

West's Louisiana Statutes Annotated

Louisiana Revised Statutes

Title 23. Labor and Workers' Compensation (Refs & Annos)

Chapter 11. Unemployment Compensation (Refs & Annos)

Part I. General Provisions (Refs & Annos)

LSA-R.S. 23:1472

§ 1472. Definitions

Effective: August 1, 2012

[Currentness](#)

As used in this Chapter, the following terms shall have the meanings ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) “Administrator” means the executive director of the Louisiana Workforce Commission.

(2) “Agricultural labor” includes all services performed:

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

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such services are performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3; [12 U.S.C. 1141j](#)), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes, or in connection with the hatching of poultry, the drying of rice, the ginning of moss, and the handling, care, and sale of nursery stock, but only if such service is performed on a farm.

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

II. In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of services described in Subparagraph (I) of this Paragraph, but only if such operators produced more than one-half of the commodity with respect to which such services are performed.

III. The provisions of Subparagraph (I) and (II) of this Paragraph shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit, in the employ of the owner or tenant or other operator of such farm, if such service is not in the course of the employer's trade or business.

(f) As used in this Subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards;

(3) "American vessel" means any vessel, documented and numbered under the laws of the United States, including any vessel which is neither documented or numbered under the laws of the United States, nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States, or corporation organized under the laws of the United States, or of any state.

(4) "Base period" means the first four of the last five complete calendar quarters immediately preceding the first day of an individual's benefit year.

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

(6) "Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which the individual first files a claim for benefits in accordance with [R.S. 23:1600\(1\)](#), and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a claim for benefits after the termination of his last preceding benefit year; provided, that at the time of filing such a claim the individual has been paid the wages for insured work required under [R.S. 23:1600\(5\)](#).

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

(8) "Contributions" means the money payments to the state unemployment compensation fund, required by this Chapter.

(9) Repealed by Acts 1977, No. 745, § 3.

(10)(a) "Employing unit" means any individual or type of organization, including the state of Louisiana or subdivisions, or instrumentality thereof or of any other state or of the United States except as excluded by any other provision of this Chapter, and any partnership, association, trust, estate, joint-stock company, nontrading corporation, insurance company, corporation, or corporate group, whether domestic or foreign, or the receiver, liquidator, trustee in bankruptcy, trustee, or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1935, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing

unit which maintains two or more separate establishments, whether the employing unit is engaged in a number of different types of businesses or is engaged in the same business in a number of different places within this state, shall be deemed to be employed by a single employing unit for all the purposes of this Chapter.

(b) “Corporate group” means any group of corporations which are one hundred percent subsidiaries of another corporation or of other corporations which are one hundred percent subsidiaries of another corporation where the corporations are engaged in essentially the same kind of business and the employees are paid from a single account maintained by the parent corporation.

(c) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer as hereinafter defined or within the provisions of [R.S. 23:1573](#) or [R.S. 23:1574](#), the employing unit shall be deemed to employ each individual in the employ of each such contractor or subcontractor during the time such individual is engaged in performing such work; except that any employing unit which is liable for and pays contributions with respect to individuals in the employ of any such contractor or subcontractor, may recover the same from the contractor or subcontractor. If such contractor or subcontractor is an employer as hereinafter defined or within the provisions of [R.S. 23:1573](#) or [R.S. 23:1574](#), he alone shall be liable for the contributions measured by wages to individuals in his employ.

(d) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(11) “Employer” means:

(a) Any employing unit which after December 31, 1971

I. in any calendar quarter in either the current or preceding calendar year paid for services in employment wages of \$1500 or more, or

II. for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day);

(b) Any employing unit, whether or not an employing unit at the time of the acquisition, which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this Chapter; or which acquired a part of the organization, trade or business or assets of another which at the time of such acquisition was an employer subject to this Chapter, provided the part acquired, if treated alone, would have satisfied the employment requirements of Paragraph (a) of this subsection;

(c) Any employing unit, whether or not an employing unit at the time of the acquisition, which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit, if the combined employment record of the predecessor prior to the date of the acquisition and the employment record of the successor subsequent to the date of the acquisition, both within the same calendar year, would be sufficient to satisfy the employment requirements of Paragraph (a) of this Subsection;

(d) I. Any employing unit for which service in employment, as defined in R.S. 23:1472(12)(F), is performed.

II. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under Paragraphs (a)(II), (b) or (c) of this Subsection, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

III. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under Paragraphs (a)(II), (b) and (c) of this Subsection, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined to be an employer for the purposes of Paragraph (a) of this Subsection.

(e) With respect to all calendar years beginning on and after January 1, 1972, any employing unit not an employer by reason of any other paragraph of this Subsection (i) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any Federal tax against which credit may be taken for contributions required to be paid into a State unemployment fund; or (ii) which, as a condition for approval of this section for full tax credit against the tax imposed by the Federal Unemployment Tax Act, ¹ is required, pursuant to such Act, to be an “employer” under this section;

(f) Any employing unit which having become an employer under Paragraph (a), (b), (c), (d) or (e) of this subsection, has not ceased to be an employer under the provisions of Part IV of this Chapter;

(g) For the effective period of its election pursuant to Part IV of this Chapter, any other employing unit which has elected to become subject to the provisions hereof;

(h) For purposes of Paragraphs (a)(II) and (d) of this Subsection, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

(i) Any Indian tribe or Indian tribal unit, as defined and established pursuant to [25 U.S.C. 450b\(e\)](#), [26 U.S.C. 3306\(u\)](#), and [43 U.S.C. 1601 et seq.](#), which is recognized as eligible for the special programs and services provided by the United States under the status of Indians, including any subdivision, subsidiary, or business enterprise wholly owned by any such Indian tribe.

(12) A. “Employment” means, subject to the other provisions of this subsection, any services including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

B. The term “employment” shall include an individual's entire service, performed within or both within and without this state, and, in the case of Paragraph (III) hereof, service performed within or without and within and without this state, if;

I. the service is localized in this state, or

II. the service is not localized in any state but some of the service is performed in this State and (a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State,

III. notwithstanding any other provisions of this subsection an individual's entire service as an officer or member of a crew of an American vessel, wherever performed and whether in intrastate, interstate or foreign commerce, if the employer maintains within this State the operating office from which the operations of the vessel are ordinarily and regularly managed, supervised and controlled; provided that the Administrator may enter into reciprocal arrangements with the appropriate agencies of other states or of the United States, or both, whereby services performed on or with respect to vessels engaged in intrastate, interstate, or foreign commerce for a single employer, wherever performed shall be deemed to be performed within this State or within such other states;

C. Services not covered under Paragraph (B) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state of the United States, the Virgin Islands or Canada, shall be deemed to be employment subject to this Chapter if the individual performing such services is a resident of this State or the place from which the services are directed or controlled is in this State.

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

I. the service is performed entirely within such state; or

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

E. Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, shall be deemed to be employment subject to this Chapter unless and until it is shown to the satisfaction of the administrator that;

I. such individual has been and will continue to be free from any control or direction over the performance of such services both under his contract and in fact; and

II. such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

III. such individual is customarily engaged in an independently established trade, occupation, profession or business;

F. The term "employment" shall include:

I. Except as excluded by Subparagraph III of this Paragraph:

(a) Service performed after December 31, 1970, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities);

(b) Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe or tribal unit, provided that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that Act.²

II. The term “employment” shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) The service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that Act;³ and

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

III. For the purposes of Subparagraphs (I) and (II) of this Paragraph the term “employment” does not apply to service performed:

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

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

(c) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education; after December 31, 1977, in the employ of a governmental entity referred to in Subparagraph I of this Paragraph if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of this state or its political subdivisions, or of an Indian tribe.

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(v) In a position which, under or pursuant to the laws of this state or tribal law, is designated as (1) a major nontenured policymaking or advisory position, or (2) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work-relief or work-training; or

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

IV. Notwithstanding the provisions of Subparagraphs (I) or (II) of this Paragraph or any other provision of law to the contrary, the term "employment" shall include service performed after December 31, 1970, by an individual in the employ of the Louisiana State School for the Blind, Southern University System State School for the Blind, Louisiana State School for the Deaf and Southern University System State School for the Deaf.

V. Service performed after December 31, 1977, by an individual in agricultural labor as defined in Subsection (2) of this Section when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor; or

(ii) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(iii) However, the individuals performing services referred to in (a), (i) and (ii) of this Subparagraph shall not include, after December 31, 1977, and prior to January 1, 1980, individuals performing agricultural labor who are aliens admitted to the United States to perform agricultural labor pursuant to Section 214(c)⁴ and Section 101(a)(15)(H)⁵ of the Immigration and Nationality Act.

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

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963;⁶ or substantially all the members of such crew operated or maintained tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of Paragraph (a) of this Subsection.

(c) For the purposes of this Subparagraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under (b) hereof:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

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

(d) For the purposes of this Subparagraph, the term “crew leader” means an individual who:

(i) Furnished individuals to perform services in agricultural labor for any other person;

(ii) Pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the services in agricultural labor performed by them; and

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

VI. The term “employment” shall include domestic service after December 31, 1977, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

VII. Service performed on or after December 21, 2000, by an individual in the employ of an Indian tribe or Indian tribal unit itself, as defined in this Section, provided that any of those exclusions from employment under this Chapter in accordance with the Federal Unemployment Tax Act shall otherwise be applicable to services performed in the employ of an Indian tribe.

G. The term “employment” shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971, (except in Canada, and in the case of the Virgin Islands after December 31, 1971,

and prior to January 1 of the year following the year in which the United States Secretary of Labor approves the unemployment compensation law of the Virgin Islands under [Section 3304\(a\) of the Internal Revenue Code of 1954](#)),⁷ in the employ of an American employer (other than services which are deemed employment under the provisions of Paragraphs (B) and (D) of this Subsection or the parallel provisions of another state's law if:

I. The employer's principal place of business in the United States is located in this state;

II. The employer has no place of business in the United States, but

(a) The employer is an individual who is a resident of this state;

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

III. None of the criteria of Subparagraph (I) and (II) of this Paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

IV. An "American employer" for purposes of this Paragraph means:

(a) An individual who is a resident of the United States;

(b) A partnership if two-thirds or more of the partners are residents of the United States;

(c) A trust, if all of the trustees are residents of the United States; or

(d) A corporation organized under the laws of the United States or of any state.

H. The term "employment" shall not include:

I. After December 31, 1977, except as described in Subsection (12)(F)(V) of this Section, agricultural labor as defined in Subsection (2) of this Section.

II. After December 31, 1977, except as described in Subsection (12)(F)(VI) of this Section, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

III. service performed as an officer or member of the crew of a vessel not an American vessel;

IV. service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

V. service performed in the employ of the United States Government or an instrumentality of the United States Government immune under the Constitution of the United States from the contributions imposed by this Chapter, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States (or individuals in their employ) to make payments into an unemployment compensation fund under a state unemployment compensation law, all of the provisions of this Chapter shall be applicable to such instrumentalities and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State should not be certified by the Secretary of Labor under Section 3304 of the Act of Congress known as the Internal Revenue Code, as amended,⁸ for any year, then the contributions required under this Chapter from any instrumentality of the United States and the payments required from individuals in its employ pursuant to this Chapter shall be refunded by the Administrator from the fund in the same manner and within the same period as is provided for refunds of erroneous collections in accordance with the provisions of [R.S. 23:1551](#);

VI. services performed in the employ of any other state or political subdivision thereof or of any instrumentality of any other state exercising sovereign power of a strictly governmental nature and not for the carrying on of a private business;

VII. Repealed by Acts 1977, No. 745, § 8, eff. Jan. 1, 1978.

VIII. except as otherwise provided in Paragraph (F) of this Subsection, service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

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

X. service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided that the Administrator is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in [R.S. 23:1654](#) for general rules; to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Chapter, acquired rights to unemployment compensation under such Act of Congress or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Chapter;

XI. casual labor not in the course of the employer's trade or business;

XII. (a) service performed in any calendar quarter in the employ of any organization exempt from income tax under [section 501\(a\) of the Federal Internal Revenue Code](#),⁹ (other than an organization described in Section 401(d))¹⁰ or under Section 521 of such code,¹¹ if the remuneration for such service is less than \$50.00, or,

(b) service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or,

(c) service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

XIII. service performed in the employ of a foreign government (including service as a consular or other officer or employee or a non-diplomatic representative);

XIV. service performed in the employ of any instrumentality wholly owned by a foreign government;

(a) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(b) if the Secretary of State of the United States shall certify to the Secretary of the Treasury of the United States, that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in a foreign country by employees of the United States Government and instrumentalities thereof;

XV. service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to the state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in medical school chartered or approved pursuant to state law;

XVI. service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

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

XVIII. Service performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products, in the home or otherwise than in a permanent retail establishment:

(a) If substantially all remuneration for the performance of the services is directly related to sales or other output rather than to the number of hours worked; and

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

XIX. Service performed for a private for-profit person or entity by an individual as a landman if:

(a) The individual is engaged primarily in negotiation for the acquisition or divestiture of mineral rights, or negotiating business agreements that provide for the exploration for or development of minerals or is otherwise engaged in activities relating to the exploration for, or development, production, or transportation of, minerals.

(b) Substantially all remuneration, paid in cash or otherwise, including but not limited to payments on the basis of a daily rate, for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the specific individual.

(c) The services performed by the individual are performed under a written contract, between the individual and the person for whom the services are performed, that provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

XX. Service performed for a private for-profit person or entity by an individual as a lecturer, consultant, teacher, or instructor of real estate or insurance if:

(a) Substantially all remuneration for the performance of such service is directly related to instruction or other output rather than to the number of hours worked by the specific individual.

(b) The services performed by the individual are performed pursuant to a written contract which provides that such individual will not be treated as an employee with respect to such services for tax purposes.

(c) Such individual performs such services for no more than thirty-two hours annually.

XXI. Service performed by an individual as a member of an Indian tribal council.

XXII. The services performed by an individual who meets the definition of an owner-operator as is defined in [R.S. 23:1021\(10\)](#).

I. Notwithstanding any of the other provisions of this Subsection, a service shall be deemed to be in employment if, with respect to such services, a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act ¹² is required to be covered under this Chapter. Notwithstanding any

provisions of this Chapter to the contrary, services performed for state and local governmental entities, nonprofit organizations, and Indian tribes recognized by the United States are deemed employment unless such services are excluded under the provisions of the Federal Unemployment Tax Act.

J. If the service performed during one-half or more of any pay period by an individual for the person employing him constitutes employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this paragraph, the term “pay period” means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing him where any of such service is excepted by R.S. 23:1472(12)(H)(X).

K. Repealed by [Acts 1992, No. 453, § 1](#).

(13) “Employment office” means a free public employment office or branch office thereof, operated by this state or maintained as a part of a state controlled system of public employment offices.

(14) “Employment security administration fund” means the employment security administration fund established by this Chapter, from which administrative expenses under this Chapter shall be paid.

(15) “Fund” means the unemployment compensation fund established by this Chapter, to which all contributions required and from which all benefits provided under this Chapter shall be paid.

(16) “Insured work” means employment for employers.

(17) “Shipping articles” means “articles of agreement” purporting to comply with Title forty-six of the United States code,¹³ or any other agreement under which officers or members of the crew are employed on the high seas, and under which they are not entitled to a final settlement of wages until the termination of the period of the employment.

(18) A. “State” includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

B. The term “United States,” when used in a geographical sense, includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

C. The provisions of Paragraphs (A) and (B) of this Section, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under [Section 3304\(a\) of the Internal Revenue Code of 1954](#)¹⁴ an unemployment compensation law submitted to the Secretary by the Virgin Islands for such approval.

(19)(a) “Unemployment”--Any individual shall be deemed to be “unemployed” in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount.

(i) For the purpose of this Paragraph, any individual who bears a relationship of spouse, mother or mother-in-law, father or father-in-law, son or step-son or son-in-law, daughter or step-daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, to a principal or controlling stockholder or a principal officer of a corporation, partnership, or proprietorship, or is himself a principal or controlling stockholder or a principal officer of a corporation, partnership, or proprietorship, shall not be deemed to be “unemployed” as provided for in this Paragraph, without first providing the administrator with whatever records or evidence the administrator may prescribe by regulation to provide proof and justification of such unemployment. However, the administrator shall not demand proof of the complete dissolution of the entire enterprise in order for the employee to be deemed unemployed.

(ii) Any person meeting the criteria set forth in Item (i) of this Subparagraph who has for the first four of the last five quarters been listed as an employee and for whom unemployment insurance coverage premiums have been paid for that same period of time and, who, in addition, is no longer eligible to receive any remuneration or dividends from the enterprise for whom he previously worked, shall be considered to have met the criteria for unemployment.

(iii) The administrator shall further prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the administrator deems necessary.

(b) Employment, for purposes of unemployment insurance coverage, is employment of workers who work for wages as defined by the Louisiana Employment Security Law; it does not include self-employment.

No individual, who has been paid wages or performed services for an employing unit within eighteen months of the filing of a claim for unemployment benefits, shall be deemed unemployed for the purposes of the Louisiana Employment Security Law if he is or was, during the eighteen month period, the principal or controlling stock or shareholder of the employing unit, unless and until evidence or such other proof such as a certificate of dissolution issued by the Secretary of State is submitted to the satisfaction of the Administrator that the employing unit has been dissolved and is no longer engaged in business or that acts beyond the control of the principal or controlling stock or shareholder occurred to such an extent as to fully justify the person's inability to perform services. Justification for this unemployment would be judged on the reasonableness of a similar employer to become unemployed under the same conditions. Persons potentially qualified for benefits by this section shall not perform any services for the employing unit of any kind whether or not for remuneration or whether or not the services are performed on or off the premises of the employing unit, nor shall he go on the premises of the employing unit and spend any time except the minimal that might be spent by a consumer of the employing units services. Any person who violates any provision of this part will be deemed to have resumed employment. Nothing contained herein shall be deemed to qualify a person who may be otherwise disqualified.

(c) No individual, if he is, or was during the 18 months preceding the filing or renewal of a claim, employed by an employing unit whose principal or controlling stock or shareholder is related to the claimant in any degree as set forth in R.S. 23:1472(19), shall be deemed unemployed unless documentary proof is submitted to the satisfaction of the Administrator that:

(i) The books, records and tax returns of the employing unit reveal such a decline in business or other business reversals so as to necessitate and justify the laying off of an employee.

(ii) The claimant is not performing or has not performed since the filing of his claim for unemployment benefits, any services of any kind whether or not for remuneration or whether or not the services are performed on the premises of the employing unit.

(iii) The claimant does not go upon the premises of the employing unit and spend any time except the minimal time that might be spent by a consumer of the employing units services.

(20)(A) “Wages” means all remuneration for services, including vacation pay, holiday pay, dismissal pay, commissions, bonuses, the cash value of all remuneration in any medium other than cash, and WARN Act payments received pursuant to [29 U.S.C. 2104](#). The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the administrator.

(B) Repealed by [Acts 1995, No. 42, § 3, eff. June 6, 1995](#).

(C) The term “wages” shall not include:

I. The amount of any payment made to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of retirement, or sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability, or death, provided the individual in its employ

(a) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit, and

(b) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his services with such employing unit;

II. The payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon a worker under [Section 1400 of the United States Internal Revenue Code](#).

III. Dismissal payments which the employing unit is not legally required to make.

IV. Salary, wages, or other remunerations paid to the owner or owners who are sole proprietors of an unincorporated employing unit.

V. Any payment made to, or on behalf of, an employee or his beneficiary under a cafeteria plan as provided in 26 U.S.C. 125 of the U.S. Internal Revenue Code, if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that 26 U.S.C. 125 would not treat such payments as wages constructively received.

(D) “Wages” paid with respect to employment performed under shipping articles and which are not paid on regularly recurring paydays, at intervals of not more than thirty-one days, shall:

I. For the purposes of R.S. 23:1531 through R.S. 23:1541, be considered as having been paid as of a date or dates determined under rules or regulations of the department irrespective of when actual payment was made to the individual; and

II. For the purposes of R.S. 23:1592, R.S. 23:1594, R.S. 23:1595, and R.S. 23:1600, be considered as having been paid in the respective calendar quarters in which the services of the individual were being performed. However, vacation pay shall be treated as provided in R.S. 23:1601(7)(d).

(21) “Week” means such period of 7 consecutive days, as the administrator may by regulation prescribe. The administrator may by regulation prescribe that a week shall be deemed to be “in,” “within,” or “during” that benefit year which includes the greater part of such week.

(22) “Louisiana Unemployment Compensation Law,” means the Louisiana Employment Security Law.

(23) “Institution of higher education,” for the purposes of paragraph (F) of Subsection (12) of this section, means an educational institution which:

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized in this State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) is a public or other nonprofit institution.

(E) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

(24) “Hospital” means an institution which has been licensed by the Louisiana Department of Hospitals as a hospital.

Credits

Amended by Acts 1950, No. 498, §§ 2, 3; Acts 1952, No. 538, §§ 1 to 3; Acts 1956, No. 377, § 1; Acts 1956, No. 403, § 1; Acts 1960, No. 438, § 1; Acts 1960, No. 439, § 1; Acts 1962, No. 248, § 1; Acts 1964, No. 213, § 1; Acts 1968, No. 42, § 1; Acts 1971, No. 136, §§ 1 to 5, eff. Jan. 1, 1972; Acts 1972, No. 165, §§ 1, 2; Acts 1972, No. 337, §§ 1 to 5; Acts 1973, No. 88, § 1; Acts 1975, No. 466, § 1; Acts 1976, No. 40, § 1, eff. June 18, 1976; Acts 1977, No. 745, §§ 1, 2, 4 to 7, 9, 10; Acts 1978, No. 521, § 1; Acts 1979, No. 738, § 1, eff. July 20, 1979; Acts 1985, No. 566, § 1, eff. Oct. 6, 1985; Acts 1986, No. 886, § 1; Acts 1987, No. 115, § 1; Acts 1987, No. 906, § 1, eff. July 1, 1987; Acts 1987, 1st Ex.Sess., No. 1, § 1, eff. Sept. 17, 1987; Acts 1988, No. 493, § 1; Acts 1989, No. 512, § 1, eff. Jan. 1, 1990; Acts 1989, No. 660, § 1; Acts 1989, No. 694, § 1; Acts 1990, No. 867, § 1; Acts 1992, No. 447, § 1, eff. June 20, 1992; Acts 1994, 3rd Ex.Sess., No. 36, § 1; Acts 1995, No. 99, § 1, eff. June 12, 1995; Acts 1995, No. 992, § 1; Acts 1998, 1st Ex.Sess., No. 106, § 1, eff. May 5, 1998; Acts 1999, No. 116, § 1, eff. June 9, 1999; Acts 2001, 1st Ex.Sess., No. 4, § 1, eff. Mar. 27, 2001; Acts 2008, No. 743, § 2, eff. July 1, 2008; Acts 2012, No. 675, § 1; Acts 2012, No. 786, § 1.

Notes of Decisions (82)

Footnotes

- 1 26 U.S.C.A. § 3301 et seq.
- 2 26 U.S.C.A. § 3306(c)(7).
- 3 26 U.S.C.A. § 3306(c)(8).
- 4 8 U.S.C.A. § 1184(c).
- 5 8 U.S.C.A. § 1101(a)(15)(H).
- 6 7 U.S.C.A. § 2041 et seq. (Repealed by Pub.L. 97-470, Title V, § 523, Jan. 14, 1983, 96 Stat. 2600. See 29 U.S.C.A. § 1801 et seq., relating to migrant and seasonal agricultural worker protection; registration, see 29 U.S.C.A. § 1811 et seq.)
- 7 26 U.S.C.A. § 3304(a).
- 8 26 U.S.C.A. § 3304.
- 9 26 U.S.C.A. § 501(a).
- 10 26 U.S.C.A. § 401(d).
- 11 26 U.S.C.A. § 521.
- 12 26 U.S.C.A. § 3301 et seq.
- 13 46 U.S.C.A.
- 14 26 U.S.C.A. § 3304(a).

LSA-R.S. 23:1472, LA R.S. 23:1472

Titles 6, 7, 8, 9, 10, 11, 12, 14, 15, 29, 32, 43, 44 and 56 of the Revised Statutes, the Civil Code, Code of Civil Procedure, Code of Criminal Procedure, Code of Evidence, and the Children's Code are current through the 2013 Regular Session. Titles 40 and 46, as they relate to the Criminal Law Handbook, are current through the 2013 Regular Session. All other provisions are current through the 2012 Regular Session.