

# CODE OF VIRGINIA



## Title 60.2

Unemployment Compensation

# **Title 60.2 - Unemployment Compensation**

## **Chapter 1 - GENERAL PROVISIONS AND ADMINISTRATION**

### **Article 1 - General Provisions**

#### **§ 60.2-100. Short title.**

This title shall be known and may be cited as the "Virginia Unemployment Compensation Act."

Code 1950, § 60-1; 1968, c. 738, § 60.1-1; 1986, c. 480.

#### **§ 60.2-101. Disclosure of social security account number.**

The Commission shall continue to require disclosure of the social security account number of any individual for any purpose relating to a claim for benefits and for any purpose relating to the provision of employment or employment-related services, including verification of the identity of any individual. Additionally, the Commission shall continue to require any employing unit to disclose the social security account number of any individual who performed services for such employing unit for any purpose relating to the unemployment insurance programs administered by the Commission.

1976, c. 708, § 60.1-22.1; 1986, c. 480.

#### **§ 60.2-102. Limitations on payment of benefits; nonliability of Commonwealth and Commission.**

Benefits shall be deemed to be due and payable under this title only to the extent provided in this title and to the extent that moneys are available to the credit of the Unemployment Compensation Fund. Neither the Commonwealth nor the Commission shall be liable for any amount in excess of such sums.

Code 1950, § 60-24; 1968, c. 738, § 60.1-28; 1986, c. 480.

#### **§ 60.2-103. Contingencies affecting operation of title.**

A. In the event that Chapter 23 of the Internal Revenue Code (26 U.S.C. § 3301 et seq.) is repealed, amended or otherwise changed by the Congress of the United States, or is finally adjudged invalid or unconstitutional by the Supreme Court of the United States, with the result that no portion of the taxes required by this title can be credited against any tax imposed by Chapter 23 of the Internal Revenue Code (26 U.S.C. § 3301 et seq.), the Governor shall, within sixty days from the date of such repeal, amendment or change, or from the date that such act is so finally adjudged invalid or unconstitutional, by proclamation so state. Upon the issuance of such proclamation, the provisions of this title shall expire by limitation and thereafter have no force and effect, except that the Commission shall thereupon requisition all moneys standing to the credit of the Commonwealth in the Unemployment Trust Fund established by Section 904 of the Social Security Act (42 U.S.C. § 1104). All such moneys so refunded, repaid or returned to the Commonwealth, together with such other money paid to the Commonwealth as taxes under the terms of this title and then held by the Commonwealth, less the cost of making the refund and repayment, shall forthwith be refunded or repaid by the State Treasurer,

upon warrants of the Comptroller, issued upon vouchers signed by the Commissioner, or by such other person as the Commissioner may designate for that purpose, to the individual employers, ratably in proportion to the amounts paid by each such employer, who have paid taxes under the terms of this title.

B. In the event that the Secretary of Labor of the United States shall withdraw his approval of this title, with the result that no portion of the taxes required by this title with respect to employment during any year can be credited against any tax imposed by Chapter 23 of the Internal Revenue Code (26 U.S.C. § 3301 et seq.) with respect to employment for such year, the provisions of this title requiring the payment of taxes shall become and remain suspended until such credit can be had.

Code 1950, § 60-25; 1956, c. 440; 1968, c. 738, § 60.1-29; 1986, c. 480.

#### **§ 60.2-104. Reservation of right to amend or repeal.**

The General Assembly reserves the right to amend or repeal all or any part of this title at any time. There shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this title or by acts done pursuant thereto shall exist subject to the power of the General Assembly to amend or repeal this title at any time.

Code 1950, § 60-25.1; 1954, c. 203; 1968, c. 738, § 60.1-30; 1986, c. 480.

#### **§ 60.2-105. Publication and distribution of law, regulations, etc.**

The Commission shall cause to be readily available for distribution to the public the text of this title, the Commission's regulations and general rules, its annual reports to the Governor, and any other material the Commission deems relevant and suitable. The Commission shall furnish these materials to any person upon request.

Code 1950, § 60-31; 1968, c. 738, § 60.1-36; 1986, c. 480; 2023, cc. [624](#), [625](#).

#### **§ 60.2-106. Employer to post and maintain posters.**

Each employer shall post and maintain in places readily accessible to individuals in its services all such posters related to unemployment insurance as furnished it by the Commission.

Code 1950, § 60-48; 1968, c. 738, § 60.1-60; 1977, c. 445; 1986, c. 480.

#### **§ 60.2-107. Waiver of rights void.**

Any agreement other than an agreement made pursuant to § [60.2-608](#) by an individual to waive, release or commute his rights to benefits or any other rights under this title shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's taxes, required under this title from such employer, shall be void. No employer shall directly or indirectly make, require or accept any deduction from wages to finance the employer's taxes required from him, or require or accept any waiver of any right under this title by any individual in his employ. Any employer or officer or agent of any employer who violates any provision of this section shall, for each offense, be guilty of a Class 1 misdemeanor.

Code 1950, § 60-106; 1968, c. 738, § 60.1-123; 1982, c. 237; 1986, c. 480.

## Article 2 - ADMINISTRATION

### § 60.2-108. The Commission; appointment, term of office and compensation of Commissioner.

The Virginia Employment Commission shall consist of one Commissioner, who shall be appointed by the Governor for a term of four years, subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, then at its next succeeding session. Appointments to fill vacancies shall be for the unexpired terms. The Commissioner may be suspended or removed by the Governor at his pleasure, and he shall receive such compensation as may be provided in accordance with law.

Code 1950, § 60-26; 1960, c. 136; 1968, c. 738, § 60.1-31; 1986, c. 480.

### § 60.2-109. Bond of Commissioner.

The Commissioner shall be bonded in accordance with § [2.2-1840](#), conditioned upon the faithful discharge of his duties.

Code 1950, § 60-27; 1968, c. 738, § 60.1-32; 1986, c. 480; 2021, Sp. Sess. I, c. [152](#).

### § 60.2-110. Repealed.

Repealed by Acts 2023, cc. [624](#) and [625](#), cl. 2, effective July 1, 2023

### § 60.2-111. Duties and powers of Commission; reporting requirements.

A. It shall be the duty of the Commission to administer this title. The Commission may establish separate divisions as necessary to carry out the duties and powers prescribed by this section. It shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action, including the appointment of advisory groups, as it deems necessary or suitable to that end. Such rules and regulations shall be subject to the provisions of Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2, except as to the subject matter of subdivisions 2 and 3 of § [60.2-515](#), which shall become effective in the manner prescribed by § [2.2-4103](#). The Commission shall determine its own organization and methods of procedure in accordance with provisions of this title, and shall have an official seal which shall be judicially noticed. In the discharge of the duties imposed by this title, the Commissioner shall have the authority to authorize any attorney employed by the Commission to have the power to issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the investigation or adjudication of any disputed claim or the administration of this title. Any party who disputes such subpoena may file a motion to quash any subpoena issued pursuant to this section prior to the date production is required in a miscellaneous action in a circuit court for which such motion shall be given priority on the docket.

B. The Commission shall take all necessary steps to maintain a solvent trust fund financed through equitable employer taxes that provides temporary partial income replacement to involuntarily unemployed covered workers.

C. The Commission shall prepare an annual balance sheet of the moneys in the fund and in the Unemployment Trust Fund to the credit of the Commonwealth in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then-current taxes. That reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the Commission believes that a change in tax or benefit rates is necessary to protect the solvency of the Fund, it shall promptly so inform the Governor and the General Assembly and make recommendations with respect thereto.

D. In preparing the annual balance sheet required by subsection C, the Commission shall regularly track metrics related to unemployment insurance benefits, establish a mechanism to help assess the adequacy of benefits, and examine metrics related to reciprocity, average benefit levels, and benefit income replacement ratios. The annual balance sheet shall include the following calculations: (i) the average unemployment insurance benefit levels, (ii) the average income replacement of unemployment insurance benefits, and (iii) the reciprocity rate for unemployment insurance benefits in the Commonwealth.

E. The Commission, as part of its biennial strategic plan submitted to the Department of Planning and Budget, shall develop and maintain a comprehensive unemployment insurance Resiliency Plan that describes specific actions the Commission will take, depending on the level of increase in unemployment insurance (UI) claims, to address staffing, communications, and other relevant aspects of operations to ensure continued efficient and effective administration of the UI program. The Resiliency Plan shall include proposed actions consistent with the following objectives to effectively prepare for periods of high unemployment:

1. Develop specific strategies or steps the Commission will take to modify staffing levels in response to incidents that increase UI program demand. These strategies or steps shall (i) include a staffing plan for varying levels of UI workload volume, (ii) cover several scenarios that may affect UI assistance services, (iii) explain how existing staff would be reallocated to high-priority functions in response to high demand, and (iv) describe how the Commission's hiring process will be streamlined to fill key vacant positions such as adjudication and appeals staff.
2. Develop specific strategies or steps the Commission will take to modify policies, procedures, or processes in response to high demands on its services.
3. Outline a strategy for clearly communicating key UI program changes to customers. This strategy shall indicate which staff will be responsible for different types of communications and include several communications goals, such as clearly conveying UI program and policy changes.
4. Outline a strategy for clearly communicating important UI information to Commission staff, the public, and the General Assembly.
5. Formalize a policy for prioritizing and assigning claims for adjudication during periods of high claims volume. This policy shall detail how prioritization may change in response to claims volume

and state that the policy of the Commission is to generally prioritize resolving older claims before newer claims.

6. Identify other tactical actions to be taken to ensure the continuity of UI claims processing and customer service.

Code 1950, § 60-29; 1968, c. 738, § 60.1-34; 1977, c. 445; 1984, c. 734; 1986, c. 480; 2022, cc. [716](#), [754](#); 2023, cc. [102](#), [103](#), [624](#), [625](#).

**§ 60.2-112. Repealed.**

Repealed by Acts 1999, cc. [840](#) and [855](#).

**§ 60.2-113. Repealed.**

Repealed by Acts 2023, cc. [624](#) and [625](#), cl. 2, effective July 1, 2023

**§ 60.2-113.1. Repealed.**

Repealed by Acts 2023, cc. [624](#) and [625](#), cl. 2, effective July 1, 2023

**§ 60.2-114. Records and reports.**

A. Each employing unit shall keep true and accurate work records, containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this title. Information thus obtained shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, except as the Commissioner or his delegates deem appropriate, nor shall such information be used in any judicial or administrative proceeding other than one arising out of the provisions of this title; however, the Commission shall make its records about a claimant available to the Workers' Compensation Commission if it requests such records. However, any claimant at a hearing before an appeal tribunal or the Commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Notwithstanding other provisions of this section, the Commissioner, or his delegate, may, in his discretion, reveal information when such communication is not inconsistent with the proper administration of this title.

B. Notwithstanding the provisions of subsection A, the Commission shall, on a reimbursable basis, furnish wage and unemployment compensation information contained in its records to the Secretary of Health and Human Services and the Division of Child Support Enforcement of the Department of Social Services for their use as necessary for the purposes of the National Directory of New Hires established under § 453(i) of the Social Security Act.

C. Notwithstanding the provisions of subsection A, the Commission shall, upon written request, furnish:



1. Any agency or political subdivision of the Commonwealth, or its designated agent, such information as it may require for the purpose of collecting fines, penalties, and costs owed to the Commonwealth or its political subdivisions. Such information shall not be published or used in any administrative or judicial proceeding, except in matters arising out of the collection of fines, penalties, and costs owed to the Commonwealth or its political subdivisions;

2. The Virginia Economic Development Partnership Authority such information as it may require to facilitate the administration and enforcement by the Authority of performance agreements with businesses that have received incentive awards. Any information provided to the Authority under this subdivision shall be confidential pursuant to 20 C.F.R. Part 603 and shall only be disclosed to members of the Authority who are public officials or employees of the Authority for the performance of their official duties. No public official or employee shall redisclose any confidential information obtained pursuant to this subdivision to nonlegislative citizen members of the Authority or to the public. Any information so provided shall be used by the Authority solely for the purpose of verifying employment and wage claims of those businesses that have received incentive awards; and

3. (Expires July 1, 2027) An arresting official such information as he may require to comply with the provisions of § [19.2-83.1](#). Such information shall not be published or used in any administrative or judicial proceeding.

D. Each employing unit shall report to the Virginia New Hire Reporting Center the employment of any newly hired employee in compliance with § [63.2-1946](#).

E. Any member or employee of the Commission and any member, employee, or agent of any agency or political subdivision of the Commonwealth who violates any provision of this section shall be guilty of a Class 2 misdemeanor.

Code 1950, § 60-35; 1968, c. 738, § 60.1-40; 1972, c. 764; 1986, c. 480; 1988, c. 766; 1993, cc. 246, 806; 1996, c. [220](#); 1997, c. [385](#); 1998, cc. [91](#), [108](#), [745](#); 2003, c. [721](#); 2013, c. [329](#); 2017, cc. [804](#), [824](#); 2023, cc. [282](#), [283](#).

#### **§ 60.2-114.01. Furnishing information to consumer reporting agencies.**

A. Notwithstanding the provisions of subsection A of § [60.2-114](#), the Commission shall be authorized to enter into agreements with any consumer reporting agency pursuant to which the consumer reporting agency is provided secure electronic access to information contained in quarterly wage reports submitted to the Commission by employing units, as set forth in this section.

B. The Commission shall:

1. Establish minimum audit, security, net worth, and liability insurance standards, technological requirements, and any other terms and conditions deemed necessary in the discretion of the Commission to safeguard the confidentiality of the information and to otherwise serve the public interest;

2. Require a contracting consumer reporting agency to pay all costs associated with the establishment or maintenance of the access to information provided for by this section, including but not limited to the costs of any audits of the consumer reporting agency or users by the Commission;
3. Be authorized to cancel any contract authorized by this section if the consumer reporting agency fails to comply with any requirement of this section or of the contract;
4. Be authorized to provide to a consumer reporting agency only information regarding the amount of wages for an individual reported by each employing unit, with the employing unit's name and address, as may be further specified in the terms of the contract; and
5. Deposit any fees received by the Commission from a consumer reporting agency pursuant to this section into the state treasury for credit to the Special Unemployment Compensation Administration Fund pursuant to § [60.2-314](#).

C. The consumer reporting agency shall:

1. Require that any user of the information shall, prior to obtaining the wage report information, obtain a written consent from the individual to whom that wage report information pertains. The written consent shall prominently contain language specifying the following:
  - a. The individual's consent to the Commission's disclosure of the wage report information is voluntary, and the individual's refusal to consent to the disclosure of wage information shall not be the basis for the denial of credit;
  - b. If the consent is granted, the information shall be released to specified parties;
  - c. Authorization by the individual is necessary for the release of wage and employment history information;
  - d. The specific application or transaction that constitutes the sole purpose for which the release is made;
  - e. That Commission files containing wage and employment history information submitted by employers may be accessed; and
  - f. The identity and address of parties authorized to receive the released information.
2. Require the use of the information only for purposes permitted under § 604 of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681b; and
3. Require that the information released shall be used only to verify the accuracy of the wage or employment information previously provided by an individual in connection with a specific transaction, to satisfy the user's standard underwriting requirements or those imposed upon the user, and to satisfy the user's obligations under applicable state or federal fair credit reporting laws.



D. In addition to any limitation on the use or release of the wage reporting information set forth in this section, release and use of the information shall be subject to the privacy laws of the Commonwealth and the federal Fair Credit Reporting Act.

E. Except in cases of willful and malicious misconduct, the Commission and its employees shall be immune from any liability in connection with information provided under this section, including but not limited to liability with regard to the accuracy or use of the information.

F. An annual audit of a contracted consumer reporting agency shall be conducted by an independent certified public accountant to ensure compliance with the provisions of this section, and such audit shall be reviewed by the Auditor of Public Accounts.

G. For the purposes of this section, "consumer reporting agency" has the meaning assigned by § 603 (f) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a (f).

2005, c. [944](#).

**§ 60.2-114.1. Repealed.**

Repealed by Act 2018, c. [457](#), cl. 1.

**§ 60.2-115. State-federal cooperation.**

A. In the administration of this title, the Commission shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this title. The Commission shall make such reports, in such form and containing such information as the United States Department of Labor may require, and shall comply with such provisions as the United States Department of Labor may find necessary to assure the correctness and verification of such reports. The Commission shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this Commonwealth and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act (29 U.S.C. § 49 et seq.), and the Federal-State Extended Unemployment Compensation Act (See notes following 26 U.S.C. § 3304).

B. In the administration of the provisions in §§ [60.2-610](#) and [60.2-611](#), which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act (See notes following 26 U.S.C. § 3304), the Commission shall take such action as may be necessary (i) to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor, and (ii) to secure to this Commonwealth the full reimbursement of the federal share of extended benefits paid under this title that are reimbursable under the federal act.

C. The Commission shall further make its records available to the Railroad Retirement Board and shall furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board, such copies thereof as the Board shall deem necessary for its purposes in accordance with the provisions of § 303 (c) of the Social Security Act (42 U.S.C. § 503 (c)).

D. The Commission shall afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

E. Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title.

Code 1950, § 60-39; 1956, c. 440; 1968, c. 738, § 60.1-44; 1971, Ex. Sess., c. 235; 1986, c. 480.

#### **§ 60.2-116. Reciprocal agreements.**

A. Subject to the approval of the Governor, the Commission is hereby 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 a single employing unit under circumstances not specifically provided for in §§ [60.2-212](#) through [60.2-219](#), 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 Commonwealth or within one of such other states. Such arrangements may set forth terms whereby the potential right to benefits accumulated under the unemployment compensation laws of one or more 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 of any state under terms which the Commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

B. Subject to the approval of the Governor, the Commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

1. a. Whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of §§ [60.2-602](#), [60.2-606](#), [60.2-607](#), [60.2-609](#), [60.2-610](#), [60.2-611](#), subdivision A 1 of § [60.2-612](#) and §§ [60.2-614](#) through [60.2-617](#), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this title upon the basis of such wages or services as the Commission finds will be fair and reasonable as to all affected interests; and

b. Whereby the Commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the Commission finds will be fair and reasonable as to all affected interests.

2. Reimbursements so payable under subdivision 1 b of this subsection shall be deemed to be benefits for the purposes of §§ [60.2-300](#) through [60.2-304](#), but no reimbursement so payable shall be charged against any employer's account for the purposes of §§ [60.2-526](#) through [60.2-531](#). The Commission is hereby authorized to make to other state or federal agencies and receive from such other

state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

C. Subject to the approval of the Governor, the Commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

1. Whereby the Commission may deduct, in accordance with the provisions of § [60.2-633](#), from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other state, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made and in accordance with the arrangement between the Commission and the jurisdiction.

2. Whereby the United States agrees to allow the Commission to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by the Commission to such individual under this title and not previously recovered, in accordance with the same procedures that apply under subdivision 1 of this subsection.

3. The amendments made by this subsection shall apply to recoveries made on or after July 1, 1987, and shall apply with respect to overpayments made before, on, or after such date.

Code 1950, § 60-40; 1968, c. 738, § 60.1-45; 1986, c. 480; 1987, c. 113; 2022, c. [668](#).

#### **§ 60.2-117. Use of collections in financing administrative expenditures.**

If § 303 (a) (5) of Title III of the Social Security Act (42 U.S.C. § 503 (a) (5)) and § 3304 (a) (4) of the Internal Revenue Code (26 U.S.C.) are amended to permit a state agency to use, in partial or complete substitution for grants under such Title III, for financing administrative expenditures incurred in carrying out its employment security functions, some part of the moneys collected or to be collected under the state unemployment compensation law, this title shall, by Commission proclamation and rules to be issued with the Governor's approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the Commission under this title. Such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

Code 1950, § 60-64; 1956, c. 440; 1968, c. 738, § 60.1-76; 1986, c. 480.

#### **§ 60.2-118. Civil action to enforce title; actions on behalf of other states.**

A. In any civil action to enforce the provisions of this title the Commission and the Commonwealth may be represented by the Office of the Attorney General.

B. The Office of the Attorney General may commence actions in this Commonwealth as agent for, or on behalf of, any other state:

1. To enforce judgments and liability for unemployment insurance taxes due such other state; or

2. To collect unemployment benefit overpayments of such state if such state extends like comity to this Commonwealth.

C. Venue for such actions shall be the same as for actions to enforce the provisions of this title.

Code 1950, § 60-109; 1968, c. 738, § 60.1-126; 1972, c. 764; 1977, c. 445; 1986, c. 480.

**§ 60.2-119. Criminal cases.**

All criminal actions for violation of any provision of this title, or of any rules or regulations issued pursuant to this title, shall be prosecuted by the attorney for the Commonwealth of the county or city in which the offense, or a part thereof, was committed, except that the offense set out in § [60.2-518](#) or [60.2-632](#) shall be deemed to be committed and venue for the prosecution shall lie in the county or city wherein the statement, representation, or nondisclosure originates or, alternatively, is received by the Commission. However, if a defendant resides in this Commonwealth and the courthouse of the county or city in which he resides is more than 100 miles from the City of Richmond, venue for such prosecution shall lie in the city or county where he resides, and the offense shall be prosecuted by the attorney for the Commonwealth for the city or county where the defendant resides. If, in the opinion of the Commission, the prosecution should be conducted by the Office of the Attorney General, that office, upon the request of the Commission, shall have authority to conduct or supervise such prosecution.

Code 1950, § 60-110; 1968, c. 738, § 60.1-127; 1972, c. 764; 1980, c. 674; 1986, c. 480; 2005, c. [105](#); 2023, cc. [82](#), [83](#).

**§ 60.2-120. Reimbursement of expenses of Office of Attorney General.**

The compensation of the assistant attorneys general, together with their proper expenses incurred in the performance of their duties, shall be chargeable as administrative expense of the Commission and paid in the manner in which the compensation and expenses of employees of the Commission are paid.

Code 1950, § 60-111; 1968, c. 738, § 60.1-128; 1986, c. 480.

**§ 60.2-121. Violation of title or rule or regulation.**

Any person who willfully violates any provision of this title or any valid rule or regulation promulgated pursuant to it, for which a penalty is not provided, shall be guilty of a Class 1 misdemeanor. Each day that such violation continues shall be deemed to be a separate offense.

Code 1950, § 60-114; 1968, c. 738, § 60.1-131; 1986, c. 480.

**§ 60.2-121.1. Communications with parties.**

In any action commenced under this title, the Commission may, if the party elects, send notices and other communications to such party through email or other electronic means. The Commission shall allow any party to change its election regarding receiving communications through electronic means. If an electronic notice is not successfully transmitted through electronic means, the Commission shall send a new notice by first-class mail to the party's alternative address on record.

2021, Sp. Sess. I, c. [290](#).

**§ 60.2-121.2. Electronic submission of information; payments.**

A. Each employer subject to the provisions of this title shall submit claim-related forms, including separation information, using an electronic format as prescribed by the Commission, unless the employer has been granted a waiver by the Commission. An employer shall submit any other information related to a claim, as defined in § [60.2-528.1](#), at any time when requested by the Commission, to the Commission by electronic means, unless the employer has been granted a waiver by the Commission. The Commission may also require, at any time, that an employer submit unemployment insurance tax payments electronically, unless the employer has been granted a waiver by the Commission.

B. The Commission may grant a waiver to an employer from providing information or payments electronically pursuant to this section at any time. The Commission may grant a waiver only if the Commission finds that the electronic submission requirement creates an unreasonable burden on the employer. All requests for a waiver shall be submitted in writing.

2022, cc. [716](#), [754](#).

**§ 60.2-121.3. Unemployment Compensation Ombudsman; established; responsibilities.**

A. The Commission shall create the Office of the Unemployment Compensation Ombudsman (the Office) and shall appoint an Unemployment Compensation Ombudsman to head the Office. The Unemployment Compensation Ombudsman shall provide neutral educational information and assistance to, shall protect the interests of, and shall ensure that due process is afforded to all persons seeking assistance in (i) appeals proceedings brought pursuant to Chapter 6 (§ [60.2-600](#) et seq.) and (ii) any other matter related to unemployment compensation under this title. Subject to annual appropriations, the Unemployment Compensation Ombudsman shall employ sufficient personnel to carry out the duties and powers prescribed by this section. The Unemployment Compensation Ombudsman and personnel of the Office shall carry out their duties with impartiality and shall not serve as an advocate for any person or provide legal advice.

B. The Unemployment Compensation Ombudsman shall maintain data on inquiries received related to the unemployment compensation process, the types of assistance requested, and actions taken and the disposition of each such matter. The Unemployment Compensation Ombudsman shall report information summarizing this data, including outcomes of individual cases, without disclosing individual-level identifying data, to the Commission at least once annually. The Unemployment Compensation Ombudsman shall carry out any additional activities as the Commission determines to be appropriate.

C. All memoranda, work products, and other materials contained in the case files of the Unemployment Compensation Ombudsman and personnel of the Office shall be confidential. Any communication between the Unemployment Compensation Ombudsman and personnel of the Office and a person receiving assistance that is made during or in connection with the provision of services of the Unemployment Compensation Ombudsman and personnel of the Office shall be confidential. Confidential materials and communications shall not be subject to disclosure and shall not be admissible in any judicial or administrative proceeding except where (i) a threat to inflict bodily injury is made; (ii)

communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (iii) a complaint is made against the Unemployment Compensation Ombudsman or personnel of the Office by a person receiving assistance to the extent necessary for the complainant to prove misconduct or the Unemployment Compensation Ombudsman or personnel of the Office to defend against such complaint; or (iv) communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against the legal representative of a person who received assistance from the Unemployment Compensation Ombudsman or personnel of the Office. Confidential materials and communications as described in this section are not subject to mandatory disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

D. The Unemployment Compensation Ombudsman and personnel of the Office shall be immune from civil liability in their performance of the duties specified in this section.

2022, cc. [716](#), [754](#).

## **Article 3 - REPRESENTATION**

### **§ 60.2-122. Limitation of fees.**

No individual claiming benefits shall be charged fees of any kind in any proceeding under this title by the Commission or its representatives. Any person who violates any provision of this section shall, for each such offense, be guilty of a Class 1 misdemeanor.

Code 1950, § 60-107; 1968, c. 738, § 60.1-124; 1981, c. 249; 1986, c. 480.

### **§ 60.2-123. Representation.**

Any individual or employing unit appearing before an officer of the Commission may be represented by counsel or other duly authorized agent. However, no such counsel or agent representing a claimant shall either charge or receive for such services more than an amount approved by the Commission.

1981, c. 249, § 60.1-124.1; 1986, c. 480.

## **Chapter 2 - Definitions**

### **§ 60.2-200. Definitions generally.**

As used in this title, unless the context clearly requires otherwise, the terms defined in this chapter shall have the meanings there ascribed to them.

Code 1950, § 60-2; 1964, c. 3; 1968, c. 738, § 60.1-2; 1986, c. 480.

### **§ 60.2-201. Agricultural labor.**

A. The term "agricultural labor" includes all service performed:

1. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

2. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

3. In connection with the production or harvesting of any commodity defined as an agricultural commodity in 12 U.S.C. § 1141 j of the Federal Agricultural Marketing Act, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit used exclusively for supplying and storing water for farming purposes.

4. a. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any such agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

b. In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subdivision 4 a of this subsection, but only if such operators produced more than one-half of the commodity with respect to which such service is performed;

c. The provisions of subdivisions 4 a and 4 b of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

5. On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

B. As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

Code 1950, § 60-3; 1968, c. 738, § 60.1-3; 1971, Ex. Sess., c. 235; 1972, c. 764; 1986, c. 480.

#### **§ 60.2-202. Annual payroll.**

"Annual payroll" means the total amount of wages payable by an employer, regardless of the time of payment, for employment during a calendar year.

Code 1950, § 60-4; 1968, c. 738, § 60.1-4; 1986, c. 480.

#### **§ 60.2-203. Average annual payroll.**

"Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever is higher.

Code 1950, § 60-5; 1968, c. 738, § 60.1-5; 1986, c. 480.



**§ 60.2-204. Base period.**

"Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of the claimant's benefit year; however, if the claimant has earned insufficient wages in the first four of the last five completed calendar quarters to become eligible for benefits, then such claimant's "base period" shall be the four most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year.

Code 1950, § 60-6.1; 1956, c. 440; 1968, c. 738, § 60.1-6; 1974, c. 466; 1986, c. 480; 2003, c. [383](#).

**§ 60.2-205. Benefits.**

"Benefits" means the money payments payable to an individual, as provided in this title, with respect to his unemployment.

Code 1950, § 60-7; 1968, c. 738, § 60.1-7; 1986, c. 480.

**§ 60.2-206. Benefit year.**

"Benefit year" with respect to any individual means a period of fifty-two consecutive weeks beginning with the first day of the week in which an individual files a new valid claim for benefits except that the benefit year shall be fifty-three weeks if filing of a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. An initial claim for benefits filed in accordance with regulations prescribed by the Commission under the provisions of this title shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of Chapter 6 (§ [60.2-600](#) et seq.) of this title.

Code 1950, § 60-8.1; 1956, c. 440; 1964, c. 3; 1968, c. 738, § 60.1-8; 1974, c. 466; 1986, c. 480.

**§ 60.2-207. Calendar quarter.**

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the equivalent thereof, as the Commission may by regulation prescribe.

Code 1950, § 60-9; 1968, c. 738, § 60.1-9; 1986, c. 480.

**§ 60.2-208. Commission.**

"Commission" means the Virginia Employment Commission. Wherever in this Code, or any act of the General Assembly the term "Unemployment Compensation Commission" is used, it shall mean the Virginia Employment Commission.

Code 1950, § 60-10; 1960, c. 136; 1968, c. 738, § 60.1-10; 1986, c. 480.

**§ 60.2-209. Taxes.**

"Taxes" means the money imposed by and collectible under this title and includes payments in lieu of taxes collectible under §§ [60.2-501](#) through [60.2-507](#).

Code 1950, § 60-11; 1968, c. 738, § 60.1-11; 1971, Ex. Sess., c. 235; 1986, c. 480.

**§ 60.2-210. Employer.**

A. The term "employer" means any employing unit which:

1. In any calendar quarter in either the current or preceding calendar year paid for some service in employment wages of \$1,500 or more or such other amount as provided by federal law pursuant to 26 U.S.C. § 3306; or
2. For some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, has or had in its employment at least one individual, irrespective of whether the same individual was in employment in each such day.

B. The term "employer" shall also mean:

1. Any employing unit which acquired the organization, trade, separate establishment or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this title;
2. Any employing unit which acquired the organization, trade or business or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under subsection A of this section;
3. Any employing unit which together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly or indirectly by the same interests, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which if treated as a single unit with such other employing unit, would be an employer under subsection A or B of this section;
4. Any employing unit which having become an employer under subsection A of this section or subdivisions 1, 2, 3, 6, 7 or 8 of this subsection has not, under § [60.2-509](#), ceased to be an employer subject to this title;
5. For the effective period of its election pursuant to § [60.2-510](#), any other employing unit which has elected to become fully subject to this title;
6. Any employing unit not an employer by reason of any other subdivision of this section (i) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for taxes required to be paid into a state unemployment fund; or (ii) which, as a condition for approval of this title for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this title;
7. Any employing unit for which service in employment, as defined in subdivisions 1 through 3 of subsection A of § [60.2-213](#), is performed;
8. Any employing unit, for which service in employment, as defined in subdivision 4 of subsection A of § [60.2-213](#), is performed;

9. For the purposes of subdivision 2 of subsection A of this section and subdivisions 8 and 10 of this subsection if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week;

10. Any employing unit for which agricultural labor in employment as defined in § [60.2-214](#) is performed; or

11. Any employing unit for which domestic service in employment as defined in § [60.2-215](#) is performed.

C. 1. In determining whether an employing unit for which service other than domestic service is also performed is an employer under subsection A or subdivision 10 of subsection B of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account.

2. In determining whether an employing unit for which service other than agricultural labor is also performed is an employer under subsection A or subdivision 11 of subsection B of this section, the wages earned or the employment of an employee performing service in agricultural labor shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purpose of subsection A of this section.

Code 1950, § 60-12; 1956, c. 440; 1964, c. 3; 1968, c. 738, § 60.1-12; 1971, Ex. Sess., c. 235; 1974, c. 466; 1977, c. 330; 1979, c. 637; 1986, c. 480.

### **§ 60.2-211. Employing unit.**

A. "Employing unit" means any of the following which has or had in its employ one or more individuals performing services for it within this Commonwealth:

1. Any individual or type of organization, including the state government and its instrumentalities;
2. Any of the political subdivisions of this Commonwealth and their instrumentalities;
3. Any instrumentalities wholly owned (i) by this Commonwealth and one or more political subdivisions, (ii) by a combination of political subdivisions or (iii) by any of the foregoing and one or more other states or their political subdivisions;
4. Any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof; or
5. The legal representative of a deceased person.

B. All individuals performing services within this Commonwealth for any employing unit which maintains two or more separate establishments within this Commonwealth shall be deemed to be employed by a single employing unit for all the purposes of this title. Whenever any employing unit contracts with any person for any service which is a part of such employing unit's usual trade, occupation, profession or business, that employing unit shall be deemed to employ all individuals employed by such person for such service unless such person performs service or is in fact actually

available to perform service for anyone who may wish to contract with him and is also found to be engaged in an independently established trade, occupation, profession or business. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this title, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work.

Code 1950, § 60-13; 1968, c. 738, § 60.1-13; 1974, cc. 466, 660; 1977, c. 330; 1986, c. 480.

## **§ 60.2-212. Employment.**

A. "Employment" means:

1. Any service including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied; and
2. Any service, of whatever nature, performed by an individual for any employing unit, for remuneration or under any contract of hire, written or oral, and irrespective of citizenship or residence of either,
  - a. Within the United States, or
  - b. On or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the individual is employed on the vessel or aircraft it touches at a port in the United States, if such individual performs such services on or in connection with such vessel or aircraft when outside the United States, provided that the operating office, from which the operations of the vessel or aircraft are ordinarily and regularly supervised, managed, directed or controlled, is within the Commonwealth.

B. Notwithstanding subdivision 2 b of subsection A of this section, "employment" means all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within the Commonwealth.

C. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless the Commission determines that such individual is not an employee for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, based upon an application of the standard used by the Internal Revenue Service for such determinations.

D. Notwithstanding the provisions of subsection C, an individual who performs services as a real estate salesperson, under direction of a real estate broker under Chapter 21 (§ [54.1-2100](#) et seq.) of Title 54.1, or as a real estate appraiser under Chapter 20.1 (§ [54.1-2009](#) et seq.) of Title 54.1 pursuant to an executed independent contractor agreement and for remuneration solely by way of commission or fee, shall not be an employee for purposes of this chapter.

E. Notwithstanding the provisions of subsection C, a hiring party providing an individual with personal protective equipment in response to a disaster caused by a communicable disease of public health

threat for which a state of emergency has been declared pursuant to § [44-146.17](#) shall not be considered in any determination regarding whether such individual is an employee or independent contractor. For the purposes of this subsection, the terms "communicable disease of public health threat," "disaster," and "state of emergency" have the same meaning as provided in § [44-146.16](#).

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480; 1996, c. [244](#); 2005, c. [892](#); 2020, c. [1261](#); 2021, Sp. Sess. I, c. [448](#).

#### **§ 60.2-212.1. Employment; special exclusion.**

A. In the trucking industry, an owner-operator or lessee of a vehicle which is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his truck, if each of the following factors is substantially present:

1. The individual owns the equipment or holds it under a bona fide lease arrangement;
2. The individual is responsible for the maintenance of the equipment;
3. The individual bears the principal burdens of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road;
4. The individual is responsible for supplying the necessary personal services to operate the equipment;
5. The individual's compensation is based on factors related to the work performed including a percentage of any schedule of rates or lawfully published tariff and not on the basis of the hours or time expended;
6. The individual generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier and specifications of the shipper; and
7. The individual enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

B. No such owner-operator or lessee who qualifies under the criteria set forth in subsection A of this section shall be considered by the Commission to be an employee covered by this title for any services performed prior to or after January 1, 1987. Taxes paid or benefits collected prior to January 1, 1987, that would be affected by the provisions of this section, shall not be subject to refund.

1987, c. 539.

#### **§ 60.2-212.2. Obtaining a determination or opinion.**

If an employing unit is unsure of the status of an individual performing services for it, the employing unit may obtain a written determination pursuant to § [60.2-500](#).

1987, c. 539.

**§ 60.2-213. Employment with hospital, higher education, state, subdivision, or certain religious or charitable organizations.**

A. "Employment" includes:

1. Service performed by an individual (i) in the employ of the Commonwealth or any of its political subdivisions or instrumentalities or (ii) in the employ of the Commonwealth and one or more other states or their political subdivisions or instrumentalities, for a hospital or institution of higher education located in this Commonwealth provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of § 3306(c)(7) of that act and is not excluded from "employment" under subsection B;

2. Service performed by an individual (i) in the employ of the Commonwealth or any of its wholly owned instrumentalities or (ii) in the employ of the Commonwealth and one or more other states or their instrumentalities, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C.) by § 3306(c)(7) of that act and is not excluded from "employment" under subsection B;

3. Service performed by an individual (i) in the employ of any political subdivision of the Commonwealth or any of its wholly owned instrumentalities or (ii) in the employ of any instrumentality wholly owned by this Commonwealth, any of its political subdivisions or instrumentalities, or any instrumentality wholly owned by any of the foregoing and one or more other states or their political subdivisions, provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by § 3306(c)(7) of that act and is not excluded from "employment" under subsection B;

4. Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

a. Their service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C.) solely by reason of § 3306(c)(8) of that act; and

b. The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

B. For the purposes of subdivisions A 3 and 4, the term "employment" does not apply to service performed:

1. In the employ of (i) a church or convention or association of churches, or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

3. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical deficiency, mental illness, intellectual disability, or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;
4. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;
5. By an inmate of a custodial or penal institution; or
6. In the employ of the Commonwealth, or any political subdivision thereof or any instrumentality of any one or more of the foregoing as set forth in subdivisions A 1 through 3, if such service is performed by an individual in the exercise of duties:
  - a. As an elected official;
  - b. As a member of a legislative body, or a member of the judiciary;
  - c. As a member of the state National Guard or Air National Guard;
  - d. As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
  - e. In a position which, under or pursuant to the laws of the Commonwealth, is designated as (i) a major nontenured policymaking or advisory position or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480; 2012, cc. [476](#), [507](#).

#### **§ 60.2-214. Agricultural employment.**

A. "Employment" includes service performed by an individual in agricultural labor as defined in § [60.2-201](#) when:

1. Such service is performed for a person who:
  - a. During any calendar quarter in either the current or the preceding calendar year paid wages of \$20,000 or more to individuals employed in agricultural labor, including labor performed by an alien referred to in subdivision 2 of this subsection, or
  - b. For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in subdivision 2 of this subsection, ten or more individuals, regardless of whether they were employed at the same moment of time.



2. Such service is not performed in agricultural labor by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to 8 U.S.C. § 214 (c) and 8 U.S.C. § 101 (a) (15) (H) of the Immigration and Nationality Act. Services performed and wages received by such alien workers after January 1, 1980, shall be counted in determining whether an employer is subject to the Virginia unemployment tax for his other farmworkers.

B. For the purposes of this section any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

1. Such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Workers Protection Act of 1983 (29 U.S.C. § 1801 et seq.) or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader, and

2. Such individual is not an employee of such other person within the meaning of subdivision 1 of subsection A of § [60.2-212](#).

C. For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection B of this section then:

1. Such other person and not the crew leader shall be treated as the employer of such individual, and

2. Such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

D. For the purposes of this section, the term "crew leader" means an individual who:

1. Furnishes individuals to perform service in agricultural labor for any other person,

2. Pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them, and

3. Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480; 1987, c. 113; 1993, c. 250; 1996, c. [745](#).

### **§ 60.2-215. Domestic employment.**

"Employment" includes domestic service performed by an individual in a private home, local college club or local chapter of a college fraternity or sorority for a person who paid wages of \$1,000 or more to individuals employed in such domestic service in any calendar quarter in the current calendar year

or the preceding calendar year. The term "domestic service" shall not include any medical services performed by personnel such as a nurse, nurse's aide, private nurse, practical nurse, student nurse or attendant rendering medical services in a private residence or a medical institution where such personnel are employed by the person receiving such services.

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480.

#### **§ 60.2-216. Employment outside of United States.**

A. "Employment" includes any service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer other than service which is deemed "employment" under the provisions of subsections A and B of § [60.2-217](#) or the parallel provisions of another state's law, if:

1. The employer's principal place of business in the United States is located in this Commonwealth;
2. The employer has no place of business in the United States, but
  - a. The employer is an individual who is a resident of this Commonwealth,
  - b. The employer is a corporation which is organized under the laws of this Commonwealth, or
  - c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of this Commonwealth is greater than the number who are residents of any one other state; or
3. None of the criteria of subdivisions 1 and 2 of this subsection is met but the employer has elected coverage in this Commonwealth or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this Commonwealth.

B. An "American employer," for purposes of this section, means a person who is:

1. An individual who is a resident of the United States;
2. A partnership, if two-thirds or more of the partners are residents of the United States;
3. A trust, if all of the trustees are residents of the United States; or
4. A corporation organized under the laws of the United States or of any state.

C. As used in this section, the term "United States" shall be defined as "state" is defined in § [60.2-225](#).

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480.

#### **§ 60.2-217. Employment within and without Commonwealth.**

A. The term "employment" shall include an individual's entire service, performed within or both within and without this Commonwealth if:

1. The service is localized in this Commonwealth; or
2. The service is not localized in any state but some of the service is performed in this Commonwealth and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this Commonwealth; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this Commonwealth.

B. Services performed within this Commonwealth and not covered under subsection A of this section shall be deemed to be employment subject to this title if taxes are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

C. 1. Services not covered under subsection A of this section, and performed entirely without this Commonwealth, with respect to no part of which taxes are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this title if (i) the individual performing such services is a resident of this Commonwealth and (ii) the Commission approves the election of the employing unit, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to this title.

2. Services covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this Commonwealth, shall be deemed to be employment if the Commission has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

3. The Commission is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (i) in which any part of such individual's service is performed, (ii) in which such individual has his residence, or (iii) in which the employing unit maintains a place of business. Any such arrangement shall be authorized if there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

4. To the extent permissible under the laws and Constitution of this Commonwealth and the United States, the Commission is authorized to enter into or cooperate in arrangements whereby facilities

and services provided under this title and facilities and services provided under the unemployment compensation law of any foreign government established on the continent of North America, may be utilized for the taking of claims and the payment of benefits under this title or under a similar law of such foreign government.

D. 1. Service shall be deemed to be localized within a state if:

a. The service is performed entirely within such state; or

b. The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example is temporary or transitory in nature or consists of isolated transactions.

2. Services performed outside the state in which the base of operations is located shall be deemed to be incidental to the services performed within such state.

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480.

#### **§ 60.2-218. Employment taxed by federal law.**

Notwithstanding any other provision of §§ [60.2-212](#) through [60.2-217](#) and § [60.2-219](#), the term "employment" shall mean service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for taxes required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this title.

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254; 1986, c. 480.

#### **§ 60.2-219. Services not included in term "employment."**

The term "employment" shall not include:

1. Service performed in the employ of the United States government or of any instrumentality of the United States which is wholly or partially owned by the United States or which is exempt from the tax imposed by § 3301 of the Federal Internal Revenue Code by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

2. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress, including service performed after June 30, 1939, for an employer determined to be subject to the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) by the agency or agencies empowered to make such determination by an act of Congress, and service as an employer representative determined to be subject to such act by such

agency or agencies. The Commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective 10 days after publication thereof, in the manner provided in § [60.2-111](#) for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this title, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this title;

3. Agricultural labor as defined in § [60.2-201](#) except as provided for in § [60.2-214](#);

4. Domestic service in a private home, local college club or local chapter of a college fraternity or sorority except as provided for in § [60.2-215](#);

5. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an employee, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

6. Service performed by an individual in, or as an officer or member of the crew of, a vessel while it is engaged in the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except (i) service performed in connection with the catching or taking of salmon or halibut for commercial purposes and (ii) service performed on or in connection with a vessel of more than 10 net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States;

6a. Service performed by an individual on a boat engaged in catching fish or other forms of aquatic life under an arrangement with the owner or operator of such boat pursuant to which:

a. Such individual does not receive any cash remuneration, other than as provided in subdivision b;

b. Such individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, or a share of the proceeds from the sale of such catch; and

c. The amount of such individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat is normally made up of fewer than 10 individuals;

7. Service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 21 in the employ of his father or mother;

8. Service performed in any calendar quarter in the employ of any organization exempt from income tax (i) under § 501(a) of the Federal Internal Revenue Code (26 U.S.C.), other than an organization

described in § 401(a) of such Code, or (ii) under § 521 of the Federal Internal Revenue Code, if the remuneration for such service is less than \$50;

9. Service performed in the employ of a school or institution of higher education, if such service is performed by a student who is enrolled and is regularly attending classes at such school or institution;

10. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law;

11. Service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

12. Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

13. Service performed by an individual for an employing unit as a real estate salesman, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

14. Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

15. Service performed by an individual for an employing unit as an agent in the wholesale distribution and sale of gasoline and other petroleum products, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

16. Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under clause (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

17. a. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on. In order for such services to be excluded from "employment":

- (1) The individual shall be enrolled as a student in a full-time program,
- (2) The program shall be taken for credit at such institution,
- (3) The program combines academic instruction with work experience, and
- (4) Such service shall be an integral part of such program.

b. Such institution shall certify to the employer that subdivisions 17 a (1) through 17 a (4) have been met.

c. This subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

18. Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in § [60.2-221](#);

19. Services provided by an individual pursuant to an agreement among the service recipient, a public human services agency as defined in § [15.2-2811](#), and such individual to an eligible service recipient in his own home or the home of the service provider, unless coverage of such services is required by the provisions of § 3304(a)(6)(A) of the Federal Unemployment Tax Act;

20. Services performed by an individual as a "direct seller" provided that:

a. Such person:

(1) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary of the Treasury prescribes by regulations for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment;

(2) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to a consumer in the home or otherwise than in a permanent retail establishment; or

(3) Is engaged in the trade or business of the delivery or distribution of newspapers or shopping news (including any delivery services directly related to such trade or business).

b. Substantially all of the remuneration for the services performed as a direct seller, whether or not paid in cash, is directly related to sales or output, including the performances of services, rather than to the number of hours worked;

c. The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes;

21. Service performed after July 1, 1984, by an individual as a taxicab driver, or as a driver of an executive sedan, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;



22. Services performed by an individual as a "contract carrier courier driver" provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;

23. Services performed by a full-time student in the employ of an organized camp if:

a. Such camp:

(1) Did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) Had average gross receipts for any six months in the preceding calendar year which were not more than 33- 1/3 percent of its average gross receipts for the other six months in the preceding calendar year; and

b. Such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year;

24. Services performed by an individual as a court reporter for an employing unit if all such service performed by the individual for the employing unit is performed for remuneration solely by way of commission;

25. Services performed by an individual as a cosmetologist or as a barber provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act;

26. Services performed by a licensed clinical social worker as defined in § [54.1-3700](#), licensed psychologist as defined in § [54.1-3600](#), licensed professional counselor as defined in § [54.1-3500](#), licensed psychiatrist, or licensed marriage and family therapist as defined in § [54.1-3500](#), if such individual:

a. Operates under a contract specifying that the individual is free from control or direction over the performance of such services;

b. Is licensed in the Commonwealth to perform independent clinical services;

c. Is compensated solely by way of fees charged for services rendered by such individual; and

d. Has a valid business license issued by the locality in which such individual performs such services; and

27. Services performed by an inmate for a penal or custodial institution or while participating in the community corrections alternative program pursuant to § [19.2-316.4](#).

Code 1950, § 60-14; 1952, cc. 30, 184; 1956, c. 440; 1962, c. 71; 1968, c. 738, § 60.1-14; 1971, Ex. Sess., c. 235; 1972, c. 824; 1974, cc. 466, 660; 1976, c. 304; 1977, c. 330; 1979, c. 637; 1980, cc. 520, 522; 1981, cc. 28, 369, 374, 375; 1982, c. 25; 1983, c. 14; 1984, cc. 120, 139, 204; 1985, cc. 152, 254;

1986, c. 480; 1987, c. 113; 1988, c. 678; 1989, c. 339; 1992, c. 4; 1997, cc. [171](#), [189](#); 2000, c. [438](#); 2003, c. [609](#); 2004, c. [977](#); 2005, c. [110](#); 2019, c. [618](#).

**§ 60.2-220. Institution of higher education.**

"Institution of higher education," for the purposes of this title, means an educational institution which:

1. Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
2. Is legally authorized in this Commonwealth to provide a program of education beyond high school;
3. Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;
4. Is a public or other nonprofit institution; and
5. Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this Commonwealth are institutions of higher education for purposes of this section.

1971, Ex. Sess., c. 235, § 60.1-14.1; 1986, c. 480.

**§ 60.2-221. Hospital.**

"Hospital" means an institution as defined in §§ [32.1-123](#) and [37.2-100](#).

1971, Ex. Sess., c. 235, § 60.1-14.2; 1986, c. 480.

**§ 60.2-222. Employment office.**

"Employment office" means a free public employment office, or branch thereof, operated (i) by this Commonwealth or maintained as a part of a state-controlled system of public employment offices or (ii) by a federal agency charged with the administration of free public employment offices.

Code 1950, § 60-15; 1968, c. 738, § 60.1-15; 1986, c. 480.

**§ 60.2-223. Fund.**

"Fund" means the Unemployment Compensation Fund established by this title, to which all taxes required and from which all benefits provided under this title shall be paid.

Code 1950, § 60-16; 1968, c. 738, § 60.1-16; 1986, c. 480.

**§ 60.2-224. Insured work.**

"Insured work" means employment for employers.

Code 1950, § 60-17; 1968, c. 738, § 60.1-17; 1986, c. 480.

**§ 60.2-225. State.**

"State" refers to the Commonwealth of Virginia, including land or premises located therein, owned, held or possessed by the United States, the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

Code 1950, § 60-18; 1962, c. 71; 1968, c. 738, § 60.1-21; 1977, c. 330; 1986, c. 480.

**§ 60.2-226. Unemployment.**

A. An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. Wages shall be deemed payable to an individual with respect to any week for which wages are due. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

B. Notwithstanding any other provisions of this title, no individual shall be deemed unemployed with respect to any week he earns less than his weekly benefit amount solely because he did not work on a legal holiday as defined in § [2.2-3300](#).

Code 1950, § 60-20; 1954, c. 203; 1956, c. 440; 1968, c. 738, § 60.1-23; 1980, c. 463; 1986, c. 480; 1992, c. 5.

**§ 60.2-227. Unemployment Compensation Administration Fund.**

"Unemployment Compensation Administration Fund" means the Unemployment Compensation Administration Fund established by this title, from which administrative expenses under this title shall be paid.

Code 1950, § 60-21; 1968, c. 738, § 60.1-24; 1986, c. 480.

**§ 60.2-228. American vessel and American aircraft.**

The term "American vessel" means any vessel documented or numbered under the laws of the United States, and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. The term "American aircraft" means an aircraft registered under the laws of the United States.

Code 1950, § 60-21.1; 1962, c. 71; 1968, c. 738, § 60.1-25; 1986, c. 480.

**§ 60.2-229. Wages.**

A. "Wages" means all remuneration paid, or which should have been paid, for personal services, including commissions, bonuses, tips, back pay, dismissal pay, severance pay and any other payments made by an employer to an employee during his employment and thereafter and the cash value of all remuneration payable in any medium other than cash. Notwithstanding the other provisions of this subsection, wages paid in back pay awards shall be allocated to, and reported as being paid during, the calendar quarter or quarters in which such back pay would have been earned. Severance pay paid at the time of, or subsequent to, separation from employment shall be allocated to the last day of work unless otherwise allocated by the employer. If otherwise allocated, severance pay shall be allocated at a rate not less than the average weekly wage of such employee during the last calendar quarter, and reported as such. Severance pay shall be deducted from any benefits payable after the

Commission's receipt of notification of severance pay by the employer pursuant to § [60.2-603](#). The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Commission.

B. The term "wages" shall not include:

1. Subsequent to December 31, 1990, for purposes of taxes only, that part of the remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, that is greater than \$8,000 and is payable during any calendar year to an individual by any employer with respect to employment in this Commonwealth or any other state. If an employer, hereinafter referred to as "successor employer," during any calendar year acquires substantially all of the property used in a trade or business of another employer, hereinafter referred to as a "predecessor," or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, with respect to employment equal to \$8,000 is payable by the successor to such individual during such calendar year, any remuneration, other than remuneration referred to in the succeeding subdivisions of this subsection, with respect to employment payable, or considered under this subdivision as payable, to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as payable by such successor employer;
2. The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provisions for (i) his employees generally, (ii) for his employees generally and their dependents, (iii) for a class or classes of his employees, or (iv) for a class or classes of his employees and their dependents, on account of:
  - a. Retirement;
  - b. Sickness or accident disability payments which are received under a workers' compensation law;
  - c. Medical or hospitalization expenses in connection with sickness or accident disability;
  - d. Death; or
  - e. Unemployment benefits under any private plan financed in whole or in part by an employer;
3. The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employer under § 3101 of the Federal Internal Revenue Code;
4. Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with the sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

5. Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;
6. Any payment, other than vacation or sick pay, made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made; or
7. Any payment made to, or on behalf of, an employee or his beneficiary under a cafeteria plan, as defined in § 125 of the Internal Revenue Code, if such payment would not be treated as wages under the Internal Revenue Code.

Code 1950, § 60-22; 1952, c. 184; 1954, c. 203; 1956, c. 440; 1968, c. 9; 1968, c. 738, § 60.1-26; 1971, Ex. Sess., c. 235; 1974, c. 466; 1976, c. 591; 1977, c. 330; 1979, cc. 629, 637; 1982, c. 363; 1983, c. 14; 1984, cc. 204, 408; 1986, c. 480; 1990, c. 908; 1993, c. 576; 1995, c. [515](#); 2020, c. [1261](#).

#### **§ 60.2-230. Week.**

"Week" means calendar week, ending at midnight Saturday, or the equivalent thereof as determined in accordance with regulations prescribed by the Commission, except as provided for in subdivision 9 of subsection B of § [60.2-210](#).

Code 1950, § 60-23; 1968, c. 738, § 60.1-27; 1971, Ex. Sess., c. 235; 1986, c. 480.

#### **§ 60.2-231. Certain federal acts and statutes defined.**

The following federal acts and laws as used in this title shall mean the following:

1. The Federal Unemployment Tax Act shall mean those provisions found in Chapter 23 (26 U.S.C. § 3301 et seq.) of Title 26 of the United States Code.
2. The Federal Internal Revenue Code shall mean those provisions found in Title 26 of the United States Code.
3. The Social Security Act shall mean those provisions found in Chapter 7 (42 U.S.C. § 301 et seq.) of Title 42 of the United States Code.

Code 1950, § 60-19; 1968, c. 738, § 60.1-22; 1986, c. 480.

## **Chapter 3 - FUNDS**

### **Article 1 - UNEMPLOYMENT COMPENSATION FUND**

#### **§ 60.2-300. Fund continued; accounts maintained.**

The special fund established in the state treasury and known as the Unemployment Compensation Fund is continued. The Comptroller shall maintain within the fund two separate accounts:

1. A clearing account; and
2. A benefit account.

Code 1950, § 60-90; 1968, c. 738, § 60.1-106; 1986, c. 480.

**§ 60.2-301. Clearing account; payment to credit of federal Unemployment Trust Fund.**

All taxes and other moneys required by this title to be paid to the Unemployment Compensation Fund and collected by the Commission, and any interest or earnings upon any moneys or property belonging to the fund shall, promptly upon collection, be paid into the state treasury and credited to the clearing account. Any interest collected on taxes shall be paid into the Special Unemployment Compensation Administration Fund continued by § [60.2-314](#). Refunds, except for interest collected payable pursuant to § [60.2-524](#), may be paid from the clearing account. After clearance thereof, all other moneys in the clearing account, including undeliverable payments, shall immediately be paid over to the Secretary of the Treasury of the United States, to the credit of the Unemployment Trust Fund established by the Social Security Act, to be held for the Commonwealth upon the terms and conditions provided in the Social Security Act.

Code 1950, § 60-91; 1968, c. 738, § 60.1-107; 1986, c. 480; 1993, c. 249; 1995, c. [515](#).

**§ 60.2-302. Benefit account; requisitions from federal Unemployment Trust Fund.**

Moneys shall be requisitioned from this Commonwealth's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the Commission, except that money credited to this Commonwealth's account, pursuant to § 903 of the Social Security Act (42 U.S.C. § 1103), shall be used exclusively as provided in § [60.2-305](#). The Commission shall requisition from the Unemployment Trust Fund such amounts, not exceeding the amount standing to its credit, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt of such amounts, the same shall be paid into the state treasury to the credit of the benefit account, and shall be used solely to pay the benefits provided for in this title. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account, including undeliverable payments, after the expiration of the period for which such sums were requisitioned shall either (i) be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or (ii) in the discretion of the Commission, be paid over to the Secretary of the Treasury of the United States, as provided in § [60.2-301](#). All benefits shall be paid through public employment offices provided for in this title.

Code 1950, § 60-92; 1960, c. 54; 1968, c. 738, § 60.1-108; 1986, c. 480; 1993, c. 249.

**§ 60.2-303. Moneys appropriated to Commission.**

All moneys paid into the state treasury and credited to the Unemployment Compensation Fund are hereby appropriated to the Commission for the purposes set forth in this article.

Code 1950, § 60-93; 1968, c. 738, § 60.1-109; 1986, c. 480.

**§ 60.2-304. Disbursements by State Treasurer upon warrants of Comptroller.**

All payments and disbursements from the Unemployment Compensation Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by the Commissioner or by such other person as the Commissioner may designate for that purpose.

Code 1950, § 60-94; 1968, c. 738, § 60.1-110; 1986, c. 480.

**§ 60.2-305. Requisition or use of money credited to Commonwealth in Unemployment Trust Fund.**

A. 1. Money credited to the account of this Commonwealth in the Unemployment Trust Fund by the Secretary of the Treasury of the United States, pursuant to § 903 of the Social Security Act (42 U.S.C. § 1103), may not be requisitioned from this Commonwealth's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this title.

2. Such money may be requisitioned, pursuant to § [60.2-302](#), for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this title but only pursuant to a specific appropriation by the General Assembly and only if the expenses are incurred and the money requisitioned after the enactment of an appropriation law which:

- a. Specifies the purpose for which such money is appropriated and the amount appropriated therefor;
- b. Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and
- c. Limits the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amount credited to the account of this Commonwealth, pursuant to § 903 of the Social Security Act (42 U.S.C. § 1103), during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this Commonwealth pursuant to such section during such thirty-five twelve-month periods.

B. Amounts credited to this Commonwealth's account in the Unemployment Trust Fund under § 903 of the Social Security Act (42 U.S.C. § 1103) which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged. However, no amount obligated for administration during a twelve-month period specified in subdivision 2 of subsection A of this section may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.

C. Money requisitioned as provided for the payment of expenses of administration shall be deposited in the Unemployment Compensation Administration Fund, but, until expended, shall remain a part of the Unemployment Trust Fund. The Commission shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited.

Code 1950, § 60-94.1; 1960, c. 54; 1968, c. 131; 1968, c. 738, § 60.1-111; 1970, c. 732; 1972, c. 23; 1986, c. 480.

**Article 2 - UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND**

**§ 60.2-306. Fund continued; available to Commission.**

The special fund in the state treasury known as the Unemployment Compensation Administration Fund is continued. All moneys which are deposited or paid into this fund shall be held for use by the Commission.

Code 1950, § 60-95; 1968, c. 738, § 60.1-112; 1986, c. 480.

**§ 60.2-307. Moneys constituting fund.**

The fund shall consist of all moneys appropriated by this Commonwealth, and all moneys received from the United States, any agency thereof or any other source, for the purpose declared in § [60.2-308](#). Notwithstanding any provision of this article, all moneys requisitioned and deposited in this fund pursuant to the provisions of subsection C of § [60.2-305](#) shall remain part of the Unemployment Trust Fund and shall be used only in accordance with the conditions specified in § [60.2-305](#).

Code 1950, § 60-96; 1956, c. 440; 1960, c. 54; 1968, c. 738, § 60.1-113; 1986, c. 480.

**§ 60.2-308. Expenditures solely for cost of administration.**

A. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title and for no other purpose whatsoever.

B. All moneys received by the Commission pursuant to the provisions of § 302 of the Social Security Act (42 U.S.C. § 502), shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor of the United States for the proper and efficient administration of this title.

Code 1950, § 60-97; 1956, c. 440; 1968, c. 738, § 60.1-114; 1986, c. 480.

**§ 60.2-309. Repealed by Acts 2023, cc. 624 and 625, cl. 2, effective July 1, 2023.**

**§ 60.2-310. Repealed by Acts 2023, cc. 624 and 625, cl. 2, effective July 1, 2023.**

**§ 60.2-311. Replacing funds lost or expended for unnecessary purposes.**

The Commission is authorized and directed to replace in the Unemployment Compensation Administration Fund, within a reasonable time, out of any funds appropriated by the General Assembly for such purpose, any moneys received by the Commission pursuant to the provisions of § 302 of the Social Security Act (42 U.S.C. § 502), which because of any action or contingency (i) are lost or (ii) are expended for purposes other than, or in amounts in excess of those found necessary by the Secretary of Labor of the United States for the proper administration of this title. The Commission is directed to report to the Governor in accordance with the provisions of subdivision 3 of § [2.2-1501](#) the amount necessary to make such replacement to the Unemployment Compensation Administration Fund. The Governor shall include in the budget reported to the General Assembly and in the budget bill submitted under § [2.2-1508](#) the amount necessary to be appropriated for such purposes.

Code 1950, § 60-98; 1956, c. 440; 1968, c. 738, § 60.1-115; 1986, c. 480.

**§ 60.2-312. Disbursements by State Treasurer upon warrants of Comptroller.**

All payments and disbursements from the Unemployment Compensation Administration Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by the Commissioner or by such other person as the Commissioner may designate for that purpose.

Code 1950, § 60-100; 1968, c. 738, § 60.1-117; 1986, c. 480.

**§ 60.2-313. Expenses incurred by Auditor of Public Accounts, Comptroller and State Treasurer.**



All expenses incurred by the Auditor of Public Accounts in auditing the books, records and accounts of the Commission and in rendering other services to the Commission and all expense incurred by the Comptroller and the State Treasurer in performing the services required by this title, may be treated as administrative expenses of the Commission and accordingly paid by the Commission.

Code 1950, § 60-101; 1968, c. 738, § 60.1-118; 1986, c. 480.

### **Article 3 - SPECIAL UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND**

#### **§ 60.2-314. Fund continued; interest and penalties paid into fund.**

The special fund in the state treasury known as the Special Unemployment Compensation Administration Fund is continued. All interest, penalties, fees, and costs regardless of when the same became payable, collected from employers and claimants under the provisions of this title, shall be paid into this fund.

Code 1950, § 60-102; 1968, c. 738, § 60.1-119; 1986, c. 480; 1990, c. 687.

#### **§ 60.2-315. Proper expenditures from fund.**

No part of the Special Unemployment Compensation Administration Fund shall be expended or available for expenditure in lieu of federal funds made available to the Commission for the administration of this title. Such fund shall be used by the Commission for the payment of costs and charges of administration, including the cost of capital projects of the Virginia Employment Commission, and discretionary expenditures not to exceed \$375,000 per fiscal year authorized in the general appropriations act, which are found by the Commission not to be proper and valid charges payable out of any funds in the Unemployment Compensation Administration Fund received from any source. Such costs and charges shall include any interest due on Title XII advances to the trust fund for the payment of benefits. Refunds of interest, allowable under § [60.2-524](#), shall be made from this special fund, provided such interest was deposited in such fund.

Code 1950, § 60-103; 1968, c. 738, § 60.1-120; 1983, c. 16; 1985, c. 323; 1986, c. 480; 2007, c. [241](#).

#### **§ 60.2-316. Disbursements by State Treasurer upon warrants of Comptroller.**

All payments and disbursements from the Special Unemployment Compensation Administration Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by the Commissioner, or by such other person as the Commissioner may designate for that purpose.

Code 1950, § 60-104; 1968, c. 738, § 60.1-121; 1986, c. 480.

#### **§ 60.2-317. Moneys in fund continuously available to Commission.**

The moneys in the Special Unemployment Compensation Administration Fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this article.

Code 1950, § 60-105; 1968, c. 738, § 60.1-122; 1986, c. 480.

## Article 4 - WORKFORCE DEVELOPMENT TRAINING FUND

§§ 60.2-318 through 60.2-322. Repealed.

Repealed by Acts 2004, c. [872](#).

### Chapter 4 - Job Service [Repealed]

§§ 60.2-400 through 60.2-401. Repealed.

Repealed by Acts 2023, cc. [624](#), [625](#), cl. 2, effective July 1, 2023.

## Chapter 5 - TAXATION

### Article 1 - EMPLOYER TAXATION

**§ 60.2-500. Determination with respect to whether employing unit is employer; whether services constitute employment; or whether business transfer is illegal.**

A. The Commission may, upon its own motion or upon application of an employing unit, and after not less than 30 days' notice in writing mailed to the last known address of such employing unit and an opportunity for hearing, make findings of fact, and on that basis, determine whether:

1. An employing unit constitutes an employer;
2. Services performed for or in connection with the business of an employing unit constitute employment for such employing unit; or
3. There has been a transfer as defined in § [60.2-536.1](#).

B. All testimony at any hearing pursuant to this section shall be recorded but need not be transcribed unless a petition for judicial review from such determination is filed in the manner herein prescribed. At such hearing the interests of the Commonwealth may be represented by the Office of the Attorney General. The Commissioner shall have the power to designate a special examiner to hold such hearings, and may authorize and empower such special examiner to decide any matter so heard, in which event the decision of such special examiner shall be the final decision of the Commission under this section, subject to judicial review under subsection C. The Commissioner or his designee shall promptly inform the appropriate attorney for the Commonwealth of any final decision that an employer transferred or attempted to transfer a trade or business for the primary or sole purpose of obtaining a lower unemployment tax rate, or was advised to do so.

C. Judicial review of any such determination made in subsection B may be initiated within 30 days after mailing notice of such findings and determination to the employing unit or, in the absence of mailing, within 30 days after delivering such notice and determination, in the Circuit Court of the City of Richmond. Such judicial review shall be commenced by the filing of a petition, which need not be verified but which shall state the grounds upon which a review is sought. Service of two copies of such petition upon the Commissioner shall be deemed completed service and such petition shall be filed with the clerk of the court within five days after service thereof. With its answer the Commission shall

certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the Commission's findings of facts, if supported by the evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions shall be given preference on the docket over all other cases except cases to which the Commonwealth is a party.

D. An appeal may be taken from the decision of such court to the Court of Appeals, in conformity with Part Five A of the Rules of Supreme Court and other applicable laws. In any such proceedings for judicial review, the Commission shall be represented by the Office of the Attorney General. A determination by the Commission from which no judicial review has been commenced shall be conclusive in any subsequent judicial proceeding involving liability for taxes against the employing unit or its successor under the provisions of subdivision B 1 of § [60.2-210](#) and of subsection B of § [60.2-523](#).

Code 1950, §§ 60-58, 60-59; 1968, c. 738, §§ 60.1-70, 60.1-71; 1970, c. 104; 1977, c. 445; 1981, c. 99; 1984, c. 703; 1986, c. 480; 2005, cc. [47](#), [91](#); 2012, cc. [65](#), [161](#).

#### **§ 60.2-501. Financing of benefits to employees of nonprofit organizations.**

A. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in § 501(c) (3) of the United States Internal Revenue Code which is exempt from income tax under § 501 (a) of that Code.

B. Any nonprofit organization which, pursuant to subdivision 8 of subsection B of § [60.2-210](#), is or becomes subject to this title shall pay taxes under the provisions of § [60.2-511](#), unless it elects, in accordance with this subsection, to pay to the Commission for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, and that is for weeks of unemployment which begin during the effective period of such election.

1. Any nonprofit organization which is or becomes subject to this title may elect to become liable for payments in lieu of taxes for a period of not less than one taxable year beginning with January 1 of each year, provided it files with the Commission a written notice of its election within the thirty-day period immediately following such date.

2. Any nonprofit organization which becomes subject to this title may elect to become liable for payments in lieu of taxes for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the Commission not later than thirty days immediately following the date of the determination of such subjectivity.

3. Any nonprofit organization which makes an election in accordance with subdivision 1 or 2 of this subsection shall continue to be liable for payments in lieu of taxes until it files with the Commission a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

4. Any nonprofit organization which has been paying taxes under this title may change to a reimbursable basis by filing with the Commission, not later than thirty days prior to the beginning of any taxable year, a written notice of election to become liable for payments in lieu of taxes. Such election shall not be terminable by the organization for that and the next year.

5. The Commission may for good cause extend the period within which a notice of election, or a notice of termination, shall be filed and may permit an election to be retroactive but not any earlier than January 1 of the current calendar year.

6. The Commission, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of § [60.2-500](#).

C. Payments in lieu of taxes shall be made in accordance with the provisions of this subsection, including either subdivision 1 or 2.

1. a. At the end of each calendar quarter, or at the end of any other period as determined by the Commission, the Commission shall bill each nonprofit organization, or group of such organizations, which has elected to make payments in lieu of taxes for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

b. If the final adjudication of a disputed claim finds the claimant totally or partially ineligible for benefits, the nonprofit organization shall be liable for any bill resulting from payments made to the claimant during or prior to the appeal process, whether made by erroneous statutory interpretation, administrative error, or incorrect wage reporting.

2. a. Each nonprofit organization that has elected payments in lieu of taxes may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the Commission.

b. At the end of each calendar quarter, or at the end of such other period as determined by the Commission, the Commission shall bill each nonprofit organization for an amount representing one of the following:

(1) One-tenth of one percent of its total payroll for the preceding calendar year.

(2) Such percentage of its total payroll for the immediately preceding calendar year as the Commission shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(3) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the Commission shall determine.

c. At the end of each taxable year, the Commission may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

d. At the end of each taxable year, the Commission shall determine whether the total of payments for such year made by a nonprofit organization is more or less than the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subdivision 3 of this subsection. If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the Commission, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

3. Payment of any bill rendered under subdivision 1 or 2 of this subsection shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subdivision 5 of this subsection.

4. Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

5. The amount due specified in any bill from the Commission shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an appeal with the Commission, setting forth the grounds for such appeal. Proceedings on appeal to the Commission from the amount of a bill rendered under this subsection or a redetermination of such amount shall be in accordance with the provisions of § [60.2-500](#). The decision of the Commission shall be subject to the provisions of § [60.2-500](#).

6. Past-due payments of amounts in lieu of taxes shall be subject to the same interest and penalties that, pursuant to § [60.2-519](#), apply to past-due taxes.

1974, c. 466, § 60.1-89; 1981, cc. 248, 252; 1986, c. 480.

#### **§ 60.2-502. Bonding of nonprofit organizations.**

A. In the discretion of the Commission, any nonprofit organization that elects to become liable for payments in lieu of taxes shall be required within thirty days after the effective date of its election (i) to execute and file with the Commission a surety bond approved by the Commission or (ii) to deposit with the Commission money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

B. The amount of the bond or deposit required by this section shall be a percentage, determined by the Commission, of the organization's taxable wages paid for employment as defined in subdivision 4 of subsection A of § [60.2-213](#) for the four calendar quarters immediately preceding the effective date of

the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date is most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the Commission.

C. Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the Commission, at such time as the Commission may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of taxes. The Commission shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of taxes when due, together with any applicable interest and penalties provided for in subdivision 6 of subsection C of § [60.2-501](#), shall render the surety liable on such bond to the extent of the bond, as though the surety was such organization.

D. Any deposit of money or securities made in accordance with this section shall be retained by the Commission in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The Commission may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of taxes and any applicable interest and penalties provided for in subdivision 6 of subsection C of § [60.2-501](#). The Commission shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The Commission may review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, the organization shall be required to make additional deposit within thirty days of written notice of the determination or the Commission shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

E. If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the Commission may terminate such organization's election to make payments in lieu of taxes and such termination shall continue for not less than the four consecutive calendar quarter period beginning with the quarter in which such termination becomes effective; however, the Commission may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days.

1974, c. 466, § 60.1-89; 1981, cc. 248, 252; 1986, c. 480.

### **§ 60.2-503. Authority to terminate elections.**

If any nonprofit organization is delinquent in making payments in lieu of taxes as required under subsection C of § [60.2-501](#), the Commission may terminate such organization's election to make payments in lieu of taxes as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

1974, c. 466, § 60.1-89; 1981, cc. 248, 252; 1986, c. 480.

### **§ 60.2-504. Allocation of benefit costs.**

If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of taxes, the amount payable to the fund by each employer that is liable for such payments shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

1974, c. 466, § 60.1-89; 1981, cc. 248, 252; 1986, c. 480.

### **§ 60.2-505. Group accounts.**

A. Two or more employers that have become liable for payments in lieu of taxes, in accordance with the provisions of § [60.2-501](#), may file a joint application to the Commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this section. Upon approval of the application, the Commission shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the Commission or upon application by the group.

B. Upon establishment of the account, each member of the group shall be liable for payments in lieu of taxes with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group.

C. The Commission shall prescribe such regulations as it deems necessary:

1. With respect to application for establishment, maintenance and termination of group accounts that are authorized by this section;
2. For addition of new members to, and withdrawal of active members from, such accounts; and
3. For the determination of the amounts that are payable under this section by members of the group and the time and manner of such payments.

1974, c. 466, § 60.1-89; 1981, cc. 248, 252; 1986, c. 480.

### **§ 60.2-506. Financing of benefits to state employees.**

A. The Commonwealth of Virginia shall have the option to:

1. Treat all of its branches of government and all of its instrumentalities as one employer;
2. Treat each branch of government, judicial, executive, and legislative, as an individual employer; or
3. Treat each of its instrumentalities as an individual employer.
4. The option described herein shall be exercised by the Governor.

B. If the option contained in subdivision 1 of subsection A of this section is exercised, the Commonwealth may elect to finance benefits to its employees by either taxes, as set forth in §§ [60.2-526](#) through [60.2-533](#), or payments in lieu of taxes.

C. If the option contained in either subdivision 2 or 3 of subsection A of this section is exercised, each such individual employer may elect to finance benefits to its employees by either taxes, as set forth in §§ [60.2-526](#) through [60.2-533](#), or payments in lieu of taxes.

D. If the election to make payments in lieu of taxes is exercised, payments shall be made into the fund in an amount equivalent to the amount of regular and extended benefits paid that is attributable to service in the employ of the Commonwealth. If benefits paid to an individual are based on wages paid by more than one employer and one or more employers are liable for payments in lieu of taxes, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of § [60.2-504](#).

E. Payments made in lieu of taxes by the Commonwealth into the Unemployment Trust Fund shall be made at such times and in such manner as the Commission may determine and prescribe.

1971, Ex. Sess., c. 235, § 60.1-89.1; 1977, c. 330; 1979, c. 634; 1986, c. 480.

#### **§ 60.2-507. Financing of benefits to employees of governmental entities.**

A. Any governmental entity which is an employer by virtue of subdivision 7 of subsection B of § [60.2-210](#) shall be permitted to join with one or more other governmental entities to form a joint account in accordance with regulations prescribed by the Commission.

B. Each governmental entity which is an employer by virtue of subdivision 7 of subsection B of § [60.2-210](#) and each joint account formed pursuant to subsection A of this section may elect to finance benefits to its employees by either taxes as set forth in §§ [60.2-526](#) through [60.2-533](#), or payments in lieu of taxes. Any such election to make payments in lieu of taxes shall be made in accordance with the provisions of subdivisions 1, 2 and 4 of subsection B of § [60.2-501](#). Termination of such election to make payments in lieu of taxes shall be made in accordance with subdivision 3 of subsection B of § [60.2-501](#).

C. If the election to make payments in lieu of taxes is exercised, payments shall be in an amount equivalent to the full amount of regular and extended benefits paid that is attributable to service in the employ of such governmental entity. If benefits paid to an individual are based on wages paid by more than one employer and one or more employers are liable for payments in lieu of taxes, the amount



payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of § [60.2-504](#). Notwithstanding the provisions of this subsection, if the final adjudication of a disputed claim finds the claimant totally or partially ineligible for benefits, the governmental entity shall be liable for any payment made to the claimant during or prior to the appeal process, whether made by erroneous statutory interpretation, administrative error, or incorrect wage reporting.

D. Payments in lieu of taxes by governmental entities as set forth in this section shall be made at such times and in such manner as the Commission may determine and prescribe by regulation.

1977, c. 330, § 60.1-89.2; 1979, c. 634; 1981, c. 248; 1986, c. 480.

#### **§ 60.2-507.1. Financing of benefits to employees of Indian tribes.**

A. As used in this section, unless the context requires a different meaning:

"Employer" includes any Indian tribe for which service in employment as defined under this title is performed.

"Employment" includes service performed in the employ of an Indian tribe, as defined in § 3306(u) of the Federal Unemployment Tax Act (FUTA), provided such service is excluded from "employment" as defined in FUTA solely by reason of § 3306(c)(7) of FUTA, and is not otherwise excluded from "employment" under this title. For purposes of this section, any exclusions from employment in § [60.2-219](#) that relate to services performed in the employ of state or local government shall be applicable to services performed in the employ of an Indian tribe.

"Tribal units" means subdivisions, subsidiaries, or business enterprises wholly owned by an Indian tribe.

B. Benefits based on service included in the definition of employment as provided in subsection A shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject under this title.

C. Indian tribes or tribal units subject to this title shall pay taxes as set forth in §§ [60.2-526](#) through [60.2-533](#) under the same terms and conditions as all other subject employers, unless they elect to pay into the fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

D. Indian tribes that elect to make payments to reimburse the fund for benefits paid shall make such election in the same manner and under the same conditions as provided in subsection C of § [60.2-507](#) pertaining to governmental entities that elect to make payments in lieu of taxes. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

E. Indian tribes or tribal units that elect to make payments in lieu of taxes shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same

schedule as nonprofit organizations that have elected to make payments in lieu of taxes as provided in § [60.2-501](#).

F. At the discretion of the Commission, any Indian tribe or tribal unit that elects to become liable for payments in lieu of taxes shall be required within 30 days after the effective date of its election (i) to execute and file with the Commission a surety bond approved by the Commission or (ii) to deposit with the Commission money or securities on the same basis as nonprofit organizations that are required to post a bond or deposit pursuant to § [60.2-502](#).

G. Failure of the Indian tribe or tribal unit to make any required payment, including any assessment of interest and penalty, within 90 days of its due date shall cause the Indian tribe to lose the option to make payments in lieu of taxes, as provided in subsection C, for the following tax year unless payment in full is received before tax rates for next tax year are computed.

H. Any Indian tribe that loses the option to make payments in lieu of taxes due to late payment or non-payment, as described in subsection G, shall have such option reinstated if, after a period of one year, all taxes have been made timely, provided that no taxes, payments in lieu of taxes for benefits paid, penalties or interest remain outstanding.

I. Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the Commission have been exhausted, shall cause services performed for such tribe to not be treated as "employment" as provided in subsection A.

J. The Commission may determine that any Indian tribe that loses coverage under subsection I may have services performed for such tribe again included as "employment" as provided in subsection A if all taxes, payments in lieu of taxes, penalties, and interest have been paid.

K. The Commission shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subsection I or subsection J.

L. Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

1. Shall cause the Indian tribe to be liable for taxes under FUTA;
2. Shall cause the Indian tribe to lose the option to make payments in lieu of taxes; and
3. May cause the Indian tribe to be excepted from the definition of "employer," as provided in subsection A, and services in the employ of the Indian tribe, as provided in subsection A, to be excepted from "employment."

M. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

2008, cc. [100](#), [247](#).

**§ 60.2-508. Period of coverage generally; account required.**

Any employing unit which is or becomes an employer subject to this title within any calendar year shall be subject to this title during the whole of such calendar year. Any such employing unit shall establish an account with the Commission by the end of the calendar quarter in which it becomes subject to this title.

Code 1950, § 60-82; 1968, c. 738, § 60.1-98; 1986, c. 480; 2020, c. [1261](#).

**§ 60.2-509. Termination of coverage.**

A. Except as otherwise provided in this section and § [60.2-510](#), an employing unit shall cease to be an employer subject to this title as of January 1 of any year subsequent to December 31, 1972, only if:

1. The employer files with the Commission a written application for termination of coverage;
2. The Commission finds that (i) there were no twenty different days, each day being in a different week within the preceding calendar year, or (ii) there were no twenty different days, each day being in a different week within the current calendar year, within which such employing unit employed one or more individuals in employment subject to this title; and
3. The Commission finds that such employing unit did not pay in any calendar quarter in the preceding or current calendar year for service in employment wages of \$1,500 or more.

B. Except as otherwise provided in this section and § [60.2-510](#), an employing unit as defined in subdivisions 1 through 4 of subsection A of § [60.2-213](#) or § [60.2-214](#) or § [60.2-215](#), shall cease to be an employer subject to this title as of January 1 of any year, only if it files with the Commission a written application for termination of coverage and the Commission finds that no services performed for such employing unit constitute employment as defined in subdivisions 1 through 4 of subsection A of § [60.2-213](#) or § [60.2-214](#) or § [60.2-215](#).

C. Any employing unit which is an employer at the end of any calendar year solely by acquisition during such year as provided in subdivision 1 of subsection B of § [60.2-210](#), shall cease to be an employer subject to this title as of January 1 of the succeeding calendar year without the filing of the written application required of all other employers, if the Commission finds that there were no twenty different days, each day being in a different week within the preceding or current calendar year that such employing unit and its predecessors in title, treated as a single employing unit:

1. Employed one or more individuals subject to this title; and
2. Did not pay in any calendar quarter in the preceding or current calendar year for service in employment wages of \$1,500 or more.

D. Whenever any employer, during any completed calendar year, fails to be subject to the payment of taxes solely because no individual has earned wages from such employer during such calendar year, the Commission may, after not less than thirty days' notice in writing mailed to such employer at his last known address, cause such employer to cease to be an employer subject to this title as of January 1 of the calendar year in which such notice is given.

Code 1950, § 60-83; 1956, c. 440; 1968, c. 738, § 60.1-99; 1971, Ex. Sess., c. 235; 1972, c. 764; 1979, c. 636; 1986, c. 480.

**§ 60.2-510. Election as to coverage.**

A. Any employing unit, not otherwise subject to this title, which files with the Commission its written election to become an employer subject to this title for not less than two calendar years, shall, with the written approval of the Commission, become an employer subject to this title to the same extent as all other employers. Such employer shall be subject as of January 1 of the calendar year for which such election is approved, and shall cease to be subject as of January 1 of any calendar year subsequent to such two calendar years if it has filed with the Commission a written notice to that effect. However, the Commission may, on its own motion, and after ten days' written notice mailed to such employing unit at its last known address, without regard to the two-year calendar period, revoke such written approval. As of the date of such revocation, such employing unit shall cease to be an employer.

B. Any employing unit for which services are performed which do not constitute employment as defined in this title may file with the Commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for not less than two calendar years. Upon the Commission's written approval, such services shall be deemed to constitute employment subject to this title from the date stated in such approval. Such services shall cease to be deemed employment subject thereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such January 1 such employing unit has filed with the Commission a written notice to that effect.

Code 1950, § 60-84; 1968, c. 738, § 60.1-100; 1971, Ex. Sess., c. 235; 1974, c. 660; 1977, c. 330; 1986, c. 480.

**Article 2 - EMPLOYER REPORTING REQUIREMENTS**

**§ 60.2-511. How and when taxes payable.**

Taxes, as set forth in this and the succeeding article, shall accrue and become payable by each employer for each calendar year in which he is subject to this title. Such taxes shall be based upon wages payable for employment, as defined in §§ [60.2-212](#) through [60.2-219](#), occurring in such calendar year. Such taxes shall become due and be paid by each employer to the Commission for the fund in accordance with such regulations as the Commission may prescribe. Payment of such taxes and the filing of related returns shall be deemed to have been made as of the date of the postmark affixed to such payment and returns by the United States Postal Service, or by receipt given by such representative of the Commission if physical delivery of such payment and related returns is made to an office of the Commission.

Code 1950, § 60-60; 1968, c. 738, § 60.1-72; 1974, c. 466; 1986, c. 480; 1997, c. [137](#).

**§ 60.2-512. Requiring payroll and tax reports and payment of taxes.**

A. The Commission is hereby expressly authorized to require the filing of payroll and tax reports, and the payment of the taxes required by § [60.2-511](#) in monthly, quarterly, semiannual or annual payments as shall be determined by the Commission; however, if the due date for filing of reports or payment of taxes falls on a Saturday, Sunday or legal holiday, the due date shall be extended to the next business day that is not a Saturday, Sunday or legal holiday. Beginning January 1, 2013, employers may file payroll and tax reports, and pay the taxes required by § [60.2-511](#), annually, in the time, form and manner prescribed by the Commission, if the employment that is the subject of the report of taxes due under this chapter consists exclusively of domestic service in a private home of the employer, as defined in §§ 31.3121 (a)(7)-1, 31.3306 (c)(2)-1, and 31.3401 (a)(3)-1 of the Employment Tax Regulations promulgated pursuant to §§ 3121, 3306, and 3401 of the Internal Revenue Code, as amended. The aggregate amount of taxes shall be fully paid to the Commission on or before January 31 of each year next succeeding the year with respect to employment during which year such taxes are imposed, or in the event the time is extended for filing the return of the taxes imposed by Title IX of the Social Security Act for the year for which such taxes are imposed, then before the expiration of such extension. Taxes due and payable in an amount less than five dollars shall be deemed to be fully paid; however, this does not relieve an employer from filing payroll and tax reports as herein required.

B. Beginning January 1, 2021, all employers shall file quarterly reports on an electronic medium using a format prescribed by the Commission. Waivers will be granted only if the Commission finds this requirement creates an unreasonable burden on the employer. All requests for waiver must be submitted in writing. Beginning January 1, 2021, if any employer who has not obtained a waiver by the date the employer's quarterly report is due, fails, without good cause shown, to file electronically, the Commission shall assess upon the employer a penalty of \$75, which penalty shall be in addition to the taxes due and payable with respect to such report and to any penalty assessed under subsection B of § [60.2-513](#). Penalties collected pursuant to this section shall be paid into the Special Unemployment Compensation Administration Fund established pursuant to § [60.2-314](#).

C. Notwithstanding the provisions of subsection A, no payroll and tax reports shall be filed with respect to an employee of a state or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

Code 1950, § 60-61; 1968, c. 738, § 60.1-73; 1981, c. 99; 1984, c. 458; 1986, c. 480; 1993, c. 249; 1996, c. [264](#); 1997, c. [385](#); 2007, cc. [426](#), [638](#); 2012, c. [316](#); 2020, c. [1261](#).

**§ 60.2-513. Failure of employing unit to file reports; assessment and amount of penalty.**

A. If any employing unit fails to file with the Commission any report which the Commission deems necessary for the effective administration of this title within 30 days after the Commission requires the same by written notice mailed to the last known address of such employing unit, the Commission may determine on the basis of such information as it may have whether such employing unit is an employer, unless such determination has already been made. Also, on the basis of such information, the Commission may assess the amount of tax due from such employer and shall give written notice

of such determination and assessment to such employer. Such determination and assessment shall be final (i) unless such employer, within 30 days after the mailing to the employer at his last known address or other service of the notice of such determination or assessment, applies to the Commission for a review of such determination and assessment or (ii) unless the Commission, on its own motion, sets aside, reduces or increases the same.

B. If any employer had wages payable for a calendar quarter and fails, without good cause shown, to file any report as required of him under this title with respect to wages or taxes, the Commission shall assess upon the employer a penalty of \$100, which shall be in addition to the taxes due and payable with respect to such report.

C. For the purposes of this subsection, "newly covered" refers to the time at which an employer initially becomes subject to liability under the provisions of this title. A newly covered employer shall file by the due date of the calendar quarter in which such employer becomes subject to liability under the provisions of this title. If such employer's report is not filed by that date, and in the absence of good cause shown for the failure to so file, a \$100 penalty shall be assessed for each report. Penalties collected pursuant to this section shall be paid into the Special Unemployment Compensation Administration Fund.

Code 1950, § 60-62; 1968, c. 738, § 60.1-74; 1974, c. 466; 1976, c. 708; 1977, c. 445; 1978, c. 238; 1984, c. 458; 1986, c. 480; 1999, c. [79](#); 2004, c. [495](#); 2018, c. [227](#); 2020, c. [1261](#).

#### **§ 60.2-514. Limitation on proceeding to establish liability for taxes.**

No suit or proceeding for the purpose of establishing liability for taxes under this chapter shall be begun for any period occurring more than three years prior to January 1 of the year within which such suit or proceeding is instituted. However, this section shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions due under this chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the Commission directing a hearing to be held to determine liability or nonliability, under this chapter, of an employing unit, or upon the date notice of the establishment of liability is mailed to the last known address of the employing unit. The order or notice mentioned herein shall be deemed to have been issued on the date such order or notice is mailed to the last known address of the employing unit.

1968, c. 9, §§ 60-62.1, 60.1-74.1; 1977, c. 445; 1986, c. 480.

#### **§ 60.2-515. Amount of taxes; increase of rate.**

Each employer shall pay taxes equal to the following percentages of wages payable by him with respect to employment:

1. Except as otherwise provided in Article 4 (§ [60.2-525](#) et seq.) of this chapter, 6.2 percent with respect to employment during the calendar year. Wages payable beyond the last pay period in December shall be considered as wages payable in the first pay period of the succeeding year, and included in reports required for the first reporting period of such year.

2. If the Federal Unemployment Tax Act is at any time amended to permit a higher maximum rate of credit against the federal tax now levied under § 3301 of the Internal Revenue Code than the credit that is now permitted under § 3302 of the Internal Revenue Code, to an employer with respect to any state unemployment compensation law whose standard tax rate on payroll under such law is more than 5.4 percent, the standard tax rate for all employers under this title shall, by Commission rule promulgated under § [60.2-111](#), be increased from 5.4 percent on wages to that percentage on wages which corresponds to the higher maximum rate of credit thus permitted against the federal unemployment tax. Such increase shall become effective on the same date as such higher maximum rate of credit becomes permissible under such federal amendment.

3. If the Federal Unemployment Tax Act is at any time amended to increase the rate of excise tax each employer pays for employing individuals, the Commission may, by rules promulgated under § [60.2-111](#), increase the rate of taxes under this title to the rate which corresponds to the highest maximum rate of credit permitted against such higher federal unemployment excise tax. Such increase shall become effective on the same date as such higher rate of federal unemployment excise tax becomes effective.

Code 1950, § 60-63; 1950, p. 360; 1956, c. 440; 1968, c. 738, § 60.1-75; 1974, c. 466; 1977, c. 330; 1980, c. 480; 1981, c. 606; 1985, c. 152; 1986, c. 480.

#### **§ 60.2-516. Taxes and payments in lieu of taxes not deducted from wages.**

Taxes imposed by this title and payments by employers in lieu of taxes shall not be deducted, in whole or in part, from the wages of individuals employed by any employer.

Code 1950, § 60-65; 1968, c. 738, § 60.1-77; 1972, c. 764; 1986, c. 480.

#### **§ 60.2-517. How fractional part of cent computed.**

In the payment of any such taxes, a fractional part of a cent shall be disregarded, unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

Code 1950, § 60-66; 1968, c. 738, § 60.1-78; 1986, c. 480.

#### **§ 60.2-518. False statements, etc., by employing units; failure to furnish reports, etc.**

A. Any employing unit or any officer or agent of an employing unit or any other person shall be guilty of a Class 1 misdemeanor if it or he:

1. Makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact (i) to prevent or reduce the payment of benefits to any individual entitled thereto, (ii) to avoid becoming or remaining subject to this title or (iii) to avoid or reduce any tax or other payment required from an employing unit under this title; or

2. Willfully fails or refuses (i) to furnish any reports required by this title or (ii) to produce or permit the inspection or copying of records as required hereunder.

B. Each such false statement, representation or failure to disclose a material fact listed in this section, and each day of such failure or refusal shall constitute a separate offense.

Code 1950, § 60-113; 1968, c. 738, § 60.1-130; 1986, c. 480.

## **Article 3 - COLLECTION OF TAXES**

### **§ 60.2-519. Interest on past-due taxes.**

Taxes unpaid on the date on which they are due and payable, as prescribed by the Commission pursuant to § [60.2-511](#), shall bear interest at the rate of one and one-half percent per month from and after such date until payment plus accrued interest is received by the Commission. Interest collected pursuant to this article shall be paid into the Special Unemployment Compensation Administration Fund continued by § [60.2-314](#).

Code 1950, § 60-77; 1968, c. 738, § 60.1-92; 1982, c. 363; 1986, c. 480.

#### **§ 60.2-519.1. Bad check charge.**

Any check submitted for payment of taxes due as prescribed by § [60.2-511](#), which is dishonored by the payer, shall bear a bad check charge of twenty-five dollars. Charges collected pursuant to this section shall be paid into the Special Unemployment Compensation Administration Fund established by § [60.2-314](#).

1987, c. 114.

#### **§ 60.2-519.2. Service charge for payment of taxes by certain means.**

If the Commission accepts a form of payment by a means that incurs a charge, the Commission shall add that charge to such payment as described in subsection B of § [2.2-614.1](#).

1990, c. 687; 2002, c. [719](#).

### **§ 60.2-520. Taxes which accrued while employer was in armed forces.**

No interest shall be assessed against or collected from any employer upon any taxes which accrued against such employer during the period of active service of such employer in the armed forces of the United States. Any proof of such service satisfactory to the Commission shall be sufficient. Any such employer who has already paid to the Commission any interest on taxes which would have been abated under this provision shall be entitled to a refund for the amount of interest so paid upon the filing of an application therefor.

Code 1950, § 60-77.1; 1952, c. 184; 1968, c. 738, § 60.1-93; 1986, c. 480.

### **§ 60.2-521. Collection by civil action; persons subject to civil actions; other remedies; compromise and adjustment.**

If, after notice, any employer defaults in any payment of taxes or payment in lieu of taxes or interest or any penalty assessed pursuant to subsection C of § [60.2-501](#) and § [60.2-513](#), the amount due shall be collected by civil action in the name of the Commission. The employer adjudged in default shall pay the fees and costs of such action. Civil actions brought under this article to collect taxes or interest or any penalty from an employer shall be heard by the court at the earliest possible date. Such civil actions may be brought against any officer, employee, or agent of a corporation or partnership in his individual, personal capacity when that person willfully fails to cause the employer to pay the



appropriate taxes and he had the authority to do so. No person shall be subject to this section unless it is proved (i) that such person had knowledge of the failure or attempt to make such payment and (ii) that such person had authority to prevent such failure or attempt. In addition to the foregoing remedies the Commission shall have such other remedies as are available to the State Tax Commissioner and county and city treasurers for the collection of taxes generally. The Commission is authorized to compromise, settle and adjust any tax or taxes, including interest, or any penalty assessed against any employer where in the judgment of the Commission the best interests of the Commonwealth will be promoted or served. The Commission may in such cases accept in full settlement of the tax assessed an amount less than that assessed.

Code 1950, § 60-78; 1968, c. 738, § 60.1-94; 1974, c. 466; 1977, c. 445; 1979, c. 634; 1986, c. 480; 1990, c. 687.

#### **§ 60.2-522. Injunction.**

When an unsatisfied execution has been returned by an officer, and the employer against whom the judgment has been obtained on which the execution was issued continues in default of payment of taxes, or any portion thereof, such employer may be enjoined from operating and doing business in this Commonwealth until such taxes have been paid. The Circuit Court of the City of Richmond shall have exclusive original jurisdiction to grant such injunction upon the complaint of the Commission. Notice of the time and place when the application for the injunction will be made shall be served on the employer, and a copy of the bill of complaint shall be served with the notice.

Code 1950, § 60-79; 1968, c. 738, § 60.1-95; 1986, c. 480.

#### **§ 60.2-523. Priorities under legal dissolutions or distributions.**

A. 1. In the event of any distribution of an employer's assets, taxes, interest and penalty then or thereafter due shall be a lien against such assets, prior to all claims of lien and general creditors. Taxes accruing by reason of an employment for an employer who is a receiver, trustee or other fiduciary shall be a lien against all the assets in the custody or control of such receiver, trustee or other fiduciary, prior and paramount to all other claims of lien and general creditors.

2. Nothing in this article shall be construed in derogation of any prior lien of the Commonwealth or any of its political subdivisions, nor any mortgage, deed of trust or other lien duly perfected prior to the date the taxes or any part thereof first accrued. However, no such lien in favor of the Commonwealth or any of its subdivisions, nor any mortgage, deed of trust or other lien shall in any case be preferred, paramount or prior to the lien for taxes due by any such receiver, trustee or other fiduciary upon payrolls earned in the employment of such receiver, trustee or other fiduciary.

B. 1. Any taxes, interest or penalty imposed by this chapter shall be a lien upon the assets of the business of any employer, subject to this chapter's provisions, who leases, transfers or sells out his business, or ceases to do business. Such employer shall be required, by the next reporting date as prescribed by the Commission, to file with the Commission all reports and pay all taxes due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of

the business. Such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of the taxes due and unpaid until such time as the former owner or employer produces a receipt from the Commission showing that the taxes have been paid, or produces a certificate from the Commission that no taxes are due.

2. If the purchaser of a business or successor of such employer fails to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the taxes are due and unpaid after the next reporting date, as set forth in subdivision 1 of this subsection, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner or employer.

3. Whenever the purchaser or successor of such employer files with the Commission a written request for a statement showing the amount of any tax due by such employer, unless such statement is furnished to such purchaser or successor within ninety days from the date such written request was filed, such purchaser or successor shall not be liable for any tax or taxes due by such employer, and the lien created by this section shall thereupon be released and discharged.

Code 1950, § 60-80; 1968, c. 738, § 60.1-96; 1977, c. 445; 1986, c. 480.

#### **§ 60.2-524. Refunds.**

A. If within three years after the date on which any taxes or interest are paid an employing unit which paid such taxes or interest applies (i) for adjustment in connection with subsequent tax payments, or (ii) for a refund thereof because such adjustment cannot be made, and the Commission determines that such taxes or interest or any portion thereof was erroneously collected, or within sixty days from the final determination of any change or correction in the liability of the employing unit for any tax payable under this chapter, whichever is later, subject to the availability of Commission records, the Commission shall allow such employing unit to make an adjustment, without interest, in connection with subsequent tax payments by it. If such adjustment cannot be made, the Commission shall refund the amount, without interest, from the fund. For like cause and within the same period, an adjustment or refund may be so made on the Commission's own initiative.

B. Where the Commission finds upon satisfactory proof that any employing unit has erroneously paid to this Commonwealth taxes or interest upon wages earned by individuals in employment in another state, or under the provisions of the Federal Railroad Unemployment Insurance Act, a refund or adjustment shall be made, without interest, and without regard to the due date.

C. Where the Commission finds that an instrumentality of the United States has paid to this Commonwealth taxes or interest upon wages for any year with respect to which this Commonwealth is not certified by the Secretary of Labor of the United States under § 3304 of the Internal Revenue Code, a refund shall be made to such instrumentality, without interest, and without regard to the date of payment.

Code 1950, § 60-81; 1956, c. 440; 1968, c. 738, § 60.1-97; 1986, c. 480; 1989, c. 144; 1994, c. [161](#).

## Article 4 - COMPUTATION OF TAX RATE

### § 60.2-525. Statement of employer's benefit charges and taxes.

The Commission, by December 31 every year, shall provide every covered employer with a statement of the employer's benefit charges and taxes for the preceding fiscal year. For any period in which benefit charges are not available, benefit charges shall be calculated as provided in § [60.2-530](#).

1981, c. 606, § 60.1-40.1; 1986, c. 480; 2003, c. [382](#).

### § 60.2-526. General provisions.

A. For each calendar year commencing after December 31, 1981, the tax rate of each employer, whose experience rating account has been chargeable with benefits during the most recent twelve completed calendar month period ending on June 30 of the calendar year immediately preceding the calendar year for which a tax rate is being determined, shall be computed as provided in this chapter.

B. Notwithstanding the provisions of subsection A of this section, the tax rate of each employer newly subject to this title, including any nonprofit organization which has elected to become liable for payments in lieu of taxes under the provisions of subsection B of § [60.2-501](#) and thereafter terminates such election, shall be 2.5 percent, except that at such time as it is eligible for computation as hereinafter provided, the tax rate shall become the computed rate. The Commission shall notify each such employer of his tax rate for such calendar year not later than December 31 immediately preceding such year, but the failure of any such employer to receive such notice shall not relieve him from liability for such tax.

Code 1950, § 60-67; 1952, c. 184; 1954, c. 203; 1956, c. 440; 1960, c. 136; 1968, c. 738, § 60.1-79; 1971, Ex. Sess., c. 235; 1974, c. 466; 1980, c. 406; 1981, c. 606; 1982, c. 370; 1983, c. 16; 1986, c. 480; 1995, c. [323](#); 1997, c. [298](#); 1999, c. [313](#).

### § 60.2-527. Tax rate of certain foreign contractors.

A. For each calendar year, the tax rate of each foreign contractor doing business in Virginia shall be the maximum rate allowable by law for three years. At the end of the three-year period, such employer shall be eligible for the computed rate as provided in § [60.2-530](#).

B. As used in this section, "foreign contractor" means (i) an out-of-state "contractor" as defined in § [54.1-1100](#) or (ii) an out-of-state "highway contractor" engaged in the type of contracting activities referred to in § [33.2-1106](#), who does not maintain a principal place of business in Virginia as determined by the Commission, except that such employer need not be a member of any highway contractors association. Such determination by the Commission shall be final and not subject to judicial review.

1982, c. 200, § 60.1-79.1; 1984, c. 468; 1986, c. 480.

### § 60.2-528. Individual benefit charges.

A. An individual's "benefit charges" shall be computed in the following manner:

1. For each week benefits are received, a claimant's "benefit charges" shall be equal to his benefits received for such week.

2. For each week extended benefits are received, pursuant to § [60.2-610](#) or [60.2-611](#), a claimant's "benefit charges" shall be equal to one-half his benefits received for such week. However, a claimant's "benefit charges" for extended benefits attributable to service in the employ of a governmental entity referred to in subdivisions 1 through 3 of subsection A of § [60.2-213](#) shall be equal to the full amount of such extended benefit.

3. For each week partial benefits are received, the claimant's "benefit charges" shall be computed (i) in the case of regular benefits as in subdivision 1 of this subsection, or (ii) in the case of extended benefits as in subdivision 2 of this subsection.

B. 1. The employing unit from whom such individual was separated, resulting in the current period of unemployment, shall be the most recent employing unit for whom such individual has performed services for remuneration (i) during 30 days, whether or not such days are consecutive, or (ii) during 240 hours. If such individual's unemployment is caused by separation from an employer, such individual's "benefit charges" for such period of unemployment shall be deemed the responsibility of the last employer for (i) 30 days or (ii) 240 hours prior to such period of unemployment.

2. Any employer charged with benefits paid shall be notified of the charges quarterly by the Commission. The amount specified shall be conclusive on the employer unless, not later than 30 days after the notice of benefit charges was mailed to its last known address or otherwise delivered to it, the employer files an appeal with the Commission, setting forth the grounds for such an appeal. Proceedings on appeal to the Commission regarding the amount of benefit charges under this subsection or a redetermination of such amount shall be in accordance with the provisions of § [60.2-500](#). The decision of the Commission shall be subject to the provisions of § [60.2-500](#). Any appeal perfected pursuant to the provisions of this section shall not address any issue involving the merits or conditions of a claimant's separation from employment.

C. No "benefit charges" shall be deemed the responsibility of an employer of:

1. An individual whose separation from the work of such employer arose as a result of a violation of the law by such individual, which violation led to confinement in any jail or prison;

2. An individual who voluntarily left employment in order to accept other employment, genuinely believing such employment to be permanent;

3. An individual with respect to any weeks in which benefits are claimed and received after such date as that individual refused to accept an offer of rehire by the employer because such individual was in training with approval of the Commission pursuant to § [60.2-613](#);

4. An individual who voluntarily left employment to enter training approved under § 236 of the Trade Act of 1974 (19 U.S.C. § 2296 et seq.);

5. An individual hired to replace a member of the Reserve of the United States Armed Forces or the National Guard called into active duty in connection with an international conflict and whose employment is terminated concurrent with and because of that member's return from active duty;
6. An individual who left employment voluntarily with good cause due to a personal bona fide medical reason caused by a non-job-related injury or medical condition;
7. An individual participating as an inmate in (i) state or local work release programs pursuant to § [53.1-60](#) or [53.1-131](#); (ii) community residential programs pursuant to §§ [53.1-177](#), [53.1-178](#), and [53.1-179](#); or (iii) any similar work release program, whose separation from work arose from conditions of release or parole from such program;
8. An individual who was unable to work at his regular employment due to a disaster for which the Governor, by executive order, has declared a state of emergency, if such disaster forced the closure of the employer's business. In no case shall more than four weeks of benefit charges be waived; or
9. An individual who leaves employment to accompany his spouse to the location of the spouse's new duty assignment if (i) the spouse is on active duty in the military or naval services of the United States; (ii) the spouse's relocation to a new military-related assignment is pursuant to a permanent change of station order; (iii) the location of the spouse's new duty assignment is not readily accessible from the individual's place of employment; and (iv) the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work voluntarily without good cause.

Code 1950, § 60-68; 1952, c. 184; 1954, c. 203; 1956, c. 440; 1958, c. 36; 1960, c. 136; 1962, cc. 12, 83; 1964, c. 3; 1966, c. 30; 1968, c. 9; 1968, c. 738, § 60.1-80; 1970, c. 104; 1972, c. 764; 1974, c. 466; 1976, c. 708; 1977, c. 330; 1978, c. 493; 1979, c. 634; 1980, c. 463; 1981, cc. 250, 606; 1986, c. 480; 1989, c. 104; 1991, c. 249; 1991, Sp. Sess., c. 9; 1997, c. [202](#); 2001, c. [721](#); 2004, cc. [583](#), [977](#); 2005, cc. [44](#), [105](#); 2009, c. [878](#); 2014, c. [442](#).

**§ 60.2-528.1. Charging of benefits relating to certain overpayments; penalty for pattern of failure to respond to requests for information.**

A. As used in this section, unless the context requires a different meaning:

"Employer," with regard to the timeliness and adequacy of responses, includes an agent of the employer used by the employer to respond to the Commission on the employer's behalf; however, an employer's agent's failure to respond timely or adequately to requests for information with regard to claims involving the agent's other clients shall not be used in determining whether the employer has established a pattern of failing to respond timely or adequately to written requests for information.

"Erroneous payment" means a payment of benefits under this title made prior to a determination by the Commission that the claimant is not eligible or qualified for the benefits paid.

"Information relating to a claim" means information material to a determination or decision by the Commission relating to the payment of benefits under this title, including separation information and

information required by the Commission for the establishment of a claim for compensation and information about wages, days, and hours worked.

"Review period" means the 48 consecutive calendar month period ending on the June 30 that precedes the Commission's next annual calculation of the employer's benefit ratio pursuant to subdivision A 1 a of § [60.2-530](#).

"Written request" includes a request sent electronically.

B. An employer's account shall not be relieved of charges relating to an erroneous payment if the Commission determines that:

1. The erroneous payment was made because the employer failed to respond timely or adequately to a written request by the Commission for information relating to the claim; and
2. The employer has established a pattern of failing to respond timely or adequately to written requests by the Commission for information relating to claims.

C. For purposes of this section, an employer's response to a written request by the Commission for information relating to a claim shall be deemed not to be:

1. "Adequate" if it fails to provide sufficient material facts to enable the Commission to make a correct determination regarding a claim for benefits; however, (i) a response shall not be deemed inadequate if the Commission failed to request the necessary information or if information is provided in a format other than as requested, provided that the information is capable of being read by the recipient, and (ii) there shall be a rebuttable presumption that an employer that participates in a fact-finding interview or responds fully to the questions set out on the written request for information has provided an adequate response; or
2. "Timely" if it is not made within 10 calendar days after the delivery or mailing of the Commission's request for information.

D. An employer shall be deemed to have established a pattern of failing to respond timely or adequately to written requests for information relating to claims if the Commission determines that the employer has failed to respond timely or adequately to a written request for information relating to a claim on four or more occasions within the applicable review period. The Commission shall not find that an employer has established a pattern of failing to respond timely or adequately to written requests for information relating to claims unless the Commission has provided the employer with the notices required pursuant to subsection E.

E. The Commission shall provide the employer with a written notice following the employer's first, second, and third determinations that the employer failed to respond timely or adequately to a written request for information relating to a claim within the applicable review period. Each such notice shall be delivered or mailed to the employer's last known address of agency record and shall advise the employer of the potential implications of the employer's failure to respond timely or adequately to written requests for such information.

F. Upon the Commission's third determination within the applicable review period that an employer failed to respond timely or adequately to a written request for information relating to a claim, the Commission shall assess upon the employer a civil penalty of \$75. A copy of the notice of assessment of a civil penalty shall be delivered or mailed to the employer with the notice of the employer's third such failure as required pursuant to subsection E. Civil penalties collected pursuant to this subsection shall be paid into the Special Unemployment Compensation Administration Fund established pursuant to § [60.2-314](#). The Commission may compromise, settle, and adjust any such penalty as authorized by § [60.2-521](#).

G. An employer shall not be found to have failed to respond timely or adequately to a written request by the Commission for information relating to a claim if the Commission finds good cause for such failure. The Commission may not find good cause for an employer's failure to respond timely or adequately to such a written request unless the failure is due to compelling and necessitous circumstances beyond the employer's control.

H. If the Commission has determined that an employer has established a pattern of failing to respond timely or adequately to written requests for information relating to claims, such determination shall remain in effect until the end of the applicable review period. Any benefit charges for an erroneous payment that the Commission has determined are not to be relieved from the employer's account pursuant to subsection B shall remain chargeable to the employer's account through the period ending on the fourth June 30 following the Commission's determination.

I. The issue of whether an employer's account shall be relieved of charges relating to an erroneous payment, including whether an erroneous payment was made because the employer failed to respond timely or adequately to a written request by the Commission for information relating to the claim, shall be decided in every Commission proceeding arising from an employer's appeal of an award of benefits. Any such decision shall be subject to appeal pursuant to § [60.2-620](#). Final decisions shall be used in determining whether the employer has established a pattern of failing to respond timely or adequately to written requests for information relating to claims, whether the employer is subject to a civil penalty pursuant to subsection F, and whether the Commission has given the notices required pursuant to subsection E.

J. The costs of benefits charged to any governmental entity, Indian tribe, or nonprofit entity that is a reimbursable employing unit under this title shall not include any credits of benefit overpayments actually collected by the Commission if the Commission finds that the overpayment was made because the entity or its agent was at fault for failing to respond timely or adequately to a written request for information relating to a claim and the entity or agent has established a pattern of failing to respond timely or adequately to such requests.

K. If the erroneous payment results from a combined-wage claim, the determination of noncharging for the combined-wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying

state shall promptly notify the transferring state of its determination, and the employer shall be appropriately charged.

L. This section applies to erroneous payments established on or after July 7, 2013.

2013, c. [771](#).

**§ 60.2-529. Employer's benefit charges.**

Any employer's benefit charges for a given calendar year shall be the total of the "benefit charges" which, pursuant to the provisions of § [60.2-528](#), are deemed to be the responsibility of such employer.

Code 1950, § 60-69; 1954, c. 203; 1962, c. 6; 1964, c. 3; 1968, c. 738, § 60.1-81; 1974, c. 466; 1977, c. 330; 1981, c. 606; 1986, c. 480.

**§ 60.2-530. Benefit ratio.**

A. 1. The "benefit ratio" of each employer for a given calendar year shall be the percentage, rounded to the nearest one-tenth of a percent, equal to the employer's benefit charges for the 12 consecutive calendar month period ending on June 30 immediately preceding that calendar year, divided by the total of his payroll for the same period except that:

- a. For an employer whose account has been chargeable with benefit charges for 48 or more consecutive completed calendar months, the "benefit ratio" shall be the percentage, rounded to the nearest one-tenth of a percent, equal to the employer's benefit charges for the most recent 48 consecutive completed calendar month period ending on June 30 immediately preceding that calendar year, divided by the total of his payrolls for the same period;
- b. For an employer whose account has been chargeable with benefit charges for 36 but less than 48 consecutive completed calendar months the "benefit ratio" shall be the percentage equal to the employer's benefit charges for the most recent 36 consecutive completed calendar month period ending on June 30 immediately preceding that calendar year divided by his payroll for the same period; and
- c. For an employer whose account has been chargeable with benefit charges for 24 but less than 36 consecutive completed calendar months the "benefit ratio" shall be the percentage, rounded to the nearest one-tenth of a percent, equal to the employer's benefit charges for the most recent 24 consecutive completed calendar month period ending on June 30 immediately preceding that calendar year divided by his payroll for the same period.

2. The term "payroll" as used in this section means the greater of (i) the taxable payroll on which taxes have been paid on or before September 30 immediately following such June 30 or (ii) \$1.

B. Where benefit charges are not available for any or all of the periods used to determine an employer's benefit ratio, benefit wages divided by three shall be used in lieu of benefit charges for those periods benefit charges are not available, in combination with benefit charges, where available to determine an employer's benefit ratio.



Code 1950, § 60-70; 1954, c. 203; 1956, c. 440; 1960, c. 136; 1968, c. 738, § 60.1-82; 1977, c. 330; 1981, c. 606; 1986, c. 480; 2014, c. [191](#).

**§ 60.2-531. Experience rating tax; table.**

Subject to the provisions of § [60.2-533](#), the experience rating tax rate for each employer for the calendar year 1982 and subsequent years shall be the percent in the column corresponding to the employer's benefit ratio, except that if the employer's benefit ratio exceeds 6.2 percent, the column under 6.2 percent shall be the appropriate column, and in the line corresponding to the fund balance factor for the year pursuant to § [60.2-533](#).

BENEFIT RATIOS IN PERCENTUM	.00	.10	.20	.30	.40	.50	.60	.70
FUND BALANCE FACTOR	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE
IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
115	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56
110	0.00	0.08	0.17	0.25	0.34	0.42	0.51	0.59
105	0.00	0.09	0.18	0.27	0.36	0.45	0.54	0.63
100	0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70
95	0.10	0.10	0.21	0.31	0.42	0.52	0.63	0.73
90	0.10	0.11	0.22	0.33	0.44	0.55	0.66	0.77
85	0.10	0.11	0.23	0.34	0.46	0.57	0.69	0.80
80	0.10	0.12	0.24	0.36	0.48	0.60	0.72	0.84
75	0.10	0.12	0.25	0.37	0.50	0.62	0.75	0.87
70	0.10	0.13	0.26	0.39	0.52	0.65	0.78	0.91
65	0.10	0.13	0.27	0.40	0.54	0.67	0.81	0.94
60	0.10	0.14	0.28	0.42	0.56	0.70	0.84	0.98
55	0.10	0.14	0.29	0.43	0.58	0.72	0.87	1.01
50	0.10	0.15	0.30	0.45	0.60	0.75	0.90	1.05

BENEFIT RATIOS IN PERCENTUM	.80	.90	1.00	1.10	1.20	1.30	1.40	1.50
FUND BALANCE FACTOR	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE	TAX RATE
IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
115	0.64	0.72	0.80	0.88	0.96	1.04	1.12	1.20

110	0.68	0.76	0.85	0.93	1.02	1.10	1.19	1.27
105	0.72	0.81	0.90	0.99	1.08	1.17	1.26	1.35
100	0.80	0.90	1.00	1.10	1.20	1.30	1.40	1.50
95	0.84	0.94	1.05	1.15	1.26	1.36	1.47	1.57
90	0.88	0.99	1.10	1.21	1.32	1.43	1.54	1.65
85	0.92	1.03	1.15	1.26	1.38	1.49	1.61	1.72
80	0.96	1.08	1.20	1.32	1.44	1.56	1.68	1.80
75	1.00	1.12	1.25	1.37	1.50	1.62	1.75	1.87
70	1.04	1.17	1.30	1.43	1.56	1.69	1.82	1.95
65	1.08	1.21	1.35	1.48	1.62	1.75	1.89	2.02
60	1.12	1.26	1.40	1.54	1.68	1.82	1.96	2.10
55	1.16	1.30	1.45	1.59	1.74	1.88	2.03	2.17
50	1.20	1.35	1.50	1.65	1.80	1.95	2.10	2.25

BENEFIT RATIOS	1.60	1.70	1.80	1.90	2.00	2.10	2.20	2.30
IN PERCENTUM								
FUND BALANCE	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX
FACTOR	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
115	1.28	1.36	1.44	1.52	1.60	1.68	1.76	1.84
110	1.36	1.44	1.53	1.61	1.70	1.78	1.87	1.95
105	1.44	1.53	1.62	1.71	1.80	1.89	1.98	2.07
100	1.60	1.70	1.80	1.90	2.00	2.10	2.20	2.30
95	1.68	1.78	1.89	1.99	2.10	2.20	2.31	2.41
90	1.76	1.87	1.98	2.09	2.20	2.31	2.42	2.53
85	1.84	1.95	2.07	2.18	2.30	2.41	2.53	2.64
80	1.92	2.04	2.16	2.28	2.40	2.52	2.64	2.76
75	2.00	2.12	2.25	2.37	2.50	2.62	2.75	2.87
70	2.08	2.21	2.34	2.47	2.60	2.73	2.86	2.99
65	2.16	2.29	2.43	2.56	2.70	2.83	2.97	3.10
60	2.24	2.38	2.52	2.66	2.80	2.94	3.08	3.22
55	2.32	2.46	2.61	2.75	2.90	3.04	3.19	3.33
50	2.40	2.55	2.70	2.85	3.00	3.15	3.30	3.45

BENEFIT RATIOS IN PERCENTUM FUND BALANCE FACTOR IN %	2.40	2.50	2.60	2.70	2.80	2.90	3.00	3.10
	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %
115	1.92	2.00	2.08	2.16	2.24	2.32	2.40	2.48
110	2.04	2.12	2.21	2.29	2.38	2.46	2.55	2.63
105	2.16	2.25	2.34	2.43	2.52	2.61	2.70	2.79
100	2.40	2.50	2.60	2.70	2.80	2.90	3.00	3.10
95	2.52	2.62	2.73	2.83	2.94	3.04	3.15	3.25
90	2.64	2.75	2.86	2.97	3.08	3.19	3.30	3.41
85	2.76	2.87	2.99	3.10	3.22	3.33	3.45	3.56
80	2.88	3.00	3.12	3.24	3.36	3.48	3.60	3.72
75	3.00	3.12	3.25	3.37	3.50	3.62	3.75	3.87
70	3.12	3.25	3.38	3.51	3.64	3.77	3.90	4.03
65	3.24	3.37	3.51	3.64	3.78	3.91	4.05	4.18
60	3.36	3.50	3.64	3.78	3.92	4.06	4.20	4.34
55	3.48	3.62	3.77	3.91	4.06	4.20	4.35	4.49
50	3.60	3.75	3.90	4.05	4.20	4.35	4.50	4.65

BENEFIT RATIOS IN PERCENTUM FUND BALANCE FACTOR IN %	3.20	3.30	3.40	3.50	3.60	3.70	3.80	3.90
	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %
115	2.56	2.64	2.72	2.80	2.88	2.96	3.04	3.12
110	2.72	2.80	2.89	2.97	3.06	3.14	3.23	3.31
105	2.88	2.97	3.06	3.15	3.24	3.33	3.42	3.51
100	3.20	3.30	3.40	3.50	3.60	3.70	3.80	3.90
95	3.36	3.46	3.57	3.67	3.78	3.88	3.99	4.09
90	3.52	3.63	3.74	3.85	3.96	4.07	4.18	4.29
85	3.68	3.79	3.91	4.02	4.14	4.25	4.37	4.48
80	3.84	3.96	4.08	4.20	4.32	4.44	4.56	4.68
75	4.00	4.12	4.25	4.37	4.50	4.62	4.75	4.87
70	4.16	4.29	4.42	4.55	4.68	4.81	4.94	5.07
65	4.32	4.45	4.59	4.72	4.86	4.99	5.13	5.26

60	4.48	4.62	4.76	4.90	5.04	5.18	5.32	5.46
55	4.64	4.78	4.93	5.07	5.22	5.36	5.51	5.65
50	4.80	4.95	5.10	5.25	5.40	5.55	5.70	5.85

BENEFIT RATIOS IN PERCENTUM FUND BALANCE FACTOR IN %	4.00	4.10	4.20	4.30	4.40	4.50	4.60	4.70
TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %
115	3.20	3.28	3.36	3.44	3.52	3.60	3.68	3.76
110	3.40	3.48	3.57	3.65	3.74	3.82	3.91	3.99
105	3.60	3.69	3.78	3.87	3.96	4.05	4.14	4.23
100	4.00	4.10	4.20	4.30	4.40	4.50	4.60	4.70
95	4.20	4.30	4.41	4.51	4.62	4.72	4.83	4.93
90	4.40	4.51	4.62	4.73	4.84	4.95	5.06	5.17
85	4.60	4.71	4.83	4.94	5.06	5.17	5.29	5.40
80	4.80	4.92	5.04	5.16	5.28	5.40	5.52	5.64
75	5.00	5.12	5.25	5.37	5.50	5.62	5.75	5.87
70	5.20	5.33	5.46	5.59	5.72	5.85	5.98	6.11
65	5.40	5.53	5.67	5.80	5.94	6.07	6.20	6.20
60	5.60	5.74	5.88	6.02	6.16	6.20	6.20	6.20
55	5.80	5.94	6.09	6.20	6.20	6.20	6.20	6.20
50	6.00	6.15	6.20	6.20	6.20	6.20	6.20	6.20

BENEFIT RATIOS IN PERCENTUM FUND BALANCE FACTOR IN %	4.80	4.90	5.00	5.10	5.20	5.30	5.40	5.50
TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %	TAX RATE IN %
115	3.84	3.92	4.00	4.08	4.16	4.24	4.32	4.40
110	4.08	4.16	4.25	4.33	4.42	4.50	4.59	4.67
105	4.32	4.41	4.50	4.59	4.68	4.77	4.86	4.95
100	4.80	4.90	5.00	5.10	5.20	5.30	5.40	5.50
95	5.04	5.14	5.25	5.35	5.46	5.56	5.67	5.77

90	5.28	5.39	5.50	5.61	5.72	5.83	5.94	6.05
85	5.52	5.63	5.75	5.86	5.98	6.09	6.20	6.20
80	5.76	5.88	6.00	6.12	6.20	6.20	6.20	6.20
75	6.00	6.12	6.20	6.20	6.20	6.20	6.20	6.20
70	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
65	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
60	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
55	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20
50	6.20	6.20	6.20	6.20	6.20	6.20	6.20	6.20

BENEFIT RATIOS	5.60	5.70	5.80	5.90	6.00	6.10	6.20	
IN PERCENTUM								
FUND BALANCE	TAX	TAX	TAX	TAX	TAX	TAX	TAX	TAX
FACTOR	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE
IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %	IN %
115	4.48	4.56	4.64	4.72	4.80	4.88	5.40	
110	4.76	4.84	4.93	5.01	5.10	5.18	5.40	
105	5.04	5.13	5.22	5.31	5.40	5.49	5.58	
100	5.60	5.70	5.80	5.90	6.00	6.10	6.20	
95	5.88	5.98	6.09	6.19	6.20	6.20	6.20	
90	6.16	6.20	6.20	6.20	6.20	6.20	6.20	
85	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
80	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
75	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
70	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
65	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
60	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
55	6.20	6.20	6.20	6.20	6.20	6.20	6.20	
50	6.20	6.20	6.20	6.20	6.20	6.20	6.20	

1981, c. 606, § 60.1-84.1; 1986, c. 480; 1987, c. 114; 1988, c. 766; 1995, c. [515](#).

**§ 60.2-532. Pool cost charges.**

A. As of January 1 of each year, to all experience rating tax rates established pursuant to § [60.2-531](#), to all assigned tax rates established pursuant to §§ [60.2-515](#), [60.2-526](#), [60.2-527](#) and [60.2-538](#), there shall be added the pool cost charges as determined in subsection B of this section.

B. The pool cost charge rate rounded to the nearest one-hundredth of a percent shall be determined as follows:

1. Pool costs for a given calendar year shall be those costs defined in subdivision 2 of this subsection for the thirty-six consecutive calendar month period ending on June 30 immediately preceding that calendar year. The pool cost charge rate shall be pool costs divided by payrolls for such period.

2. Pool costs shall consist of (i) benefit charges which cannot be assigned to an individual employer pursuant to §§ [60.2-210](#), [60.2-212](#) through [60.2-219](#), or subsection C of § [60.2-528](#), or cannot be charged to an individual employer due to his becoming an inactive account pursuant to § [60.2-210](#) or § [60.2-509](#), (ii) the difference in the amount the Commission pays pursuant to subdivision 2 of subsection A of § [60.2-609](#) and the amount the Commission receives pursuant to subdivision 3 of subsection A of § [60.2-609](#), and (iii) the difference between the benefit charges of all employers with a maximum experience rating tax rate and the amount of the taxes resulting from applying the maximum experience rating tax rate against the payrolls of the same employers. The term "payrolls" as used in this section shall mean the taxable payroll on which taxes have been paid on or before September 30 immediately following such June 30.

3. When the fund balance factor for the most recent twelve-month period ending on June 30 of the immediately preceding calendar year is greater than fifty percent, interest earned on the balance which shall stand to the credit of the account of the Commonwealth of Virginia in the Unemployment Trust Fund in the treasury of the United States shall be subtracted from pool costs, except that in no instance shall pool costs be less than zero.

1981, c. 606, § 60.1-84.2; 1984, c. 458; 1986, c. 480; 1987, c. 114; 1990, c. 908; 1993, c. 249.

#### **§ 60.2-533. Fund balance factor.**

A. As of July 1 of each calendar year, a fund balance factor, rounded to the nearest one-tenth of a percent, shall be determined as follows:

The net assets which shall be compared with the "adequate balance" as determined in subsection B of this section, shall be comprised of the balance which shall stand to the credit of the account of the Commonwealth of Virginia in the Unemployment Trust Fund in the Treasury of the United States; amounts withdrawn therefrom but not expended; employer payments not yet transferred to such account; net employer taxes receivable; and amounts due from claimants and other states, minus payables due to claimants, employers, other funds of the Virginia Employment Commission, and other states. The resulting percent shall be termed the "fund balance factor," except that if the percent determined is less than fifty percent, the fund balance factor shall be fifty percent.

B. As of July 1 of each calendar year, the Commission shall determine the "adequate balance" for the trust fund as follows:

For the twenty-year period ending July 1 of the year of determination, the highest ratios of benefits divided by total wages of three separate consecutive four-quarter periods shall be averaged and

multiplied by 1.38 to determine the fund adequacy multiplier. The fund adequacy multiplier shall be multiplied by the total wages for the year in question to determine the "adequate fund balance" for that year.

C. A fund building rate of two-tenths percent shall be added to all experience rating rates established pursuant to § [60.2-531](#), and to all assigned tax rates established pursuant to §§ [60.2-515](#), [60.2-526](#), [60.2-527](#) and [60.2-538](#), except that such rate shall not be applied if the fund balance factor determined pursuant to subsection A of this section exceeds fifty percent.

1981, c. 606, § 60.1-85.1; 1986, c. 480; 1993, c. 249; 1996, c. [305](#); 1997, cc. [530](#), [674](#).

**§ 60.2-534. Tax rate defined.**

As used in this article "tax rate" means the tax or percentage of wages payable by an employer with respect to employment.

Code 1950, § 60-74; 1968, c. 738, § 60.1-87; 1986, c. 480.

**§ 60.2-535. Employing unit acquiring business, etc., of another employing unit.**

A. Except as provided in subsection B, whenever any employing unit in any manner succeeds to or acquires the organization, trade, separate establishment or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this title, the succeeding or acquiring unit shall be assigned the experience record of the predecessor. Such record shall be deemed the experience record of the successor solely for rate computation purposes as of July 1 of the year in which the acquisition occurred. Such successor, unless already an employer subject to this title, shall, during the remainder of the current calendar year, be subject to the rate of taxation of the predecessor. If such successor is at the time of the acquisition an employer subject to this title, such successor's rate of tax to which it is then subject shall remain the same until the next determination of rates under this chapter for all employers. When a successor acquires an employing unit by partial acquisition, the predecessor employer shall provide within thirty days of notification by the Commission, information relating to the division of taxable payroll for partial acquisitions. Such information shall be provided on a form supplied by the Commission.

B. Upon written notification to the Commission that it does not desire the experience record of its predecessor, a succeeding or acquiring unit shall not be assigned such record. This notification shall be made to the Commission within sixty days of the later of (i) such acquisition or succession or (ii) the effective date of this section on a form approved by the Commission. Upon receipt thereof, the Commission shall assign the notifying unit the rate of a new employer. If the notification is not received within such sixty-day period, however, the Commission shall assign the succeeding or acquiring unit the experience record of its predecessor. The provisions of this subsection shall not be applicable to any successor that, at the time of the acquisition, was an employer subject to this title.

1979, c. 634, § 60.1-88.01; 1983, c. 13; 1986, c. 480; 1995, c. [515](#); 1997, c. [409](#).

**§ 60.2-536. Review of decision under § 60.2-535.**

A. Any person aggrieved by a decision of the Commission under the provisions of § [60.2-535](#) shall have the right to review before the Commission. Such review before the Commission shall be instituted by a request filed by the aggrieved party with the Commission within thirty days from the date of mailing of the decision.

B. Any party aggrieved by the Commission decision on review may secure judicial review of any decision pursuant to the provisions of § [60.2-500](#), such provisions applying mutatis mutandis.

1974, c. 198, § 60.1-88.1; 1981, c. 252; 1986, c. 480; 1999, c. [79](#).

**§ 60.2-536.1. Transfers for the purpose of obtaining a lower unemployment compensation tax rate; assignment of rates.**

A. If an employer shall transfer any trade or business to another employer where, at the time of transfer, there is substantially common ownership, management, or control of the trade or business, then the unemployment experience attributable to the transferred business shall also be transferred to, and combined with the unemployment experience attributable to, the employer to whom such business is transferred. If the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate, that employer shall be subject to the penalties established by § [60.2-536.3](#).

B. If an employer shall transfer any trade or business to a person who is not otherwise an employer at the time of such transfer, and the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate:

1. The unemployment experience of the acquired business shall not be transferred to such person; instead, such person shall be assigned the higher of the transferred business' calculated rate or the new employer rate under § [60.2-526](#); and

2. Such person shall be subject to the penalties established by § [60.2-536.3](#).

C. Any person who shall knowingly advise another person to engage in a transfer of any trade or business, where the sole or primary purpose of such transfer is to obtain a lower unemployment tax rate, shall be subject to the penalties established by § [60.2-536.3](#).

D. The Commission shall establish methods to identify and investigate the transfer or acquisition of a business for purposes of this section.

1. For the purposes of determining whether there is "substantially common ownership, management, or control of two or more employers," the Commission shall consider all relevant facts and circumstances, including the extent of commonality or similarity of: (i) ownership, (ii) any familial relationships, (iii) principals or corporate officers, (iv) organizational structure, (v) day-to-day operations, (vi) assets and liabilities, and (vii) stated business purpose.

2. For the purposes of determining whether a business was transferred solely or primarily to obtain a lower unemployment tax rate, the Commission shall consider the facts and circumstances of the transfer, including: (i) the cost of acquiring the business, (ii) how long such business was continued, and



(iii) whether a substantial number of new employees was hired to perform duties unrelated to the business activity conducted prior to the transfer.

2005, cc. [47](#), [91](#).

**§ 60.2-536.2. Advisory opinion by the Commission.**

Upon application by an employer who is a party to a transfer or potential transfer of any trade or business, the Commission shall issue an advisory opinion as to whether such transfer constitutes a transfer pursuant to § [60.2-536.1](#), or is solely or primarily for the purpose of obtaining a lower unemployment tax rate. The application shall be under oath or affirmation, in a form prescribed by the Commission, and shall fully set forth all relevant facts regarding the proposed transfer. The Commission may require such additional information and documentary evidence as deemed necessary for a fair and informed opinion. Such opinion shall be issued within 60 days after the Commission has received all of the information and evidence requested. An employer who proceeds with the transfer of a trade or business in reliance upon a favorable advisory opinion issued under this section shall not subsequently be found to have violated the provisions of § [18.2-204.3](#), and shall not be subject to the penalties of § [60.2-536.3](#), provided such employer has made full disclosure of all relevant facts to the Commission. If an employer disagrees with the Commission's advisory opinion, it shall have the right to a hearing and decision pursuant to § [60.2-500](#), provided that an application for a hearing is filed with the Commission within 30 days from the date the advisory opinion was mailed.

2005, cc. [47](#), [91](#).

**§ 60.2-536.3. Violations; penalties.**

A. If a person knowingly transfers, or attempts to transfer, any trade or business where the sole or primary purpose is to obtain a lower unemployment tax rate, or if a person knowingly advises another person to engage, or attempt to engage, in such transfer, such person shall be subject, in addition to the criminal penalties set forth in § [18.2-204.3](#), to the following additional rate of contributions and civil penalty:

1. If the person is an employer, he shall be assigned the highest rate assignable under this chapter for the calendar year during which such violation or attempted violation occurred, and for the next calendar year immediately following such year. However, if the employer is already at such highest rate for that year, or if the amount of increase in the employer's rate would be less than two percent for any such year, then an additional rate of contributions of two percent of taxable wages shall be imposed for such year, which shall be paid into the benefit account of the Unemployment Compensation Fund pursuant to § [60.2-301](#).

2. If the person is not an employer, he shall be subject to a civil penalty of \$5,000, which shall be paid into the Special Unemployment Compensation Administration Fund pursuant to § [60.2-314](#).

B. Final orders of the Commission with respect to the provisions of § [60.2-536.1](#) may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Clerk of the Commission. Such orders may be appealed pursuant to § [60.2-500](#).

2005, cc. [47](#), [91](#).

**§ 60.2-536.4. Interpretation.**

The provisions of §§ [60.2-536.1](#) through [60.2-536.3](#) shall be interpreted and applied in such a manner as to meet the requirements contained in Public Law 108-295.

2005, cc. [47](#), [91](#).

**§ 60.2-536.5. Definitions.**

As used in §§ [60.2-536.1](#) through [60.2-536.3](#), unless the context requires a different meaning:

"Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

"Person" shall have the meaning given such term by § 7701 (a) (1) of the Internal Revenue Code of 1986.

"Trade" or "business" includes the employer's workforce.

"Violates" or "attempts" to violate includes intent to evade, misrepresentation, or willful nondisclosure.

2005, cc. [47](#), [91](#).

**§ 60.2-537. Reduced tax rate permissible under federal amendment.**

Notwithstanding the provisions of §§ [60.2-500](#) through [60.2-536](#), if § 3303 of the Internal Revenue Code is amended so as to allow an additional credit under § 3302 (b) of the Internal Revenue Code to employers not otherwise eligible for a reduced rate by reason of the lapse of insufficient time since first becoming subject to this title, the Commission, by a regulation promulgated under § [60.2-111](#), shall fix and determine the tax rate of all such employers at such reduced rate as shall then be permissible under such federal amendment.

Code 1950, § 60-76.1; 1956, c. 440; 1968, c. 738, § 60.1-90; 1986, c. 480.

**§ 60.2-538. Where employer's taxes are delinquent.**

Notwithstanding the provisions of §§ [60.2-500](#) through [60.2-537](#), if on July 31 of any year the taxes or any portion thereof or the interest due thereon for any previous quarter is delinquent and unpaid and has been delinquent and unpaid for ninety days or more, the Commission may issue a notice of delinquency demanding payment. If the amount due is not paid within thirty days after such notice is mailed to the delinquent employer at his last known address, such delinquent employer's rate for the calendar year immediately following the calendar year in which such notice is sent shall not be computed under the provisions of this article, but shall be 6.2 percent.

Code 1950, § 60-76.2; 1956, c. 440; 1960, c. 136; 1968, c. 738, § 60.1-91; 1977, c. 445; 1980, c. 480; 1981, c. 606; 1982, c. 363; 1986, c. 480.

## Chapter 6 - BENEFITS

### Article 1 - General Provisions

#### § 60.2-600. No assignment of benefits; exemptions.

Any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this title shall be void except as provided in this section and in §§ [60.2-608](#), [60.2-608.1](#), [60.2-608.2](#), and [60.2-633](#). Such rights to benefits shall be exempt from levy, execution, attachment, garnishment or any other legal process provided for the collection of debt, even if the compensation is used for purchase of shares in a credit union, or deposited into an account with a financial institution or other organization accepting deposits and is thereby commingled with other funds, except debts incurred for necessities furnished to such individual, his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

Upon an order of garnishment, attachment or other levy addressed to a financial institution in which the principal defendant claims to have exempt funds hereunder, the principal defendant may file an answer asserting the exemption hereunder. From the time of service of such garnishment, attachment or levy, the financial institution, until further order of the court, shall hold the amount subject to such garnishment, attachment or levy, or such lesser amount or sum as it may have, which amount shall be set forth in its answer. It shall hold such amount free of any person drawing against such funds whether by check against such account or otherwise. The financial institution shall be subject to such further order or subpoena for discovery of its records, for which it shall be entitled an order or agreement for compensation for the expense of such service, and in a case deemed appropriate to the court by such an order directing deposit of funds or further security prior to such records being ordered produced.

Code 1950, § 60-108; 1968, c. 738, § 60.1-125; 1986, c. 480; 1987, c. 331; 1996, c. [107](#); 1997, c. [385](#).

### Article 2 - BENEFIT COMPUTATION

#### § 60.2-601. Payment of benefits.

All benefits shall be paid through public employment offices, in accordance with such regulations as the Commission may prescribe.

Code 1950, § 60-41; 1968, c. 738, § 60.1-46; 1986, c. 480.

#### § 60.2-602. Weekly benefit amount.

A. Beginning July 6, 2008, for claims effective on or after July 6, 2008, but before July 6, 2014, an eligible individual's weekly "benefit amount" shall be the amount appearing in Column B in the "Benefit Table" in this section on the line on which in Column A of such table, there appears the total wages for insured work paid to such individual in the two quarters of his base period in which such total wages were highest.

[Benefit Table Division C Duration of Benefits beginning July 6, 2008, but before July 6, 2014](#)

B. Beginning July 6, 2014, for claims effective on or after July 6, 2014, an eligible individual's weekly "benefit amount" shall be the amount appearing in Column B in the "Benefit Table" in this section on the line on which in Column A of such table, there appears the total wages for insured work paid to such individual in the two quarters of his base period in which such total wages were highest.

#### [Benefit Table Division C Duration of Benefits beginning July 6, 2014](#)

Code 1950, § 60-42; 1952, c. 184; 1954, c. 203; 1956, c. 440; 1960, c. 136; 1962, c. 12; 1964, c. 3; 1966, c. 30; 1968, c. 9; 1968, c. 738, § 60.1-47; 1970, c. 104; 1972, c. 764; 1974, c. 466; 1976, c. 708; 1977, c. 330; 1978, c. 493; 1979, c. 691; 1980, c. 463; 1981, c. 606; 1984, c. 468; 1985, c. 516; 1986, cc. 480, 493; 1988, c. 131; 1990, c. 908; 1996, c. [367](#); 1997, cc. [530](#), [674](#); 2000, c. [573](#); 2002, cc. [122](#), [892](#); 2003, c. [926](#); 2005, cc. [23](#), [918](#); 2006, c. [258](#); 2007, c. [628](#); 2008, c. [725](#); 2009, c. [789](#); 2010, c. [412](#); 2011, c. [16](#); 2012, c. [312](#).

#### **§ 60.2-603. Weekly benefit for unemployment.**

A. Each eligible individual who is unemployed in any week shall be paid for such week a benefit equal to his weekly benefit amount less any part of the wages payable to him for such week which is in excess of \$50. Where such excess is not a multiple of \$1, it shall be computed to the next highest multiple of \$1.

B. Wages earned on a shift commencing Saturday and ending Sunday shall be allocated to the week in which the claimant earns the majority of wages for such work.

Code 1950, § 60-43; 1964, c. 3; 1966, c. 30; 1968, c. 738, § 60.1-48; 1970, c. 104; 1984, cc. 458, 468; 1986, c. 480; 1992, c. 482; 2005, c. [125](#).

#### **§ 60.2-604. Reduction of benefit amount by amount of pension.**

The weekly benefit amount payable to an individual for any week which begins in a period for which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer based on the previous work of such individual, including payments received by such individual in accordance with § [65.2-500](#) or [65.2-502](#), shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week; however, in consideration of the employee's contributions thereto, the weekly benefit amount payable to an individual for any week shall not be reduced by any amount of Social Security Act or Railroad Retirement Act retirement benefits received by such individual and attributable to such week.

1977, c. 330, § 60.1-48.1; 1978, c. 269; 1986, c. 480; 1987, c. 3; 2003, cc. [534](#), [555](#); 2005, c. [1](#); 2011, cc. [748](#), [751](#).

#### **§ 60.2-605. Benefit rights based on benefit year.**

Benefit rights of individuals shall be based solely upon the benefit year as defined in § [60.2-206](#).

Code 1950, § 60-44; 1960, c. 136; 1968, c. 738, § 60.1-49; 1986, c. 480.

**§ 60.2-606. Benefits when wages irregular.**

If the remuneration payable to an individual is not based upon a fixed period or duration of time or if the individual's wages are payable at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of computing an individual's right to unemployment benefits only shall be determined in such manner as may by regulation be prescribed. Such regulations shall, so far as possible, secure results reasonably similar to those which would prevail if the individual's wages were payable at regular intervals.

Code 1950, § 60-45.1; 1968, c. 738, § 60.1-50; 1986, c. 480.

**§ 60.2-607. Maximum total benefit amounts.**

The maximum total amount of benefits payable to any individual during any benefit year shall be determined from the "Benefit Table" shown in § [60.2-602](#) but shall not exceed twenty-six times such individual's weekly benefit amount, except when benefits are paid pursuant to the provisions of § [60.2-610](#) or § [60.2-611](#). Such determination shall be based only upon wages paid for insured work during such individual's base period. The Commission shall maintain a separate account for each individual who is paid wages for insured work. After the expiration of each calendar quarter the Commission shall credit each individual's account with the wages paid to him for insured work in such calendar quarter.

Code 1950, § 60-45.2; 1956, c. 440; 1960, c. 136; 1962, c. 12; 1964, c. 3; 1968, c. 738, § 60.1-51; 1971, Ex. Sess., c. 235; 1986, c. 480.

**§ 60.2-608. Child support intercept of unemployment benefits.**

A. Any individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection G of this section. If any such individual discloses that he or she owes child support obligations, and is determined to be eligible for unemployment compensation, the Commission shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

B. The Commission shall deduct and withhold the following from any unemployment compensation payable to such an individual:

1. The amount specified by the individual to the Commission to be deducted and withheld under this subsection, if neither the provisions of subdivision 2 of this subsection nor the provisions of subdivision 3 of this subsection are applicable;
2. The amount, if any, determined pursuant to an agreement submitted to the Commission under § 454 (20) (B) (i) of the Social Security Act by the state or local child support enforcement agency, unless the provisions of subdivision 3 of this subsection are applicable; or

3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as defined in § 462 (e) of the Social Security Act, properly served upon the Commission.

C. Any amount deducted and withheld under subsection B shall be paid by the Commission to the appropriate state or local child support enforcement agency.

D. Any amount deducted and withheld under subsection B shall be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

E. For purposes of subsections A through D of this section, "unemployment compensation" means any compensation payable under this title, including amounts payable by the Commission pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

F. This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the Commission under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

G. The term "child support obligations" as defined for purposes of this section includes only obligations which are being enforced pursuant to a plan described in § 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV (42 U.S.C. 651 et seq.) of the Social Security Act.

H. The term "state or local child support enforcement agency" as used in this section means any agency of any state or a political subdivision thereof operating pursuant to a plan described in subsection G of this section.

1982, c. 237, § 60.1-52.6; 1986, c. 480.

#### **§ 60.2-608.1. Deduction and withholding of federal income tax.**

A. For all payments made after December 31, 1996, federal income tax may be deducted and withheld from a benefit payment if the individual receiving such benefits voluntarily requests such deduction and withholding. The deduction shall be an amount equal to fifteen percent of such payment, or the amount determined by the Internal Revenue Service.

B. Any amount deducted and withheld under subsection A of this section shall remain in the Unemployment Compensation Fund until transferred to the Internal Revenue Service as a payment of income tax.

C. Any amount deducted and withheld under subsection A of this section shall be treated as if it were paid to the individual as unemployment benefits.

D. Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any unemployment benefit overpayments, child support obligations, or any other amounts required to be deducted and withheld under this title.

E. The Commission shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of federal income tax from unemployment benefits.

1996, c. [107](#).

**§ 60.2-608.2. Withholding of benefits; food stamp overissuance.**

A. Any individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes an uncollected overissuance of food stamp coupons, as such is defined in § 13(c) (1) of the Food Stamp Act of 1977, 7 U.S.C. § 2022 (c) (1). If any such individual discloses that he or she owes food stamp obligations and is determined to be eligible for unemployment compensation, the Commission shall notify the state food stamp agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

B. The Commission shall deduct and withhold the following from any unemployment compensation payable to an individual who owes an uncollected overissuance:

1. The amount specified by the individual to the Commission to be deducted and withheld under this subsection, if neither the provisions of subdivision 2 nor the provisions of subdivision 3 of this subsection are applicable; or

2. The amount, if any, determined pursuant to an agreement submitted to the Commission by the state food stamp agency under § 13(c) (3) (A) of the Food Stamp Act of 1977, 7 U.S.C. § 2022 (c) (3) (A); or

3. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to § 13(c) (3) (B) of the Food Stamp Act of 1977, 7 U.S.C. § 2022 (c) (3) (B).

C. Any amount deducted and withheld under subsection B shall be paid by the Commission to the appropriate state food stamp agency.

D. Any amount deducted and withheld under subsection B shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

E. For purposes of subsections A through D of this section, the term "unemployment compensation" means any compensation payable under this title including amounts payable by the Commission pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

F. The provisions of this section shall be applicable only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the

Commission under this subsection which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

1997, c. [385](#).

**§ 60.2-609. Reciprocal arrangements with agencies of other states or federal government.**

A. 1. The Commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the unemployment compensation laws of two or more states. Such arrangements shall be approved by the United States Secretary of Labor, in consultation with the state unemployment compensation agencies, to assure the prompt and full payment of compensation in such situations. Such arrangements include provisions for:

- a. Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and
- b. Avoiding the duplicate use of wages and employment by reason of such combining.

2. The Commission shall periodically reimburse any other state agency, up to the amount of benefit credits thus transferred to it by the Commission for payments actually made by such other state agency based on such transfers.

3. Similarly, such other state agency shall periodically reimburse the Commission, for payments it actually made based on the benefit credits transferred to it by such other state agency.

B. Amounts paid under such reciprocal arrangement by another state agency on behalf of the Commission shall, when reimbursed by the Commission, be chargeable to the same accounts and in the same amounts as if such benefits had been paid without regard to such reciprocal arrangement.

C. Amounts paid under any such reciprocal arrangement by the Commission on behalf of another state agency shall be chargeable to the Commission's benefit account fund and the corresponding reimbursements shall be credited to the same account.

Code 1950, § 60-47.1; 1968, c. 738, § 60.1-59; 1970, c. 104; 1971, Ex. Sess., c. 235; 1979, c. 675; 1986, c. 480.

## **Article 3 - EXTENDED BENEFITS**

**§ 60.2-610. Extended benefits defined.**

A. As used in this article, unless the context clearly requires otherwise, "extended benefit period" means a period which:

1. Begins with the third week following a week for which there is a state "on" indicator; and
2. Ends with either of the following weeks, whichever occurs later:
  - a. The third week after the first week for which there is a state "off" indicator; or



b. The thirteenth consecutive week of such period; however, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this Commonwealth.

B. "Rate of insured unemployment," for purposes of subsections H and I of this section, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular compensation in this Commonwealth for weeks of unemployment with respect to the most recent, 13 consecutive week period, as determined by the Commission on the basis of its reports to the United States Secretary of Labor, by

2. The average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

C. "Regular benefits" means benefits, other than extended benefits, payable to an individual under this title or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code.

D. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, payable to an individual under the provisions of § [60.2-611](#) for weeks of unemployment in his eligibility period.

E. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

F. 1. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to him under this title or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, in his current benefit year that includes such week;

b. His benefit year having expired prior to such week, has no, or insufficient, wages or employment on the basis of which he could establish a new benefit year that would include such week; and

c. (i) Has no right to unemployment benefits or allowances, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.), the Automotive Products Trade Act of 1965 (19 U.S.C. § 2001 et seq.) and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada. However, if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

2. For the purposes of subdivision 1 a of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment.

G. "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under 26 U.S.C. § 3304.

H. There is a "state 'on' indicator" for this Commonwealth for a week if:

1. The Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this title:

a. Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years; and

b. Equaled or exceeded five percent, provided that the determination of whether there has been a state trigger "on" indicator shall be made as if this subsection did not contain subdivision 1 a, if the rate of insured unemployment as defined in this subsection equaled or exceeded six percent, except that any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator; or

2. With respect to weeks of unemployment beginning on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto, the United States Secretary of Labor determines that, for the period consisting of the most recent three months for which data for all states are published before the close of such week, the average rate of total unemployment in this Commonwealth, seasonally adjusted:

a. Equaled or exceeded 110 percent of the average of such rates for either or both of the corresponding three month periods ending in the two preceding calendar years; and

b. Equaled or exceeded a six and one half percent.

I. There is a "state 'off' indicator" for this Commonwealth for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks the requirements of subsection H of this section have not been satisfied.

1982, c. 237, § 60.1-51.2; 1986, c. 480; 2009, c. [789](#); 2011, c. [303](#).

**§ 60.2-611. Receipt of extended benefits.**

A. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

B. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that for such week:

1. He is an "exhaustee" as defined in subsection F of § [60.2-610](#);

2. He has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

3. He had during his base period 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this subdivision, "or the equivalent in insured wages" means more than 40 times the individual's most recent weekly benefit amount.

C. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall equal the weekly benefit amount payable to him during his applicable benefit year.

D. The total extended benefit amount payable to any eligible individual for his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

2. Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

3. Thirty-nine times his weekly benefit amount which was payable to him under this title 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 title for the benefit year.

E. 1. Whenever an extended benefit period is to become effective in this Commonwealth as a result of a state "on" indicator, or an extended benefit period is to be terminated in this Commonwealth as a result of state "off" indicators, the Commission shall make an appropriate public announcement.

2. Computations required by the provisions of subsection B of § [60.2-610](#) shall be made by the Commission, in accordance with regulations prescribed by the United States Secretary of Labor.

3. An "on" or "off" indicator for this Commonwealth shall be determined without regard to subdivision 1 of subsection H of § [60.2-610](#) for any period that waiver of such provisions is authorized under § 203 (d) of the Federal-State Extended Unemployment Compensation Act (26 U.S.C. § 3304) and any amendments thereto, or as authorized by any provision of federal law.

F. 1. Notwithstanding the provisions of subsection A of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Commission finds that during such period:

a. He failed to accept any offer of suitable work or failed to apply for any suitable work, as defined under subdivision 3 of this subsection, to which he was referred by the Commission; or

b. He failed to actively engage in seeking work as prescribed under subdivision 5 of this subsection.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision 1 of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

3. a. For purposes of this subsection, "suitable work" means, with respect to any individual, any work which is within the individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of:

(1) The individual's average weekly benefit amount as determined under subsection C of this section, plus

(2) Any amount of supplemental unemployment benefits, as defined in § 501(c)(17)(D) of the Internal Revenue Code, payable to the individual for such week.

b. Such gross average weekly remuneration shall pay wages equal to the higher of:

(1) The minimum wages provided by § 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), without regard to any exemption; or

(2) The state or local minimum wage.

c. No individual, however, shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitable work as described in subdivision 3a of this subsection if:

(1) The position was not offered to such individual in writing or was not listed with the Job Service;

(2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision 3 of § [60.2-618](#) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

(3) The individual furnishes satisfactory evidence to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision 3 of § [60.2-618](#) without regard to the definition specified by this subdivision.

4. Notwithstanding the provisions of this subsection, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304(a) 5 of the Internal Revenue Code and set forth under subdivision 3 of § [60.2-618](#).

5. For the purposes of subdivision 1 b of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

a. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

b. The individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The Job Service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in subdivision 3 of this subsection.

7. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

8. No claim for extended benefits shall be subject to subdivisions 1, 2, 3 or 6 of this subsection for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. If the Federal-State Extended Unemployment Compensation Act of 1970 is at any time amended to preclude enforcement of any provision of this section, such provision shall not apply to any claim for weeks beginning on the date said amendment becomes effective.

G. 1. Except as provided in subdivision 2 of this subsection, an individual shall not be eligible for extended benefits for any week if:

a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit plan; and

b. No extended benefit period is in effect for such week in such state.

2. Subdivision 1 of this subsection shall not apply to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

H. Effective with respect to weeks beginning in a high unemployment period that commenced on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto, subsection D shall be applied by substituting (i) "eighty percent" for "fifty percent" in subdivision D 1; (ii) "twenty" for "thirteen" in subdivision D 2; and (iii) "forty-six" for

"thirty-nine" in subdivision D 3. As used in this subsection, "high unemployment period" means any period during which an extended benefit period would be in effect if subdivision H 2 b of § [60.2-610](#) were applied by substituting "eight percent" for "six and one-half percent."

1982, c. 237, § 60.1-51.2; 1986, c. 480; 1993, c. 153; 2008, Sp. Sess. II, c. [11](#); 2009, c. [789](#); 2011, c. [303](#).

## Article 4 - Eligibility Criteria

### § 60.2-612. Benefit eligibility conditions.

A. An unemployed individual shall be eligible to receive benefits for any week only if the Commission finds that:

1. He has, in the highest two quarters of earnings within his base period, been paid wages in employment for employers that are equal to not less than the lowest amount appearing in Column A of the "Benefit Table" appearing in § [60.2-602](#) on the line which extends through Division C and on which in Column B of the "Benefit Table" appears his weekly benefit amount. Such wages shall be earned in not less than two quarters.

2. a. His total or partial unemployment is not due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute which exists (i) at the factory, establishment, or other premises, including a vessel, at which he is or was last employed, or (ii) at a factory, establishment or other premises, including a vessel, either within or without this Commonwealth, which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. This subdivision shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises, including a vessel, at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute.

b. If separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment or other premises. Membership in a union, or the payment of regular dues to a bona fide labor organization, however, shall not alone constitute financing a labor dispute.

3. He is not receiving, has not received or is not seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; however, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this subdivision shall not apply.

4. He is not on a bona fide paid vacation. If an individual is paid vacation pay for any week in an amount less than the individual's weekly benefit amount his eligibility for benefits shall be computed under the provisions of § [60.2-603](#).
5. He has registered for work and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe. The Commission may, by regulation, waive or alter either or both of the requirements of this subdivision for certain types of cases when it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title.
6. He has made a claim for benefits in accordance with regulations the Commission may prescribe.
7. a. He is able to work, is available for work, and is actively seeking and unable to obtain suitable work. Every claimant who is totally unemployed shall report to the Commission the names of employers contacted each week in his effort to obtain work. This information may be subject to employer verification by the Commission through a program designed for that purpose. The Commission may determine that registration by a claimant with the Virginia State Job Service may constitute a valid employer contact and satisfy the search for work requirement of this subsection in labor market areas where job opportunities are limited. The Commission may determine that an individual, whose usual and customary means of soliciting work in his occupation is through contact with a single hiring hall which makes contacts with multiple employers on behalf of the claimant, meets the requirement that he be actively seeking and unable to obtain suitable work by contacting that hiring hall alone. In areas of high unemployment, as determined by the Commission, the Commission has the authority to adjust the requirement that he be actively seeking and unable to obtain suitable work.
- b. An individual who leaves the normal labor market area of the individual for the major portion of any week is presumed to be unavailable for work within the meaning of this section. This presumption may be overcome if the individual establishes to the satisfaction of the Commission that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies.
- c. An individual whose type of work is such that it is performed by individuals working two or more shifts in a 24-hour period shall not be deemed unavailable for work if the individual is currently enrolled in one or more classes of education related to employment or is continuing in a certificate or degree program at an institution of higher education, provided that the enrollment would only limit the individual's availability for one shift and the individual is otherwise available to work any of the other shifts.
8. He has given notice of resignation to his employer and the employer subsequently made the termination of employment effective prior to the date of termination as given in the notice, but in no case shall unemployment compensation benefits awarded under this subdivision exceed two weeks;

provided, that the claimant could not establish good cause for leaving work pursuant to § [60.2-618](#) and was not discharged for misconduct as provided in § [60.2-618](#).

9. Beginning January 6, 1991, he has served a waiting period of one week during which he was eligible for benefits under this section in all other respects and has not received benefits, except that only one waiting week shall be required of such individual within any benefit year. For claims filed effective November 28, 1999, and after, this requirement shall be waived for any individual whose unemployment was caused by his employer terminating operations, closing its business or declaring bankruptcy without paying the final wages earned as required by § [40.1-29](#) of the Code of Virginia.

Notwithstanding any other provision of this title, if an employer who terminates operations, closes its business or declares bankruptcy pays an individual his final wages after the period of time prescribed by § [40.1-29](#) of the Code of Virginia, such payment shall not be offset against the benefits the individual was otherwise entitled to receive and shall not, under any circumstances, cause such individual to be declared overpaid benefits.

10. He is not imprisoned or confined in jail.

11. He participates in reemployment services, such as job search assistance services, if he has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the Commission, unless the Commission determines that (i) such claimant has completed such services or (ii) there is good cause for such claimant's failure to participate in such services.

B. Prior to any individual receiving benefits under this chapter, the Commission shall conduct an incarceration check and an employment identification check to verify the status of the unemployed individual seeking a claim for benefits.

Code 1950, § 60-46; 1954, c. 203; 1956, c. 440; 1962, c. 270; 1966, c. 30; 1968, c. 9; 1968, c. 738, § 60.1-52; 1970, c. 104; 1974, c. 264; 1976, c. 708; 1977, c. 445; 1980, c. 463; 1981, c. 606; 1982, c. 265; 1983, c. 359; 1984, c. 458; 1985, c. 563; 1986, c. 480; 1988, c. 521; 1990, c. 908; 1993, c. 249; 1995, c. [436](#); 2000, c. [573](#); 2004, c. [496](#); 2022, c. [668](#).

#### **§ 60.2-612.1. (Effective January 1, 2023) Program integrity.**

A. In order to verify that an individual is eligible to receive benefits, the Commission shall conduct all mandatory and recommended program integrity activities as identified by the U.S. Department of Labor Employment and Training Administration and the U.S. Department of Labor Office of Inspector General.

B. The Commission shall perform a full eligibility review of suspicious or potentially improper claims. In determining if a claim is suspicious or potentially improper, the Commission shall consider the factors utilized by the Integrity Data Hub and any additional factors that may be appropriate, including commonalities in physical addresses, mailing addresses, internet protocol addresses, email addresses, multi-factor authentication, and bank accounts.



C. The Commission shall recover any improper overpayment of benefits to the fullest extent authorized by this title and federal law.

D. The Department of Social Services, the Department of Medical Assistance Services, and the Department of Housing and Community Development, upon receipt of notification that an individual enrolled in any of such department's public assistance programs has become employed, shall notify the Commission of such fact in order for the Commission to determine the individual's eligibility for benefits.

E. The Commission may enter into a memorandum of understanding with any state agency necessary to implement the provisions of this section.

F. The Commission shall report by December 1 of each year to the Commission on Unemployment Compensation addressing the implementation and enforcement of the provisions of this section. The report shall include:

1. The Commission's general program integrity processes, including tools, resources, and databases utilized, to the extent that sharing the information does not jeopardize program integrity measures;
2. A description of efforts to identify, prevent, and recover improper overpayments of benefits and fraudulent payments and measures being taken to improve such efforts;
3. The type and amount of improper payments detected retroactively;
4. The type and amount of improper payments prevented;
5. Moneys saved in preventing improper overpayments and, if any, in recouping improper overpayments; and
6. An explanation for the nonrecovery of overpayments, including the application of any allowable recovery exceptions.

2022, c. [740](#).

**§ 60.2-613. Benefits not denied to individuals in training with approval of Commission.**

A. No otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the Commission, including training under § 134 of the Workforce Investment Act, nor shall such individual be denied benefits for any week in which he is in training with the approval of the Commission, including training under § 134 of the Workforce Investment Act, by reason of the application of the provisions in subdivision A 7 of § [60.2-612](#) relating to availability for work, or the provisions of subdivision 3 of § [60.2-618](#) relating to failure to apply for, or a refusal to accept, suitable work.

B. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training approved under § 2296 of the Trade Act (19 U.S.C. § 2101 et seq.), nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any

such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work.

C. For purposes of this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act.

1971, Ex. Sess., c. 235, § 60.1-52.1; 1982, c. 237; 1984, c. 204; 1985, c. 152; 1986, c. 480; 1995, c. [436](#); 2000, c. [687](#); 2022, c. [668](#).

**§ 60.2-614. Service required during immediately preceding benefit year in which individual received benefits.**

No individual may receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which he received benefits, he performed service for an employer as defined in § [60.2-210](#) for remuneration (i) during thirty days, whether or not such days were consecutive, or (ii) for 240 hours, and subsequently became totally or partially separated from such employment.

1971, Ex. Sess., c. 235, § 60.1-52.2; 1977, c. 445; 1981, c. 369; 1984, c. 458; 1986, c. 480; 1997, c. [202](#).

**§ 60.2-615. Benefits based on employment by state or political subdivision, certain hospitals, educational institutions and charitable, etc., organizations.**

Benefits based on service in employment defined in subsection A of § [60.2-213](#) shall be payable in the same amount on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this title, except that:

A. 1. Benefits based on service in an instructional, research, or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

2. The provisions of this subsection relating to the denial of benefits shall apply to an individual who performs such services on a part-time or substitute basis.

B. 1. Benefits based on service in any capacity, other than an instructional, research, or principal administrative capacity, for an educational institution shall not be paid to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms.

2. The provisions of this subsection relating to the denial of benefits shall apply to an individual who performs such services on a part-time or substitute basis.

3. If compensation is denied to any individual for any week which occurs during the period between academic years or terms under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

C. Benefits based on services performed in an educational institution while employed by an educational service agency shall not be payable to any individual who provided such services under the same circumstances and subject to the same terms and conditions as described in subsections A, B and E of this section. For purposes of this subsection "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

D. Benefits based on services provided to or on behalf of an educational institution while employed by a governmental entity or nonprofit organization shall not be payable to any individual who provided such services under the same circumstances and subject to the same terms and conditions as described in subsections A, B, C and E of this section.

E. For services described in subsections A and B of this section, compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

1971, Ex. Sess., c. 235, § 60.1-52.3; 1977, c. 330; 1979, c. 652; 1981, c. 328; 1983, c. 14; 1984, cc. 204, 458; 1985, c. 152; 1986, c. 480.

#### **§ 60.2-616. Benefits based on services in connection with sports.**

Benefits based on services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, shall not be paid to any individual for any week of unemployment which commences during the period between two successive sport seasons, or similar periods, if such individual performed such services in the first of such seasons, or similar periods, and there is a reasonable assurance that such individual will perform such services in the later of such seasons, or similar periods.

1977, c. 330, § 60.1-52.4:1; 1986, c. 480.

#### **§ 60.2-617. Benefits denied to certain aliens.**

A. Benefits shall not be paid on the basis of services performed by an alien unless such individual was lawfully admitted for permanent residence at the time such services were performed, was lawfully

present for purposes of performing such services, or was permanently and lawfully residing in the United States under color of law at the time such services were performed. The provisions of this subsection shall include aliens who were lawfully present in the United States as a result of the application of the provisions of § 1153 (a) (7) or § 1182 (d) (5) of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.). Additionally, any modifications to the provisions of § 3304 (a) (14) of the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.) which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

B. Any data or information required of individuals claiming benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

C. In the case of an individual whose claim for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

1977, c. 330, § 60.1-52.5:1; 1986, c. 480.

#### **§ 60.2-618. Disqualification for benefits.**

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked 30 days or 240 hours or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause.

If (a) at the time of commencing employment with such employing unit an individual is enrolled in an accredited academic program of study provided by an institution of higher education for students that have been awarded a baccalaureate degree, which academic program culminates in the awarding of a master's, doctoral, or professional degree; (b) the individual's employment with such employing unit commenced and ended during the period between spring and fall semesters of the academic program in which the individual is enrolled; and (c) the individual returned to such academic program following his separation from such employing unit, there shall be a rebuttable presumption that the individual left work voluntarily.

As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality, except where an individual leaves employment to accompany a spouse to the location of the spouse's new duty assignment if (A) the spouse is on active duty in the military or naval services of the United States; (B) the spouse's relocation to a new military-related

assignment is pursuant to a permanent change of station order; (C) the location of the spouse's new duty assignment is not readily accessible from the individual's place of employment; and (D) except for members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work voluntarily without good cause. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ [54.1-3400](#) et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(5) An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which such failure occurred, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

b. In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.

c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

d. No individual shall be qualified for benefits during any week that such individual, in connection with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ [54.1-3400](#) et seq.) of Title 54.1, if the test is required as a condition of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The disqualification shall commence with the week in which such a test was conducted, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds that such individual, within 36 calendar months immediately preceding such determination or decision, has made a false statement or representation knowing it to be false, or has knowingly failed to disclose a material fact, to obtain or increase any benefit or payment under this title, the unemployment

compensation of any other state, or any other program of the federal government which is administered in any way under this title, either for himself or any other person. Overpayments that have been fraudulently obtained and any penalty assessed against the individual pursuant to § [60.2-636](#) shall be recoverable as provided in § [60.2-633](#).

5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his release from prison or jail until he has performed services for an employer for (i) 30 days, whether or not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated from such employment.

6. If such separation arose as a condition of the individual's parole or release from a custodial or penal institution and such individual was participating in the community corrections alternative program pursuant to § [19.2-316.4](#).

Code 1950, § 60-47; 1952, c. 184; 1954, c. 203; 1956, c. 440; 1960, c. 136; 1962, c. 12; 1966, c. 30; 1968, c. 738, § 60.1-58; 1972, c. 764; 1974, c. 466; 1977, c. 286; 1979, cc. 675, 681; 1981, c. 251; 1982, cc. 319, 363; 1983, c. 559; 1984, c. 458; 1986, c. 480; 1991, c. 296; 1993, c. 249; 1996, cc. [175](#), [182](#), [194](#), [199](#); 1997, c. [202](#); 1998, c. [241](#); 1999, c. [919](#); 2004, cc. [525](#), [977](#); 2005, c. [464](#); 2008, c. [719](#); 2009, c. [878](#); 2013, cc. [175](#), [771](#); 2014, cc. [201](#), [442](#); 2019, c. [618](#).

## **Article 5 - Claims Adjudication**

### **§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.**

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

- a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or
- b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § [60.2-620](#).

2. When the payment or denial of benefits will be determined by the provisions of subdivision A 2 of § [60.2-612](#), the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § [60.2-620](#).

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units which may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits.

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination which involves the application of the provisions of § [60.2-618](#), together with the reasons therefor, shall be promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may dispense with the giving of notice of any determination to any employing unit, and such employing unit shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of the Commission for information, as required by § [60.2-528.1](#), from which the deputy may have determined that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

D. Such determination or decision shall be final unless the claimant or any such employing unit files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the 30-day period may be extended. A claim that the Commission has determined to be invalid because of monetary ineligibility shall first be subject to review only upon a request for redetermination pursuant to § [60.2-629](#). The Commission shall issue a new monetary determination as a result of such review, and such monetary determination shall become final unless appealed by the claimant within 30 days of the date of mailing. The Commission shall clearly set out the process for requesting a redetermination and the process for filing an appeal on each monetary determination issued. Monetary ineligibility does not include an appeal on the effective date of the claim, unless the claimant has requested and received a redetermination of the monetary determination pursuant to § [60.2-629](#).

E. Benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court under §§ [60.2-625](#) and [60.2-631](#) upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid until such time as a court decision has become final so that no further appeal can be taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the employer under § [60.2-530](#) only when, and as of the date on which, as the result of an appeal, the courts finally determine that the Commission should have awarded benefits to the claimant or claimants involved in such appeal.



Code 1950, § 60-49; 1954, c. 203; 1966, c. 30; 1968, c. 738, § 60.1-61; 1970, c. 104; 1972, c. 692; 1974, c. 466; 1976, c. 708; 1980, cc. 408, 426; 1982, c. 363; 1986, c. 480; 1995, c. [515](#); 1997, c. [202](#); 1999, c. [79](#); 2013, c. [771](#); 2022, cc. [668](#), [716](#), [754](#).

#### **§ 60.2-620. Hearing and decision on appeal.**

A. Appeals filed under § [60.2-619](#) shall be heard by an appeal tribunal appointed pursuant to § [60.2-621](#). Such appeal tribunal, after affording the claimant and any other parties reasonable opportunity for a fair hearing, shall have jurisdiction to consider all issues with respect to the claim since the initial filing thereof. Such tribunal shall affirm, set aside, reverse, modify, or alter the findings of fact and decision of the deputy, and may enter such order or decision with respect to the claim as such appeal tribunal finds should have been entered. However, no such order or decision shall affect benefits already paid except in accordance with the provisions of § [60.2-633](#).

B. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within thirty days after the date of notification or mailing of such decision, further appeal is initiated pursuant to § [60.2-622](#). However, for good cause shown the thirty-day period may be extended.

Code 1950, § 60-50; 1968, c. 738, § 60.1-62; 1976, c. 708; 1980, c. 426; 1986, c. 480; 1995, c. [515](#); 1999, c. [79](#).

#### **§ 60.2-621. Appeal tribunals.**

In order to hear and decide disputed claims expeditiously, the Commissioner shall establish one or more impartial appeal tribunals consisting in each case of either (i) a salaried examiner or (ii) a tribunal consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees. Each of the latter two members of the tribunal in (ii) of this section shall serve at the pleasure of the Commissioner and be paid a fee of not more than ten dollars per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commissioner may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

Code 1950, § 60-51; 1968, c. 738, § 60.1-63; 1986, c. 480.

#### **§ 60.2-622. Commission review.**

A. The Commission (i) may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence by an appeal tribunal, or receive such evidence itself, or (ii) shall permit any of the parties to such decision to initiate further appeals before it. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal.

Any proceeding so removed to the Commission shall be heard in accordance with the requirements of § [60.2-620](#). The Commission shall promptly notify the interested parties of its findings and decision.

B. 1. Any decision of the Commission, upon a hearing on appeal, shall become final 10 days after the date of notification or mailing, and judicial review shall be permitted the claimant or any interested party claiming to be aggrieved. The Commission shall be deemed to be a party to any judicial action involving any such decision, and shall be represented in any such judicial action by the Office of the Attorney General.

2. Any such decision by the Commission involving (i) whether an employing unit constitutes an employer or (ii) whether services performed for or in connection with business of an employing unit constitute employment for such employing unit, from which no judicial review is had pursuant to subsections C and D of § [60.2-500](#), shall be conclusive in any subsequent judicial proceedings involving liability for taxes by the Commission against any employing unit which was a party to the proceedings held before the Commission.

C. The Commissioner shall have the power to designate a special examiner to hear appeals to the Commission under this section. The Commissioner may authorize and empower such special examiner to decide any appeal so heard, in which event the decision of the special examiner shall be the final decision of the Commission under this section, subject to judicial review under § [60.2-625](#).

Code 1950, § 60-52; 1968, c. 738, § 60.1-64; 1977, c. 445; 1986, c. 480; 1995, c. [515](#); 1996, c. [106](#); 2005, cc. [47](#), [91](#).

**§ 60.2-623. Procedure generally; confidentiality of information.**

A. The manner in which disputed claims shall be presented, reports required from the claimant and from employers, the conduct of hearings and appeals before any deputy, appeal tribunal or the Commission, and transcripts prepared shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties. Such regulations need not conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed and a timely request for a hearing before the Commission has been made in accordance with regulations prescribed by the Commission. In lieu of providing a transcript, and with the consent of all parties who participated in the hearing, the Commission may provide a digital or other electronic recording of the testimony taken at any hearing, which recording may be transmitted in any medium provided that the recording is protected from unauthorized interception by reasonable security measures.

B. Information furnished the Commission under the provisions of this chapter shall not be published or be open to public inspection, other than to public employees in the performance of their public duties. Neither such information, nor any determination or decision rendered under the provisions of § [60.2-619](#), [60.2-620](#) or [60.2-622](#), shall be used in any judicial or administrative proceeding other than one

arising out of the provisions of this title; however, the Commission shall make its records about a claimant available to the Workers' Compensation Commission if it requests such records. The Commission may also, in its discretion, furnish copies of the transcript of hearings to any party.

C. Notwithstanding the provisions of subsection B, the Commission shall, on a reimbursable basis, furnish wage and unemployment compensation information contained in its records to the Secretary of Health and Human Services and Virginia's child support enforcement agency for their use as necessary for the purposes of the National Directory of New Hires established under § 453 (i) of the Social Security Act.

D. Notwithstanding the provisions of subsection B, the Commission shall, upon written request, furnish any agency or political subdivision of the Commonwealth such information as it may require for the purpose of collecting fines, penalties, and costs owed to the Commonwealth or its political subdivisions. Such information shall not be published or used in any administrative or judicial proceeding, except in matters arising out of the collection of fines, penalties, and costs owed to the Commonwealth or its political subdivisions.

Code 1950, § 60-53; 1968, c. 738, § 60.1-65; 1972, c. 764; 1986, c. 480; 1988, c. 766; 1994, c. [203](#); 1996, cc. [108](#), [130](#); 1997, c. [385](#); 1998, cc. [91](#), [745](#); 2012, c. 50.

#### **§ 60.2-623.1. Party's recording of hearing.**

A. Any party to a compensation hearing of the Virginia Employment Commission may employ the use of a court reporter to record for transcription the proceeding, provided it is done at the party's own expense.

B. In the event the Commission's transcript of the proceeding is lost, damaged, or parts are missing, a transcript existing as a result of subsection A of this section may be used in addition to any full or partial Commission transcript.

1986, c. 129, § 60.1-65.1.

#### **§ 60.2-624. Witness expenses.**

Witnesses subpoenaed pursuant to this chapter shall be allowed expenses at a rate fixed by the Commission. Such expenses shall be deemed a part of the expense of administering this title.

Code 1950, § 60-54; 1968, c. 738, § 60.1-66; 1986, c. 480.

#### **§ 60.2-625. Judicial review.**

A. Within thirty days after the decision of the Commission upon a hearing pursuant to § [60.2-622](#) has been mailed, any party aggrieved who seeks judicial review shall commence an action in the circuit court of the county or city in which the individual who filed the claim was last employed. In such action against the Commission, the Commission and any other party to the administrative procedures before the Commission shall be named a defendant in a petition for judicial review. Such petition shall also state the grounds upon which a review is sought; it shall be served upon a member of the Commission or upon such person as the Commission may designate, and such service shall be deemed

completed service on all parties. There shall be left with the party so served as many copies of the petition as there are defendants, and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this chapter, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of the court to the Court of Appeals in conformity with Part Five A of the Rules of Supreme Court and other applicable laws.

B. From any circuit court decision involving (i) the provisions of § [60.2-612](#) or § [60.2-618](#), (ii) whether an employing unit constitutes an employer or (iii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any proceeding under this chapter, to enter exceptions to the rulings of the Commission or an appeal tribunal, and no bond shall be required upon an appeal to any court. Upon the final determination of such judicial proceeding, the Commission shall administer the Unemployment Compensation Fund in accordance with such determination.

C. The Commission shall have the right to appeal a decision of a circuit court in any proceeding under this chapter.

1980, c. 463, § 60.1-67.1; 1982, c. 24; 1984, c. 703; 1986, c. 480; 1987, c. 567; 1988, c. 766; 1996, c. [573](#).

**§ 60.2-626. Oaths and witnesses; subpoenas.**

In the discharge of the duties imposed by this title, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this title.

Code 1950, § 60-36; 1968, c. 738, § 60.1-41; 1986, c. 480.

**§ 60.2-627. Failure to obey subpoenas; orders of court; penalty.**

A. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this Commonwealth within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before an appeal tribunal, a commissioner, the Commission, or its duly authorized representative, in order to produce evidence or to give testimony

concerning the matter under investigation or in question. Any failure to obey such court order may be punished by the court as contempt.

B. Any person subpoenaed by the Commission who, without just cause, fails or refuses to attend and testify or to answer to any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, when it is within his power to do so, shall be guilty of a Class 1 misdemeanor.

C. Each day any violation of such court-issued subpoena, court order, or Commission-issued subpoena continues shall be deemed to be a separate offense.

Code 1950, § 60-37; 1968, c. 738, § 60.1-42; 1986, c. 480; 2020, c. [1261](#).

#### **§ 60.2-628. Protection against self-incrimination.**

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Code 1950, § 60-38; 1968, c. 738, § 60.1-43; 1986, c. 480.

#### **§ 60.2-629. Redetermination of claims.**

Notwithstanding any other provisions of this title, the Commission may, at any time within one year from the date the deputy's determination becomes final pursuant to § [60.2-619](#), redetermine any monetary determination issued by a deputy from which no appeal was taken by the claimant. Notice of any such redetermination shall be given promptly to the interested parties, and an appeal from such redetermination may be filed within the time and in the manner prescribed for an appeal from any original determination. If no such appeal is filed such redetermination shall be final. Any redetermination hereunder shall be limited to monetary determinations containing (i) an error in computation or (ii) newly discovered wages of the claimant pertinent to such determination.

Code 1950, § 60-56; 1968, c. 738, § 60.1-68; 1986, c. 480.

#### **§ 60.2-630. Authority to set aside or vacate determinations and decisions.**

The Commission may, in its discretion, at any time before a determination or decision becomes final pursuant to §§ [60.2-619](#), [60.2-621](#), or § [60.2-622](#), with good cause set aside or modify any such determination or decision.

1981, c. 74, § 60.1-68.1; 1986, c. 480.

#### **§ 60.2-631. Board of Review.**

A. The Commissioner, in his discretion, is hereby authorized to appoint a Board of Review consisting of three members, one of whom shall be designated chairman for a term of six years. The terms of the

members first taking office shall be two, four, and six years, respectively, as designated by the Commissioner at the time of the appointment. Vacancies shall be filled by appointment by the Commissioner for the unexpired term. During his term of membership on the Board no member shall serve as an officer or committee member of any political organization. The members of the Board shall be compensated in a manner determined by the Commission. The Commission shall furnish the Board such stenographic and clerical assistance as the Board may require. All compensation of the members of the Board and all necessary expenses for the operation thereof shall be paid out of the administrative fund provided for in §§ [60.2-306](#), [60.2-307](#), and [60.2-308](#) and §§ [60.2-311](#), [60.2-312](#), and [60.2-313](#). The Commissioner may at any time, after notice and hearing, remove any member for cause. The Commissioner may, after thirty days' notice to the members of the Board and upon a finding that the Board is no longer needed, abolish the same.

B. 1. The Board shall meet upon the call of the chairman. It shall have the same powers and perform the same functions vested in the Commission in this title for review of decisions by an appeal tribunal, including the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with disputed claims.

2. The Board may hold its hearings in the county or city where the claimant was last employed, except that hearings involving the provisions of subdivision A 2 of § [60.2-612](#) shall be held in the county or city where the claimant was last employed. When the same or substantially similar evidence is relevant and material to matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, and a single record of the proceedings made.

C. The Commission may issue such regulations as it deems necessary for the procedure of the Board in the conduct of its hearings. During the time the Board is organized under authority of the Commissioner, the Commission shall have no jurisdiction under § [60.2-622](#). Any decision of the Board shall become final ten days after the date of notification or mailing and judicial review shall be permitted the claimant, the Commission or any interested party claiming to be aggrieved. In any judicial action involving any such decision the Commission shall be represented by the Office of the Attorney General. Any decision of the Board from which no judicial review is sought within the time prescribed in § [60.2-625](#) shall be conclusive against any party to the hearing before the Board and the Commission in any subsequent judicial proceedings involving liability for taxes under this title.

D. Within the time specified in § [60.2-625](#) the Commission, or any party to the proceedings before the Board, may obtain judicial review by filing in the circuit court of the county or city in which the individual who filed the claim was last employed, in the Commonwealth, a petition for review of such decision. In any such proceeding any other party to the proceeding shall be made a party respondent. The Commission shall be deemed to be a party to any such proceeding. The petition need not be

verified. A copy of such petition shall be served upon the Commission and each party to the proceeding held before the Board at least thirty days prior to the placing of the petition upon the docket. The mailing of a copy of such petition to each party at his last known address shall be sufficient service. The Commission shall file along with its petition or answer a certified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the Board's findings, conclusions and decision therein.

E. In any proceeding under this section the Board's findings of facts, if supported by the evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the court shall be confined to questions of law. The court may order additional evidence to be taken by the Board, which such additional evidence, findings of fact or conclusions, together with the additional transcript of the record, shall be certified by the chairman of the Board and filed by him with the court. Such petition for review shall be heard in a summary manner and shall have preference over all other cases on the docket, except cases in which the Commonwealth is a party.

F. An appeal may be taken from the decision of such court to the Court of Appeals in conformity with Part Five A of the Rules of Supreme Court and other applicable laws. From any such decision involving (i) the provisions of § [60.2-612](#) or § [60.2-618](#), (ii) whether an employing unit constitutes an employer or (iii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any proceeding before the Board, to enter exceptions to its ruling, and no bond shall be required upon any appeal to any court. Upon the final determination of such judicial proceeding, the Board shall enter an order in accordance with such determination.

Code 1950, § 60-57; 1966, c. 30; 1968, c. 738, § 60.1-69; 1974, c. 466; 1984, c. 703; 1986, c. 480; 2022, c. [668](#); 2023, cc. [624](#), [625](#).

## **Article 6 - VIOLATIONS, PENALTIES, AND LIABILITIES**

### **§ 60.2-632. False statements, etc., to obtain or increase benefits.**

Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, with intent to obtain or increase any benefit or other payment under this title, the unemployment compensation act of any other state, or any program of the federal government which is administered in any way under this title, either for himself or for any other person, shall be guilty of a Class 1 misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

Code 1950, § 60-112; 1968, c. 738, § 60.1-129; 1970, c. 104; 1986, c. 480.

### **§ 60.2-633. Receiving benefits to which not entitled.**

A. Any person who has received any sum as benefits under this title to which he was not entitled shall be liable to repay such sum to the Commission. For purposes of this section, "benefits under this title" includes benefits under an unemployment benefit program of the United States or of any other state. In

the event the claimant does not refund the overpayment, the Commission shall deduct from any future benefits such sum payable to him under this title. However, if an overpayment of benefits under this chapter, but not under an unemployment benefit program of the United States or of any other state, occurred due to administrative error, the Commission shall have the authority to negotiate the terms of repayment, which shall include (i) deducting up to 50 percent of the payable amount for any future week of benefits claimed, rounded down to the next lowest dollar until the overpayment is satisfied; (ii) forgoing collection of the payable amount until the recipient has found employment as defined in § [60.2-212](#); or (iii) determining and instituting an individualized repayment plan. The Commission shall collect an overpayment of benefits under this chapter caused by administrative error only by offset against future benefits or a negotiated repayment plan; however, the Commission may institute any other method of collection if the individual fails to enter into or comply with the terms of the repayment plan. Administrative error shall not include decisions reversed in the appeals process. In addition, the overpayment may be collectible by civil action in the name of the Commission. Amounts collected in this manner may be subject to an interest charge as prescribed in § [58.1-15](#) from the date of judgment and may be subject to fees and costs. Collection activities for any benefit overpayment established of five dollars or less may be suspended. The Commission may, for good cause, determine as uncollectible and discharge from its records any benefit overpayment which remains unpaid after the expiration of seven years from the date such overpayment was determined, or immediately upon the death of such person or upon his discharge in bankruptcy occurring subsequently to the determination of overpayment. Any existing overpayment balance not equal to an even dollar amount shall be rounded to the next lowest even dollar amount.

B. The Commission is authorized to accept repayment of benefit overpayments by use of a credit card. The Virginia Employment Commission shall add to such payment a service charge for the acceptance of such card. Such service charge shall not exceed the percentage charged to the Virginia Employment Commission for use of such card.

C. Final orders of the Commission with respect to benefit overpayments may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner as may be appropriate.

Code 1950, § 60-115; 1962, c. 138; 1968, c. 738, § 60.1-132; 1974, c. 466; 1979, c. 675; 1980, c. 751; 1981, c. 251; 1984, c. 458; 1985, c. 151; 1986, c. 480; 1988, c. 544; 1990, c. 687; 1996, c. [95](#); 2008, c. [492](#); 2010, c. [327](#); 2013, c. [683](#); 2021, Sp. Sess. I, c. [539](#).

#### **§ 60.2-634. Receiving back pay after reinstatement.**

Whenever the Commission finds that a discharged employee has received back pay at his customary wage rate from his employer after reinstatement such employee shall be liable to repay any benefits paid to such person during the time he was unemployed. When such an employee is liable to repay benefits to the Commission, such sum shall be collectible without interest by civil action in the name of the Commission.

Code 1950, § 60-116; 1962, c. 138; 1968, c. 738, § 60.1-133; 1974, c. 466; 1986, c. 480.



**§ 60.2-635. Deprivation of further benefits.**

Any person who has been finally convicted under this chapter shall be deprived of any further benefits for the one-year period next ensuing after the date of conviction.

Code 1950, § 60-117; 1962, c. 138; 1968, c. 738, § 60.1-134; 1974, c. 466; 1986, c. 480.

**§ 60.2-636. Penalty for fraudulent claim.**

A. Any person who has been disqualified for benefits under subdivision 4 of § [60.2-618](#) and who, because of those same acts or omissions, has received any sum as benefits under this title to which the person is not entitled shall be assessed a penalty in an amount equal to 15 percent of the amount of the payment to which the person was not entitled. All penalties collected by the Commission shall be paid into the state treasury and credited to the clearing account of the Fund established pursuant to § [60.2-300](#). The penalty applies to an erroneous payment made under any state program providing for the payment of unemployment compensation as well as an erroneous payment made under any federal program providing for the payment of unemployment compensation. The notice of determination or decision advising the person that benefits have been denied or adjusted pursuant to subdivision 4 of § [60.2-618](#) shall include the reason for the finding of an erroneous payment, the penalty amount assessed under this section, and the reason the penalty has been applied.

B. The amount of the penalty assessed pursuant to this section may be collected in any manner allowed for the recovery of the erroneous payment. When a recovery with respect to an erroneous payment is made, any recovery shall be applied first to the principal of the erroneous payment, then to the penalty amount imposed under this section, and finally to any other amounts due.

2013, c. [771](#).

**§ 60.2-637. Notice of penalties for false or misleading statements.**

A. The Commission shall provide to each claimant notices of the sanctions to which the claimant is subject as a consequence of providing false or misleading statements to obtain unemployment benefits. The notices shall, at a minimum, (i) identify the penalties and sanctions to which any person is liable as a result of providing false or misleading statements to obtain benefits; (ii) inform the claimant that making a false statement or representation knowing it to be false or knowingly failing to disclose a material fact, with intent to obtain or increase any benefit or other payment under this title, is punishable as a Class 1 misdemeanor; and (iii) provide a summary of all remedies available to the Commission to collect overpayments made to a claimant as a result of his making false or misleading statements to obtain benefits.

B. The notices required by subsection A shall be included with the written statement advising claimants of their benefit rights and responsibilities that is provided by the Commission to claimants following the filing of the initial claim. In addition, the notices shall be provided to claimants at the time of the filing of initial and weekly claims by the same medium, including telephone or the Internet, that is used by the claimant to file his claim.

C. The failure of the claimant to receive any of the notices set out in subsection A shall not constitute a defense to any criminal prosecution for unemployment insurance fraud under § [60.2-632](#), to an administrative fraud disqualification under subdivision 4 of § [60.2-618](#), or to any overpayment of benefits under § [60.2-633](#) that the claimant would be required to repay as a result of the fraudulent act or acts. 2013, c. [740](#).

## Chapter 7 - Short-Time Compensation Program

### §§ 60.2-700 through 60.2-709. Expired.

Expired pursuant to Acts 2014, c. [818](#), cl. 5, effective July 1, 2016.

### § 60.2-710. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

### § 60.2-711. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit that has at least two employees to which an approved short-time compensation plan applies.

"Health and retirement benefits" means employer-provided health benefits and retirement benefits under a defined benefit pension plan as defined in § 414(j) of the Internal Revenue Code or contributions under a defined contribution plan as defined in § 414(i) of the Internal Revenue Code that are incidents of employment in addition to the cash remuneration earned.

"Program" means the short-time compensation program established pursuant to this chapter.

"Short-time compensation" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the unemployment compensation provisions of this title.

"Work sharing plan" or "plan" means a plan submitted by an employer to the Commission for approval to participate in the Program.

2020, c. [1261](#).

### § 60.2-712. Application to participate in short-time compensation program.

A. The Commission shall establish and implement a short-time compensation program by January 1, 2022. The Program shall meet the requirements of 22 U.S.C. § 3306(v) and all other applicable federal and state laws.

B. An employer that wishes to participate in the Program shall submit to the Commission a signed, written work sharing plan for approval. The Commission shall develop an application form to request approval of a plan and an approval process. The application shall include:

1. The affected unit covered by the plan, including the number of employees in the unit; the percentage of employees in the affected unit covered by the plan; identification of each individual

employee in the affected unit by name, social security number, and the employer's unemployment tax account number; and any other information required by the Commission to identify plan participants.

2. A description of how employees in the affected unit will be notified of the employer's participation in the plan if such application is approved, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer does not intend to provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice.

3. A requirement that the employer identify, in the application, the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. The percentage of reduction for which a work sharing plan application may be approved shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly does not provide work, including incidences due to a holiday or other plant closing, then such week shall be identified in the application.

4. Certification by the employer that, if the employer provides health benefits and retirement benefits to any employee whose usual weekly hours of work are reduced under the Program, such benefits will continue to be provided to employees participating in the Program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the Program. For defined benefit retirement plans, the hours that are reduced under the plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

5. Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, whether temporary or permanent layoffs or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the plan. The employer shall also certify that new employees will not be hired in or transferred to an affected unit for the duration of the plan.

6. Certification by the employer that participation in the plan and its implementation is consistent with the employer's obligations under applicable federal and state laws.

7. Agreement by the employer to (i) furnish reports to the Commission relating to the proper conduct of the plan; (ii) allow the Commission access to all records necessary to approve or disapprove the plan application and, after approval of a plan, monitor and evaluate the plan; and (iii) follow any other directives the Commission deems necessary to implement the plan and that are consistent with the requirements for plan applications.

8. Any other provision added to the application by the Commission that the U.S. Secretary of Labor determines to be appropriate for purposes of a work sharing plan.

**§ 60.2-713. Approval and disapproval of plan.**

The Commission shall approve or disapprove a work sharing plan in writing within 10 working days of its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. If a plan is disapproved, the employer may submit a different work sharing plan for approval.

2020, c. [1261](#).

**§ 60.2-714. Effective date, duration, and modification of plan.**

A. A work sharing plan shall be effective on the date that is mutually agreed upon by the employer and the Commission, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the Commission. However, if a work sharing plan is revoked by the Commission under subsection B, the plan shall terminate on the date specified in the Commission's written order of revocation. An employer may terminate a plan at any time upon written notice to the Commission. Upon receipt of such notice from the employer, the Commission shall promptly notify each member of the affected unit of the termination date. An employer may submit a new application to participate in another plan at any time after the expiration or termination date.

B. The Commission may revoke approval of a work sharing plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective. The Commission may periodically review the operation of each employer's plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of any criteria on which approval of the plan was based.

C. An employer may request a modification of an approved plan by filing a written request to the Commission. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the plan. The Commission shall approve or disapprove the proposed modification in writing within 10 working days and promptly communicate the decision to the employer. An employer is not required to request approval of a plan modification from the Commission if the change is not substantial, but the employer shall report every change to the plan to the Commission promptly and in writing.

2020, c. [1261](#).

**§ 60.2-715. Eligibility for short-time compensation.**

A. An employee is eligible to receive short-time compensation under a work sharing plan with respect to any week only if the employee is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

1. During the week, the employee is employed as a member of an affected unit under an approved work sharing plan that was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed; and

2. Notwithstanding any other provisions of this title relating to availability for work and actively seeking work, the employee is available for the employee's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training, including employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act of 2014, to enhance job skills that is approved by the Commission.

B. Notwithstanding any other provision of law, an employee covered by a work sharing plan is deemed unemployed in any week during the duration of that plan if the employee's remuneration as an employee in an affected unit is reduced based on a reduction of the employee's usual weekly hours of work under an approved work sharing plan.

C. The short-term compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment.

2020, c. [1261](#).

#### **§ 60.2-716. Benefits.**

A. The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

B. An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that (i) no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation and (ii) no individual shall be paid short-time compensation benefits for more than 26 weeks under a plan.

C. Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with the Program's provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

D. An employee who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of regular unemployment compensation to which he would otherwise be eligible.

E. An employee who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

F. An employee who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

2020, c. [1261](#).