

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 65]

Retirement Pensions and Annuities

The Bureau of Unemployment Compensation Benefits and Allowances of the Department of Labor and Industry (Department) proposes to amend Subchapter E (relating to eligibility in conjunction with other payments) to read as set forth in Annex A.

Statutory Authority

These amendments are proposed under section 201(a) of the Pennsylvania Unemployment Compensation Law (act) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the act.

Contact Person

Questions and comments about the proposed rulemaking may be directed to Pete Cope, Director, Bureau of Unemployment Compensation Benefits and Allowances, Room 615, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17121 at (717) 787-3547, within 30 days of publication of this proposal.

Purpose of Rulemaking

The purpose of the proposed rulemaking is to bring the pension and annuities section of the unemployment compensation (UC) regulations into conformity with the United States Department of Labor's (USDOL) interpretation of the Federal Unemployment Tax Act (26 U.S.C.A. § 3301 et seq.) (FUTA).

Most important of the changes that USDOL requires is the proposed deletion of § 65.103 (relating to separation prior to retirement date) which provides that periodic payments made under a retirement plan to individuals who are permanently and involuntarily separated prior to retirement age are not deductible from UC benefits.

Summary of Proposed Rulemaking

The proposed amendments will accomplish several objectives which USDOL believes will bring them into conformity with section 3304(a)(15) of FUTA.

The amendments will remove the \$40 per week floor on that portion of pensions which may be deducted from UC benefits, and provide clarification indicating that all periodic payments meeting specified Federal requirements, which are made under a retirement plan, are deductible.

Paperwork Requirements

No new paperwork is required.

Fiscal Impact

The UC system is funded by the Federal government. The emergence of a conformity issue could have substantial impact on the Commonwealth. If the Commonwealth does not delete § 65.103 and is found to be out of conformity with Federal law, the Secretary of USDOL could seek to withdraw certification from the Commonwealth, which would abrogate funding for both the UC system and job centers. In addition, employers within this

Commonwealth could lose the Federal tax credits to which they are entitled by virtue of their payment of State UC taxes.

The fiscal impact of the amendments is difficult to ascertain. Employers would benefit from the fact that payments made under § 65.103 would be deducted from UC. The reverse holds for affected employees. It is hard to know the numbers of employers and employees who would be affected by the changes and the impact, if any, that the amendments would have on the UC Trust Fund, but it appears that the increase in deductibility of these payments may have some positive impact on the UC Trust Fund. There would be no increase in administrative costs.

Sunset Date

These proposed regulations will be monitored through practice and application. No sunset date is designated.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 27, 1996, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Welfare and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

JOHNNY J. BUTLER,
Secretary

Fiscal Note: 12-44. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. EMPLOYMENT SECURITY

CHAPTER 65. EMPLOYEE PROVISIONS

Subchapter E. ELIGIBILITY IN CONJUNCTION WITH OTHER PAYMENTS

RETIREMENT PENSIONS AND ANNUITIES

§ 65.101. Purpose.

[The purpose of] In accordance with section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA) and section 404(d)(2) of the law (43 P. S. § 804(d)(2)) [with regard to] the Department will deduct from the weekly compensation otherwise payable to a claimant those retirement pensions [or], annuities [shall be to offset that portion of retirement pensions which exceed \$40 per week and are financed in whole or in part by base-year

employers], or other similar periodic payments which are paid to a claimant under a plan maintained or contributed to by the claimant's base period or chargeable employer, are based on the claimant's previous work, and are reasonably attributable to that week.

§ 65.102. Application of the deduction.

[The deduction shall apply only with regard to retirement pensions, annuities and disability retirement pensions. This does not include payments made under profit-sharing plans which are not designated as retirement pension payments and as payable for any specific period or periods of unemployment due to retirement, nor does it include social security disability pensions, workmen's compensation payments, temporary disability payments administered by a union or an employer, disability payments made under an employer's insurance plan or Veterans Administration disability compensation.]

(a) The Department will deduct periodic payments if they represent retirement pensions, annuities or other similar payments made under a retirement or pension plan maintained or contributed to by a base period or chargeable employer.

(b) The Department will deduct only that amount of the periodic payment which is reasonably attributable to the same week for which compensation is payable to the claimant.

(c) The Department will deduct Social Security payments which are based upon the claimant's previous work. This will include Social Security payments made on account of age, disability or self-employment.

(1) The Department will not deduct Social Security payments which are not based on the claimant's previous work, such as Supplemental Security Income.

(2) The Department will deduct pensions paid under the Social Security Act (42 U.S.C.A. §§ 301—1397e) and the Railroad Retirement Act of 1974 (45 U.S.C.A. §§ 231—231s) if the claimant's base year employer contributed to the pension plan. The pensions are deductible irrespective of whether the claimant's base year employment affected the eligibility for, or increased the amount of, the pension.

(d) The Department will not deduct periodic payments which are made under severance agreements, profit sharing arrangements or disability plans administered by a union, employer, workers' compensation carrier, insurance company or the Veterans Administration, unless the payments are based on retirement and fulfill the other prerequisites specified in this chapter.

(e) The Department will make no deduction for a week in which the claimant is eligible for the periodic payments but receives no payment reasonably attributable to that week.

§ 65.103. [Separation prior to retirement date] (Reserved).

[(a) When an employe has accumulated certain moneys, rights or equities under a retirement pension or annuity plan but is permanently and involuntarily separated from his employment prior to

retirement date, and payment is made to him from the moneys or in liquidation of his rights or equities, that payment may not constitute a retirement pension or annuity within the meaning of section 404(d)(4)(iii) of the law (43 P. S. § 804(d)(4)(iii)) nor may it be considered a deductible wage replacement under any other provision of the law.

(b) Subsection (a) applies whether the payment is made in a lump sum or in installments.

(c) For the purposes of this section, the phrase "prior to retirement date" means prior to the claimant's attainment of the age specified in the retirement plan or program at which the employe may be retired with full or reduced pension rights.]

§ 65.104. Initial payments.

(a) When, following the retirement of an employe and, as part of a general pension plan, an initial payment is made in lieu of or in addition to the regular pension amount to which the employe is entitled, the initial payment [shall] will be considered a pension payment, and will be subject to this chapter.

(b) [The deduction of this initial pension amount in accordance with § 65.101 (relating to purpose) shall, in the case of lump-sum payments, be allocated on a weekly basis for the number of weeks the payment represents in weekly wages.] Initial payments are independent of regular pension payments. To the extent that they meet the requirements for deductibility in this chapter, the Department will deduct them from compensation otherwise payable to a claimant even if the claimant's regular pension payments are not deductible. The Department will not deduct initial payments if they do not meet the requirements for deductibility in this chapter, even if the claimant's regular pension payments are deductible.

(c) When the [entitlement to the initial employer pension payment is reduced by reason of the prior receipt of vacation or other payments, only such reduced amount as that to which the employe is entitled shall be deductible] initial payment includes an amount paid for any reason other than pension, including unused vacation, only that amount which is attributable to the pension will be deductible.

(d) The deduction of this initial pension amount will, in the case of lump-sums, be calculated by dividing the initial pension amount by the number of weeks for which the pension is paid. The number of weeks attributable to unused vacation or other payments will not be used in determining the weekly pension amount to be deducted. The result of this calculation, if not a multiple of \$1, will be computed to the next higher multiple of \$1 and will be considered the prorated weekly deductible amount of the initial payment and is the amount by which the weekly benefit rate will be reduced, but not below zero.

§ 65.105. Lump-sum retirement payments.

[Where] (a) When an employe [, at retirement,] exercises the option of receiving a lump-sum payment in lieu of a [monthly retirement] periodic pension payment, the [monthly retirement] calculated weekly pension amount which the employe could have

received [shall] will be deducted in accordance with [§ 65.101 (relating to purpose), provided, however, that where the lump-sum payment is mandatory, no deduction shall be made] this chapter.

(b) When the lump-sum payment is mandatory because the claimant did not have the option of receiving a periodic pension payment, no pension deduction will be made.

§ 65.108. Rules of attribution.

If the pension, retirement, annuity or other similar periodic payment deductible under section 404(d)(2) of the law (43 P. S. § 804(d)(2)) is received on other than a weekly basis, the amount thereof will be prorated as follows:

The amount of the pension, retirement or other similar periodic payment will be calculated to a yearly amount. The calculated yearly amount of the payment will be divided by 52, the number of weeks in a year. The result of this calculation, if not a multiple of \$1, will be computed to the next higher multiple of \$1, and will be considered the prorated weekly deductible amount of the pension and is the amount by which the weekly benefit rate will be reduced, but not below zero.

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