

## CHAPTER 99

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**LABOR AND INDUSTRY**

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SENATE BILL 96-072

BY SENATORS Schroeder and Feeley;  
also REPRESENTATIVES May and Dyer.**AN ACT**

CONCERNING ADMINISTRATION OF THE UNEMPLOYMENT COMPENSATION FUND, AND, IN CONNECTION THEREWITH, CONFORMING COLORADO LAW TO FEDERAL LAW, INCREASING THE LIMIT OF ADJUDICATED EMPLOYEE-BASE-PERIOD WAGES ALLOWABLE FOR BENEFITS, ALLOWING BENEFITS PAID DUE TO A DECLARED DISASTER TO BE CHARGED AGAINST THE FUND, EXEMPTING FROM THE TAX SURCHARGE EMPLOYERS THAT MAINTAIN AN UNEMPLOYMENT COMPENSATION FUND BALANCE OF ZERO FOR THREE CONSECUTIVE YEARS, CONTINUING THE TERM OF THE EMPLOYMENT SUPPORT FUND, AND DECREASING THE PENALTY FOR FAILURE TO FILE A TAX REPORT WITH THE DIVISION OF EMPLOYMENT.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 8-70-103 (11), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-70-103. Definitions.** As used in articles 70 to 82 of this title, unless the context otherwise requires:

(11) "Employment" has the meaning set forth in sections 8-70-115 to 8-70-125, exclusive of the exceptions set forth in sections 8-70-126 to ~~8-70-140~~ 8-70-140.7.

**SECTION 2.** 8-70-140.2, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-70-140.2. Employment does not include - nonresident alien service.** "Employment" does not include services performed by a nonresident alien individual for the period such individual is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), ~~or~~ (M), OR (Q) of section 101 of the federal "Immigration and Nationality Act", 8 U.S.C. sec. 1101 (a) (15), as amended,

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

to carry out any purpose specified in subparagraph (F), (J), ~~or~~ (M), OR (Q) of section 101 of such federal act.

**SECTION 3.** The introductory portion to 8-70-141 (1) (d) (I), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-70-141. Wages - definition.** (1) "Wages" means:

(d) (I) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work paid for previously uncovered services. For the purposes of this paragraph (d), "previously uncovered services" means services which were not employment as defined in sections 8-70-126 to ~~8-70-140~~ 8-70-140.7 and were not services covered pursuant to section 8-76-107 at any time during the one-year period ending December 31, 1975, and:

**SECTION 4.** 8-72-110 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-72-110. Reciprocal interstate agreements.** (3) The division is authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for employing units under circumstances not specifically provided for in sections 8-70-126 to ~~8-70-140~~ 8-70-140.7 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights and benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

**SECTION 5.** 8-73-102, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**8-73-102. Weekly benefit amount for total unemployment.** (7) (a) AN INDIVIDUAL FILING A NEW CLAIM FOR UNEMPLOYMENT COMPENSATION SHALL, AT THE TIME OF FILING SUCH CLAIM, BE ADVISED THAT:

(I) UNEMPLOYMENT COMPENSATION IS SUBJECT TO FEDERAL AND STATE INCOME TAX;

(II) REQUIREMENTS EXIST PERTAINING TO ESTIMATED TAX PAYMENTS;

(III) THE INDIVIDUAL MAY ELECT TO HAVE FEDERAL INCOME TAX DEDUCTED AND WITHHELD FROM THE INDIVIDUAL'S PAYMENT OF UNEMPLOYMENT COMPENSATION AT THE RATE SPECIFIED IN THE FEDERAL INTERNAL REVENUE CODE;

(IV) THE INDIVIDUAL MAY ELECT TO HAVE COLORADO STATE INCOME TAX DEDUCTED AND WITHHELD FROM THE INDIVIDUAL'S PAYMENT OF UNEMPLOYMENT COMPENSATION AT THE RATE OF FOUR PERCENT; AND

(V) THE INDIVIDUAL SHALL BE PERMITTED TO CHANGE A PREVIOUSLY ELECTED WITHHOLDING STATUS NO MORE THAN ONE TIME DURING EACH "BENEFIT YEAR" AS THAT TERM IS DEFINED BY SECTION 8-70-111 (1).

(b) AMOUNTS DEDUCTED AND WITHHELD FROM UNEMPLOYMENT COMPENSATION FOR INCOME TAX PURPOSES SHALL REMAIN IN THE UNEMPLOYMENT COMPENSATION FUND, CREATED PURSUANT TO SECTION 8-77-101, UNTIL TRANSFERRED TO THE FEDERAL OR STATE TAXING AUTHORITY AS A PAYMENT OF INCOME TAX.

(c) THE DIRECTOR OF THE DIVISION SHALL FOLLOW ALL PROCEDURES SPECIFIED BY THE UNITED STATES DEPARTMENT OF LABOR AND THE FEDERAL INTERNAL REVENUE SERVICE PERTAINING TO THE DEDUCTING AND WITHHOLDING OF INCOME TAX.

(d) AMOUNTS SHALL BE DEDUCTED AND WITHHELD UNDER THE PROVISIONS OF THIS SUBSECTION (7) FOR INCOME TAX PURPOSES ONLY AFTER AMOUNTS ARE DEDUCTED AND WITHHELD FOR ANY OVERPAYMENTS, CHILD SUPPORT OBLIGATIONS, FOOD STAMP OVERISSUANCES, OR ANY OTHER AMOUNTS REQUIRED TO BE DEDUCTED AND WITHHELD UNDER ARTICLES 70 TO 82 OF THIS TITLE.

**SECTION 6.** The introductory portion to 8-73-108 (3) (e) (II) and 8-73-108 (3) (e) (II) (B), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 8-73-108 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**8-73-108. Benefit awards.** (3) (e) (II) When the total amount of base period wages, as defined in section 8-70-141 (1) (a), paid by a base period employer is less than ~~five hundred~~ ONE THOUSAND dollars:

(B) Benefits paid with respect to such wages shall not be charged against THE EXPERIENCE RATING ACCOUNT OF an employer ~~account~~ but will be charged against the fund; ~~and shall include combined wage claims in which Colorado wages are transferred to another state;~~ and

(f) BENEFIT PAYMENTS SHALL NOT BE CHARGED AGAINST THE EXPERIENCE RATING ACCOUNT OF AN EMPLOYER AND SHALL BE CHARGED AGAINST THE FUND WHEN:

(I) THE BENEFITS ARE PAID FOR UNEMPLOYMENT DIRECTLY CAUSED BY A MAJOR NATURAL DISASTER;

(II) THE PRESIDENT HAS DECLARED THE EVENT A DISASTER PURSUANT TO SECTION 102 (2) OF THE FEDERAL DISASTER RELIEF ACT OF 1974, 42 USCA 5122(2); AND

(III) THE BENEFITS ARE PAID TO AN INDIVIDUAL WHO WOULD HAVE OTHERWISE BEEN ELIGIBLE FOR DISASTER UNEMPLOYMENT ASSISTANCE WITH RESPECT TO THAT UNEMPLOYMENT BUT FOR THE INDIVIDUAL'S RECEIPT OF UNEMPLOYMENT COMPENSATION BENEFITS.

**SECTION 7.** 8-74-103 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

**8-74-103. Hearing officer review.** (1) Any interested party who is dissatisfied

with a deputy's decision may appeal that decision and obtain a hearing covering any issue relevant to the disputed claim. The issue of a claimant's availability will be relevant to the extent set forth in section 8-73-107 (1) (c) (I) (A). The initial appeal shall be to a hearing officer designated by the director of the division and must be postmarked or received by the division within fifteen calendar days ~~or ten calendar days in work incentive program cases~~, from the date of notification of the decision of the deputy. "Deputy", as used in this article, means a person who adjudicates claims for the division when Colorado is the paying state. Wages paid in Colorado and transferred to another state in which the claimant has filed shall not be subject to adjudication by a deputy of the division or to an appeal directed to this state.

**SECTION 8.** 8-74-104 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-74-104. Industrial claim appeals office review.** (1) Any interested party who is dissatisfied by a hearing officer's decision may appeal that decision and obtain administrative review by the industrial claim appeals office. Any such appeal must be postmarked or received by the industrial claim appeals office within fifteen calendar days ~~or ten calendar days in work incentive program cases~~, from the date of mailing of the decision of the hearing officer. The director of the division shall prescribe regulations for the conduct of such appeals, including apportionment of transcript costs (not to exceed the actual costs of such materials), briefing schedules, and similar matters.

**SECTION 9.** 8-74-106 (1) (a) and (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

**8-74-106. Time limits and procedures for appeal within the division.** (1) The following procedures and limitations shall apply to all appeals taken pursuant to this article:

(a) Any party may petition for review of a deputy's decision by filing a petition therefor with the division within fifteen calendar days ~~or ten calendar days in work incentive program cases~~, after the date of notification of such decision. Notification of the decision shall be by personal delivery of the decision to an interested party or by mailing a copy of the decision to the last-known address shown in the division files of an interested party and to his attorney or representative of record, if any. The date of notification shall be the date of personal delivery or the date of mailing of a decision.

(b) Unless, within fifteen calendar days ~~or ten calendar days in work incentive program cases~~, after the date of notification of a deputy's decision, an interested party petitions for review of such decision, the decision shall be final. Petitions for review may be accepted out of time only for good cause shown and in accordance with regulations adopted by the director of the division.

**SECTION 10.** 8-76-102 (4) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-76-102 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**8-76-102. Rate of tax - surcharge.** (4) (b) Effective calendar year 1990 through

calendar year ~~1997~~ 2002, or until such time as employers' federal unemployment taxes are returned to the state by the federal government at levels sufficient to permit the effective administration of the provisions of articles 70 to 82 of this title, whichever first occurs, twenty percent of the surcharge tax established by paragraph (a) of this subsection (4) shall be segregated and deposited in the employment support fund created in section 8-77-109.

(c) EFFECTIVE JANUARY 1, 1998, THE SURCHARGE ESTABLISHED BY THIS SUBSECTION (4) SHALL NOT BE ASSESSED AGAINST ANY EMPLOYER WHOSE BENEFIT-CHARGE ACCOUNT BALANCE FOR THE LAST THREE FISCAL YEARS IMMEDIATELY PRECEDING THE COMPUTATION DATE IS LESS THAN ONE HUNDRED DOLLARS.

**SECTION 11.** 8-79-104 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-79-104. Failure to file true report - penalty.** (1) (a) It is the responsibility of each employer subject to the provisions of articles 70 to 82 of this title to file true and accurate reports whether or not taxes are due and to pay all taxes when due. Whenever an employer fails to furnish tax reports required by the division by the due date, such employer shall be assessed a penalty of fifty dollars for each such occurrence; EXCEPT THAT AN "EMPLOYER NEWLY SUBJECT" AS DEFINED BY SECTION 8-76-103 (3) (a) (IV) SHALL BE ASSESSED A PENALTY OF TEN DOLLARS FOR EACH SUCH OCCURRENCE DURING THE FIRST FOUR QUARTERS OF COVERAGE. Each subsequent quarter in which the employer continues the failure to file such reports shall be considered a separate occurrence.

**SECTION 12. Effective date.** Sections 5 and 11 of this act shall take effect on January 1, 1997, and the remainder of this act shall take effect on passage.

**SECTION 13. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 17, 1996