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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 08-98

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : GRACE A. KILBANE
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SUBJECT : Unemployment Compensation (UC) - Payment Only for Periods of Unemployment

- Purpose.** To remind States that Federal law limits the payment of UC to periods when an individual has experienced unemployment.
- References.** Section 303(a)(5) of the Social Security Act (SSA) and Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Employment and Training Administration Glossary of Program Terms and Definitions, ET Handbook No. 373 (Glossary).
- Background.** Since the inception of the UC program, Federal law has authorized withdrawals from a State's unemployment fund only with respect to an individual's unemployment. Put another way, Federal law limits the payment of UC to periods in which an individual has experienced unemployment, that is, an actual reduction in hours worked. As the result of questions arising from a review of a State's law, this UIPL is being issued to remind all States that their laws must contain this limitation.

This UIPL addresses only whether an individual has experienced unemployment. It does not address other eligibility conditions related to the term "unemployment" such as able and available requirements.

- Discussion.** Section 3304(a)(4), FUTA, requires, as a condition for employers in a State to receive credit against the Federal tax, that State law provide that:

all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund. . .

Section 303(a)(5), SSA, contains the same requirement as a condition for receiving administrative grants. Section 3306(h), FUTA, defines compensation as "cash benefits payable to individuals with respect to their unemployment." Thus, Federal law permits withdrawals from a State's unemployment fund only with respect to an individual's "unemployment."

The 1935 Senate Report on the original Social Security Act also emphasized that UC may be paid only with respect to an individual's unemployment:

Unemployment compensation differs from relief in that payments are made as a matter of right not on a needs basis, but only while the worker is involuntarily unemployed. . . . Payment of compensation is conditioned upon continued involuntary unemployment. [S. Rep. No. 628, 74th Cong., 1st Sess. 11 (1935).]

On January 31, 1939, the Social Security Board, which at that time had Federal jurisdiction for the UC program, also concluded that unemployment must exist for UC to be payable:

[S]ince . . . any benefits paid under a State law must be paid with respect to unemployment, a State's plan for the payment of partial benefits must safeguard against the payment for reduced earnings without accompanying unemployment.

Thus, whether an individual is unemployed within the meaning of Federal law depends on whether the individual has suffered a loss of work. It is not sufficient that the individual merely have reduced earnings.

The Department uses the phrase "partial benefits" to describe "UC of less than the full weekly benefit amount payable to a claimant." ¹ Partial benefits may be paid for a period of "part-total unemployment" when an individual has odd jobs or subsidiary work with other than the individual's regular employer, or "partial unemployment" in which an individual works less than regular full-time hours for his/her regular employer. (Short-time compensation is a form of "partial unemployment.")

5. **Effect on State laws.** State laws must be fashioned so as to prevent payment of UC to individuals who have experienced no unemployment for the period being compensated. Whether a payment of partial benefits may be made is determined by whether the individual has actually experienced unemployment. If wages are used as the only surrogate for unemployment, it may be possible that an individual, who moves from a high-paying job to a low-paying job, could experience no unemployment, or even see hours worked increased, and still be eligible for benefits. To avoid this, State law must contain a test which ensures that the individual has, in fact, experienced unemployment.

Generally, States provide for partial UC benefits through provisions of State law which specify the individual must be "unemployed." Usually States determine if the individual has worked less than a full-time week where "full-time week" means the number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

6. **Action Required.** Each State should take appropriate action to ensure that its law is consistent with the above requirements.
7. **Inquiries.** Inquiries should be directed to the appropriate Regional Office.

1. This and the definitions of "partial" and "part-total" unemployment and "full-time week" are taken from the Glossary.