STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EMPLOYMENT SECURITY BOARD OF REVIEW

Public Notice of Proposed Rule-Making

The Board of Review, under the authority granted by Chapter 42 of Title 28 of the General Laws of Rhode Island, 1956, as amended, granting the Board of Review the power to adopt, amend, modify and reject general and special rules and regulations under Chapter 35 of Title 42 of the General Laws of Rhode Island as amended, proposes an amendment to **Labor and Training Rule 3 – Meaning of Terms**. The proposed amendment defines the term "Lag Payments" as it relates to the Temporary Disability Insurance program and also replaces "Physician" with "Qualified Healthcare Provider (QHP) or Medical Practitioner".

RULES

OF THE

RI DEPARTMENT OF LABOR AND TRAINING

FOR THE

UNEMPLOYMENT INSURANCE

AND

TEMPORARY DISABILITY INSURANCE

PROGRAMS

Revised March 26, 2012

TABLE OF CONTENTS

Rule

1 Employer Registration

2 Interstate Reciprocal Coverage Agreement

3 Meaning of Terms

4 Payroll Records

5 Posting of Notices

6 Contributions and Reports

7 Extended Benefit Work Search Requirement

8 Cash Value of Remuneration Otherwise Paid

9 Gratuities and Tips

10 Traveling and Business Expenses

11 Adjustments

12 Estimate of Amounts of Taxable Wages for Period Not Reported by an Employer

13 Termination of Accounts

14 Transfer of Accounts

15 Revocation Hearing Procedure Under 28-42-63.1

16 Filing of Claims for Temporary Disability Insurance Benefits

17 Filing of Claims for Unemployment Insurance Benefits

18 Wage and Employment reports - TDI

19 Wage and Employment reports - UI

20 Affidavit in Lieu of Wage and Termination/Employment Report

21 Vacation Pay

22 Waiting Period Credit and Benefits for Total and Partial Unemployment

TABLE OF CONTENTS (con't.)

Rule

23 Dependents' Allowance

24 Payment for Benefits for Interstate Claimants

25 Application of Funds - Partial Payment by Employers

26 Wage Record Reporting

27 Automated Telephone Payment System

28 Holiday Pay

29 TDI Partial Return To Work and Earnings Offset

30 TDI – Limit on Partial Payments

31 Work-Share Benefits Program

32 Counsel Fees

33 Severance and Dismissal Pay

34 Wages paid After Last Day of Employment

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 1

EMPLOYER REGISTRATION

Whenever an employing unit becomes newly subject to the R.I. Employment Security Act or the R.I. Temporary Disability Insurance Act, it shall immediately inform the Director thereof in writing. On or before the tenth day next following the date upon which said employing unit has employed one or more individuals in employment, it shall file with the Department of Labor and Training, Form DET-TX-8, *Application for Determination of Liability,* or such other form(s) as may be required by these rules or the R.I. Employment Security Act or the R.I. Temporary Disability Insurance Act, containing all such information as indicated thereon.

[Reference to R.I. Employment Security Act: Sections 28-42-3 (6) and 28-42-38]
[Reference to R.I. Temporary Disability Insurance Act: Section 28-39-2 (7)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 2

INTERSTATE RECIPROCAL COVERAGE ARRANGEMENT

This rule shall govern the Rhode Island Department of Labor and Training in its administrative cooperation with other States subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the Arrangement."

A. Definitions

As used in this Rule, unless the context clearly indicates otherwise:

(1) "Jurisdiction" means any State of the United States, the District of Columbia, the Virgin Islands, Puerto Rico, any Province of Canada or, with respect to the Federal government, the coverage of any Federal unemployment insurance law;

(2) "Participating Jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not been terminated;

(3) "Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction;

(4) "Interested Jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and "interested agency" means the agency of such jurisdiction;

(5) "Services 'customarily performed' by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or are expected to be performed in more than one jurisdiction under the election.

B. Submittal and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement.

(1) Any employing unit may file an election, on Form TX-36 to cover under the law of a single participating jurisdiction all of the services performed for him/her by any individual who customarily works for him/her in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (1) any part of the individual's services are performed; (2) the individual has his/her residence; or (3) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(2) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approved the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practical; and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(3) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reason therefor.

(4) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

(5) An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(6) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw it selection within ten days after being notified of such action.

C. Effective Period of Elections

(1) Commencement. An election duly approved under this Rule shall become effective at the beginning of the calendar quarter in which the election is submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer has no liability to pay contributions for the earlier period in question.

(2) Termination

(a) The application of an election to any individual under this Rule shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(b) Except as proved in subparagraph (a), each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(c) Whenever an election under this Rule ceases to apply to any individual, under subparagraph (a) or (b), the electing unit shall notify the affected individual accordingly.

D. Reports and Notices by the Electing Unit

(1) The electing unit shall promptly notify each individual affected by its approved election, on Form TX-36 supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(2) Whenever an individual covered by an election under this Rule is separated from his/her employment, the electing unit shall again notify him/her, forthwith, as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him/her as to the procedure for filing interstate benefit claims.

(3) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him/her to perform services in a new participating jurisdiction.

E. Approval of Reciprocal Coverage Elections

The authority to approve or disapprove reciprocal coverage elections rests with the Director.

[Reference to Employment Security Act: Section 28-42-58]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 3

MEANING OF TERMS

The following words and phrases used in the Rhode Island Employment Security Act and the Temporary Disability Insurance Act and the Rules, forms, interpretations or other official matters issued by the Department of Labor and Training, shall, unless the context clearly requires otherwise, have the following meaning:

A. "~~Physician~~ Qualified Healthcare Provider (QHP) or Medical Practitioner" means an individual licensed to practice medicine, surgery, dentistry, optometry, osteopathy and podiatry; also chiropractic and psychology within the scope of the individual's practice as defined by applicable laws of Rhode Island, or of any other state of the United States, or such other jurisdiction. This includes, licensed clinical social workers, licensed independent clinical social workers, licensed midwives, nurse practitioners, physician assistants and psychiatric clinical nurse specialists (PCNS) as the Director in his/her discretion may allow; provided, however, that the Director may require documentary evidence of the license to practice in any case in which he/she deems such evidence to be necessary.

B. "Week of unemployment due to sickness" shall mean a calendar week as defined in the Act, during which an individual is unable to perform his/her regular or customary work because of sickness, as defined in Section 28-39-2 (20) of the Rhode Island Temporary Disability Insurance Act; provided, however, that for the purpose of establishing a waiting period under Section 28-41-12 of the said Act, such week of unemployment shall be effective on the Sunday of the week as required in section 28-41-12(a).

C. "Valid claim," for the purpose of establishing a benefit year for Temporary Disability Insurance benefits shall mean any claim for waiting period or benefit credits made by an individual unemployed because of sickness, who, during the individual's base period, has been paid sufficient wages for employment by employers to meet the requirements set forth in Section 28-41-11 of the Temporary Disability Insurance Act.

D. "Calendar quarter" means a period of three consecutive calendar months ending March 31, June 30, September 30, and December 31, or, in accordance with the weekly payroll plan of any employer, any period of three consecutive months ending within 6 days before or after March 31, June 30, September 30, and December 31.

E. "Lag Payments" as defined in Section 28-41-9 of the Temporary Disability Insurance Act shall mean: benefit payments for an individual who is unemployed due to sickness and is in receipt of benefits under said Act, who returns to work or recuperates from the illness or injury prior to the end of the immediately succeeding week, shall receive one-fifth (1/5) of his or her benefit rate for each day of unemployment due to sickness in which work is ordinarily performed in the occupation in which he or she is employed during the week in which he or she returns to work or recuperates from the illness or injury; provided, that in no case shall any individual be entitled to more than four fifths (4/5) of his or her benefit rate for that week.

Formatted: Underline

Formatted: Font: 12 pt, Underline

[Reference to Employment Security Act: Section 28-42-3(19) and Temporary Disability Insurance Act: Sections 28-39-2(13), (14), (18); 28-41-9, 28-41-11 and 28-41-12]

[Reference to Department of Labor and Training Rule 16]

DEPARTMENT OF LABOR AND TRAINING

RULE 4

PAYROLL RECORDS

A. Every employing unit shall establish, maintain and preserve all payroll records for a period of at least four years from the date when taxes under the Employment Security and Temporary Disability Insurance Acts are due thereon, or the date such taxes are paid, whichever is the later. All such records shall be available at all reasonable times within this state for inspection by duly authorized representatives of the Director. Such payroll records shall, in addition to recording the name of the employing unit and place of employment, show the following data for each worker:

(1) Name and address
(2) Social Security Account Number
(3) Rate of pay per hour, day or week and effective date of such rate
(4) Number of hours worked by each employee during each week from date of accession to date of termination
(5) Computation of gross wages earned for each payroll period showing separately:

(a) Amount of money wages
(b) Cash value of wages when payment is made in any medium other than cash
(c) Commissions and special payments such as bonuses, gifts, tips, gratuities, dismissal wages, and the like, and the period for which such payments were made.

(6) The amount of money paid to an employee as an allowance or reimbursement for traveling or other expenses attributable to business.

(7) Time lost because the worker was not available for work during any part of his normal customary full-time hours in any calendar week.

[Reference to Employment Security Act: Section 28-42-38]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 5

POSTING OF NOTICES

Every employing unit in the State of Rhode Island shall post and maintain printed notices of such form and design and in such numbers containing such information as the Director, Department of Labor and Training, may determine to be necessary to administer the Employment Security Act and Temporary Disability Insurance Act. Such notices shall be posted in conspicuous places where the workers' services are performed.

[Reference to Employment Security Act: Section 28-44-38 (a) and Temporary Disability Insurance Act 28-41-15 (c)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 6

CONTRIBUTIONS AND REPORTS

A. All contributions with respect to employment required by law shall be made on a quarterly basis, and all reports relating thereto shall be made on forms supplied or approved by the Director. Such quarterly payments and reports shall be due on or before the last day of the calendar month next following the close of each calendar quarter, with exceptions set out therein below:

(1) Any employer who shall fail to make such reports or to pay contributions when required by this Rule shall, at the discretion of the Director, immediately become liable to pay required contributions on a monthly basis. An employer who had transmitted contributions for twelve (12) consecutive months without delinquency and who is not indebted to the Department of Labor and Training for any previous contributions may, with the approval of the Director, revert to the quarterly basis of contributions and reporting.

(2) Whenever an employer desires to report and pay contributions on a monthly basis, a request for permission to do so shall be submitted to the Director in writing, and the Director may grant such request; provided, however, that until the written permission of the Director has been received, such employer shall continue to report and pay contributions on a quarterly basis.

(3) Monthly reports and payments shall be due on or before the last day of the calendar month next following the month for which said report or contributions are required.

B. The Director may require contributions to be paid by certified or registered check, cash, or money order.

C. Whenever the day on which contributions are due falls on a Sunday or legal holiday, payment thereof shall be made on the next following business day.

D. The postmark affixed on the envelope enclosing the required contributions and reports shall determine the date of receipt thereof by the Director.

E. Notwithstanding the provisions of Section A of this Rule, the Director may require the monthly payment of contributions by all covered employers if such action would be beneficial to the financial position of the Employment Security Fund or the Temporary Disability Insurance Fund. Notice of such determination shall be given to such employers, and they shall immediately thereafter be required to make contributions and reports thereof on a monthly basis until the Director shall otherwise decree.

[Reference to Employment Security Act: Sections 28-42-64 and 28-43-8.1
and Temporary Disability Insurance Act : Section 28-40-3]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 7

EXTENDED BENEFIT WORK SEARCH REQUIREMENT

Any individual claiming payment for any week of extended benefits shall maintain written evidence of a systematic and sustained search for work and will be required to submit this documentation at the request of the Director.

The work search must consist of a minimum of three (3) personal contacts at places of employment each week for which benefits are claimed.

The number of contacts and the number of days on which the contacts are made should be increased as the period of unemployment lengthens and when labor market conditions warrant additional activity. No claimant, however, should be required to make an unreasonable search for work.

[Reference to Employment Security Act: Section 28-44-62]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 8

CASH VALUE OF REMUNERATION OTHERWISE PAID

A. Each employing unit required to report wages and make contributions for individuals in employment covered by the Employment Security Act or the Rules adopted thereunder, or each employing unit required to report wages and withhold and transmit contributions of individuals under any section of the Temporary Disability Insurance Act or the Rules adopted thereunder, where such wages include remuneration paid in any medium other than cash (excepting meals or lodging) shall estimate and determine such remuneration at the fair market value thereof at the time such remuneration became payable.

B. The reasonable cash value of meals or lodging payable as part or all of the wages for personal services of individuals in employment by any employing unit shall be reported and contributions made thereon in accordance with the determination of such cash value resulting from an agreement entered into between the employing unit and such individuals; provided, however, that if the cash value so determined is less than the amounts in the schedule hereinafter set forth, then such schedule shall be used to determine the cash value of such remuneration; and provided, further, that the Director or his/her representative may set the amounts of such cash value based upon an investigation in individual cases.

C. In the absence of a bona fide agreement entered into in accordance with Section B hereinabove between an employing unit and any individual in employment for the purpose of determining the cash value of meals and lodging, such cash value shall be determined in accordance with the following schedule:

Meals and Lodging — Weekly $80.00
Meals — Per Week.....$40.00
Meals, less than one week.....$ 2.00 per meal
Lodging — Per Week.....$40.00
Lodging — Less than one week....$ 6.00 per day

[Reference to Employment Security Act: Section 28-42-3 (17) and Temporary Disability Insurance Act: Sections 28-39-2 (15), 28-40-1]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 9

GRATUITIES AND TIPS

The amount of tips and gratuities customarily received by an individual which is claimed by his/her employer as a credit against the minimum wage for such individual under the laws of the State of Rhode Island and the Rules applicable thereto, shall constitute wages of such individual and shall be reported as such; provided, however, that if in any week of employment the individual, in agreement with his employer shall certify that he/she has received tips and gratuities in an amount exceeding said credit, then such amount shall be reported on the regular quarterly reports required under Rule 6. The said certification shall be retained by the employer and shall be kept with his/her payroll records and a copy shall be furnished to the employee; provided, further, however that if in any week of employment the employer and employee shall disagree on the amount of such tips and gratuities, the Director, or his/her authorized representative, shall determine the amount to be credited to tips and gratuities.

The wages reported for any employee shall in no event be less than the minimum wage provided by law.

[Reference to Employment Security Act: Section 28-42-3(17)]
[Reference to Temporary Disability Insurance Act: Section 28-39-1(15), 28-40-1 and Rule 6]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 10

TRAVELING AND BUSINESS EXPENSES

A. When an employee, under a contract of hire, receives a commission or salary for personal services and the contract does not provide for an allowance or reimbursement for traveling or other business expenses incurred by the employee, then the total amount of commissions and salary must be reported as wages by the employer. Employer contributions must be made, and employee contributions withheld, on the total amount paid to the employee.

B. When an employee, under a contract of hire, receives from his/her employer allowances or reimbursement for traveling or other business expenses incurred by said employee in furthering the business of his/her employer, which are in excess of the actual expenses incurred and accounted for by receipt or voucher submitted by the employee to his employer, such excess amounts are to be considered as wages paid by the employer to the employee for services rendered, and such amounts must be included in all reports of wages paid for the required reporting periods. Employer contributions must be made, and employee contributions withheld, on the basis thereof for those periods during which they were received.

C. All payments made by an employer to an employee, as an allowance or reimbursement for traveling or other business expenses, must be recorded in the books of the employer in a separate expense account maintained for each employee receiving the same.

[Reference to Employment Security Act: Section 28-42-3 (17)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 11

ADJUSTMENTS

A. When an error in computing, reporting or paying contributions for any reporting period has been discovered, either by an employer or by the Director, an appropriate adjustment of the account shall be made following documentation of the error; provided, however, that if such error shall be discovered by an employer, he/she shall promptly notify the Director thereof.

B. If such error results in an underpayment of contributions, the employer shall receive a statement of account indicating the amount of such underpayment, and shall forward such amount immediately upon receipt of the statement.

C. If such error results in an overpayment of contributions, upon verification, the Director shall immediately refund the overpaid amount. If the error is discovered by the employer, he/she shall request such refund in writing and shall provide documentation of the payroll figures for the period in question.

[Reference to Employment Security Act: Section 28-43-12]
[Reference to Temporary Disability Insurance Act: Section 28-40-5, 28-40-6]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 12

ESTIMATE OF AMOUNT OF TAXABLE WAGES FOR PERIOD NOT REPORTED BY AN EMPLOYER

If any employer shall have failed to report his/her taxable wages for any period during the twelve (12) months ending on any June 30, as required under Section 28-43-7.1, the Director shall, prior to the next succeeding October 31 estimate the amount of taxable wages for such period. Such estimate shall be used for experience rating purposes.

As a basis for such estimate, the Director may use any information available in the Department files, including reports filed for any period within the twelve (12) months immediately preceding the beginning of the period for which such estimate is made.

[Reference to Employment Security Act: Section 28-43-7.1]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 13

TERMINATION OF ACCOUNTS

A. No employer's account with the Department of Employment and Training shall be terminated unless and until the employer has provided the following:

(1) A completed *Termination of Account* form.
(2) Any and all completed quarterly tax forms.

B. Any employer who terminates a business shall provide a completed Form DET-TX-17, *Quarterly Tax and Wage Report,* to the Department within ten (10) days of the termination.

[Reference to Employment Security Act: Section 28-42-38]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 14

TRANSFER OF ASSETS

A. Every employing unit, immediately upon becoming the transferee or purchaser of a substantial part of the assets of any business from a previous owner, whether by sale, lease, merger, consolidation, reorganization, or otherwise, shall report such transfer and the date when it takes place, in writing to the Director. Such report must be received by the Director within ten (10) days of the date such transfer becomes effective.

B. Every executor or administrator of the estate of a deceased person who at the time of death was an employing unit, shall notify the Director, in writing, concerning:

(1) the date of death of such person, and
(2) the date upon which such executor or administrator qualified.

Such report must be received by the Director within ten (10) days after the date of qualification.

C. Every custodian, guardian, receiver, trustee in bankruptcy, and other person designated by order of any court of competent jurisdiction within the State of Rhode Island to assume control of the assets of any employing unit, shall immediately notify the Director, in writing, concerning:

(1) the date of such order, and
(2) the provisions thereof.

Such report must be received by the Director within ten (10) days of the promulgation of such order.

[Reference to Employment Security Act: Section 28-43-10]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 15

REVOCATION HEARING PROCEDURE UNDER 28-42-63.1

A. RULES OF PRACTICE AND PROCEDURE

1. Appearance and Practice. Any attorney-at-law or any person authorized by law to practice accountancy may represent any employer in any hearings or other proceedings before the Director. Such person must officially enter his or her appearance with the Director.

   Any person may appear and act for himself or herself, or for a partnership of which he or she is a member, or for a corporation of which he or she is an officer, or for an association or other organization of which he or she is a member or official, and being duly authorized by such association or organization to represent it, in any hearings or other proceedings before the Director.

   Notice of any change of attorney, accountant, or other duly authorized representative, shall be given promptly to the Director. Said notice of change or withdrawal must be consented to by the employer in writing.

2. Form and Style of Papers. All papers filed with the Director shall be either printed or typewritten, and if typewritten shall be on white paper of the usual legal size (8-1/2" x 14") or the usual letter size (8-1/2" x 11") and shall be clearly legible.

3. Continuances of Hearings. (a) When notice of hearing has been sent to an employer and his or her representative, if known, the date assigned may be postponed at the discretion of the Director for good cause shown.

   (b) If the tax has been paid, continuances as requested will be freely made. Otherwise, inordinate delays will be cause for refusal of continuances, and the hearing will proceed as scheduled, with or without the presence of the employer or his or her representative.

4. Scope of Hearing. (a) Hearing Officers to Hear Case. Hearings shall be conducted by a hearing officer appointed by the Director who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence. He or she shall have the authority to continue or recess any hearing, to keep the record open for the submission of additional evidence, and to make recommendations to the Director. If for any reason, a hearing officer cannot continue on a contested case, another hearing officer will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

   (b) Conduct of Hearing. The hearing shall be convened by the hearing officer, appearance shall be noted, any motions or preliminary matters shall be taken up, and then each party shall have opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing documentary evidence. The Department of Labor and Training shall first present its case followed by presentation of the employer's case. Each party shall also have opportunity to cross-examine opposing witnesses on any matter relevant to the issue. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated. The hearing officer may question any party or any witness for the purpose of clarifying his or her understanding or to clarify the record. Proceedings are not open to the public.

   (c) Oral Evidence, Witnesses, and Penalty for False Statements. Any party may request a hearing officer to subpoena witnesses or the hearing officer may do so on his or her own motion. A hearing officer may require the parties in a case to indicate the persons they expect to call as witnesses. The testimony of witnesses shall be made under oath or affirmation and the making of false statements may subject a person to criminal prosecution under Chapter 33 of Title 11 of the General Laws, as amended.

   (d) Requests for Subpoena Duces Tecum. Any party may request a hearing officer to issue a subpoena duces tecum or the hearing officer may do so on his or her own motion. Said

request shall set forth, in detail, the information sought, the relevance thereof, and the reasonableness of the scope of the subpoena. The party requesting the issuance of said subpoena shall have the burden of showing the relevance and reasonableness of the scope of the subpoena. A subpoena duces tecum may be quashed after its issuance if it is subsequently determined that the matters sought to be adduced are not relevant or the subpoena is not reasonable in scope.

(e) Ex Parte Communications. There shall be no verbal communications with the hearing officer regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate and there shall be no written communications that are not transmitted at the same time to all parties, except that an individual involved in rendering the decision in a case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

5. Agreed Statement of Facts. The parties may, by stipulation in writing, filed with the Director, agree upon any facts involved in any request for hearing. Where an agreed statement of facts is contemplated, a proposed statement shall be submitted on behalf of the employer well in advance of the hearing date. To the extent that all the facts are not agreed upon, testimony or exhibits may be presented at the oral proceedings. If for any reason the parties are unable to reach agreement on the facts prior to the scheduled date of the hearing, the oral proceedings shall go forward as scheduled without further notice to the parties unless postponed in accordance with these regulations.

6. Transcript of Oral Proceedings. All proceedings before the hearing officer will be electronically recorded and shall be available for the use of either party by request to the hearing officer. No other electronic recording devices will be allowed in the hearing room.

7. Upon the completion of the hearing, the hearing officer shall promptly render a decision and each party shall be furnished a copy of the decision.

8. All decisions of the Director may be appealed in accordance with Section 28-43-14 of the Employment Security Act.

[Reference to Employment Security Act: Section 28-42-63.1]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 16

FILING OF CLAIMS FOR TEMPORARY DISABILITY INSURANCE BENEFITS

A. Every individual who files a claim under the provisions of the Rhode Island Temporary Disability Insurance Act shall file such claims in writing, or otherwise as the Director may prescribe.

B. Every otherwise eligible claimant who files a claim for benefit credits shall be entitled to such for each week of unemployment due to sickness only if:

(1) He/she is examined by a licensed Qualified Healthcare Provider, as defined by the Director, within the calendar week in which the first day of unemployment due to sickness occurs or within the calendar week prior or subsequent thereto; provided, however, that for good cause as shall be determined by the Director, an examination by a licensed Qualified Healthcare Provider within any other period may be considered as having been made within the period herein set forth.

(2) The notice of the claim for benefits is mailed, delivered or otherwise sent to the Department of Labor and Training.

C. There shall be no determination made of the validity of a claim to waiting period or benefit credits unless the claimant's attending licensed Qualified Healthcare Provider shall have certified, on a form having his/her signature, to the inability of the claimant, due to sickness, to perform his/her regular or customary work; provided, however, that the Director or his/her authorized representative may for good cause, as determined by the Director, permit such determination without such signature.

D. Whenever an individual is physically or mentally incapable of filing or continuing a claim for benefits under the Rhode Island Temporary Disability Insurance Act, the Director, or his/her authorized representative, may appoint, upon request made prior to the death of such individual, an agentinfact to act for and in behalf of such individual for the purpose of filing and continuing claims and receiving temporary disability benefits; provided, however, that no such agentinfact shall be appointed unless and until he/she shall present a power of attorney or such other affidavit or evidence of responsible relationship to the individual for whom he/she is to act, as may be required by the Director or his/her authorized representative, together with a licensed Qualified Healthcare Provider's certificate stating the physical or mental incapacity of the individual to act for himself/herself; provided, further, however, that in the discretion of the Director, or his/her authorized representative, a bond, or such other lawful surety, may be required up to and including the total amount of benefit credits which may be available to the individual.

E. Whenever an otherwise eligible claimant shall die before filing a claim, such claim may be filed in his/her behalf by the duly appointed executor, or administrator, as the case may be, upon receipt by the Director of a certified copy of such appointment, together with an application for the payment of such benefits.

F. In the discretion of the Director, or his/her authorized representative, a claimant may, at any time, be required:

(1) To submit to the Department of Labor and Training, medical or laboratory reports, transcripts of hospital records, affidavits, certificates, evidence of separation from or accession to employment, or any other type of documentary evidence, and

(2) To undergo examination by an impartial licensed Qualified Healthcare Provider appointed and compensated by the Department of Labor and Training; provided, however, that if a claimant shall fail or refuse to submit such evidence when requested, or shall fail or refuse to undergo examination by such impartial licensed Qualified Healthcare Provider, unless such failure or refusal shall be based on good cause, as shall be determined by the Director, such failure or refusal shall be deemed to be prima facie evidence of an inability to meet the eligibility requirements with respect to proof of sickness.

[Reference to Temporary Disability Insurance Act: Sections 28-39-12 and 28-41-15(A)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 17

FILING OF CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS

BENEFITS

A. Every individual who wants to file a claim for waiting period credit or benefits shall contact the Department's Call Center utilizing the telephone or by any other method prescribed by the Director. Said individual shall:

(1) Have in their possession his/her social security card with a valid social security number,

(2) File the claim in accordance with the procedures, methods and on forms as prescribed by the Director.

(3) Register for work and make themselves available for Profiling Services as prescribed by law with the Employment Service.

B. A "valid claim" for the purpose of establishing a benefit year shall mean any claim for waiting period or benefit credits made by an unemployed individual who, during the individual's base period, has been paid sufficient wages for employment by employers to meet the requirements set forth in Section 28-44-11 of the Employment Security Act and appropriate Rules in effect at the time.

C. Every individual claiming weekly benefits shall contact the department's Call Center utilizing the Automated Telephone Payment System or Online/Internet Payment Application, Tele-Serve, or submit a written payment certification form to the department's Call Center, or by any method prescribed by the Director. Upon each contact with the Department for said benefits; the individual shall have their Social Security Account Number, Personal Identification Number (PIN), claims information and other pertinent documents necessary to complete the transaction.

D. Whenever an otherwise eligible individual who has already served a waiting period for the benefit year during which he/she claims benefits shall contact the department's Call Center to refile or reopen a claim for benefits during a week of total or partial unemployment, the effective date of said claim shall be established as the Sunday of the week in which the individual contacts and refiles or reopens his/her claim in accordance with procedures prescribed by the Director. Any individual who fails without good cause to contact the Call Center in accordance with these provisions shall not be eligible to receive benefits for the week(s) in which such failure occurs.

E. Every claimant shall make such personal efforts to find suitable work as are customarily made by persons in the same occupation or in any other occupation for which the claimant is reasonably suited, commensurate with current economic conditions to include but not limited to: registering for work with the Employment Service, making themselves available for Profiling Services when offered, provided, however, that no claimant shall in order to establish his/her availability be required to perform any unreasonable act in seeking work to pursue a search which has no definite basis expectation that it would result in re-employment. The Department of Labor and Training shall provide every claimant with written guidelines for an active and independent search for work.

F. Any individual who fails to contact the department utilizing the Telephone Automated Payment System or Online/Internet Payment Application, Tele-Serve, or who fails to contact the Department for their scheduled telephone interview, or who fails to contact the department by any other method prescribed by the Director, or who fails to return to the department's Call Center the mail payment certification form by the end of the week following the week or weeks requested, shall not be eligible to establish credit for a waiting period or to receive benefits for the week or weeks during which such failure occurs, unless the reason for such failure is based upon good cause as shall be determined by the Director.

G. An individual who fails to contact the department's Call Center, during a week succeeding a week in which the individual did make proper contact to the Department of Labor and Training, shall not be barred from establishing a waiting period or receiving benefits for such week in which he/she did make proper contact; provided, however, that the individual must establish ability to work and availability for work for such week and provided, further, that no claim shall be valid unless the individual makes proper contact not later than thirty (30) days subsequent to the termination of the benefit year in which the week for such claim occurs.

H. An individual who fails to report to an office of the Department of Labor and Training when notified of an appointment shall be denied benefits for the week in which such failure occurs unless the reason for such failure to report is based upon good cause as shall be determined by the Director.

[Reference to Employment Security Act: Sections 28-44-11, 28-44-14, and 28-44-37]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 18

WAGE AND EMPLOYMENT REPORTS - T.D.I.

A. Whenever an individual files a claim for waiting period credit and/or benefits, the Director shall forward a Claimant Employment Report containing the individual's name, social security number and last day of work to the individual's most recent employer.

The employer shall return such completed report to the Department. The completed report shall contain the following information:

(1) The reason for the individual's separation from employment.

(2) The last date the individual actually performed services prior to his/her disability.

(3) Whether or not the individual has returned to work following the period of disability and, if so, the date of return.

(4) If applicable, the name of the employer's Workers' Compensation insurance carrier.

(5) Any discrepancy in the individual's name or social security number from those shown on the form.

B. Whenever an individual files a claim for waiting period credit and/or benefits and such individual's base period earnings are not on file, the Director shall forward an employee Wage and Employment Report to the employers for whom the individual has worked during his/her base period. The report shall contain the individual's name and social security number and the time period for which wage information is needed.

The employer shall return such completed report to the Department. The completed report shall contain the following information:

(1) The gross wages earned by the individual during the time period indicated on the report.

(2) The last date the individual actually performed services prior to his/her disability.

(3) The reason for the individual's separation from employment.

(4) If applicable, the name of the employer's Workers' Compensation insurance carrier.

(5) The employer's Rhode Island Employer Registration Number.

(6) Any discrepancy in the individual's name or social security number from those shown on the form.

C. Any employer who fails to complete and return either of the reports referred to in A or B of this Rule within five working days of the mailing dates indicated on the form shall be deemed to have violated the reporting requirements of the Act.

[Reference to Temporary Disability Insurance Act: Sections 28-39-14 and 28-41-15]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 19

WAGE AND TERMINATION REPORTS - U.I.

A. Whenever an individual files a claim for waiting period or benefits, the Director shall forward a notice of claim filed and termination report to the last separating employer and any base period employers.

The last separating employer shall return the form with the following information:

(1) The last date the worker actually performed services.

(2) Whether or not the claimant had eight weeks of work preceding the separation in which the claimant earned at least twenty times the minimum hourly wage.

(3) The reason for unemployment.

(4) The expected return to work date, if any.

(5) Pension information if the claimant is receiving a company pension or payments under any other type of company retirement plan.

(6) Vacation information if the separation is due to vacation or inventory shutdown.

Any other employers need to return their notice if:

(1) The reason for separation is other than a layoff.

(2) The claimant is receiving a company pension.

(3) The claimant is being paid by the employer during a vacation or inventory shutdown.

B. Whenever an individual refiles a claim, the Director shall forward a form requesting the separating employer to provide the reason for the individual's separation and last date of employment. The failure of any employer to complete and return such report within the time limit set forth in accordance with Section 28-44-38(c) of the Act shall be considered a representation on the part of the employing unit that the individual was not separated from employment for any reason or any circumstances on the basis of which such individual could be disqualified under the provisions of the Act, and a further representation that the individual did not work for the employer beyond the date indicated on the report.

C. Any employer who fails to complete and return wage and termination reports within the time limit set forth in accordance with Section 28-44-38(c) of the Act shall be deemed to have violated the reporting requirements of this Section.

[Reference to Employment Security Act: Section 28-44-38(c)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 20

AFFIDAVIT IN LIEU OF WAGE & TERMINATION/EMPLOYMENT REPORT

A. After an individual has filed a claim for benefits and the employer(s) has failed within a reasonable time as determined by the Director to return the required wage and termination/employment report(s), the individual may file an affidavit with the Department of Labor and Training setting forth the following information:

   (1) The name and address of any employer for whom the individual performed services for wages during his/her base period.

   (2) The total wages earned by the individual during the base period from each such employer.

   (3) The beginning and ending dates of the individual's employment from each such employer.

   (4) The reason for the individual's separation from employment from each such employer.

   (5) Such other information as may be required by these Rules or the Employment Security Act or the Temporary Disability Insurance Act.

B. Such affidavit shall be supported when possible by payroll receipts, check stubs, internal revenue forms, or such other documents, forms, or papers, which substantiate in whole or in part the information set forth in said affidavit.

C. When such affidavit and evidentiary documents have been submitted, the Director shall determine whether or not the employer named therein is subject to the Act. If it is found that such employer is subject to the Act, the wage information as contained in said affidavit shall be accepted and the claim shall thereupon be processed in the same manner as all other claims: provided, however, if it shall subsequently be determined that the individual was not entitled to any benefits or to a lesser sum of benefits than received, the individual shall be required to repay such excess in accordance with the Act and Rules in effect.

[Reference to Employment Security Act: Section 28-44-38(c)]
[Reference to Temporary Disability Insurance Act: Sections 28-41-5 and 28-41-11]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 21

VACATION PAY

A. When an individual meets the eligibility requirements as set forth in Section 28-44-21 of the Employment Security Act for the receipt of waiting period credit or benefits during a bona-fide vacation period at the establishment in which the individual was employed, any vacation pay received for such period shall be allocated as follows:

(1) If the total amount received is less than or equal to his/her average weekly wage, such amount shall be apportioned to the first week of unemployment during such vacation period.

(2) If the total amount received is more than his/her average weekly wage, such amount shall be apportioned to each week of unemployment during such vacation period in such a manner that no more than an amount equal to his/her average weekly wage will be apportioned to any one week; provided, however, that where vacation pay is paid on the basis of a contract designed to give the employee a week's pay for each week of vacation, such amounts may be substituted for the "Average Weekly Wage."

(3) Vacation pay will be allocated as indicated in the two preceding subsections even though the claimant has been separated by the employer prior to the last working day preceding the vacation period except as follows:

(a) The employer has discontinued operations in whole or in part on a permanent basis.

(b) The claimant has permanently retired.

(c) The claimant has been separated by two weeks or more prior to the start of the vacation period.

The term "Average Weekly Wage" as used in this Rule means the average straight time weekly earnings exclusive of bonuses or overtime during an employee's last four weeks of employment immediately preceding his/her vacation period.

B. Upon request of the Director, an employer shall furnish information regarding the individual's total amount of vacation pay, the dates of the vacation period prescribed, and the individual's average weekly wage.

C. If the claimant is not unemployed during a bona fide vacation period as described in Section 28-44-21 of the Employment Security Act, and is not unemployed due to a request on his/her part for a vacation, the vacation pay shall be considered as wages received by the individual and shall be allocated to the last day of work.

D. If the employer pays the claimant excess vacation pay which is not in conjunction with an official vacation period shutdown, this vacation pay shall be considered as wages allocated to the last day of work.

[Reference to Employment Security Act: Section 28-44-21]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 22

WAITING PERIOD CREDIT AND BENEFITS FOR TOTAL AND PARTIAL UNEMPLOYMENT

A. Every otherwise eligible individual who is totally unemployed shall be deemed to have established the first day of the required seven (7) day waiting period as of the Sunday of the calendar week in which the individual contacted the Department of Labor and Training's Call Center to file a claim. To receive a waiting period as provided in this paragraph, an individual must have filed a claim for such waiting period in accordance with the requirements of Rule 17.

B. Any otherwise eligible individual claiming a waiting period based on partial unemployment, as defined in Section 28-42-3 of the Employment Security Act, may file his/her claim within a period of twenty-nine (29) days after the receipt of appropriate notice from the employer of the amount of wages earned with respect to such week of partial unemployment.

   The waiting period shall be deemed to have been effective as of the Sunday of the week in which the claim is filed provided that the individual files the claim in accordance with Rule 17, and grosses less than his/her benefit rate..

C. For good cause shown, an individual who failed to file a claim for a waiting period or benefits based on partial unemployment within the time limit set forth in Paragraph B, above, shall be permitted to file such claim at any time thereafter, but in no case subsequent to a thirty (30) day period after the end of the benefit year during which the period of partial unemployment occurred.

D. Every employing unit shall furnish written evidence of the amount of gross wages earned to each individual who worked within any calendar week less than the normal, customary, full-time hours. Such evidence shall include the following information:

   (1) The individual's name and social security number
   (2) The name and address of the employing unit
   (3) The week-ending date of the calendar week involved
   (4) The number of hours worked within said week
   (5) The gross wages earned for such period, and
   (6) An entry indicating "unavailable" when the individual worked less than full time although there was more work available.

E. If an individual has been partially unemployed due to lack of work for seven (7) consecutive days, within two (2) calendar weeks, the employing unit shall, upon request, furnish written evidence specifying:

   (1) The exact days of unemployment
   (2) The amount earned on each day worked, and
   (3) That the unemployment was due to lack of work.

F. Any individual who claims a waiting period or benefits based on partial unemployment shall present to the department's Call Center the evidence required to support the claim. However, nothing contained in this Rule shall prevent the establishment of a waiting period or the payment of benefits based on partial unemployment because of the failure or refusal by the employing unit to supply the individual with the required evidence. In such case the waiting period may be established and benefits may be paid on the basis of such other evidence as the Director may obtain; provided, however, that the claim is filed in accordance with the provisions of this Rule as set forth herein above.

[Reference to Employment Security Act: Sections 28-42-3; 28-44-7 and 28-44-14]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 23

DEPENDENTS' ALLOWANCE

A. At the beginning of a benefit year, each individual who makes a claim for Dependents' Allowance(s), as provided for in Section 28-44-6(B) of the Employment Security Act, or Section 28-41-5(B) of the Temporary Disability Insurance Act, shall establish to the satisfaction of the Director that he/she shall have contributed to the support of each dependent.

B. While the claimant who first established a current benefit year is in receipt of benefits, including dependents' allowances, for any week or weeks of unemployment during the said benefit year, no other claimant shall be entitled to a dependents' allowance for the same dependent for any such week.

C. Any individual claiming dependents' allowance must supply the dependents' date of birth, dependent's social security number, and any other information the Director specifies to verify the claim for dependency.

[Reference to Employment Security Act: Section 28-44-6(b)]
[Reference to Temporary Disability Insurance Act: Section 28-41-5(b)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 24

PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

A. This Rule shall govern the RI Department of Labor and Training in its administrative cooperation with other states adopting a similar Rule for the payment of benefits to interstate claimants.

B. Definitions

As used in this Rule the following terms shall have the following meanings, unless the context clearly requires otherwise:

(1) "Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the State (or States) in which benefit credits have been accumulated.

(2) "Interstate Claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable States through the facilities of an agent State. The term "interstate claimant" shall not include any commuter; provided, however, that the RI Department of Labor and Training may, by arrangement with any adjoining State Employment Security Agency, treat certain commuters as interstate claimants if they reside in geographical areas from which the liable State finds that requiring commuters to file their benefit claims in the State of their last employment would cause undue hardship to such claimants. As herein used, the term "commuter" applies to each individual who, customarily commuted from his/her residence in the agent State to his/her work in the liable State.

(3) "State" includes Puerto Rico, Virgin Islands and the District of Columbia.

(4) "Agent State" means any State in which an individual files a claim for benefits from another State or States.

(5) "Liable State" means any State against which an individual files, through another State, a claim for benefits.

(6) "Benefits" means the compensation payable to an individual, with respect to his/her unemployment, under the unemployment insurance law of any State.

(7) "Week of Unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

C. Registration for Work

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent State when and as required by the law, rules, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.

(2) Each agent State shall duly report, to the liable State in question, whether each interstate claimant meets the registration requirements of the agent State.

D. Benefit Rights of Interstate Claimants

(1) If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file claims against any other State in which there are available benefit credits.

For the purposes of this Rule benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonable restriction.

E. Claims for Benefits

(1) Claims for benefits or waiting period shall be filed using the Call Center telephone system, or Internet system, or any other system that the Director prescribes and in accordance with Rule 17 and Rule 27.

(2) Claims shall be filed by contacting the department's Call Center, in local offices, or by mail in accordance with agent State rule for interstate mail claims.

F. Extension of Interstate Benefit Payments to Include Claims Taken in and for Canada

(1) This Rule shall apply in all its provisions to claims taken in and for Canada.

[Reference to Employment Security Act: Section 28-42-59]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 25

APPLICATION OF FUNDS - PARTIAL PAYMENT BY EMPLOYERS

A. Whenever an employer becomes liable for overdue contributions and is assessed interest and/or penalties for one or more taxable periods and partial payment is tendered and accepted by the Director, such payment will be applied in the following order:

(1) to penalties assessed due to the late filing of reports, or the late or non-payment of E.S. contributions.

(2) to interest assessed due to the late or non-payment of E.S. contributions.

(3) to E.S. contributions outstanding.

(4) to penalties assessed due to the late filing of reports, or the late or non-payment of T.D.I. contributions.

(5) to interest assessed due to the late or non-payment of T.D.I. contributions.

(6) to T.D.I. contributions outstanding.

(7) to penalties assessed due to the late or non-payment of J.D.F. contributions.

(8) to interest assessed due to the late or non-payment of J.D.F. contributions.

(9) to J.D.F. contributions outstanding.

B. Whenever contributions, penalties and/or interest are due for more than one taxable period the earliest period will be paid in full, in the order specified in paragraph A, before any monies are applied to the next earliest period.

[Reference to Employment Security Act: 28-43-8.1]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 26

WAGE RECORD REPORTING

A. All employers are required to report their employee wages on the Quarterly Tax and Wage Report (DET-TX-17). Employers must enter the social security number, name, the total number of weeks for which the employee received pay during the quarter, the total number of hours for which the employee received pay during the quarter and total wages paid to each employee during the quarter in the Wage Report Section of the form. Alternate methods of reporting, such as computer reports, diskettes, or compact discs (CDs) may be used, subject to the approval of the Director. Employers who have twenty-five (25) employees or more are required to file electronically.

B. Payroll service providers who provide payroll services to twenty (20) or more clients are required to file Quarterly Tax and Wage Reports (DET-TX-17) for their clients electronically.

C. These reports must be submitted by the last day of the month following the end of each calendar quarter.

D. All employers will be required to report the hours and weeks worked information beginning with the filing of the Quarterly Tax and Wage Report (DET-TX-17) for fourth quarter 2007, which is due on or before January 31, 2008.

[Reference to Employment Security Act: Section 28-42-38.1]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 27

PAYMENT SYSTEM, TELESERVE

A. Once the claimant has established a valid claim as prescribed under Rule 17, in accordance with the procedures as prescribed by the Director, and in accordance with Chapters 42-44 inclusive of the Employment Security Act, shall claim weekly benefits in the following manner:

(1) The claimant must call Tele-Serve to establish a Personal Identification Number (PIN).
(2) Commencing with 12:01 AM of the Sunday immediately following the compensable week ending date for which an individual is claiming benefits, he/she shall utilize the department's Automated Telephone Payment System, or Online/Internet Payment Application, Tele-Serve, or by any method prescribed by the Director to request benefits.
(3) Each claimant requesting benefits will provide their social security number, benefit year ending date, and Personal Identification Number (PIN).
(4) The claimant will be required to answer questions, as prescribed by the Director, to establish their availability and continuing eligibility for benefits for the week in question.

B. Each claimant is responsible for establishing and activating their own Personal Identification Number (PIN)

(1) It is the responsibility of the claimant to safeguard this number and must not release it to anyone for any purpose. The PIN is the claimant's electronic signature meant to identify the claimant to the Automated Telephone Payment System or Online/Internet Payment Application, Tele-Serve, so that proper payment can be authorized.
(2) If this PIN becomes lost or known to another person, it becomes the responsibility of the claimant to immediately contact an authorized representative of the Department of Labor and Training's Call Center in order to delete the PIN so that a new PIN can be authorized by the claimant alone.
(3) The claimant is responsible for all payment authorized utilizing his/her PIN through the Automated Telephone Payment System or Online/Internet Payment Application, Tele-Serve.

[Reference to Employment Security Act: Section 28-44-11, 28-44-14, and 28-44-37]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 28

HOLIDAY PAY

Holiday Pay issued by an employer will be:

a. Considered wages under Section 28-42-3(28) of the R.I.G.L. and will be used in the base period when computing a claim.
b. Deducted from the gross earnings during the week in which the holiday occurs and prior to computing a weekly benefit amount or recording a waiting period
c. Considered for a holiday under section 28-44-61 if the holiday is a declared holiday under Section 25-1-1 of the R.I.G.L.

[Reference to R.I. Employment Security Act: Sections 28-42-3 (28) and 28-44-61]
[Reference to R.I. General Laws: Section 25-1-1]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 29

TDI PARTIAL RETURN TO WORK AND EARNINGS OFFSET

Any individual who is in partial return to work status and is collecting Temporary Disability Insurance (TDI) partial return to work benefits is required to report all wages earned in employment for the compensable week in which they are claiming partial benefits. Wages will include: any wages earned and/or received, including any sick pay, vacation pay or supplemental wages and/or salary. If the person earns less than their weekly benefit amount (WBA), they can keep the first twenty percent (20%) of their weekly benefit amount without any penalty. Any wages earned (as defined above) that exceed twenty percent (20%) of their WBA, will be deducted (offset) dollar for dollar from their WBA.

[Reference to the RI Temporary Disability Insurance Act: Sections 28-41-5(d) and 28-39-2(17)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 30

TDI - LIMIT ON PARTIAL PAYMENTS

The Temporary Disability Insurance (TDI) partial return to work law allows people collecting TDI to return to work on a partial basis (reduced hours) without cutting off their TDI benefits entirely. The spirit and intent of the legislation is for individuals to transition back into the workforce from an illness or injury. As such, partial return to work benefits facilitates transition for the individual to return to their normal working hours while continuing their recuperation. Partial payments are available for a short term basis to allow the individual to transition back to their customary work and work schedule; therefore, a standard of an eight (8) week maximum is allowed under this benefit. Partial payments may be extended up to twelve (12) weeks total when clearly supported by medical documentation provided by the Qualified Healthcare Provider and subject to agency review and approval. No more than twelve (12) weeks total maximum may be paid under the Partial Return to Work Program.

[Reference to the RI Temporary Disability Insurance Act: Section 28-41-5(d)]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 31

WORK-SHARE BENEFITS PROGRAM

This rule is intended to clarify employer participation in the Work-Share Benefits Program.

A. If an employer participates in the Work-Share Program for 18 months or more, within two consecutive years, the reduced hours shall become the standard for the usual weekly hours of work for the subsequent third year. The reduction will be computed based on the previous years' hours.

B. An employer will not be allowed to participate in the Work-Share Program for the same period of time each year for more than three (3) consecutive years as defined by "seasonal employment" in section 28-44-69(a)(6) of the Employment Security Act.

C. All affected units will be reduced by the maximum amount of hours before any layoffs are allowed, unless justification can be given as to why the layoff must occur in an affected unit.

D. An employer shall not make any modifications to the Work-Share Plan for thirty (30) days after its effective date. If a modification is needed after this thirty (30) day period, the employer must submit a request for a new application.

E. If dissatisfied with an initial determination, an employer may seek reconsideration by the Director, whose decision shall be final with no further appeal.

F. A Work-Share employer may not participate in the program during any week of a bona-fide vacation shut down or an economic shut down.

[Reference to Employment Security Act: Section 28-44-69]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 32

COUNSEL FEES

In appeals from a director's determination to an appeals body other than a court of law, if a claimant retains an attorney-at-law to represent him or her, the attorney shall be entitled to a counsel fee of fifteen (15%) percent of amount of the benefits at issue before the appeals body but not less that fifty ($50.00) dollars, which the director shall pay out of the employment security administrative funds; provided, however, the attorney-at-law must submit his or her request for a counsel fee to the director not later than two (2) years from a final adjudication of the case by the appeals body. Any requests for counsel fees after the two (2) year period will not be allowed by the director.

[Reference to Employment Security Act: Section 28-44-57]

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

Rule 33

Severance and Dismissal Pay

When an individual is in receipt of severance or dismissal pay under Section 28-44-59 of the Employment Security Act for benefit years beginning on or after July 1, 2012, severance or dismissal pay issued by an employer will be:

A. Considered wages under Section 28-42-3 (28) of the R.I.G.L. and will be used in the base period, attributable to the last day of employment for services performed prior to that date, when computing a claim for benefits. The amount of any payments, whether or not under a plan or system, made to or on behalf of an employee by his or her employer after the expiration of six (6) calendar months following the last calendar month in which the employee performed actual bona fide personal services for his or her employer, shall not be deemed to be wages either for the purpose of reporting wages received under Section 28-44-13, or for the purpose of wages considered in computing benefits under Section 28-44-3 of the R.I.G.L.

B. Deducted from the weekly "benefit rate" as defined in section 28-42-3 (6) of the R.I.G.L. for each week severance or dismissal pay is received. The weekly benefit rate shall be reduced by the full amount of that severance or dismissal pay, which is attributable for that week, for a period not to exceed twenty-six (26) weeks. Within the period, not to exceed twenty six (26) weeks, an individual shall be disqualified from receiving benefits for any week of his or her unemployment within any period with respect to which the individual is receiving severance or dismissal pay in an amount greater than or equal to his or her weekly benefit rate. Within the period, not to exceed twenty six (26) weeks, the total amount of severance pay paid in the form of a lump sum to an employee will be attributed to each week it represents. The total amount of severance pay and the number of weeks it represents will be provided by the employer. If the employer does not specify a set number of weeks, such severance or dismissal pay shall be allocated using the individual's weekly benefit rate.

C. For unemployment purposes suspension pay is considered dismissal pay.

[Reference to Employment Security Act: Sections 28-42-3(6) & (28); 28-44-3; 28-44-13; and 28-44-59]

Rule 34

Wages paid after last day of employment

Wages paid after the last day of employment for services performed prior to that date for benefit years beginning on or after July 1, 2012:

-

A. For benefit years beginning on or after July 1, 2012, wages paid to an individual after the last day of employment by an employer for services performed prior to that date shall be considered wages under Section 28-42-3 (28) of the R.I.G.L. and will be used in the base period, attributable to the last day of employment for services performed prior to that date, when computing a claim for benefits.

B. The amount of any payments, whether or not under a plan or system, made to or on behalf of an employee by his or her employer after the expiration of six (6) calendar months following the last calendar month in which the employee performed actual bona fide personal services for his or her employer, shall not be deemed to be wages either for the purpose of reporting wages received under Section 28-44-13, or for the purpose of wages considered in computing benefits under Section 28-44-3 of the R.I.G.L.

[Reference to Employment Security Act: Sections 28-42-3(28); 28-44-3; and 28-44-13]

In the development of the proposed rule consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small businesses. Based on available information, no significant economic impact was identified nor are there any alternative approaches, duplications or overlaps with other state regulations.

All interested parties are invited to submit written or oral comments concerning the proposed regulations are welcomed and will be accepted within twenty (20) days of the date of publication of this notice. In accordance with Rhode Island General Law, Section 42-35-3, an oral hearing on these proposed amendments will be granted if requested by twenty-five (25) persons or a governmental subdivision or agency, or by an association having not less than twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of the date of publication of this notice. Such input or requests should be addressed to Thomas J. Daniels, Chairman, Board of Review, Hazard Building, 74 West Road, Cranston, RI 02920. If the above-cited requests are received, an oral hearing will be conducted on Tuesday, May 8th at 10:00 AM at the Board of Review, Hazard Building, 74 West Road, Cranston, RI 02920.