

No. 262

AN ACT

SB 1222

Amending the act of December 5, 1936 (1937 P.L.2897, No.1), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," further defining "Benefit Year" and "Valid Application for Benefits," changing certain exclusions under the definition of "employment," further providing for qualifications to secure compensation, ineligibility for compensation, and employer contributions changing the maximum weekly benefit rate, and further providing for extended benefits, appeals from determinations of the department, powers of the board over claims and recovery and recoupment of compensation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subsection (b) of section 4, act of December 5, 1936 (1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," amended December 17, 1959 (P.L.1893, No.693), is amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * *

(b) "Benefit Year" with respect to an individual who files or has filed a "Valid Application for Benefits" means the **[one-year] fifty-two consecutive week** period beginning with the day as of which such "Valid Application for Benefits" is filed, and thereafter the **[one-year] fifty-two consecutive week** period beginning with the day as of which such individual next files a "Valid Application for Benefits" after the termination of his last *preceding* benefit year. **[: Provided, however, That when the last day of such one-year period falls within a week with respect to which an employe has met the eligibility requirements of this act, the ending date of the benefit year may be extended for a period not to exceed six days: And provided further, That for the purpose of filing any subsequent application for benefits, the extension of the benefit year as hereinbefore provided shall not change the benefit year ending date as established prior to such extension.]**

* * *

Section 2. Clause (c) of subparagraph (8) of paragraph (4) of subsection (l) of section 4 of the act, amended September 27, 1971 (P.L.460, No.108), is amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * *

(l) * * *

(4) The word “employment” shall not include—

* * *

(8) * * *

(c) in the employ of a school (*public or nonprofit*) which is not an institution of higher education; or

* * *

Section 3. Paragraph (1) of subsection (w) of section 4 of the act, amended December 17, 1959 (P.L.1893, No.693), is amended to read:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise.

* * *

(w) (1) A “Valid Application for Benefits” means an application for benefits on a form prescribed by the department, which is filed by an individual, as of a day not included in the benefit year previously established by such individual, who (1) has been separated from his work or who during the week commencing on *the Sunday previous to* such day has worked less than his full time due to lack of work [**and has earned less than the maximum weekly benefit amount plus the maximum partial benefit credit**] and (2) is qualified under the provisions of section four hundred and one (a), (b) and (d).

* * *

Section 4. Paragraph (4) of subsection (a) of section 301 of the act, added September 27, 1971 (P.L.460, No.108), is amended to read:

Section 301. Contributions by Employers; Successors-in-Interest; Appeals.—

(a) * * *

(4) Notwithstanding the provisions of paragraph (1) of this subsection, any employer who becomes newly liable for contributions under this act on or after the first day of January, one thousand nine hundred seventy-two, other than an employer subject to the provisions of paragraph (3) of this subsection, shall be liable for contributions at the rate of [**one**] **two** per centum of wages paid by him for employment until such time as he shall become classifiable under the provisions of section 301.1(b) of this act. Thereafter his rate of contributions shall be two and seven-tenths per centum subject to adjustment under the provisions of section 301.1 of this act.

* * *

Section 5. Subsections (d) and (e) of section 301.1 of the act, subsection (d) amended March 24, 1964 (Sp. Sess., P.L.53, No.1) and subsection (e) amended December 6, 1972 (P.L.1622, No.336), are amended to read:

Section 301.1. Determination of Contribution Rate; Experience Rating.—

* * *

(d) An employer's Experience Factor shall be computed on the basis of the following formula:

$$\frac{\text{Average Annual Benefits}}{\text{Average Annual Payroll}} \times 100 = \text{Experience Factor}$$

to a tenth of a per centum, rounding all fractional parts of a tenth of a per centum to the **[next higher] nearest** tenth of a per centum. No Experience Factor shall be more than three per centum nor less than zero per centum.

(e) The State Adjustment Factor for the calendar year beginning January one, one thousand nine hundred sixty, shall be six-tenths of one per centum and for the year beginning January one, one thousand nine hundred sixty-one, and for each calendar year thereafter, shall be computed as of the computation date for such year to a tenth of a per centum, rounding all fractional parts of a tenth of a per centum to the **[next higher] nearest** tenth of a per centum, but in no event less than zero nor in excess of one per centum, according to the following formula:

$$\frac{\text{Bdr} - \text{Dcr}}{\text{Wt}} \times 100 = \text{State Adjustment Factor}$$

in which factor "Bdr" equals the aggregate of (A) all benefits paid but not charged to employers' accounts, plus, (B) all benefits paid and charged to inactive and terminated employers' accounts, plus, (C) all benefits paid and charged to accounts of active employers who were assigned the maximum Experience Factor for the preceding calendar year to the extent such benefits exceed the amount of contributions payable by such employers on the basis of such factor. Factor "Dcr" equals the aggregate of (A) interest credited to the Unemployment Compensation Fund, plus (B) amounts transferred from the Special Administration Fund to the Unemployment Compensation Fund, plus, (C) refunds of benefits unlawfully paid, plus, (D) amounts credited to the Unemployment Compensation Fund by the Federal Government other than by loan, except that any amount credited to this Commonwealth's account under section 903 of the Federal Social Security Act which has been appropriated for expenses of administration shall be excluded from the amount in the Unemployment Compensation Fund in the computation of the "Dcr" factor. Factor "Wt" equals the wages paid by all employers. Each item in each factor shall be computed with respect to the twelve-month period ending on the computation date: Provided, That should the computed

State Adjustment Factor for calendar year one thousand nine hundred sixty-two, and any year thereafter exceed one per centum, such excess over one per centum shall be added to the computed State Adjustment Factor for the following year or years.

* * *

Section 6. Subsection (e) of section 401 of the act, amended September 27, 1971 (P.L.460, No.108), is amended to read:

Section 401. Qualifications Required to Secure Compensation.—Compensation shall be payable to any employe who is or becomes unemployed, and who—

* * *

(e) Has been unemployed for a waiting period of one week, unless the Governor upon the occurrence of a disaster declares that a state of emergency exists, in which event the department may suspend the waiting week requirement with respect to unemployment resulting directly from such disaster.

No week shall be counted as a week of unemployment for the purposes of this subsection, (1) unless it occurs within the benefit year which includes the week with respect to which such employe claims compensation, or (2) if compensation has been paid or is payable with respect thereto, or **[(3) which includes any part of a benefit year extended under the provisions of subsection 4 (b) of this act, or (4)] (3)** unless the employe was eligible for compensation with respect thereto under all other provisions of this section and was not disqualified with respect thereto under section 402 (a), (b), (d), (e), (f), (g), and (h): Provided, notwithstanding any other provision of this subsection, That when an individual has been paid benefits in his current benefit year equal to four times his weekly benefit amount, he shall be eligible to receive benefits on his waiting period claim in accordance with the terms of this act.

* * *

Section 7. Subsection (a) of section 402 of the act, amended August 24, 1953 (P.L.1397, No.396), is amended to read:

Section 402. Ineligibility for Compensation.—An employe shall be ineligible for compensation for any week—

(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe, or to accept suitable work when offered to him by the employment office or by any employer, irrespective of whether or not such work is in "employment" as defined in this act: Provided, That such employer notifies the employment office of such offer within **[three (3)] seven (7)** days after the making thereof;

* * *

Section 8. Subsection (d) and paragraphs (1) and (2) of subsection (e) of section 404 of the act, amended or added September 27, 1971 (P.L.460, No.108), are amended to read:

Section 404. Rate and Amount of Compensation.—* * *

(d) Notwithstanding any other provisions of this section each eligible employe who is unemployed with respect to any week ending subsequent to the first day of **[October] July**, one thousand nine hundred **[seventy-one] seventy-four**, shall be paid, with respect to such week, compensation in an amount equal to his weekly benefit rate less the total of (i) the remuneration, if any, paid or payable to him with respect to such week for services performed which is in excess of his partial benefit credit; (ii) vacation pay, if any, **which is in excess of his partial benefit credit**, except when paid to an employe who is permanently or indefinitely separated from his employment and (iii) that part of a retirement pension or annuity, if any, received by him under a private pension plan to which a base-year employer of such employe has contributed which is in excess of forty dollars (\$40) per week. Retirement pension or annuity payments received by the employe under the Federal OASI program, the Federal Railroad Retirement program or under any private retirement plan to which the employe was the sole contributor, shall not be considered a deductible retirement pension or annuity payment for the purpose of this subsection. The provisions of this subsection shall be applicable whether or not such vacation pay, retirement pension or annuities, or wages are legally required to be paid. If such retirement pension or annuity payments deductible under the provisions of this subsection are received on other than a weekly basis, the amount thereof shall be allocated and pro-rated in accordance with the rules and regulations of the department. Vacation pay, or other remuneration deductible under the provisions of this subsection shall be pro-rated on the basis of the employe's normal full-time weekly wage and as so pro-rated shall be allocated to such period or periods of unemployment as shall be determined by rules and regulations of the department. Such compensation, if not a multiple of one dollar (\$1.00), shall be computed to the next higher multiple of one dollar (\$1.00).

(e) (1) Table Specified for the Determination of Rate and Amount of Benefits

Part A Highest Quarterly Wage	Part B Rate of Compensation	Part C Qualifying Wages	Part D Amount of Compensation
\$ 120-262	[\$ 12] \$13	\$440	[\$360] \$ 390
263-287	[13] 14	480	[390] 420
288-312	[14] 15	520	[420] 450

313-337	[15]	16	560	[450]	480
338-362	[16]	17	600	[480]	510
363-387	[17]	18	640	[510]	540
388-412	[18]	19	680	[540]	570
413-437	[19]	20	720	[570]	600
438-462	[20]	21	760	[600]	630
463-487	[21]	22	800	[630]	660
488-512	[22]	23	840	[660]	690
513-537	[23]	24	880	[690]	720
538-562	[24]	25	920	[720]	750
563-587	[25]	26	960	[750]	780
588-612	[26]	27	1000	[780]	810
613-637	[27]	28	1040	[810]	840
638-662	[28]	29	1080	[840]	870
663-687	[29]	30	1120	[870]	900
688-712	[30]	31	1160	[900]	930
713-737	[31]	32	1200	[930]	960
738-762	[32]	33	1240	[960]	990
763-787	[33]	34	1280	[990]	1020
788-812	[34]	35	1320	[1020]	1050
813-837	[35]	36	1360	[1050]	1080
838-862	[36]	37	1400	[1080]	1110
863-887	[37]	38	1440	[1110]	1140
888-912	[38]	39	1480	[1140]	1170
913-937	[39]	40	1520	[1170]	1200
938-962	[40]	41	1560	[1200]	1230
963-987	[41]	42	1600	[1230]	1260
988-1012	[42]	43	1640	[1260]	1290
1013-1037	[43]	44	1680	[1290]	1320
1038-1062	[44]	45	1720	[1320]	1350
1063-1087	[45]	46	1760	[1350]	1380
1088-1112	[46]	47	1800	[1380]	1410
1113-1162	[47]	48	1840	[1410]	1440
1163-1187	[48]	49	1880	[1440]	1470
1188-1212	[49]	50	1920	[1470]	1500
1213-1237	[50]	51	1960	[1500]	1530
1238-1262	[51]	52	2000	[1530]	1560
1263-1287	[52]	53	2040	[1560]	1590
1288-1312	[53]	54	2080	[1590]	1620
1313-1337	[54]	55	2120	[1620]	1650
1338-1362	[55]	56	2160	[1650]	1680
1363-1387	[56]	57	2200	[1680]	1710
1388-1412	[57]	58	2240	[1710]	1740
1413-1437	[58]	59	2280	[1740]	1770

1438-1462	[59]	60	2320	[1770]	1800
1463-1487	[60]	61	2360	[1800]	1830
1488-1512	[61]	62	2400	[1830]	1860
1513-1537	[62]	63	2440	[1860]	1890
1538-1562	[63]	64	2480	[1890]	1920
1563-1587	[64]	65	2520	[1920]	1950
1588-1612	[65]	66	2560	[1950]	1980
1613-1637	[66]	67	2600	[1980]	2010
1638-1662	[67]	68	2640	[2010]	2040
1663-1687	[68]	69	2680	[2040]	2070
1688-1712	[69]	70	2720	[2070]	2100
1713-1737	[70]	71	2760	[2100]	2130
1738-1762	[71]	72	2800	[2130]	2160
1763-1787	[72]	73	2840	[2160]	2190
1788-1812	[73]	74	2880	[2190]	2220
1813-1837	[74]	75	2920	[2220]	2250
1838-1862	[75]	76	[*] 2960	[2250]	2280
1863-1887	[76]	77	3000	[2280]	2310
1888-1912	[77]	78	3040	[2310]	2340
1913-1937	[78]	79	3080	[2340]	2370
1938-1962	[79]	80	3120	[2370]	2400
1963-1987	[80]	81	3160	[2400]	2430
[1988 or more]	[81]		[*3200]	[2430]	
1988-2012		82	3200		2460
2013-2037		83	3240		2490
2038-2062		84	3280		2520
2063-2087		85	3320		2550
2088-2112		86	3360		2580
2113-2137		87	3400		2610
2138-2162		88	3440		2640
2163-2187		89	3480		2670
2188-2212		90	3520		2700
2213-2237		91	3560		2730
2238-2262		92	3600		2760
2263-2287		93	3640		2790
2288-2312		94	3680		2820
2313-2337		95	3720		2850
2338-2362		96	3760		2880
2363-2387		97	3800		2910
2388-2412		98	3840		2940
2413-2437		99	3880		2970
2438-2462		100	3920		3000
2463-2487		101	3960		3030
2488-2512		102	4000		3060
2513-2537		103	4040		3090

2538-2562	104	4080	3120
2563-2587	105	4120	3150
2588 or more	106	*4160	3180

* (this figure subject to section 401 (a) (1)).

(2) The Table Specified for the Determination of Rate and Amount of Benefits shall be extended or contracted annually, automatically by regulations promulgated by the secretary in accordance with the following procedure: for calendar year one thousand nine hundred seventy-two and for all subsequent calendar years, to a point where the maximum weekly benefit rate equals ~~[sixty]~~ **sixty-six and two-thirds** per centum of the average weekly wage for the twelve-month period ending June 30 preceding each calendar year. If the maximum weekly benefit rate is not a multiple of one dollar (\$1), it shall be rounded to the next higher multiple of one dollar (\$1): **Provided, however, That effective with benefit years beginning the first Sunday at least thirty days after the effective date of this amendatory act, the per centum stated in this paragraph for establishing the maximum weekly benefit rate shall be sixty-two and two-thirds per centum for the remainder of calendar year one thousand nine hundred seventy-four, sixty-four and two-thirds per centum for the calendar year one thousand nine hundred seventy-five, and sixty-six and two-thirds per centum for the calendar year one thousand nine hundred seventy-six and for all subsequent calendar years.**

The Table Specified for the Determination of Rate and Amount of Benefits as so extended or contracted shall be effective only for those claimants whose benefit years begin on or after the first day of January of such calendar year.

For the purpose of determining the maximum weekly benefit rate, the Pennsylvania average weekly wage in covered employment shall be computed on the basis of the total wages reported (irrespective of the limit on the amount of wages subject to contributions) for the twelve-month period ending June 30 and this amount shall be divided by the average monthly number of covered workers (determined by dividing the total covered employment reported for the same fiscal year by twelve) to determine the average annual wage. The average annual wage thus obtained shall be divided by fifty-two and the average weekly wage thus determined rounded to the nearest cent.

* * *

Section 9. Sections 404-A and 405-A of the act, added February 9, 1971 (P.L.1, No.1), are amended to read:

Section 404-A. Weekly Extended Benefit Amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount (**plus dependents' allowances**) payable to him during his applicable benefit year.

Section 405-A. Total Extended Benefit Amount.—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) fifty per centum of the total amount of regular benefits (*plus dependents' allowances*) which were payable to him under this act in his applicable benefit year;

(b) thirteen times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year; or

(c) thirty-nine times his weekly benefit amount (*plus dependents' allowances*) which was payable to him under this act for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this act with respect to the benefit year.

Section 10. Sections 502 and 504 of the act, amended September 29, 1951 (P.L.1580, No.408), are amended to read:

Section 502. Decision of Referee; Further Appeals and Reviews.—Where an appeal from the determination or revised determination, as the case may be, of the department is taken, a referee shall, after affording the parties and the department reasonable opportunity for a fair hearing, affirm, modify, or reverse such findings of fact and the determination or revised determination, as the case may be, of the department as to him shall appear just and proper. The parties and the department shall be duly notified of the referee's decision, and the reasons therefor, which shall be deemed the final decision of the board, unless within ten days after the date of such decision the board acts on its own motion, or upon application, permits any of the parties or the department to institute a further appeal before the board. A memorandum of testimony of any hearing before any referee shall be made and be preserved for a period of ~~[two years]~~ *ninety days following expiration of the period for filing an appeal from the final decision rendered in the case.*

Section 504. Powers of Board Over Claims.—The board shall have power, on its own motion, or on appeal, to remove, transfer, or review any claim pending before, or decided by, a referee, and in any such case and in cases where a further appeal is allowed by the board from the decision of a referee, may affirm, modify, or reverse the determination or revised determination, as the case may be, of the department or referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. When any claim pending before a referee is removed or transferred to the board, the board shall afford the parties and the department reasonable opportunity for a fair hearing. The parties and the department shall be duly notified of the board's final decision and the reasons therefor. A complete record shall be kept of each case heard before the board. All testimony at any hearing

before the board, whether on appeal or otherwise, shall be taken by a reporter, *or recording device*, but need not be transcribed unless the disputed claim is further appealed.

Section 11. Subsection (b) of section 804 of the act, amended March 30, 1955 (P.L.6, No.5), is amended to read:

Section 804. Recovery and Recoupment of Compensation.

* * *

(b) Any person who other than by reason of his fault has received with respect to a benefit year any sum as compensation under this act to which he was not entitled shall not be liable to repay such sum but shall be liable to have such sum deducted from any future compensation payable to him with respect to such benefit year, or the three-year period immediately following such benefit year: Provided, That with respect to overpayments of one hundred dollars or more, recoupment from such future compensation shall not exceed one-third of the maximum benefit amount to which such person is entitled during any such subsequent benefit year nor one-third of the weekly benefit amount to which such person may be entitled for any particular week. In the absence of misrepresentation or non-disclosure of a material fact, no recoupment shall be had if such overpayment is created by reason of (1) a subsequent reversal of [a decision] *two decisions* of eligibility under the provisions of section five hundred one (e) of this act, or (2) a retroactive allocation of wages pursuant to an award of a labor relations board arbitrator or the like, unless such award provides for the repayment of unemployment compensation benefits received during the period to which such wages are allocated, or (3) the subsequent receipt of holiday pay, vacation pay or the like of which the person had no knowledge, or (4) a subsequent determination that the person's base year wages were not earned in employment as defined in this act. No provision of this subsection shall be construed to prevent or prohibit the voluntary repayment of compensation by such person or the maintenance of records of overpayments by the department.

The claimant and other affected parties shall be notified in writing of the department's determination to deduct any sum from future compensation under this section, and such determination shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation.

Section 12. This act shall take effect immediately: Provided, however, That the amendments to section 301(a)(4) and section 301.1, subsections (d) and (e) shall be applicable commencing with the computation of contribution rates for calendar year 1975.

APPROVED—The 5th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly
No. 262.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

Secretary of the Commonwealth.