New York State Department of Labor

Section 900

DETERMINATION OF BENEFITS

INDEX 900

TABLE OF CONTENTS

Introduction 900

General 905

Base period earnings and employment 910

Reduction due to pension 915

Pension or retirement payment: definition

Amount of reduction

Retrocative pension

Employees of educational institutions 920

General

"Professional" or "non-professional" employment

Reasonable assurance (Sub. Sec. 590.10)

Replacement of benefit check 930

Shared Work 940

SEAP- Self Employment Assistance Program 950

Unemployment Compensation for Ex-Service Members (UCX) 960

Canceling a claim 970

900. Introduction

Section 527 of the Unemployment Insurance Law sets forth the conditions under which a valid original claim may be filed effective April 1999, the conditions are:

Basic condition. "Valid original claim" is a claim filed by a claimant who meets the following qualifications: (a) is able to work, and available for work; (b) is not subject to any disqualification or suspension under this article: (c) his previously established benefit year, if any, has expired; (d) has had employment during at least two calendar quarters of the Base Period consisting of the first four of the last five completed calendar quarters: (e) has had remuneration paid in at least two of the Base Period quarters, with at least $1600 paid in the highest quarter; (f) has total remuneration of at least one and a halftimes the highest quarter (See Field Memo 1-99)

For Original Claims filed effective April 17, 2000 and thereafter, when determining (f) above, wages in excess of twenty-two times the Maximum Benefit Rate are disregarded (See Field Memo 1-2000)

Alternate condition. "Valid original claim" is also a claim filed by a claimant who meets the qualifications enumerated in Paragraph above, within the Base Period consisting of the last four completed calendar quarters. A claimant who does have entitlement under the Basic Condition Base Period may elect to use the Alternate Condition Base Period.

Claimant who meets the entitlement criteria above, and whose choice of Base Period has been finalized, may elect to have his/her benefit rate recomputed based on the Average Weekly Wage for all weeks of work in the Base Period, if claimant has had at least twenty weeks of employment, and submits sufficient proof of the weeks of employment and remuneration to the Commissioner.

Between April 1999 and April 2000, the statute was silent as to "Weeks of employment." Effective Apri1 2000, this definition was updated and included in the current law, to enable benefit rate recomputations using average weekly wages (See Field Memo 1-2000).

Determining whether a claimant's work is "employment" as defined in the Unemployment Insurance Law and whether base period earnings constitute "remuneration" is the responsibility of the Liability and Determination Section.

When it has been established that a claimant worked in employment, the local office is responsible for resolving issues involving the amount of earnings **1**/ and the number of weeks of employment **2**/ to be allocated to the claimant's base period.

1/ Doubtful cases should be referred to the Liability and Determination Section.

2/ Doubtful cases should be referred to the Adjudication Services Office.

The rules contained in Index 900 are intended to aid claims personnel in determining claimant's entitlement to benefits. They deal with base period employment and earnings; reduction of the benefit rate due to receipt of a pension, retirement pay, annuity or similar periodic payment; and the disregarding of base period weeks and wages of certain classes or employees.

When interviewing claimants regarding their entitlement to benefits, claims personnel should consult the appropriate Fact-Finding Guidecards for a checklist of questions to be explored. Determinations should be made in accordance with the principles reported in this section of the Interpretation Service and the policies set forth in relevant Special Bulletin (A-710 Series).

905. General

Claimant could not accumulate statutory waiting period during a period when he was ineligible for benefits. (Matter of Munterfering, 256 App. Div. 151; A-750-151)

If a claim has been invalidated and the claimant files thereafter a valid original claim in a week for which benefits were erroneously paid, such week may constitute his waiting period in connection with the valid claim although the resulting overpayment is not recoverable by virtue of the provisions of Section 597.4 (Ref. 546-1025-53R; A-750-1235)

Benefits accrued in favor of the claimant, a former sole proprietor of a business enterprise, may not be applied on account of and as an offset to unpaid tax contributions due and owing to the Unemployment Insurance Fund by the claimant. Section 595.2 of the Law acts as a bar to such action. (A.B. 13,976-46; A-750-780)

Benefits due to a claimant who was an officer of a corporation may not be held in abeyance because the corporation is delinquent in the payment of contributions. (Matter of Steinberg, 27 A.D. 2d 581; A-750-1663)

If the local office fails to act on information received from a base period employer that work is available for the claimant, the employer's account is not charged with benefits paid to the claimant during the period when the employer had work for him. (A.B. 96-087; A-750-1587)

If a voluntary quit to attend vocational training is held to be with good cause because Employment Service representatives who approved the training failed to advise the claimant of the possible consequences of such leaving, the account of the employer involved in the quit is not charged with the resulting payment of benefits. (A.B. 147,105; A-750-1702)

910. Base period earnings and employment

A statutory week which includes one or more days of paid vacation for which benefits would not be payable, when the employment relationship continues, is a "week of

employment" for determining entitlement. (The vacation pay is remuneration) (A.B. 179,158; A-750-1757; similarly, A.B. 262,277)

A payment made under a play or system established by an employer for his employees on account of sickness or disability is not remuneration, and a week covered by such payment is not a week of employment when no services are performed during such week. (A.B. 248,834A; A-750-1843)

The week in which a filmed television commercial is used or reused, or the week in which payment therefor is made, and which follows the week of the actual filming is not a "week of employment" as defined by Section 524 of the Law, and the receipt of payments for such use and re-use does not render the claimant employed in such week. (Matter of Price, 9 A.D. 2d 561; aff'g A.B. 61,788-57; A-750-1474)

Re-use fees for television commercials filmed and paid to the claimant during his base period is "remuneration" (Section 517) which must be taken into account in calculating his average weekly wage for establishing his benefit rate (A.B. 127,681; A-750-1655)

Re-use fees for television commercials are remuneration in the week/quarter in which they are paid (Section 516, UI Law)

> The prior rule at this entry was rendered obsolete by UI Reform: See Field Memos 1-99 and 1-2000.

A tugboat deckhand whose customary employment pattern is to work and be paid for 144 hours with respect to each three weeks' unit, who performs this work within two weeks by working 12 hours daily so as to be off every third week, and who cannot accept employment aboard any vessel during that third week is entitled to be credited with such third week as a "week of employment." (A.B. 51,115-55; A-750-1384)

Employment in an illegal enterprise will not establish rights to unemployment insurance benefits if the specific services which the claimant renders are in violation of the law (A.B. 69,783-59; A-750-1514) (See Special Bulletin A-710-18)

Union officials, performing during working hours specific duties on behalf of their union for which they are compensated by the union on an hourly basis, and during which time do not receive wages from the employer, are employees of the union and such employment, and the compensation therefrom, are considered in determining their base period employment and earnings. (A.B. 47,579-54; A-750-1356)

A claimant' s service with the reserve component of the armed forces may be used to establish benefit rights under the UCX program, provided that the service consisted of 90 days of continuous active duty and provided that it met all the other criteria for employment set forth in the UCX Law. (Field Memo 9-99)

A claimant's base period is extended by Section 527.3 for the number of calendar quarters, up to a maximum of two quarters, in which s/he collected workers compensation (or benefits under the volunteer fire fighters' benefit law) during the Basic Condition base Period. In computing claimant' s benefit rate, all quarters and remuneration should be treated as Base Period quarters and remuneration.

The prior rule at this entry was rendered obsolete by UI Reform: See Field Memo 1-99.

A claimant is totally unemployed despite the receipt of fully paid sick leave pursuant to an employer plan, since such weeks of sick leave would not be considered remuneration or weeks of employment for the purpose of establishing claimant's future entitlement. (Matter of Mark Rappaport, 144 AD 2d 141; A-750-1997)

To exclude a claimant's services (other than a caretaker) under Section 563(2)(c) it is necessary to review the claimant's functions and duties to determine if the duties were religious in nature. (Matter of Conde, 180 AD 2d 911; A-750-2048)

915. Reduction due to pension

Pension or retirement payment: definition

Payments received by a claimant upon retirement under a profit-sharing retirement plan constitute a "pension or retirement payment" as contemplated by the provisions of Section 600 of the Law. (A.B. 111,760; A-750-1625; Principle confirmed by Matter of Hager, 42 A.D. 2d 798)

A claimant is subject to the benefit reduction by pension or retirement payments as provided in Section 600 although such payments are not made under a formal or general plan but under an arrangement or plan established for the claimant individually. (A.B. 144,243; A-750-1706). (Similarly A.B. 147,462A where the Board indicated this conclusion may be reached "regardless of the label or designation which may be applied to such payments by either the claimant or the employer.")

A weekly payment following retirement made by an employer in lieu of claimant's participation in the company's general pension plan may properly be held to be a "pension or retirement payment" under Section 600 of the Law, even though payable only for a limited number of years. Matter of Landsman; 37 A.D. 2d 667; A-750-1739)

When a claimant's right to a pension has been established, and an estimated amount of the pension determined, his benefit rate is subject to a reduction based on the estimated amount, even though issuance of the pension payments is held in abeyance pending final computation of the pension award. Should the final award differ from the estimated amount, a redetermination of the amount of reduction is to be made (A.B. 320,165; A-750-1911)

A claimant who upon separation from employment for reasons other than retirement, has the option of accepting a lump sum payment representing accrued pension contributions or a periodic payment effective at a much later date, is not subject to the provisions of Section 600.7. (A.B. 332,798A; A-750-1925)

To determine whether a claimant has contributed at least 50% toward a Federal pension, a comparison must be made between the claimant's total contribution and the actual value of the pension at the time of retirement. If the claimant's total contribution is less than half the actual value, the claimant's benefit rate is subject to reduction. (A.B. 357,229A; A-750-1957)

Receipt of a retirement pension due to disability, which pension constitutes a periodic payment based on claimant's previous work under a plan contributed by the claimant's base period employer, requires a benefit rate reduction pursuant to Section 600.7 of the U.I. Law. (A.B. 368,203; A-750-1969)

REMOVED

A special payment made to claimant upon retirement, designed to act as a "bridge" between claimant's former salary and the commencement of regular retirement benefits, is subject to the provisions of Section 600.7 (A.B. 380,086; A-750-1985)

A claimant is subject to a benefit rate reduction as a result of a pension payment made from a union pension plan where union members voted to determine what amount out of the base pay package is contributed to the pension plan, and since the contributions were made by the employer. (A.B. 454,956A; A-750-2082)

A claimant in receipt of a pension from a plan financed by an employer for whom the claimant last worked prior to the beginning of the base period, who receives a back pay award from that employer during the base period that increases the monthly pension amount, is not subject to pension reduction because the employer is not a base period employer. (AB 540634A; A 750-2126)

Amount of reduction

Removed. See Field Memo 2-2005 regarding lump-sum pension payments.

Removed. See Field Memo 2-2005 regarding lump-sum pension payments.

If a claimant, instead of receiving a current pension, elects to be paid its present cash value in two (or more) installments, his benefit rate is subject to the reduction provided by Section 1600 but the amount thereof is the weekly equivalent of the pension as it would have been payable to him in the absence of such election. (A.B. 130,463; A-750-1653)

Where claimant in accordance with an elected option withdraws all his contributions and accrued interest from an employer's pension plan and thus receives a pension 100% financed by the employer, the benefit rate is reduced by the total pro-rated weekly pension amount. (A.B. 113,865; A-750-1620)

When a profit-sharing plan consisted of two accounts for each employee to which the employer alone contributed, a "retirement account" and an "optional account", the employee having full ownership of the money in his "optional account" at all times, claimant's use of the proceeds of both accounts upon retirement to purchase an annuity resulted in a finding that he was a partial contributor to such annuity in the amount of the proceeds of his "optional account". (A.B. 202,557; A-750-1792)

When reducing the U.I. benefit rate of a claimant because of receipt of a pension pursuant to a plan which provides for a choice of pension options, the reduction is to be made using the pension amount claimant actually chose to receive and not an amount claimant might have received had a different option been chosen. (A.B. 359,273; A-750-1965)

If a claimant's employment in the base period increases his preexisting pension by any amount, the entire amount of the pension not just the amount of the increase is used in calculating the appropriate reduction. (Matter of Hall, 162 AD 2d 96; A-750-2005)

A statutory week is not divisible for purposes of Section 600.7. Thus, if claimant is subject to a pension reduction because the eligibility for the pension began on any day during a week, the reduction is applied to the entire week. (A.B. 386,208; A-750-2066)

Where claimant contributed a fixed percentage of his annual salary to his pension, but the monthly amount of the pension is determined by a formula which includes the claimant' s length of service, salary and age, the percentage of claimant' s contribution to his pension is determined by comparing his total contribution during the entire course of his employment with the actuarial value, (or lump-sum value), of the pension. (A.B. 476,484; A-750-2097)

Retroactive pension

Pursuant to Section 600.7 (c) of the Unemployment Insurance Law, a claimant who receives a retroactive pension payment may be held subject to a retroactive benefit rate reduction and recoverable overpayment despite the fact that the claimant was not at fault and had made a full disclosure to the department regarding the pension

shortly after filing the original claim. (Matter of Rita J. Sanchez, 56 A.D. 3d 846 [2008]; A-750-2128)

920. Employees of educational institutions

General

While case law requires that reasonable assurance includes the opportunity to perform services under substantially the same economic terms with earnings no less than 90% of the prior year, an educational institution does not have to provide a guarantee of earnings to a prospective employee for reasonable assurance to exist. (Matter of Caruso 241 AD3d 1686 [2025]; A-750-2180)

A nursery school or kindergarten is an educational institution. (Matter of Nirenberg 48 A.D. 2d 729; Matter of Sherwin, 48 A.D. 2d 733; A-750-1793)

When an educational institutions's academic year is comprised of multiple terms, each period between successive terms is a period between regular academic terms within the meaning of Section 590.10. (A.B. 294,552; A-750-1916)

An instructional employee whose work ceased prior to the end of the school term was not subject to Section 590.10 until the term is over. (A.B. 274,204)

A non-instructional employee whose work ceases prior to the end of the school term is not subject to the provisions of Section 590.11 until the term is over. (A.B. 277,066); A-750-1875) (See Comments)

The provisions of Section 590.10 are effective the first Monday after the end of the academic year or term or the first Monday after the giving of reasonable assurance, whichever comes later. Section 590.10 no longer applies as of the first day of the next academic year or term. (A.B. 331,545A; A-750-1920)

The provisions of Section 590.10 apply to the period between two successive academic years or terms. Thus, a teacher who has reasonable assurance of employment during the next academic year is subject to the provisions of Section 590.10 although employed during a term between the academic years. (Matter of Lintz, 89 AD 2d 1038; A-750-1934)

To determine if reasonable assurance exists when claimant files an additional claim during a period between school l terms, it is necessary to compare claimant's earnings during the school year or term immediately preceding her filing with her anticipated earnings for the succeeding school year or term. Having done so, if it is determined that the provisions of Section 590.10 (or Section 590.11) should be invoked, all employment with educational institutions in the base period should be disregarded notwithstanding the fact that the same employer is involved and the anticipated earnings are substantially less than the base period earnings. (Matter of Rhoda Abramowitz, 156 AD 2nd 837; A-750-2021)

"Professional", or "non-professional" employment

In determining whether a claimant was employed in an instructional capacity, the nature of the services performed is controlling, not the job title. Thus a teaching assistant employed by a school district, who tutored small groups of students, supplementing their regular classroom instruction, was employed in an instructional capacity and subject to Section 590.10. (A.B. 274,204; A-750-1874)

Employment as a counseling intern at a college is employment in an instructional capacity, within the meaning of Section 590.10. (A.B. 281,305; A-750-1882)

A claimant who was employed by a school in an instructional, research or principal administrative capacity, is subject to Section 590.10 if there is reasonable assurance of employment in any of those capacities. (A.B. 279,214; A-750-1879)

A change in job title or duties from one school year to the next does not exempt a claimant from the provisions of Section 590.11 if both jobs meet the criteria set forth in that section of the Law. (A.B. 326,031; A-750-1921)

Reasonable assurance

A notice of reappointment issued in good faith, which does not guarantee reemployment because it is conditioned upon the sufficiency of registration, changes in curriculum, and the employer's financial ability, is reasonable assurance under Section 590.10 when other evidence, such as a history of reemployment for several years, indicates that the preconditions may not affect the claimant. (A.B. 274,804; A-750-1868)

A history of regular rehiring by an educational institution does not, in itself, provide reasonable assurance of future employment when the claimant has been given no affirmative indication of rehire. (A.B. 325,166; A-750-1918)

Where it is the employer's established practice that employees return unless notified that their employment is not to be continued for the next academic year or term, reasonable assurance exists although no affirmative notification to return is given. (A.B. 326,077; A-750-1919)

A substitute teacher has reasonable assurance of employment and is subject to Section 590.10 when notified by a school that he will be retained on its active substitute list, even though he responds by stating he is not interested the job. (A.B. 279,276; A-750-1880)

There is reasonable assurance even though a claimant fails to comply with an instruction to acknowledge the letter of notification of inclusion on the substitute teacher's list (A.B. 276,680).

That a claimant customarily received assignments from the employer's agent, the Job Service registry, does not affect the existence of reasonable assurance (A.B. 284,001A).

There is reasonable assurance even though the offer of future employment is with a different school from the one where the claimant previously worked (A.B. 283,853).

A pro forma letter sent by a school district informing a claimant of placement on its substitute teacher's list does not establish reasonable assurance of employment when the district does not intend to employ the claimant during the next school year. (A.B. 339,163; A-750-1937)

A letter from a school district informing claimant of inclusion on its list of substitute teachers does not constitute reasonable assurance of employment when that list is not used by its schools as a source for employing substitute teachers. (A.B. 328,152 et. al; A-750-1938)

A claimant who held a teaching position concurrently with a position subject to sub. sec. 590.11 who has a contract of continuing employment in the non-instructional capacity, but no reasonable assurance of employment as a teacher, may use the weeks of employment and wages earned as a teacher to establish a benefit claim. (A.B. 339,140; A-750-1940) (This principle applies only to the period between school terms and not recess or holiday periods)

The provisions of Section 590.10 apply to the period between two successive academic years or terms. Thus, a teacher who has reasonable assurance of employment during the next academic year is subject to the provisions of Section 590.10 although employed during a term between the academic years. (Matter of Lintz, 89 AD 2d 1038; A-750-1934)

The rule previously here is obsolete.

Reasonable assurance exists only if the economic terms and conditions of employment are not substantially less favorable to the claimant in the next school year or term than the conditions in the prior year or term. (A.B.379,090A; A-750-1988)

Reasonable assurance does not exist for a per diem substitute employee, who had enhanced earnings because of a steady assignment in the prior school year or term, unless the employer can demonstrate that claimant's earnings will not be substantially less in the upcoming school year or term. (A.B. 389,347; A-750-2000)

To determine if reasonable assurance exists when claimant files an additional claim during a period between school terms, it is necessary to compare claimant's earnings during the school year or term immediately preceding her filing with her anticipated earnings for the succeeding school year or term. Having done so, if it is determined that the provisions of Section 590.10 (or Section 590.11) should be invoked, all employment with educational institutions in the base period should be disregarded notwithstanding the fact that the same employer is involved and the anticipated earnings are substantially less than the base period earnings. (Matter of Rhoda Abramowitz, 156 AD 2d 837; A-750-2021)

A per-diem substitute teacher in a school system that uses a computerized central registry for its substitutes, has reasonable assurance if the number of days of work

offered by the central registry in the prior school year was at least 90% of the number of days worked in the prior school year, and the employer has assured the claimant that it intends in the next year to offer the claimant employment through the central registry for at least the same number of days.(AB 544293; A 750-2125)

The Appellate Division held that the employer must provide notice to the claimant that if the claimant worked in the week immediately preceding a customary vacation or recess, the claimant will receive employment opportunities in the week immediately following such customary vacation or recess. (A 750-2164)

To meet reasonable assurance requirements for weeks commencing during a customary vacation period or holiday recess, the educational institution must establish that: 1) the per diem employee of the institution worked at least one of the seven days immediately preceding the vacation period or holiday recess; the per diem employee was placed on a priority list consisting only of those employees who worked during this pre-period/recess; 2) the educational institution will use this priority list to call substitutes for employment during the seven days immediately following the period/recess; 3) the individual notice was sent to the per diem employee and that it will use this priority list to call substitutes for employment during the seven days immediately following the recess period. Furthermore, the Appeal Board has held that individual notices can be given at the beginning of the academic year to satisfy the statutory requirement of individual notice. (A 750-2165)

930. Replacement of Benefit Check

No replacement of a lost or stolen benefit check can be made when the check was cashed after being endorsed by claimant, since such check became a negotiable instrument and its loss is similar to losing cash. (A.B. 357,020; A-750-1959)

940. Corporate Officer/Shared Work Program

Corporate principals are not eligible to receive benefits pursuant to the Shared Work Program. (A.B. 431,477; A-750-2081)

950. SEAP – Self Employment Assistance Program

Applicants for enrollment in the Self Employment Program must be eligible for regular unemployment insurance benefits (A..B 452,496; A-750-2084).

960. Unemployment Compensation for Ex-Service Members (UCX)

A claimant who did not complete the first full term of military service which he agreed to serve may not use such service to establish an Unemployment Compensation for Ex-Service Members (UCX) claim unless tha narrative reason for separation as shown on his form DD-214 matches one of the acceptable narrative reasons for separation pursuant to 5 USC § 8521.(AB 544932; A-750-2127).
For purposes of determining the claimant's record of service for unemployment insurance, the DD214 is binding on the Department and the Appeal Board, even though the days credited may not correspond to the actual number of days of active duty. Further, days of military service is based on a 30-day month regardless of the number of actual days in the month. (A.B. 594,841; A-450-2163)

970. Canceling a claim

There is no authority in either the Labor Law or the Rules and Regulations of the Commissioner of Labor that allow a claimant to cancel a valid original claim and then open a new claim once the claimant has certified to at least one effective day or post-date a previously established valid claim. (A.B. 543,965; A-750-2166)