

the legislature set forth the Public Policy in regard thereto as follows:

"Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the State for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

Opinion No. 93.

Unemployment Compensation—Eligibility for Compensation—Rules and Regulations—Statutory Construction.

HELD: Paragraph 3, Regulation No. 12, is within the powers of the Commission as set out by Chapter 137, Laws of 1937 and 1939.

July 6, 1939.

Mr. Barclay Craighead
Chairman, Unemployment Compensation Commission of Montana
Helena, Montana

Dear Mr. Craighead:

Receipt is acknowledged of your letter of June 24, 1939, requesting an opinion from the Attorney General's office as to the legality of the action taken by the Unemployment Compensation Commission of Montana in adopting Paragraph 3 of Regulation 12, which reads as follows:

"Where the earnings of the claimant as shown by his wage records (Section 3 (c) of the Law) are not sufficient to qualify the claimant for the full weekly benefit amount as provided by Section 3 (b) of the Law, the claimant shall be determined to be eligible to draw as a weekly benefit amount, the largest sum per week as a benefit for which his wage credits can qualify him under Section 4 (e) of the Law."

Chapter 137, Session Laws of Montana, 1937, provides for unemployment compensation, and under Section 2

The Unemployment Compensation Law of Montana (Chapter 137 Session Laws of Montana 1937) was amended by the twenty-sixth Legislative Assembly under Chapter 137, Session Laws of Montana, 1939.

Unemployment compensation is a new governmental function and one wherein there has been accumulated very little judicial interpretation. Since it is new, the legislature no doubt anticipated that situations would arise which could not be provided for by direct statutory provisions. It is to be noted that the Legislature, in enacting this Act, provided in a large number of instances for the administration thereof by commission regulation and rule. For instance, the following sections from the law provide for commission interpretation, determination or regulation:

How benefits are to be paid, Section 3 (a)

- Maintain a Wage Record, Section 3 (c)
- Where and how to register for work, Section 4 (a)
- What is good cause for quitting, Section 5 (a)
- What is misconduct, Section 5 (b)
- When has a claimant failed to apply for or accept suitable work, Section 5 (c)
- How Commission shall determine suitability of work, Section 5 (c) (1)
- Factor used by Commission in Labor Disputes, Section 5 (d)
- How claims shall be filed, Section 6 (a)
- Commission designates deputy to make initial determination, Section 6 (b)
- Commission appoints appeal tribunal, Section 6 (d)
- Procedure on disputed claims, Section 6 (f)
- Fix witness fees, Section 6 (g)
- Time for payment of contributions, Section 7 (a)
- Investigate merit rating, Section 7 (c)
- Termination of Employers Status, Section 8 (b)
- Election of coverage by Employer, Section 8 (c)
- Accounts under State Treasurer regulated by Comm., Section 9 (b)
- Withdrawal of funds by Commission regulations, Section 9 (c)
- Transfer of funds to RR Retirement Board (Chap. 167, Session Laws 1939)
- Duty to administer Act, Section 11 (a)
- Providing for rules and regulations, Section 11 (b)
- Records and reports of employers, Section 11 (e)
- Power to administer oaths, Section 11 (f)
- Power to enter into reciprocal arrangements with appropriate agencies, Section 11 (j)
- Commission to determine refunds, Section 14 (d)
- Calendar Quarter, Section 19 (e)
- Total unemployment, Section 19 (m) (2)
- "Week," Section 19, (o)
- "Wages," Section 19 (q)

The administration of legislative enactments by commission or bureau regulation is quite prevalent under our form of government. When such regulations are considered by the courts the same are generally upheld as contemplated by the general intent of the Legislature if such regulatory measures are just, fair and reasonable.

Great Western Mushroom Co. v. Industrial Commission, 82 Pac. (2) 862; Industrial Commission v. Northwestern Mutual Life Insurance Co., 88 Pac. (2) 23; Department of Labor & Industry v. Unemployment Compensation Board of Review, 3 A (2) 211.

In respect to filing claims for benefits by the work, Section 6 (a) of the Unemployment Compensation Law provides:

"Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe."

Under this section, and the Regulations of the Commission, the worker who is unemployed appears at the office of the Montana State Employment Service and makes out a claim for benefits, stating the name of the employer that he worked for and the amount of wages that he earned during the "base period." This claim for benefits is sent to the central office of the Commission at Helena for determination of the benefits due. Upon the facts shown in the claim and other pertinent data, the unemployed worker is determined as eligible or ineligible for benefits, the weekly benefit amount is determined, and such weekly benefit amount is paid to the worker during the time he is unemployed. His total unemployment compensation benefits cannot exceed sixteen times his weekly benefit amount (Section 3) (d.)

The following tables are hereto attached to illustrate the operation of the Sections 3 and 4 of the Unemployment Compensation Law. Table I analyzes the question under the hypothetical earnings of six workers whose earnings

are almost identical, but differing amounts thereof show in different calendar quarters. Table II is an analysis of the operation of these sections on twelve classes of workers whose earnings are set up for the purpose of such analysis. Table III is a report from the Supervising Claims Examiner on twenty-eight claims filed out of 232 claims processed.

June 30, 1939.

From: Edmund S. Botch

To: Barclay Craighead, Chairman

Of the first two hundred and thirty-two (232) initial claims for benefits upon which determinations were made, twenty-eight (28) claimants were determined to be ineligible to receive benefits because of not having earned the necessary qualifying wages in the base period.

Attached hereto is a listing of these cases which shows: claimant's name, social security number, total wages in base year, total wages in highest quarter, weekly benefit amount, qualifying wages, and the reduced weekly benefit amount for which they could qualify under the Revised Regulation No. 12.

Sincerely yours,

EDMUND S. BOTCH,
Supervising Claims Examiner.

Referring to Table I, we see that Worker "A" and Worker "B" both earned the same amount of wages, but because the earnings of Worker "B" were all in one calendar quarter, while those of Worker "A" were spread over two calendar quarters, "A" is apparently entitled to benefit payments while "B" is apparently ineligible. In the case of Worker "C" and Worker "D" the earnings were equal, but in one instance \$10.00 falls within a different calendar quarter, creating a different determination. Not only that, but by reason of the wording of Section 3 (b) "if a multiple of a dollar or computed to the next highest multiple of a dollar" Worker "D" becomes ineligible. His highest quarter earnings were \$130.00, of which amount four percent produces \$5.20, and if that sum were tested by the "Thirty times" formula in Section 4 (e), he would re-

quire qualifying earnings of only \$156.00, and since he has earned \$170.00, he would apparently be ineligible, but by reason of raising his weekly benefit amount to the next highest multiple of a dollar (\$6.00) and multiplying the same by thirty, the total qualifying wages resulting would be \$180.00, and since he only earned \$170.00, he would apparently be ineligible.

By virtue of the amendments of the Twenty-sixth Legislative Assembly, was it the intent of the Legislature thereby to eliminate certain workers? Under Section 3 of the old law the weekly benefit amount payable to an unemployed worker was one-half of the full time weekly wage. It provided for a method whereby the Commission should determine the weekly benefit amount under certain conditions. For instance, "where it would be unreasonable, or arbitrary, or not readily determinable with respect to any individual, the full time weekly wage of such individual shall be deemed to be one-thirteenth of his total wages in the highest quarter." It also provides, "the full time weekly wage of any individual shall be determined and re-determined at such reasonable times as the Commission may find necessary to administer this act and may by regulation prescribe." It also provides that wage credits should be set up for each individual of one-sixth of his earnings, and his benefits depended upon the total amount of such wage credits set up for the individual. It provided for part-time workers under the rules of the Commission and "such rules shall, with respect to such workers, supersede any inconsistent provisions of this Act, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this Act."

Section 3 of the new law based the weekly benefit amount on a percentage basis of the highest quarter's earnings, and contains this phrase: "**but not more than Fifteen Dollars (\$15.00) nor less than Five Dollars (\$5.00) per week.**" It repealed the wage credit section of the old law and only provides for the earnings of the worker to be reported and kept. It provides a flat duration of benefits of not more than sixteen times the weekly benefit amount.

TABLE I
BASE PERIOD

	2nd Quarter 1938		3rd Quarter 1938			4th Quarter 1938			1st Quarter 1939		Lag Quarter		
	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Jan.		Feb.	March
Worker "A"	0	0	0	0	0	0	0	0	0	100	100	0	Eligible for \$8.00 per week for 16 weeks; 4% x \$200.00 equals \$8.00; 30 x \$8.00 equals \$240.00. He earned \$300.00.
Worker "B"	0	0	0	0	0	0	0	0	0	100	100	100	Not eligible. 4% x \$300.00 equals \$12.00; \$12.00 x 30 equals \$360.00. He earned only \$300.00.
Worker "C"	0	0	0	0	0	0	40	40	40	40	0	0	Eligible for \$5.00 per week for 16 weeks. 4% x \$120.00 equals \$4.80; \$5.00 x 30 equals \$150.00. He earned \$170.00.
Worker "D"	0	0	0	0	0	0	40	40	40	50	0	0	Not eligible. 4% x \$130.00 equals \$5.20; Raised to \$6.00. \$6.00 x 30 equals \$180.00. Earned only \$170.00.
Worker "E"	0	0	0	0	0	0	0	0	125	125	125	125	Eligible for \$15.00 per week for 16 weeks. \$375.00 x 4% equals \$15.00. \$15.00 x 30 equals \$450.00. He earned \$500.00.
Worker "F"	0	0	0	0	0	0	0	0	0	130	130	150	Not eligible. 4% x \$410.00 equals \$15.00; maximum. \$15.00 x 30 equals \$450.00. He earned only \$410.00.

The same inequalities as shown in the above table would arise upon a number of different cases of the same general nature and trend.

	BASE PERIOD						The quarter wherein unemployment commenced and claim for benefit was filed.
	Jan.-Feb.- Mar. (1st Qr.) 1938	Apr.-May June (2nd Quar.) 1938	Jul.-Aug.- Sept. (3rd Qr.) 1938	Oct.-Nov. Dec. (4th Qr.) 1938	Jan.-Feb.- Mar. (1st Qr.) 1939	Apr.-May- June (2nd Qr.) 1939	
	LAG- QUAR- TER						
A Well paid, steadily employed individual	600.00	600.00	800.00	600.00	1300.00	600.00	4% of \$1300.00—\$52.00 Maximum \$15.00. 30x\$15.00—\$450.00. Earned \$3300.00. ELIGIBLE Pay \$15.00 for 16 weeks.
B \$30.00 per week Employee. Steadily employed	390.00	390.00	390.00	390.00	390.00	390.00	4% of \$390.00—\$15.60 Maximum \$15.00. 30x\$15.00—\$450.00. Earned \$1560.00. ELIGIBLE Pay \$15.00 for 16 weeks.
C \$30.00 per week Employee. Loses some time off each quarter.	270.00	240.00	270.00	210.00	150.00	390.00	4% of \$270.00—\$10.80. Pay \$11.00. 30x\$11.00—\$330.00. Earned \$770.00. ELIGIBLE Pay \$11.00 for 16 weeks.
D \$30.00 per week Employee. Some long periods of employment.	150.00	0	390.00	60.00	150.00	0	4% of \$390.00—\$15.60 Maximum \$15.00. 30x\$15.00—\$450.00. Earned \$900.00. ELIGIBLE Pay \$15.00 for 16 weeks.
E \$30.00 per week Employee. Just started to work.	0	0	0	0	390.00	390.00	4% of \$390.00—\$15.60 Maximum \$15.00. 30x\$15.00—\$450.00. Earned \$390.00. (NOT ELIGIBLE)
F No regular weekly salary. Small job earnings. Steady work.	89.00	74.45	16.25	45.00	175.00	185.00	4% of \$175.00—\$7.00 (Even) 30x\$7.00—\$210.00. Earned \$310.70. ELIGIBLE Pay \$7.00 for 16 weeks.
G No regular salary per week. Small job earnings. 1 quarter with high earnings.	89.00	62.50	12.50	64.00	400.00	13.50	4% of \$400.00—\$16.00 Maximum \$15.00. 30x\$15.00—\$450.00. Earned \$939.00. ELIGIBLE Pay \$15.00 for 16 weeks.
H \$1.00 per day man. \$30.00—month Steadily employed.	90.00	90.00	90.00	90.00	90.00	90.00	4% of \$90.00—\$3.60. Raise to \$5.00. 30x\$5.00—\$150.00. Earned \$360.00. ELIGIBLE Pay \$5.00 for 16 weeks.
I \$1.00 per day man. \$30.00—month. Loses some days. Unemployed for 1 quarter.	75.00	45.00	15.00	37.50	0	60.00	4% of \$45.00—\$1.80 Minimum \$5.00. 30x\$5.00—\$150.00. Earned \$87.50. (NOT ELIGIBLE)
J \$1.00 per day man. \$30.00—month. Loses some days. Some earnings in all quarters.	75.00	45.00	15.00	37.50	52.50	0	4% of \$52.50—\$2.10 Minimum \$5.00. 30x\$5.00—\$150.00. Earned \$150.00. ELIGIBLE Pay \$5.00 for 16 weeks.
K Very low earnings. \$3.00 per week. Steady.	39.00	39.00	39.00	39.00	39.00	39.00	4% of \$39.00—\$1.56 Minimum \$5.00. 30x\$5.00—\$150.00. Earned \$156.00. ELIGIBLE Pay \$5.00 for 16 weeks.
L Very low earnings. \$3.00 per week. Some time lost.	39.00	39.00	36.00	30.00	30.00	27.00	4% of \$39.00—\$1.56 Minimum \$5.00. 30x\$5.00—\$150.00. Earned \$135.00. (NOT ELIGIBLE)

"Weekly Benefit Amount" is 4% of highest quarterly earnings, raised to next higher dollar if not even.

"Eligibility" means that employee must have earned 30 times his weekly benefit amount in the Base Period.

"Base Period" means first four out of the last five completed calendar quarters immediately preceding the quarter wherein a valid claim is filed.

Claimant's Name	Social Security Number	Total Wages in Base Year	Total Wages in Highest Quarter	Weekly Benefit Amount	Qualifying Wages	Reduced Weekly Benefit Amount
Herman Nasl.....	516-12-3539	\$ 328.25	\$ 328.25	\$ 14.00	\$ 420.00	\$ 10.00
Tilden G. Sapp.....	516-12-3895	229.00	204.60	9.00	270.00	7.00
Gabriel Kruzic.....	516-09-2440	298.00	240.25	10.00	300.00	9.00
Harold William Edwards.....	516-12-6253	251.05	251.05	11.00	330.00	8.00
Roland Delaney.....	516-07-5381	140.40	78.40	5.00	150.00	
John H. Matson.....	566-12-6755	336.55	336.55	14.00	420.00	11.00
Steve Frank Reblich.....	516-12-6509	294.00	231.00	10.00	300.00	9.00
Frank Murphy.....	516-12-9521	191.10	169.50	7.00	210.00	6.00
Joe Shutey.....	516-07-5814	253.95	207.35	9.00	270.00	8.00
William Thomas Riley.....	522-03-3619	404.91	404.91	15.00	450.00	13.00
Walno Maki.....	516-12-6487	256.35	236.35	11.00	330.00	8.00
Chas. Melvin Hensley.....	516-07-4414	389.45	336.95	14.00	420.00	12.00
Jenny Ann Little.....	516-14-5635	383.48	322.00	13.00	390.00	12.00
Oliver Alex McDonald.....	518-03-3993	444.15	357.35	15.00	450.00	14.00
Charles Jarvi.....	516-12-7266	215.55	215.55	9.00	270.00	7.00
Willard Marion Boam.....	516-09-2800	318.08	267.88	11.00	330.00	10.00
Tony Shutey.....	516-12-7104	178.50	152.25	7.00	210.00	5.00
Jan Zaklan.....	516-07-8227	264.80	209.00	9.00	270.00	8.00
Joseph Henry Toole.....	516-12-0527	436.57	332.59	15.00	450.00	14.00
Leona M. McGrath.....	516-12-6184	143.20	74.08	5.00	150.00	
Jeremiah Francis Downey.....	516-07-5384	252.00	252.00	11.00	330.00	8.00
Harry Borok.....	517-09-1195	240.40	224.65	9.00	270.00	8.00
Edward Joseph Lee.....	516-07-8837	324.00	324.00	13.00	390.00	10.00
Stanley Fitz.....	516-07-6749	223.25	223.25	9.00	270.00	7.00
Amos R. Simonson.....	517-09-9385	377.05	304.85	13.00	390.00	12.00
Joseph Richard Brooks.....	516-12-8600	213.20	219.20	9.00	270.00	7.00
Andro Bordon.....	516-12-4030	253.30	206.05	9.00	270.00	8.00
Michael R. Kennedy.....	517-10-5062	171.45	171.45	7.00	210.00	5.00

TABLE III

The old eligibility section (Section 4) (e) reads:

"He has within the first three out of the last four completed calendar quarters immediately preceding the first day of his benefit year, earned wages for employment by employers equal to not less than sixteen times his weekly benefit amount."

This was changed by the amendment, as follows:

Section 4 (e), Chapter 137, Laws of 1939.

"He has within the base period earned wages for employment by employers equal to thirty (30) times his weekly benefit amount."

In construing the law, the intent of the Legislature must be determined by the words used, taken in their ordinary meaning. By the amendments enacted during the Twenty-sixth Legislative Session, did the legislature intend thereby to foreclose certain workers from claiming benefits from the fund? We do not think so.

Does the phrase **"not more than Fifteen Dollars (\$15.00) per week, nor less than Five Dollars (\$5.00) per week"** have any bearing upon determining the purpose and intent of the Legislature?

From a study of the language used throughout the amendments, and taking into consideration the purposes to be arrived at by the law, and in view of the statement of public policy expressed in Section 2, we are lead to believe that the Legislature intended to set up a measuring device whereby a worker's weekly benefit amount could be easily and readily arrived at by means of a percentage on past earnings, with the added direction that no benefit recipient should be paid more than \$15.00 per week nor less than \$5.00 per week. The larger amount of \$15.00 representing what the Legislature determined as being sufficient to take care of the actual necessities of life and not large enough to encourage the worker to rely on benefits payments rather than look for or accept work if work was available. The smaller amount was evidently determined by the Legislature as being the least amount that any worker could be expected to be paid, and that any less payment than that amount

would be useless, and have to be supplemented by other relief payments. The worker whose earnings came within the qualifying brackets surely was not intended to be penalized, or deprived of benefit rights by merely arbitrary or technical figures, especially where his earnings were equal in every respect to other workers who were entitled to such benefits. The Legislature must have intended that in the event that the worker's weekly benefit amount, when computed by the four per cent formula, fixes a weekly benefit amount for which his earnings do not allow him to qualify when tested by the provisions of Section 4 (e), then the Commission might fix such weekly benefit amount in a sum which will permit the worker to qualify under that section, if within the brackets of **"not more than Fifteen Dollars (\$15.00) per week, nor less than Five Dollars (\$5.00)."**

By Section 2 of the Act, as well as by the general rules of construction (59 C. J. 961), the purpose of the Act and public policy must be taken as a guide to the interpretation and application of the Act. Section 2 declares that the economic insecurity resulting from involuntary unemployment is a "serious menace to the health, morals and welfare of the people of the state." The object of the Act is to reduce, so far as possible, the evils of unemployment which fall with "crushing force upon the unemployed and his family." The construction we have placed upon the Act makes it possible for a greater number of workers to receive unemployment compensation and thus lightens the burden of the unemployed workers and their families. We feel it our duty, so far as possible, so to construe the law and in doing so we are not only effecting the purpose and intent of the Legislature but making the Act more workable and equitable in its application.

It is my opinion therefore that Paragraph 3 of Regulation 12, adopted by the Unemployment Compensation Commission of Montana on June 24, 1939, is within the power of the Commission, in accordance with Chapter 137, Session Laws of Montana, 1937 and 1939, and in compliance with the general laws and statutes of the State of Montana.