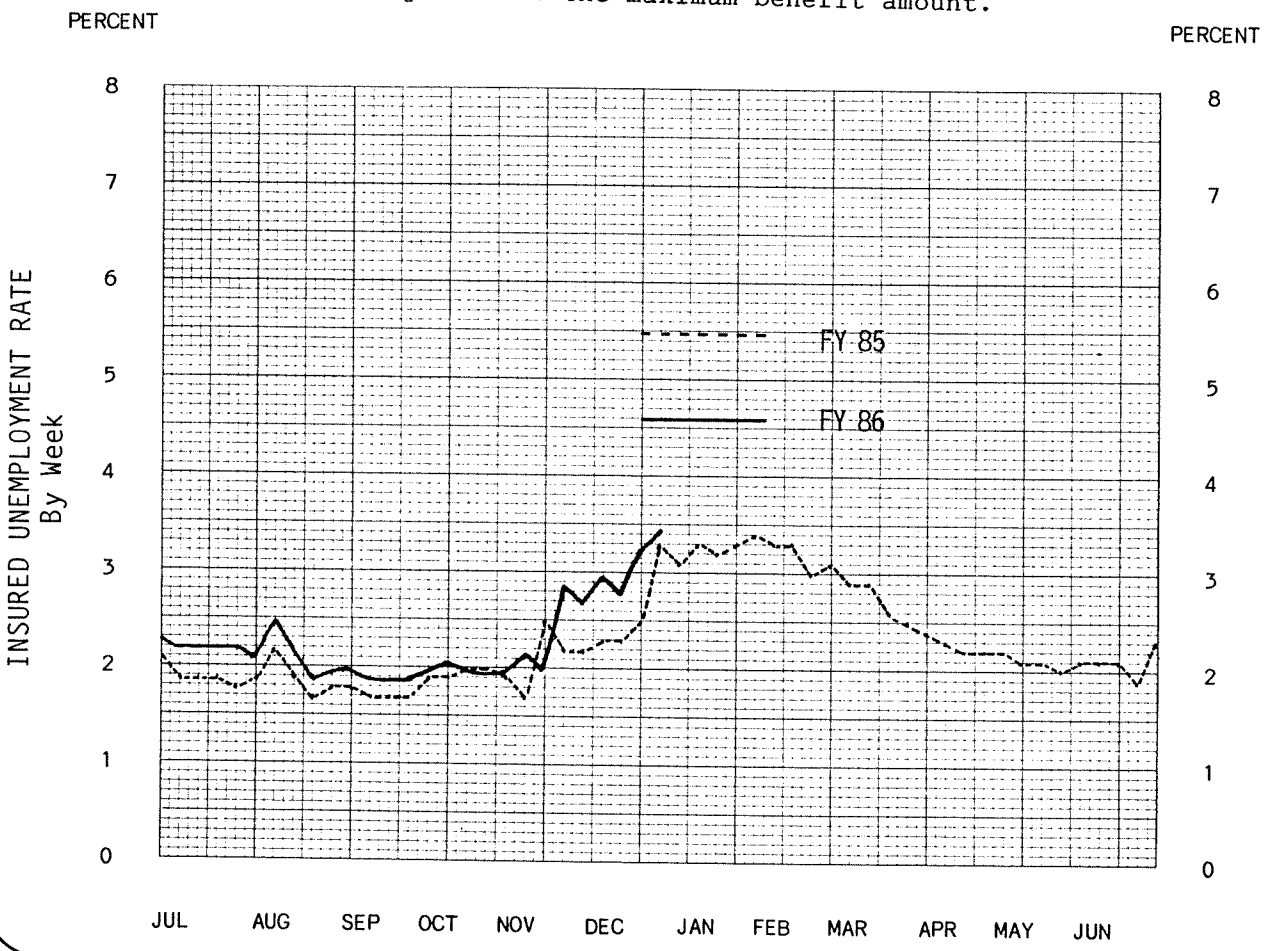
Attachment C 1/27/86
Senate Labor, Industry
and Small Business

UNEMPLOYMENT INSURANCE CLAIMS

January 11, 1986

WEEKLY HIGHLIGHTS

The Kansas insured unemployment rate for the week ended January 4, 1986 rose to 3.5 per cent from 3.3 per cent the previous week. The rate for the corresponding week of 1985 was 3.3 per cent. The number of initial claims filed during the week ended January 11, 1986 was up 12 per cent from the prior week but was well below the level of a year ago. Only a small number of manufacturing layoffs were reported during the week with most involving small groups of workers. Although moderate weather conditions existed, seasonal construction layoffs occurred during the week and were the prime factor in the upswing of initial claims. Continued claims increased slightly over the week as more claimants from recent layoffs were added to those already receiving benefit payments. The number of weeks compensated and the amount of payments both were down from last week's levels. The average weekly benefit amount, however, rose to \$145.30, as more new claimants became eligible for the maximum benefit amount.



KANSAS DEPARTMENT OF HUMAN RESOURCES
 RESEARCH AND ANALYSIS SECTION
 DIVISION OF EMPLOYMENT AND TRAINING
 REPORT SERIES NUMBER 23

1/27/86
 Attachment D
 Senate Labor,
 Industry and
 Small Business

Week Ended January 11, 1986

	This Week	Last Week	Year Ago
<u>Claims Filed 1/</u>			
Initial	4,786	4,253	7,063
Continued	27,948	26,763	24,043
<u>Insured Unemployment Rate (prior week)</u>			
Statewide	3.5%	3.3%	3.3%
<u>Weekly J. I. Benefit Payments</u>			
Individuals Receiving Payments. . .	26,773	26,473	24,048
Weeks Compensated	28,841	30,070	28,933
Amount.	\$4,190,628	\$4,352,248	\$3,915,099
Average	\$145.30	\$144.74	\$135.32

1/ Intrastate only; excluding transitional and interstate agent.

JOB INSURANCE CLAIMS FILED BY OFFICE

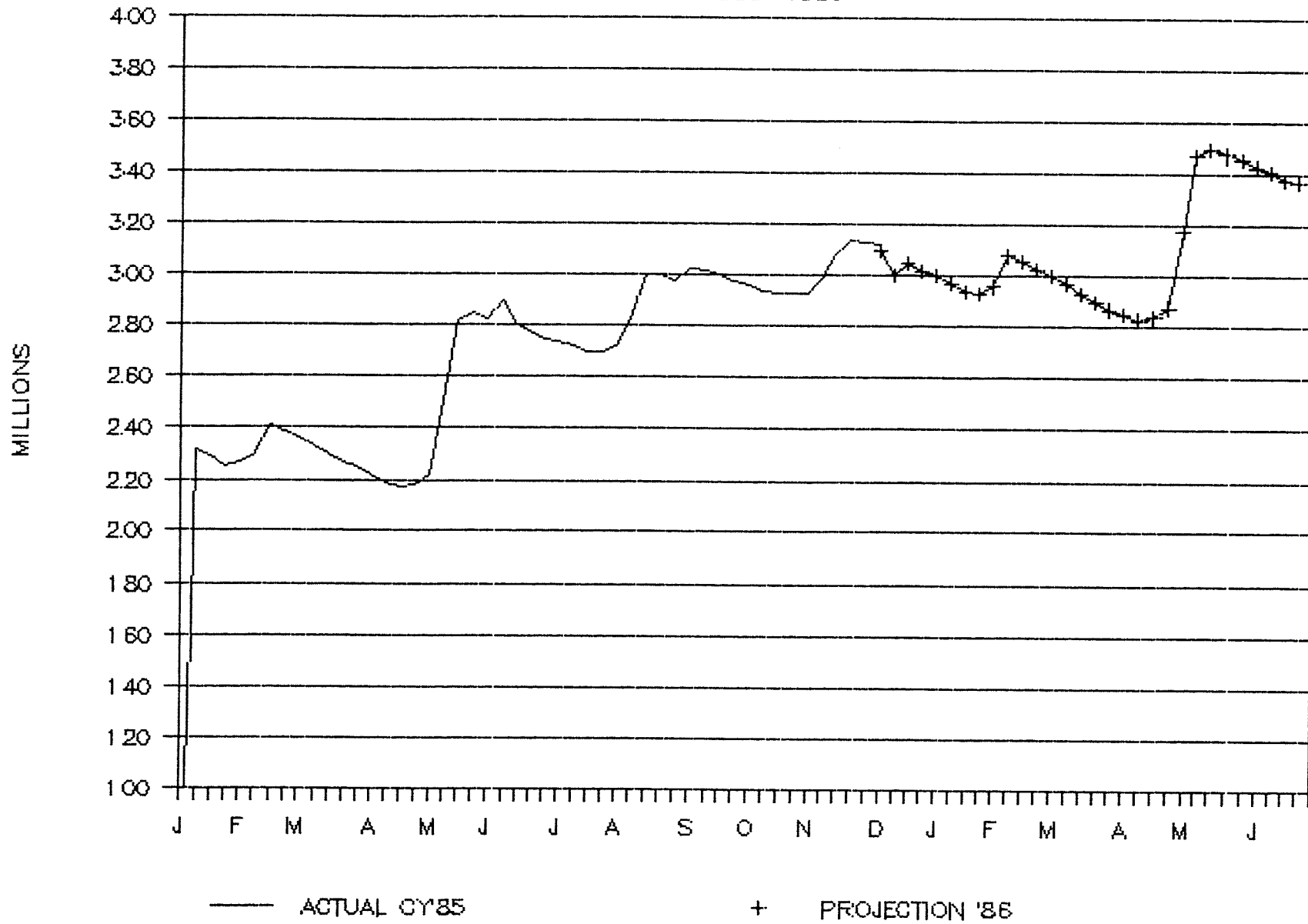
	Kansas Liable	
	Initial	Continued
<u>All Offices</u>	5,200	30,628
Administrative (Interstate)	414	2,680
<u>Job Insurance Offices</u>	4,786	27,948
Hutchinson.	571	3,823
Kansas City	699	3,330
Overland Park	519	3,345
Pittsburg	617	3,631
Salina.	355	2,370
Topeka.	956	5,249
Wichita South	475	2,878
Wichita Central	594	3,322

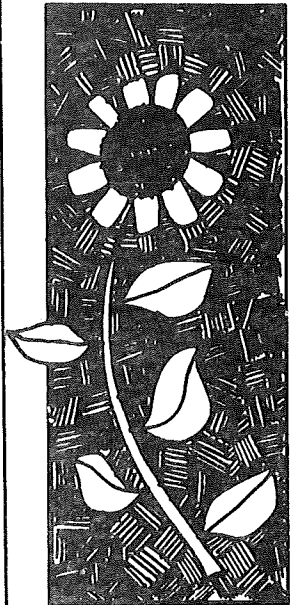
Note: Data relate to state programs only

Research and Analysis Section
 Division of Employment and Training
 Department of Human Resources
 Topeka, Kansas

TRUST FUND BALANCE

CY 1985-1986





STATE OF KANSAS Departments of Administration and Human Resources

OUTLINE- Employment Security Law

Purpose

The public policy of Kansas is to alleviate economic insecurity based on unemployment by providing benefits to those who are unemployed through no fault of their own. K.S.A. 44-702.

Entitlement to Benefits

Once an individual has become unemployed, he or she may file for unemployment insurance benefits. An initial determination is made as to whether or not the individual is entitled to receive benefits. An individual is entitled to benefits if he or she has been paid wages in at least two quarters and earned thirty (30) times the weekly benefit amount in the base period, which is the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. K.S.A. 44-704.

A benefit year is calculated from the first day of the first week in which an individual files a valid claim. K.S.A. 44-704.

When an individual is entitled to receive unemployment insurance benefits, the total amount which he or she is entitled to receive in benefits is established. A weekly benefit amount (WBA) is determined. The WBA is an amount equal to four and 25/100 per cent (4.25%) of the calendar quarter in which the claimant earned the highest wages. K.S.A. 44-704(b).

The maximum WBA is reached by computing sixty percent (60%) of wages paid to employees in insured work during the previous year. K.S.A. 44-704(c). The maximum WBA cannot be more than one hundred ninety dollars (\$190.00).

The minimum WBA is twenty-five per cent of the maximum WBA. K.S.A. 44-704(d).

Qualification for Benefits

Once the entitlement to benefits is established, a determination is made as to whether or not an individual voluntarily separated from employment. The separation issues include quits and discharges for breach of duty or gross misconduct. Each determination of separation is based on the facts presented by the individual and the employer.

The individual provides information on the separation issue through answers to a series of questions, particularized to a voluntary quit or a discharge. The employer is then notified of the individual's application for benefits and given an opportunity to make a written statement on the facts of the separation. The examiner determines the voluntariness of the separation from employment after evaluating the statements of the claimant and the employer.

Voluntary Quit K.S.A. 44-706(a)

An individual will ordinarily be disqualified for unemployment benefits if he or she voluntarily quits work. There are eleven exceptions set out in the statute under which an individual may qualify for benefits when it appears he or she has voluntarily separated from employment. The individual who quit work bears the burden to prove he or she is entitled to be qualified through an exception.

1. An individual is forced to leave work because of

illness or injury. The following elements must be satisfied if the individual is to be qualified to receive benefits.

- a. The departure from work is upon the advice of a physician;
- b. The individual must immediately notify the employer of the reason for the absence;
- c. Upon recovery, the individual must return to the employer and offer services; and
- d. The normal job or a comparable and suitable job is not available when the individual is offered to return to work.

Example:

An individual is a data entry operator. He developed frequent severe headaches and intermittent blurring of vision over a period of time. His physician restricted him from this type of work for a period of one month. Proper notice was given the employer. No other work was available so the individual was given a leave of absence.

During the month the individual was on a leave of absence, budgetary considerations had required the employer to eliminate a number of positions. When the individual returned to work with his physician's recommendation that he work in a different job, no suitable work was available.

This individual will be qualified for benefits as he has satisfied the four elements set out in the statute.

2. An individual left temporary work to return to a regular employer.

Example:

An individual was laid off employment for a two week period. During that time, she secured short-term employment. The employer was aware that she would be available for only two weeks.

The individual was discharged within a few days of her return to regular employment. She then filed for unemployment benefits.

It is important to note that K.S.A. 44-706(a)(2) looks to the separation from temporary employment. The claimant will not be penalized by disqualification because she quit a temporary job to return to regular employment.

3. An individual left work to join the Armed Services but was rejected or the expected date of entry was delayed.

Example:

An individual resigned from employment to enter the Army. Because of a medical condition of recent origin, he was rejected.

This individual will probably be qualified for benefits. It is possible the individual might be disqualified if the employer could establish the individual knew or should have known the medical condition would cause the Army to reject him for active service.

4. An individual resigned from employment to accompany the spouse who was transferred. Several elements must be satisfied to fit within this exception:

- a. The spouse is transferred;
- b. The transfer is to another geographic location to which the spouse was transferred is such that it is unreasonable to continue employment.

Example:

An individual resigned from employment in Kansas because her husband was transferred to the company headquarters in Chicago, Ill.

The individual will qualify for benefits as she has satisfied the elements set out in the statute.

5. An individual terminated employment because of hazardous working conditions. The elements to be investigated in the determination of whether work is hazardous are:

- a. The degree of risk to the individual's health, safety, and morals;
- b. The physical fitness of the individual;
- c. The prior training of the individual; and
- d. The working conditions of workers in the same or similar work for the same or other employees in the locality where the individual worked.

Example:

The individual worked in a factory. The employer had failed to provide safety guards for the machines.

The individual had made three verbal complaints to his supervisor and two written complaints, one to the supervisor and one to the plant manager, over a period of six months. Two individuals had suffered injuries because of the lack of guards.

At the end of the six month period, no additional guards had been placed on the machines so the individual resigned.

The individual will qualify for benefits. He has established the risk to his health and safety. The risk was supported by injuries to fellow employees because guards were not in place. He complained verbally and in writing in an attempt to remedy the situation. Although not established in the facts, industry standards require guards when working with machines with exposed moving parts.

6. An individual resigned from employment to enter training approved under section 236(a)(1) of the Trade Act of 1974. The following elements must be satisfied to avoid a disqualification for benefits:

- a. The training under the Trade Act of 1974 must be approved.
- b. Past work must be adversely affected.
- c. The work from which the individual resigned must not be of a substantially equal or higher skill level than the individual's past adversely affected employment.
- d. Wages of the occupation for which the individual entered training must not be less than 80% of wages paid for past work. The wage paid for work in which the individual is training is determined under the Trade Act of 1974.

Questions of whether past work is adversely affected may be directed to the Administrative Office, Benefits Branch. Adversely affected means the specific employer and the individual worker has been certified by DOL to receive Trade Act Benefits.

Example:

An individual was employed in the manufacture of farm implements. Because of the economic ramifications of a severely depressed farm economy, he was laid off work for an indefinite period of time. He had been paid an hourly wage of \$6.00.

The individual secured a job as a clerk in a convenience shop. He received an hourly wage of \$3.35.

The individual resigned employment as a clerk to enter approved training to become an electrician.

Again, under K.S.A. 44-706(a)(g), it is important to be aware that the separation from employment which is at issue is the separation which occurred immediately prior to entering approved training. In the event that benefits are paid, a contributing employer will be issued a pro rata charge to its account and a reimbursing employer is liable.

It is necessary to establish whether past work was adversely affected and percentage regarding wages to determine whether the individual is qualified for benefits.

7. An individual resigned from employment because of unwelcome harassment by the employer or of harassment by another employee of which the employer had knowledge.

Example:

A woman had been subjected to remarks and questions laden with innuendo of sexual nature on six or seven occasions over a period of one year by a fellow

employee. The employee was a good friend of the supervisor. There was no witness to the remarks and gestures on any occasion.

The individual made two verbal complaints to the supervisor over a period of one year. There was no change in the employee's behavior toward her.

The individual had become extremely stressed by the employee's behavior and had begun to feel the continuation of her employment was dependent upon her response to her fellow employee's behavior. She eventually resigned from employment.

The claimant will probably be qualified to receive benefits as an individual is entitled to work in an environment free of harassment. Further, she had attempted to remedy the situation but without success.

8. An individual resigned to accept better work. Elements to be considered in the determination of whether the work accepted is better are:

- a. Rate of pay;
- b. Hours of work;
- c. Probable permanency of work from which the individual resigned as compared with the work accepted;
- d. Cost of getting to the work from which the individual resigned as compared to the cost of getting to the newly accepted employment; and
- e. The distance from the previous place of employment in comparison with the distance to the place where employment has been accepted.

Example:

The claimant resigned from employment as an electrician. He was paid \$15.00 an hour. The employer's premises were located 50 miles from his residence. He resigned to accept employment as an electrician at an hourly wage of \$15.00 for an employer located 40 miles from his residence.

This issue is close. The comparative cost of traveling to and from work is not established in the facts. Therefore, it must be inferred the cost of traveling to newly accepted work is less as it is ten miles closer. It must be determined whether this is a significant reduction in cost.

9. An individual resigned from employment because of an instruction or a request by the employer, supervisor, or fellow employee to perform a service or act as part of the job which is in violation of an ordinance or statute.

Example:

An individual was requested by her supervisor to deliver ten marijuana joints to a customer when she

made a pizza delivery. She turned the joints into the police. She did not return to work.

This individual will be qualified for benefits. The act requested of her was clearly illegal.

10. The individual terminated employment because the employer had violated the work agreement. The individual had exhausted all available remedies to settle disputes prior to termination.

Example:

The individual worked in sales on a 15% commission with a guaranteed monthly salary if the commission didn't reach a gross of \$1,300.00 per month.

He resigned from employment when the employer did not pay the guaranteed monthly salary. The individual had received \$1,000.00 in commissions for the month in question. He did not talk with the employer nor utilize any available remedies for resolution of the dispute.

The individual will be disqualified as he did not make an attempt to remedy the dispute prior to resignation.

11. The individual left work because of a personal emergency which was of such nature and compelling urgency that it is unreasonable to impose a disqualification. The individual must have made reasonable efforts to preserve work before resigning.

Example:

The individual, an only child, wished to provide care for her widowed father who was in the terminal stages of a long term illness. He was unable to afford the expense of nursing care in his home or in a good extended care facility. His physician did not feel his condition was critical enough for admission into the hospital.

The individual requested vacation time and then a leave of absence from her supervisor. Because of business considerations, both requests were denied. She then resigned from employment.

The individual will probably be qualified for unemployment benefits under the circumstances given in the example. The situation is urgent as care is needed and is beyond the financial resources of the father. Further, she is apparently the only relative available to assist her father. These factors, in conjunction with the humanistic need to care for and comfort a dying parent, make it contrary to good conscience to impose a disqualification.

An individual who voluntarily quits work is disqualified for a period which begins the day following the separation and continues until the individual returns to insured work and earns three times the weekly benefit amount.

There is no charge to the employer's account if the employee is found to have quit without good cause or to have quit for good cause based on personal reasons. K.S.A. 44-710(c)(2)(A)(iii).

Breach of Duty

K.S.A. 44-706(b)

An individual may be discharged from employment because he or she breached a duty owed the employer. The employer has the burden to prove the claimant was discharged for a breach of duty.

A duty is a substantial and reasonable obligation owed an employer by an employee. The duties spring from the terms of the employment contract, either expressed or implied. The following are a few of the multitude of duties relating to employment:

1. Report to work regularly and in a timely manner.
2. Loyalty to the employer.
3. Rendering a "day's work for a day's pay".
4. Maintenance of a reasonable standard of behavior.
5. Compliance with reasonable rules and regulations of the employer.
6. Intentional failure to successfully perform duties.
7. Intentional disruption of production.
8. Calculated friction with a supervisor.

The employer has the burden to prove a discharge was based on a breach of duty. Four elements must be established:

1. A material duty reasonably owed an employer by an employee;
2. A substantial breach or violation of the duty;
3. Intentional action to breach the duty; and
4. Substantial disregard of the interests owed the employer.

As a punitive statute is to be construed narrowly, an isolated instance of negligence, inadvertance or act of a similar nature is not considered to be a breach of duty. Inability or incapacity to perform work is not a breach.

Example:

An employee had a history of frequent absen-

teism. Generally the employee had notified the employer of her absence in a timely manner. The reasons for which she was absent include personal illness, personal business, and car trouble. She was discharged after notifying her supervisor that she would be absent from work because of illness.

The claimant had a substantial obligation or duty to report to work regularly as scheduled. She was frequently absent from work which caused a hardship on the employer. Three of the four elements have been satisfied. The decision rests on whether the absence was unavoidable and due to circumstances beyond the control of the individual or whether it was a continuation or pattern of absences which could have been avoided.

An individual was discharged from employment because he was unable to work at a pace rapid enough to satisfy the supervisor. The claimant worked in the same production area for four months. At no time had his level of productivity satisfied the supervisor. He had been verbally reprimanded at least twice and in writing once. The supervisor was satisfied with the quality of the work.

This individual was discharged merely because he could not do the work for which he was hired. Inability to do work is not a breach of duty. There was no intentional action taken in substantial disregard of the interests of the employer.

When an individual is discharged for a breach of duty, no charge is made to the employer's account. K.S.A. 44-710(c)(2)(A)(i).

If an individual is disqualified because he or she was discharged for a breach of duty, the entitlement is reduced by ten (10) times the weekly benefit amount. Further, there is a disqualification period of eleven weeks during which an individual cannot receive benefits.

Gross Misconduct K.S.A. 44-706(b)

Gross misconduct is "conduct which evinces willful and wanton disregard of an employer's interests or carelessness or negligence of such a degree or recurrence to show an intentional or substantial disregard of the employer's interest." The employer has the burden to prove gross misconduct.

Examples:

An employee who steals from the employer is guilty of gross misconduct. The theft demonstrates voluntary action taken which is reckless and disregards the rights or safety of others or the consequences of the act. (Willful and wanton behavior)

An employee who repeatedly ignores rules which place the physical well being of other employees in jeopardy may be guilty of intentional carelessness or negligence which constitutes gross misconduct.

An employee discharged on the basis of gross misconduct is disqualified from receiving employment benefits until the individual returns to work and earns at least eight (8) times the determined weekly benefit amount.

Suitable Work K.S.A. 44-706(c)

The question of suitable work appears in two areas: Whether, without good cause, an individual refused a job or failed to apply for a job offered by an employer or employment service. Listed in the statute are factors to be considered in suitable work issues:

1. "degree of risk involved to health, safety, and morals,
2. physical fitness, and
3. prior training,
4. experience and
5. prior earnings,
6. length of unemployment, and
7. prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and
8. the distance of available work from the individual's residence."

When work is determined to be suitable, further inquiry is made to determine if the refusal was with good cause. Areas of evaluation are:

1. The restrictions or circumstances particular to the individual;
2. The prevailing conditions of employment;
3. The available labor market; and
4. Applicable federal standards.

The burden to prove a job was offered or that work is suitable is that of the agency or the employer. Once the offer of work or suitability of work is established, the burden of proof shifts to the claimant who must prove

good cause for refusing the offer or failure to apply for work or that the work is unsuitable.

Examples:

A woman declines the offer from the State Employment Agency to apply for a job which was out of area in which she wished to work.

As the individual did not investigate the offer of employment, she could not determine whether or not the work was suitable. Further inquiry is necessary to establish the reasons the individual wished to work only in a restricted area and whether the reasons constitute good cause. It is generally difficult to justify the failure to investigate a job offer.

Example:

An individual's position was phased out by the employer. The claimant was offered another position with the same title but with substantially altered responsibilities and a substantially lowered salary. The individual refused the position.

An individual is given a reasonable length of time to secure employment similar in responsibilities and salary to the individual's previous employment. Generally, it will be found that the individual refused work with good cause under the aforementioned facts.

An individual who failed to apply for suitable work or accept an offer of suitable work without good cause is disqualified from receiving benefits for the waiting week and the following ten (10) weeks. The benefit entitlement is reduced by ten (10) times the determined weekly benefit amount. No charge to the employer's account is issued on a suitable work determination.

Fraud

K.S.A. 44-706(g)

An individual is disqualified to receive unemployment benefits if he or she knowingly makes a false statement or representation to obtain employment benefits. The agency has the burden of proof.

Example:

The individual continues to file claim cards after returning to work. He answers "no" to the question, "Did you work?". The individual does not fill in the hours worked in the area so designated on the claim card.

This individual has improperly been issued unemployment benefits for obvious reasons.

Because of the stringent administrative penalty for

false representation and because of the potential of criminal charges, extreme care is taken by the investigator to insure the due process rights of the individual are protected.

When an individual is found to have falsely represented his employment status, he or she is disqualified to receive unemployment benefits for one year. Upon evaluation of the evidence, the case will probably be forwarded to the appropriate county attorney for prosecution.

All claims filed are checked against employer's wage records each quarter.

A random check is made to discover misrepresentation when wages are not reported. A social security number is randomly selected and a field investigation is done.

Eligibility

Once an individual has established a valid claim and is found qualified to receive benefits, a determination of eligibility is made. Each individual must meet statutory conditions to establish waiting week credit, in which no benefits are paid, and for each subsequent week to receive benefits.

There are four standards which must be satisfied to be eligible to receive benefits. K.S.A. 44-705(c):

1. Ability to perform the duties of the claimant's customary occupation or work for which the individual is reasonably fitted by training or experience;
2. Availability for work;
3. Pursuit of a full course of action most reasonably calculated to result in reemployment; and
4. Unemployment.

The claimant bears the burden to prove that he or she is eligible for benefits.

Able to Work

The ability of an individual to work involves both physical and mental ability. Individuals are expected to be able to perform the duties of their customary occupation.

As a general rule, an individual must be able to work each day of the normal work week. However, this is subject to the rule of reason in the light of the facts and circumstances specific to the individual.

Availability for Work

Availability is at the heart of eligibility. Availability is a broad issue which speaks to domestic, retirement, school, and self employment issues, among others.

Availability for work is difficult to define but should be taken in the ordinary and usual meaning.

The availability requirement is generally satisfied if an individual is 'willing, able, and ready to accept suitable work'. *Clark v. Board of Review of the Employment Security Division*, 187 Kan 695, 698-99, 359 P.2d 856 (1961).

Work Search

An effective work search demonstrates an intent to secure employment. As a rule of thumb, an individual is expected to make contacts with employers or hiring halls each week. The rule of thumb, subject to the rule of reason, is applied after evaluating the specific circumstances of each individual.

Unemployment

An individual must be unemployed to be eligible for benefits. However, a partially employed individual may be eligible for benefits. The determination is made following an evaluation of the number of hours worked and the amount of compensation received.

Clark v. Board of Review, supra, is the leading case on eligibility in this jurisdiction.

Examples:

An individual is attending school as a full time student.

He is not available for work in the usual labor market because the hours he can work are restricted by the hours he attends school.

An individual is working greater than forty hours each week in sales. She is paid by straight commission. She is, however, considered by the company to be an employee.

The individual is employed even though she is receiving minimal, if any, compensation. Further, she is not available for work because the number of hours she is working restricts her availability to the labor market.

An individual is hospitalized because of a thought disorder. He is not able to work as an accountant, his customary occupation. He has looked for work in

other areas but has declined positions because he believed them to be too stressful.

The claimant is unable to work because of the state of his health. The claimant does not satisfy the availability standard because he has restricted the type of work for which he is available.

The claimant made contact with two employers by telephone on Wednesday. Although she looked through the classified ads each day, she took no other action to find work.

Unless further inquiry revealed additional pertinent facts, this woman may not have made an adequate work search. In-person contacts on regular work days in the week heightens the individual's visibility to employers and, if appropriate, according to labor market attachment, may require a daily search of some type or contact with hiring halls.

The eligibility for benefits is a week by week determination. If an individual does not meet the requirements during a specific week, the weekly benefit will not be paid.

No charge to an employer's account is issued on an eligibility determination.

Weekly Benefit Denials for Specific Circumstances

Specific circumstances under which an individual is denied benefits on a weekly basis are:

1. Unemployment because of a work stoppage which exists because of a labor dispute. K.S.A. 44-706(d);
2. Receipt of unemployment benefits from another state. K.S.A. 44-706(c);
3. Receipt of unemployment allowance or compensation from the United States government by ex-service member. K.S.A. 44-706(f);
4. Receipt of Worker's Compensation payment. K.S.A. 44-706(h);
5. Unemployment during break in regular academic year in an educational institution with a contract or reasonable assurance of continued employment. K.S.A. 44-706(i);
6. Unemployment because of seasonal nature of athletic and sports schedules. K.S.A. 44-706(l); and
7. Unemployment of alien not lawfully admitted for permanent residence when services were performed. K.S.A. 44-706(m).

8. Receipt of pension payments for the amount contributed to by the base period employer. K.S.A. 44-706(n).

Liability of Employers

Employers can pay into the employment security fund under one of three categories of employers: Reimbursing employer 44-703(x), Contributing employer 44-703(y) or Rated governmental employer 44-703(bb). The State of Kansas has elected to reimburse as an employer 44-710(e).

As the state has elected to pay into the fund through reimbursement, no charge is issued when the decision on separation from employment is made. The state makes full reimbursement to the fund for benefits paid to former employees.

The State of Kansas pays into the fund on a quarterly basis. The yearly fiscal rate is based on the following statutory considerations 44-710(e)(2)(G):

- (i) The available balance in the state's reimbursing account as of December 31 of each calendar year;
- (ii) The historical unemployment experience of all covered state agencies during prior years;
- (iii) The estimate of total covered wages to be paid during the ensuing calendar year;
- (iv) The applicable fiscal year rate of the claims processing and audit fee under Section 1; and
- (v) Actual and other information furnished to the secretary by the Secretary of Administration.

Appeals

If either an employer or a claimant disagrees with the initial determination by the examiner, they have the right to appeal the decision to a referee. This is done by stating the reasons for the appeal through a letter or on a standard appeal form. K.A.R. 48-1-1. The appeal must be in writing within sixteen days of the date the examiner's decision was mailed. Otherwise, the decision becomes final. K.S.A. 44-709(c).

If an appeal is filed, a hearing is held before a referee. The referee is required by statute to afford parties a "reasonable opportunity for fair hearing".

Due process must be observed to insure a fair hearing.

Notice is given to both parties which states the issue and cites the appropriate law. Parties are offered an opportunity for full disclosure of the facts through direct and cross examination of witnesses. Notice of the hearing shall be mailed to the parties at least five (5) days before the hearing. K.A.R. 48-1-2.

An individual may waive written notice of the hearing by stating the same on the record.

The hearing is open to the public. The procedure is recorded by the referee. No other mechanical recording is allowed. K.A.R. 48-1-4(b).

The information taken from claimants and employers to properly administer the Employment Security Law is confidential. K.S.A. 44-714(f). A party may request and receive information which he or she has submitted to the record if proper identification is made available and a written request for his or her information is submitted. K.A.R. 50-4-2(a)(1)(A) and (B).

Once a referee's written decision is issued, either party may appeal the decision to the Board of Review (hereinafter the Board). The appeal, stating reasons for the appeal (K.A.R. 48-2-2), must be made in writing within sixteen (16) days of the date the decision is mailed. K.S.A. 44-709(c).

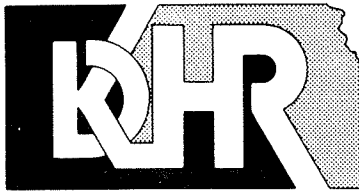
The board consists of three members. Two members, the representative of employers and the representative of employees, are appointed by the Governor, subject to Senate confirmation. The third board member, the representative of the general public, is selected by the other two members. If they are unable to agree, the appointment is made by the Governor. K.S.A. 44-709(f).

The Board issues a notice of appeal to appropriate parties involved in the appeal. K.A.R. 48-2-2.

The Board makes its decision upon the record made by the referee at the hearing. In its discretion, the Board may remand an issue to the referee for additional evidence. K.A.R. 48-2-3.

Once administrative remedies are exhausted, an individual may appeal to the district court. The appeal must be made within sixteen (16) days of the date the decision from the Board was mailed. K.S.A. 44-709(i)(1) and (2).

The appeal to the District Court is confined to a decision on the questions of law. The court will determine if the facts are supported by the evidence. The court will look behind the facts to determine that fraud is absent. K.S.A. 44-709(i)(5).



OFFICE OF THE SECRETARY
401 S.W. Topeka Avenue, Topeka, Kansas 66603
913-296-7474

John Carlin, Governor

Larry E. Wolgast, Secretary

Employment Security Law - Employer Obligations

BASIC PREMISE OF THE EMPLOYMENT SECURITY LAW FUNDING

Unemployment Insurance is financed by employers through Federal and State payroll taxes. The Federal Unemployment Tax is used, in part, to finance all administrative expenses of the State UI system and the federal costs involved with extended benefits. The Kansas Unemployment Tax is used only for the payment of benefits to unemployed workers.

COVERAGE AND LIABILITY

An employing unit is determined subject to the Kansas Employment Security Law when any of the following minimum requirements of K.S.A. 44-703(h) are met:

1. Agricultural Employment: When an employing unit employs ten or more individuals in agricultural labor for some portion of a day in twenty different weeks in the current or preceding calendar year or has quarterly cash wages of \$20,000.00 or more in the current or preceding calendar year.

Example:

A rancher hires twenty workers to assist him in his ranch-related duties. The individuals all work on the same days and their employment covers a twenty-five week span.

Result:

Liability is incurred for the current year.

Example:

A farmer has two employees who are paid a salary of \$9,000.00 per year each. In addition to the salary the employees are given free room and board valued at \$5,000.00 per year each.

Result:

No liability is incurred since the total cash wages paid were less than \$20,000.00 per quarter. Remuneration in kind (room and board) is not included in determining "cash wages."

2. General Employment: When an employing unit employs one or more individuals for some portion of a day for twenty different weeks within a calendar year or has wages of \$1,500.00 or more in any calendar quarter.

Example:

An employer hires a part-time employee for three afternoons a week. The employee has worked every week since January 1, 1984.

Result:

Liability is established 4-20-84 by virtue of 20 weeks of employment.

Example:

An employer hires an employee during the summer months only (June 1st to September 1st) and pays \$150.00 per week.

Result:

No liability is incurred since neither criteria for liability has been met (there was 13 weeks of employment and the quarter with the largest payroll was only \$1,200.00).

3. Governmental/Political Subdivision: When the State of Kansas, any unit of local government, and any political subdivision of the state or local government or any combination of these has any covered employment.

Example:

A local town creates a new water district and hires a secretary/book-keeper to work the office.

Result:

Liability is incurred since this is nonexempt employment.

Example:

Due to a flood a city hires individuals to help with the clean-up tasks.

Result:

While the city is a liable employer, individuals performing duties as a result of any fire, storm, snow, earthquake, flood or similar emergency is exempted from their income being reported as wages.

4. Successorship: When an employing unit acquires the Kansas business of an employer already subject to the law.

Example:

An individual, operating as a corporation, purchases an already existing business on a turn-key basis.

Result:

Liability is incurred since the corporation purchased an already existing business and is continuing to operate it. (The form of ownership has no bearing on the basis of liability.)

Example:

An individual, operating as such, purchases a small business. All equipment, inventory and other assets are sold except the new owner lets the old staff go and hires only their spouse to work with them.

Result:

No liability is incurred because as an individual proprietor a spouse's wages are exempt. The old owner's (predecessor) account will be terminated.

5. Domestic Service: When an employing unit pays cash wages of \$1,000.00 or more in any calendar quarter for domestic service.

Example:

An employer has a live-in house-keeper whom receives \$300.00 per month salary.

Result:

No liability is incurred since less than \$1,000.00 in cash wages would be paid in any quarter. Once again the value of the room and board will not be included unless liability is established under the cash value basis.

6. Reactivation: When a previously subject employer resumes paying wages following a period of inactivity and their former liable status has not been formally terminated.

Example:

An employer who closed his business in February 16, 1984 reopens the doors of his old business as of August 7, 1985.

Result:

Liability is incurred as an inactive employer who resumed paying wages within three years of the account's inactivation.

Example:

An employer who last ran his business in 1978 opens a brand new business as of July 7, 1985.

Result:

Liability is not incurred yet. The employer who has been inactive for three years or more is considered terminated and is treated as any new employer upon starting a new business.

7. Voluntary Election: When an employing unit is not otherwise subject to the law and voluntarily elects to come under the provisions of the law for a minimum period of two calendar years.

Example:

An employer who owns a business operating since September 12, 1984 requests to have what little employment he has covered. The employment never involves 20 weeks of employment for the year nor a quarter of \$1,500.00 total wages.

Result:

Liability is incurred but only for the calendar year the request is made in.

8. FUTA: When an employing unit is not otherwise subject to the law but as a result of their employment in all states is subject to the Federal Unemployment Tax Act within either the current or preceding calendar year.

Example:

A new employer to Kansas opens a business in 1985 that was previously nonexistent. The employer has come from Oklahoma where he operated a liable business in 1984.

Result:

Liability is incurred since the employer is liable under FUTA requirements as being a liable employer in the current or preceding year.

9. 501(c)(3) Organization: When an employing unit is a non-profit organization described in section 501(c)(3) of the Internal Revenue Code and employs four or more individuals for some portion of a day in twenty different weeks in a calendar year.

Example:

A non-profit corporation has three full-time staff members and one part-time staff member.

Result:

Liability could be incurred since any "part-time" employment by Employment Security Law definition is an employee so they are included in the count of four or more employees for 20 weeks.

Example:

A non-profit organization has a total of 12 hourly employees but at no time do any more than three work on any given day.

Result:

No liability is incurred as the total number of employees has no bearing on the liability.

Example:

Because of a special grant a non-profit organization is able to hire 20 employees for a three-month period and pays over \$50,000.00 in wages during this span.

Result:

No liability is incurred since the only criteria of 20 weeks of employment of four or more employees was not met.

COVERED AND EXCLUDED EMPLOYMENT

K.S.A. 44-703(i)(1) through (i)(3)(K) defines employment as any service, unless specifically excluded, performed for compensation under a contract of hire, whether the contract is expressed or implied, written or oral, and without regard to whether the service is performed on a part-time, full-time or casual basis.

Employment is service performed by an active officer of a corporation, including professional and closely-held corporations, or any employee under the common law employer/employee relationship. Employment also includes specific types of services, such as agent driver and commission salesperson.

Terms such as regular employment, full-time employment, commission sales, casual labor, temporary employees, part-time employees, contract for hire, teenage workers, etc., are all different words for employees. These items generally constitute employment and are usually reportable.

Employment or payrolls connected with the following types of services are excluded from coverage: K.S.A. 44-703(i)(4)

1. Service covered by another unemployment insurance law (such as Railroad Retirement Act and federal employees).
2. Services performed by an individual in the employ of a son, daughter, or spouse or by a child under 18 years of age employed by the child's parents (effective May 24, 1984, under 21 years of age). This family exemption does not apply to any corporation. It is applicable only for an individual proprietorship or a partnership if the relationship of the exempt member is the same for all partners of the partnership.

Example:

An individual owner of a business hires her parents, her husband and her 16 year old adopted son to work at the business.

Result:

No liability is established since all these wage earners are exempt from coverage.

Example:

Two brothers are partners in a firm, they have their parents, both their wives and all their children on the company payroll.

Result:

In establishing the liability only the information pertinent to the wives and children are considered. Since the relationship with the parents is the same for both partners these wages are exempt.

3. Services performed for a church, convention or association of churches or an organization which is operated primarily for religious purposes and is owned, operated, controlled, or principally supported by a church or a convention or association of churches.

Example:

A custodian is hired by a church to maintain the buildings and grounds.

Result:

These wages would not be used to establish liability since they are exempt.

Example:

A day care business rents space from a church to conduct their daily work with no affiliation to the church.

Result:

Since the business is not church related any wages paid to any employees would be accountable towards meeting liability requirements.

4. Service performed by carriers under 18 years of age in the delivery or distribution of newspapers or shopping news directly to the consumer, not including delivery or distribution to any point for subsequent delivery or distribution.

Example:

A fifteen year old has a paper route that delivers newspapers door to door.

Result:

The individual is exempt and is not considered an employee of the paper.

Example:

A newspaper utilizes drivers to deliver bundles of their papers to appointed spots.

Result:

These drivers do not qualify for an exemption as they are not involved in the direct delivery of the newspaper and are therefore reportable.

5. Services, of an individual, performed for an organization exempt from Federal Income Tax as set forth in Section 501(a) of the Federal Internal Revenue Code, if wages for such services are less than \$50.00 per calendar quarter.

6. Services of an elected official, member of a legislative body or member of the judiciary of a state or political subdivision, in the performance of the duties of such office or position.
7. Service performed as an insurance agent or solicitor, if all such service is performed for remuneration solely by way of commission.

Example:

An insurance agency manager receives commissions on all his sales as well as a percentage of any sales from the salesmen working for him.

Result:

All his income, commission and the percentage from his sales force are to be reported since his income is not solely by way of commissions.

8. Effective May 24, 1984, services performed as a qualified real estate agent if remuneration for services is directly related to sales or other output and the services are performed pursuant to a written contract and the contract provides that the individual will not be treated as an employee.
9. Other exemptions include certain services performed by students, inmates of correctional institutions, hospital patients, recipients of certain rehabilitation work-relief and work-training programs.

Example:

An individual works as a security guard at a university they are enrolled at and attending classes.

Result:

Since the individual is a student at the university while working for the university their wages are exempt and would not be reported.

INDEPENDENT CONTRACTORS

While the law does not define an independent contractor, court decisions have held that the common law tests of master and servant must be applied in making determinations of whether services rendered by an individual are in the capacity of an employee or independent contractor.

The Kansas Employment Security Law provides two specific tests to be applied to the worker's service to determine if the service constitutes that of an independent, contractual nature. K.S.A. 44-703(i)(3)(D)

1. Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of hire and in fact.
2. Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed.

These tests are of a conjunctive nature and BOTH MUST BE MET for a worker to be considered as an independent contractor, rather than an employee.

FUNDING THE UNEMPLOYMENT INSURANCE PROGRAM

The Employment Security Law provides for three methods of payment:

Rated Governmental --

This alternative payment method is only available to a governmental entity. This employer reports total wages paid each employee each quarter and pays tax on total wages. Election to this option is for a minimum of four complete calendar years.

Reimbursing --

This alternative payment method is available only to a governmental entity or non-profit organizations which are exempt under the Internal Revenue Code, Section 501(a) and specifically described in Section 501(c)(3). With this option, the employer reports total wages paid each employee each quarter, but pays no tax at the time. Instead, this option requires the employer to reimburse the fund 100 percent for any benefits paid to their former employees. Election of this option must be for a minimum of four complete calendar years. K.S.A. 44-710(e)

Contributing --

All employers are required to be a contributing employer except governmental entities and those non-profit organizations described in the reimbursing method; however, at their option, they may also select the contributing method of payment.

A contributing employer is required to report gross wages paid and pay contributions (taxes) each calendar quarter. An employer must report gross wages paid to each employee during each quarter, but pays taxes based upon a taxable wage base limit on each employee at an assigned contribution rate.

	<u>Taxable Wage Base</u>
1978 through 1982	\$6,000
1983	\$7,000
1984 thru present	\$8,000

A new contributing employer is assigned a tax rate based on the major industry of the business. After three or four years, depending upon when original liability was established, the business will become eligible for an experience computed tax rate. K.S.A. 44-710

FEDERAL UNEMPLOYMENT TAX OBLIGATIONS

Federal liability is established under the same guidelines as the State for Agricultural, Domestic and General employers. (For examples refer to the previous example under Coverage and Liability.)

1. Agricultural Employers: Liable for any calendar year in which they employ ten or more individuals in agricultural labor for some portion of a day in twenty different weeks in the current or preceding calendar year or have quarterly cash wages of \$20,000.00 or more in the current or preceding calendar year.
2. Employers of Domestic or Household Workers: Liable for any calendar year in which they pay cash remuneration of \$1,000.00 or more in any calendar quarter of that year or the preceding.
3. General Employers: Liable for any calendar year in which they pay wages of \$1,500.00 or more during any calendar quarter in that year or the previous year, or employ at least one person on at least one day in each of twenty different weeks during the current or previous calendar year.

Non-profit organizations and governmental entities are not subject to the Federal Unemployment Tax Act.

All employers pay the same fixed tax for Federal Unemployment Tax and receive a fixed credit for their full and timely payment of their State Unemployment Tax.

- 3.7% Federal Unemployment Tax
- 2.5% Credit for payment of State Unemployment Tax
- 0.8% Net Federal Unemployment Tax
(Note: FUTA tax base is \$7,000.00)

Form 940, Employer's Annual Federal Unemployment Tax Return must be filed with the Internal Revenue Service on or before January 31 following such a year when any of the above requirements are met.

DISPUTING A DETERMINATION: APPEALS PROCESS

An appeal process is provided for in K.A.R. 50-2-19 to resolve protests of any determination made pursuant to K.S.A. 44-703, 44-710, 44-710a, 44-710b, and 44-710d. Appeals generally fall into the following categories:

1. Notice of liability determinations (including, but not restricted to):
 - a) employer liability,
 - b) employer/employee relationships,
 - c) wages,
 - d) agricultural labor, and
 - e) domestic service.

Example:

From an audit by a field representative additional people are held to be employees of the firm. The field representative relays his findings from the audit to the employer.

Result:

The employer disagrees with these findings and has 15 days to request an Administrative Review in writing (refer to the following "steps when protesting a determination").

2. Notice of contribution rate or benefit cost rate.
3. Notice of benefit payments.

Example:

An employer receives their Notice of Benefit Payments and finds a name listed of an employer who has never worked for the business.

Result:

The employer has 20 days from the mailing date to request the Administrative Review to get the non-employee removed from the business record.

An employer may protest the correctness of the pro rata charges of benefit payments to the employer's account.

NOTE: An employer may not protest the eligibility of a claimant to receive benefits under K.S.A. 44-705 or protest a prior determination of chargeability at the time a valid new claim is presented under K.S.A. 44-710(c) in a contribution protest.

4. Notice of the transfer of experience rating factors.

An employer must take the following steps when protesting a determination:

1. Within 20 days from the mailing or 15 days after delivery of the determination, request in writing, setting forth the reasons therefore an Administrative Review of the determination.

NOTE: Request for an Administrative Review of contribution rate or benefit cost rate must be made within 15 days of mailing and delivery of the notice.

The Administrative Review will be made by the Chief of Contributions or his authorized representative. The employer will be notified within 60 days of the results of the Administrative Review. The results of this review will become binding unless;

2. Within 20 days after the mailing of or 15 days after the delivery of the results of the Administrative Review, the employer requests an Administrative Hearing.

At the Administrative Hearing, which will be held in Topeka, the employer is entitled to be present, to be represented by counsel or by a designated representative of the employer's choice, at the employer's own expense, to present oral testimony or evidence. The employer will be notified within 30 days of the Secretary's findings as a result of the Administrative Hearing.

Requests for the Administrative Review and the Administrative Hearing must be sent to:

Department of Human Resources
Division of Employment Security
401 Topeka Avenue
Topeka, Kansas 66603
Attn: Chief of Contributions

3. An employer may appeal the Secretary's findings to the District Court pursuant to K.S.A. 44-710(b) or K.S.A. 60-2101(d), whichever is applicable.

(Note: An appeal of an Administrative Review does not stay the enforcement of the order unless the Chief of Contributions or an authorized representative orders a suspension.)