

Unemployment Compensation

L. B. SOLSBERRY*

On June 1, 1951, the Ohio Legislature passed Amended Substitute Senate Bill No. 149 relative to Unemployment Compensation. This legislation was signed by the Governor on June 12, 1951, but by its own terms does not become effective until January 1, 1952.

The measure makes some rather significant changes in the Unemployment Compensation Law, and not the least of these is the changing of the definition of the "base period." Whereas the base period prior to the effective date of this new law consists of the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, the base period after January 1, 1952, will mean the last four completed calendar quarters just prior to the benefit year. The so-called "lag quarter" has been eliminated, and this action will probably simplify an understanding of the base period, which has been confusing to so many persons dealing with this law. Now, it is only necessary to determine in which quarter the benefit year begins, and the base period can be ascertained by taking the four completed quarters just preceding.¹

Prior to the passage of the new Act, the "duration of any period of unemployment", although used in the law, was not defined. The Act now defines that condition as being unemployment until an individual has become reemployed in employment subject to the Unemployment Compensation Act of this or another state, and has earned wages equal to his weekly benefit amount.² Under present law, a claimant could cure a defect in this claim by becoming employed theoretically for but a few minutes, be separated due to lack of work, and reestablish full benefit rights. Under this new provision, he will have to earn at least his weekly benefit amount before being able to cure a previous faulty separation.

One of the most significant changes in the law is that relating to those base period employers from whom a claimant has a faulty separation. Under the new Act, a base period employer's account will not be charged for benefits paid a claimant if the claimant became separated from the employer because of: (1) quitting his work without just cause; (2) being discharged with just cause in connection with his work; (3) being unemployed by reason of commitment to any penal institution; and (4) being discharged for dishonesty, if admitted or if a conviction is obtained. Although being a Communist is totally disqualifying, that circumstance is also included

*Of the firm of Brownfield, Schwenker and Teaford; Member of the Ohio Bar.

¹ OHIO GEN. CODE § 1345-1-0.

² OHIO GEN. CODE § 1345-1-w.

as a faulty separation along with those listed above. As the law reads, it was perhaps the legislative intent to protect the accounts of employers separating employees for being Communists. In the writer's opinion the inclusion of the paragraph on Communism at this particular place was an oversight.

No disqualification will result if a claimant voluntarily quits to accept a bona fide offer from another employer and is paid wages by such employer equal to ten times his weekly benefit amount.³

All wages paid in the base period can be used to determine whether the application for the determination of benefit rights is valid, and in determining the weekly benefit amount.⁴

It thus becomes obvious that all separations during the entire base period will be relevant. Under the present law only the reason for separation from the last employer is material. There is, however, a burden cast upon the employer to file a timely notice with the Administrator, when a request is made as to the reason for separation.⁵

In this connection, it should also be noted that quitting because of pregnancy has been added to the old "marital obligation" section of the law.⁶ Under existing law, if a person quits to marry or because of a marital, parental, filial, or other domestic obligation, benefits are suspended until such a defect is cured by the obtaining of subsequent employment, becoming separated therefrom, and being otherwise eligible. Added to this section are words in the new law reading ". . . or becomes unemployed because of pregnancy." Note particularly that the pregnant woman does not have to "quit" to receive the suspension. Theoretically, if an employer learns that an employee is pregnant, he can discharge her and she is thus "unemployed because of pregnancy" and would be disqualified.

The Act contains a new provision allowing a second benefit year to begin before the expiration of the old one, under certain conditions. If a claimant's benefit rights have been exhausted or canceled, and if he has not been paid his maximum benefits, the claimant may, in any calendar quarter, subsequent to the quarter in which such benefits have been canceled or exhausted, file an application for cancellation of the existing benefit year. He may then file another application and establish one additional benefit year before the expiration of the first. However, wages used to set up the first benefit year may not be used to establish the second.

This provision in the law will not have too wide an application because several things must be precedent. Note particularly that

³ OHIO GEN. CODE § 1345-8-e.

⁴ *Ibid.*

⁵ OHIO GEN. CODE § 1345-4-(c)-(1)-D.

⁶ OHIO GEN. CODE § 1345-6-c-(10).

benefit rights must have been exhausted on the first claim before the second benefit year, under these conditions, can come into existence. The law also provides that there must be intervening employment. With the elimination of the "lag quarter" in the computation of the base period, and with the new 20-week rule rather than a 14-week rule, it appears to the writer that this new provision in the law will not mean too much to claimants.

Under existing law, it is necessary for a claimant to have fourteen weeks of employment and \$240.00 in earnings in his base period, whereas under the new law, he must have twenty weeks, a reversion to the law as it existed prior to the 1949 amendments. The monetary amount remains at \$240.00. It must be remembered that for the purpose of this section any employment within a calendar week counts as a week of employment.

There has always been a great deal of confusion over one or more organizations becoming successors to a predecessor entity. An organization disposing of its assets in many instances has very valuable rights in its reserve balance and merit rate at the Bureau. There has been added to existing law a section allowing a transfer of a portion of a predecessor's experience to the successor under certain circumstances. The Act states: "In the case of a transfer of a portion of an employer's enterprise, only that part of the experience with unemployment compensation and payrolls that is directly attributable to the segregated and identifiable part shall be transferred and used in computing the contribution rate of the successor employer on the next computation date. The administrator by regulation may prescribe procedures for effecting transfers of experience as provided herein."⁷

A minor change in the law makes provision for the continuity of the business if its owner is called into military service.⁸

Under existing law, an employer is notified of the money paid out on claims filed against his account by means of a chargeback statement issued monthly. The law actually provided for the issuing of such a statement at least once during each calendar quarter and, on written request of the employer, being issued monthly. In practice the Bureau has been issuing such statements monthly. Under the law to become effective on January 1, 1952, the Bureau must at least once during each calendar quarter issue a notice showing a summary of the amount of benefits paid which are chargeable to each employer, but the Bureau must also promptly mail notice of weekly benefit payments to the employer to be charged. The law provides that such notices may consist of copies of the benefit checks to be charged to the employer's account and

⁷ OHIO GEN. CODE § 1345-4-(c)-(1)-D.

⁸ OHIO GEN. CODE § 1345-4-(c)-(4)-(F).

shall contain relevant information.⁹

Existing law allows a base period employer's account to be charged up to one-half of the claimant's earnings in that particular quarter, not to exceed \$280.00. The new law does not contain the \$280.00 limitation. It is believed that this was unintentional. It is possible for one employer to have to absorb maximum benefits of \$728.00 although that employer may have employed the claimant in but one quarter.

This new provision will definitely increase the work of the chargeback section of the Bureau, but it should be of material significance to all employers. One of the underlying reasons for notice to an employer that a claim has been filed or allowed, or that benefits are being paid to a former employee, is to advise that employer that an ex-employee is out of work and apparently in need of work. The issuance of a weekly chargeback statement will apprise the employer of former employees drawing benefits, and if that employer has work for such an individual, these weekly notices may result in increased reemployment.

By the same token, an employer cognizant of the costs of unemployment compensation, will more carefully watch claims where he is currently advised of the money being drained from his account. This new provision in the law will undoubtedly act to control claims. Since the word "notice" is in use in the new law, these weekly chargebacks may be appealable to the Board of Review. It is not thoroughly clear why the law still provides for a quarterly summary of chargebacks.

There is another entirely new provision requiring a reduction of unemployment benefits if the claimant is drawing retirement or pension benefits made by or on behalf of an employer in accordance with an exclusively employer-sponsored plan.¹⁰

In keeping with the increased cost of living, and legislative increases in all other forms of social legislation, the Act provides for an increase in maximum benefits from \$650.00 to \$728.00.¹¹ Ohio law sets up maximum benefits only indirectly by creating a maximum weekly benefit amount, and then stating that maximum benefits shall not exceed 26 times such maximum weekly amount. The weekly amount is determined from a statutory chart which is based on the claimant's highest quarterly base period earnings. The new law merely allows increased weekly benefit amounts to those claimants who had high base period earnings. The new provision does not in any way affect the benefits of those claimants averag-

⁹ OHIO GEN. CODE § 1345-4-(c)-(4)-(G) and (H).

¹⁰ OHIO GEN. CODE § 1345-7-a-(4).

¹¹ OHIO GEN. CODE § 1345-8-b.

ing less than approximately \$200.00 per month in the best quarter of their base period.

Under existing law, a claimant could draw benefits up to two-thirds of his base period earnings not to exceed the maximum benefit amount. Under the Act a claimant will be entitled to draw only up to one-half of his base period earnings, not to exceed the maximum benefit amount.¹² This provision is quite significant to claimants in the lower earnings group. It must not be forgotten that the entire program was designed primarily for that group.

Here again a claimant may have sufficient earnings credits, but have them erased by a disqualifying separation.

The new law did not disturb existing dependency benefits, but it is most significant to the writer that no limitation was made on the number of weeks that dependency benefits can be drawn. Theoretically, a claimant could draw partial benefits throughout his benefit year, as has been done, and draw up to \$5.00 per week in dependency benefits.¹³

The Act makes it mandatory on the Administrator to make corrections where an applicant has drawn benefits without fraudulent misrepresentation on his part.¹⁴ The penalties have been increased against claimants who do make fraudulent misrepresentation.¹⁵

Although this new legislation does not go into effect until January 1, 1952, its presence has already caused some widespread changes in present operating policy at the Bureau. For example, since the end of the second calendar quarter of 1951 an employer does not have to report his employees' individual earnings to the Bureau each quarter. Since claim for Unemployment Compensation benefits are totally dependent upon the claimant's earnings during that particular year called the base period, the local offices of the Bureau will in the future have to obtain such information from the employers after the claimant has signified his intention to file a claim. At first blush this does not seem too difficult, but when it is realized that many claimants have as high as 50 to 60 employers in a base period, some of the difficulties under the new law become quite apparent. The law anticipates that many employers will not be cooperative in furnishing the requested information, and provides that: ". . . if the Administrator fails to receive such information from any or all such employers within seven days from the date of mailing such request, and if necessary to assure prompt payment of benefits when due, the Administrator may, nevertheless, make his determination, and shall base his determination on

¹² OHIO GEN. CODE § 1345-8-d.

¹³ OHIO GEN. CODE § 1345-8-e.

¹⁴ OHIO GEN. CODE § 1345-25-b.

¹⁵ OHIO GEN. CODE § 1345-26.

such information as is available to him, which may include the Applicant's statement"¹⁶

A small financial penalty is also assessed against an employer who fails to comply with these requests of the Administrator.

It is the writer's opinion that many applicants are going to lose their rights to benefits because of a failure to recall the names of employers in the base period. Construction workers, including laborers, carpenters, brick masons, and painters frequently work for many employers during the base period. Many employers pay in cash, and the writer has known numerous claimants who did not remember for whom they worked and who could recall only the location of the building and the name of the foreman. How the Bureau is going to determine base period earnings in such and similar circumstances is not clear.

From the employer's standpoint, there should be immediate compliance with the Bureau's request for information, particularly the reason for separation and the earnings in the base period. It is the writer's opinion that the form to be used by the Bureau for this request will undoubtedly explain the base period to the employer and will probably ask for specific earnings by quarters.

With the passage of the 1949 Amendments, each week has been considered as a separate claim. When the employer has appealed from the allowance of the first claim for benefits, it has been held that the jurisdiction of the Referee of the Board of Review hearing the appeal only extends to the first week. As a consequence, when the first week has been disallowed on appeal, no further action is usually taken by an employer. However, the Administrator has interpreted the law to mean that he may allow any subsequent week without giving notice thereof to the interested employers, and a claimant may, under such circumstances, draw maximum benefits without the employer being formally notified. In such cases the employer is only notified indirectly by means of a chargeback statement, which is received too late for the purpose of contesting the merits of the claim. Several cases are presently pending in court challenging the Administrator's interpretation of this section of the law allowing such a practice.

The new law has added a provision which reads as follows: ". . . determination allowing waiting period or benefits for the first week following a previous disallowal during such benefit year, shall be mailed or delivered to all interested parties."¹⁷ The practice under existing law is hardly conceivable when it is realized that the employers paying the cost of a claim would be notified when a claim was disallowed, and yet when the claim is subsequently al-

¹⁶ OHIO GEN. CODE § 1346-4.

¹⁷ OHIO GEN. CODE § 1345-4.

lowed, tending to charge the employer's account, no notice is given. This new provision is a much-needed remedy.

Although the law seems explicit that benefits cannot be paid pending an appeal, the Benefits Department of the Bureau has been paying many such claims. This is made worse by the fact that this same department will not credit the protesting employer's account except for the first week. Section 1346 of the General Code provides: "All employers or deputies of the Administrator receiving or disbursing funds shall give bond to the state in amounts and with surety to be approved by the Administrator." The writer anticipates a taxpayer's suit contesting this procedure.

Although the law has always been liberal in allowing automatic rights of appeal to all the parties, the existing law only required a referee to take notes during a hearing and preserve them for two years. To further enhance appellate rights, the Act provides that a record must be made at each hearing and that all testimony shall be taken by a reporter. It does not have to be transcribed until the claim is further appealed.

Ohio law has always provided that an employer be allowed to make a voluntary contribution to enhance the position of his account. Existing law allows such a contribution up to thirty days after the computation date. The new law allows such a contribution within ninety days after the computation date. The attorney and accountant representing corporations subject to the excess profits tax should give serious study to this last provision.

There has been no effort here to cover all the changes in the law and procedure. The effort has been to set forth some of the more important provisions. It must be understood that the comments and interpretations are those of the writer, and in the future, as in the past, the Administrator, Referees, Board of Review and the courts will probably make him sorry for some of his prognostications.