

Department of
Industrial Relations

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF INDUSTRIAL RELATIONS

RULE NO. & TITLE: 480-4-3-.33 Types of Income Effecting Eligibility

INTENDED ACTION: To amend the above rule in the Benefits Chapter to reflect determinations on types of income effecting eligibility.

SUBSTANCE OF PROPOSED ACTION: The adoption will not restrict claimant eligibility based upon income received and classified as terminal vacation and sick pay.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments in writing to Joseph Ammons, Department of Industrial Relations, 649 Monroe Street, Montgomery, Alabama 36131 by mail or in person between the hours of 8:00 am and 4:30 pm, Monday through Friday until and including August 10, 2012. Persons wishing to submit data, views or arguments orally should contact Martha Johnson by telephone at (334) 242-8376 during this period to arrange an appointment.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: August 10, 2012.

CONTACT PERSON AT AGENCY:

Martha Johnson
Asst. UC administrator
Department of Industrial Relations
649 Monroe Street
Montgomery, Alabama 36131
Telephone: (334) 242-8623



Joseph Ammons,
Administrative Procedure Secretary

ALABAMA DEPARTMENT OF INDUSTRIAL RELATIONS
ADMINISTRATIVE CODE

CHAPTER 48-4-3
BENEFITS

480- 4-3.33 Types Of Income Affecting Eligibility.

(1) Only those types of income specifically set forth in the law can possibly affect eligibility. These are:

(a) Wages

(b) Wages in lieu of notice, a dismissal or separation allowance.

(c) Pensions

(d) Receipt of or application for Unemployment Compensation from another state.

(e) Workers' Compensation for a temporary disability.

(f) Training allowance.

(2) Wages

(a) Statutory Provisions.

1. Wages means every form of remuneration paid or received for personal services (25-4-16).

2. Either total or partial unemployment is required as a condition of eligibility (§25-4-77(4)).

3. If wages are payable with respect to a week equal to or exceeding the weekly benefit amount the individual is deemed to be employed for such week (§25-4-71). An employed individual is not eligible for any benefits

4. If wages are payable with respect to a week less than the weekly benefit amount he is deemed to be partially unemployed for such week (§25-4-71).

5. The weekly benefit payment to a partially unemployed individual is reduced by any amount of wages payable with respect to a week which is in excess of \$15. The weekly

benefit is rounded to the nearest multiple of \$1.00
(;±25473).

Note: This \$15 exclusion applies only to wages. It does not apply to other types of income.

(b) Vacation Pay. Vacation pay is wages and is deductible or disqualifying for the week with respect to which is payable. The time of payment is not the controlling factor. A determination must be made as to the period with respect to which it is paid.

1. In many instances the worker is, at the time of separation, paid for accrued vacation but not taken.

(i) No previously established vacation period. If a Vacation period has not been previously established by agreement, assignment, custom or tradition, the vacation pay is deemed payable with respect to the period immediately following separation, and the number of days of vacation are allocated to weeks based upon the claimants customary work week. This provision only applies to individuals who remain job attached. Individuals who are permanently separated will not have their benefits affected by accrued vacation or sick pay. Note: If a week of partial unemployment results, the \$15 exclusion applies.

(ii) Previously established vacation period. If a Vacation period was, prior to termination, established by agreement, assignment, custom or tradition, and if it is paid at the time of separation, it is deemed to be payable with respect to the previously established vacation period. Vacation days are allocated to weeks within the previously established period based upon the claimant's customary work week. Note: If a week of partial unemployment results, the \$15 exclusion applies.

(c) Holiday Pay. Holiday pay is wages and is deemed paid with respect to the week in which the holiday falls. The \$15 exclusion applies to a week of partial unemployment.

(d) Bereavement Pay. Bereavement pay is wages and is deemed paid with respect to the week in which the event occurs that give rise to the entitlement. The \$15 exclusion applies to any week of partial unemployment.

(e) Bonus Pay. Bonus pay comes within the definition

of wages and is deemed paid with respect to the period during which the claimant worked.

(f) Sick Pay. Sick pay is wages. If an individual is, upon termination, paid for unused sick days, the payment is deemed payable with respect to the period immediately following termination, allocating the number of sick days to weeks of unemployment based upon the claimants normal and customary work week. This provision only applies to individuals who remain job attached. Individuals who are permanently separated will not have their benefits affected by accrued vacation or sick pay.

Note: The \$15 exclusion applies to any week of partial unemployment.

(g) Income from self employment as wages. See Rule 48043.24

(h) Commission income as wages. See Rule 48043.25

(3) Wages in lieu of notice, a dismissal or separation allowance. This type of income affects eligibility only if all of the following factual circumstances exists:

(a) The payment is made pursuant to a legal obligation. It must arise out of a contract or agreement that would be enforceable in an action at law.

(b) The agreement that causes the payments to arise must specify the period after termination with respect to which the payments are applied.

(c) The agreement that causes the payment to arise must contain specific language that would evidence some continuation of the employer employee relationship after termination. For example, the agreement could provide that the payments would cease or be reduced if the employee is subsequently employed. If the severance payments are made without regard to the employee's status after termination, the payment does not affect eligibility.

(4) Pensions

(a) Statutory Provisions.

1. Any pension, retirement or retired pay, annuity or

other similar periodic payment under the Social Security Act or Railroad Retirement Act are neither deductible nor disqualifying (§25478(8)).

2. Other payments are neither deductible nor disqualifying unless all of the following three requirements exist:

(i) The payment is based upon the previous work of the individual (§25478(8)).

(ii) The payment is made under a plan maintained (or contributed to) by a base period employer (§25478(8)).

(iii) The claimant has been determined eligible to receive a periodic payment (§25478(8)). This is interpreted to mean that the claimant has satisfied all requirements of the plan including age, length of service or other conditions.

3. Pension payments that are deductible or disqualifying reduce the weekly benefit by the amount of the pension (but not below zero) (§25478(8)).

(b) Lump Sum Payment. If the retiring worker has the choice of receiving periodic payments or a lump sum retirement payment and elects to receive a lump sum in lieu of periodic payments the lump sum is deemed payable with respect to weeks as though he had opted for periodic payments. If the amount of the periodic payment which he could have chosen cannot be ascertained with certainty the amount will be determined by reference to the most recently updated longevity chart available.

(c) Rollovers

1. Rollovers by an individual not eligible under the plan for periodic payments do not represent a payment to the individual for purposes of retirement. Instead it merely effectuates a change with respect to the retirement plan under which the accounts are maintained. Such rollovers have no effect upon eligibility.

2. An employer may discontinue maintaining a plan,

particularly where a plant is being closed. The claimant may have no choice but to make some disposition of the funds.

(i) If the claimant satisfies all requirements under the plan to be eligible for periodic payments the entire amount of that rolled over and any amount received in a single payment is treated as any other lump sum pension payment as outlined in paragraph (b) above.

(ii) if the claimant does not meet all requirements of the plan to be eligible for periodic payments any amount received in a lump sum or rolled over have no effect upon eligibility.

3. Receipt of or application for unemployment compensation from another state. A claimant seeking unemployment compensation under the law of any other state or of the United States is disqualified. If the appropriate agency of such other state or the United States finally determines that he is not entitled to such unemployment benefits this disqualification does not apply (§25448(7)). "State includes in addition to the states of the United States, the District of Columbia, the Virgin Islands, Puerto Rico, and Canada (§25414).

4. Workers' Compensation for a Temporary Disability. A claimant is disqualified for any week with respect to which or a part of which he has received or is seeking compensation for a temporary disability under any workers' compensation law. If it is finally determined that he is not entitled to such compensation the disqualification does not apply. If he is entitled and the amount is less than the benefits payable on his unemployment compensation claim, he is entitled to receive the difference, if otherwise eligible (§25478(9)).

5. Training Allowances. An individual enrolled in a course of training approved by the director is disqualified for any week with respect to which or a part of which he has applied for or is entitled to receive any wage or subsistence or training allowance or any other form of remuneration other than reimbursement for travel expenses under any public or private training program. If it is finally determined that he is not entitled to such remuneration, the disqualification does not apply. If the

remuneration, the receipt of which is disqualifying, is less than the weekly benefit on his unemployment compensation claim he is entitled to receive the difference, if otherwise eligible. Receipt of training allowances under the Trade Programs are neither deductible nor disqualifying (§25478(12)). Note: A course of training approved by the director waives all availability requirements and makes the remuneration disqualifying or deductible. A course of training not approved by the director does not waive the availability requirements and the remuneration has no effect upon eligibility.

Author: Byron Abrams, Director, Unemployment Compensation Division

Statutory Authority: Code of Ala. 1975, §§25-2-7, 25-28-, 25-4-111.

History: New Rule: Filed August 9, 1995; effective September 13, 1995. **Repealed and New Rule:** Filed January 12, 2001; effective February 16, 2001.