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ARTICLE 1
REGULATIONS OF THE INDUSTRIAL COMMISSIONER

PART 470 - GENERAL PROVISIONS

(Statutory authority: Labor Law, § 530; Article 18)

Section 470.1	Superseded Regulations
Section 470.2	Definition of Terms
Section 470.3	Value of Gratuities
Section 470.4	Overpaid unemployment insurance benefits
Section 470.5	Setoff against unemployment insurance benefits

§ 470.1 Superseded regulations.

- a. Each and every rule and regulation promulgated by the Industrial Commissioner and effective before June 5, 1944 is superseded by the regulations promulgated and effective beginning with such date.
- b. Rules and regulations which were in effect before June 5, 1944 and which are superseded in accordance with subdivision (a) of this section shall continue to govern employers' and employees' rights and obligations for the period preceding such date.

§ 470.2 Definition of terms.

- a. Payroll period means that period of time for which an employer customarily makes a single payment of remuneration to all or a group or groups of his employees.
- b. 1. For all purposes except the computation of a claimant's average weekly wage, remuneration earned, whether or not paid, shall be deemed "paid":
 - i. as of the day or the first of several days on which amounts definitely assignable to a payroll period are generally paid by the employer;
 - ii. as of the day when both the amount and the liability of the employer for payment thereof have been unconditionally established if the remuneration is not definitely assignable to a payroll period;
 - iii. with respect to remuneration paid pursuant to an order of a competent tribunal or an agreement between an employer and his employees or their respective representatives following negotiations, a dispute or disagreement with respect to the amount or liability for remuneration, as of the date of said order or agreement, or the date, if any prescribed therein for payment.
2. For the purpose of computing a claimant's average weekly wage:
 - i. all remuneration accrued in, whether or not paid at the end of a statutory week, shall be deemed "paid" in such statutory week. If remuneration is accrued in a payroll period other than a statutory week and the remuneration for each statutory week cannot be ascertained, such remuneration shall be allocated to statutory weeks in proportion to the number of calendar days of the payroll period which fall within each statutory week;
 - ii. remuneration which cannot be allocated in accordance with subparagraph (i) of this paragraph shall be deemed "paid" in accordance with paragraph (1) of this subdivision unless actually paid at an earlier date.
- c. A quarter or calendar quarter means one of the four period of three consecutive calendar months which begin, respectively, on January 1, April 1, July 1, and October 1.
- d. Wages paid in a quarter means the total of all wages which in accordance with subdivision (b) of this section are deemed "paid" on any day falling within the calendar quarter.
- e. Statutory week means the period beginning with Monday and ending with the following Sunday.
- f. Itinerant point means a locality where there is no full-time State employment office but where claims are taken by the division's field service and personal reports are made by claimants at a

- specified place and on a specified day or days of the week.
- g. Week of employment includes any statutory week during any part of which an employee is on paid vacation or other paid leave of absence even though no actual work is performed.

Historical note: Section amendment filed May 14, 1969, effective immediately. Substituted new (b)(2).

Decisions

1. Wages when paid

Held that in determining the number of weeks covered employment to be credited claimant musician rehearsal wages, despite the fact that they were withheld until after the performance, must be considered earned when each rehearsal took place. A rule of the Industrial Commissioner (12NYCRR 470.2) provides that remuneration shall be deemed paid "as of the day both the amount and the liability of the employer for payment thereof have been unconditionally established if the remuneration is not definitely assignable to a payroll period." Entitlement to such wages is unconditionally established as of the date of each rehearsal and is not dependent as to amount of liability on any future event.

Matter of Jory v. Catherwood, 34 A D 2d 260 (1970)

§ 470.3 Value of gratuities.

- a. The value of gratuities under Section 517 of the Unemployment Insurance Law may be determined and established by rules promulgated by the Industrial Commissioner in the following manner:
1. Public hearings with respect to which notice as to time, place and purpose has been given at least 20 days prior to the date of each such hearing shall be held in regard to such rules.
 2. Such rules shall be filed in the offices of the Industrial Commissioner and the Secretary of State and published within 30 days of the date of filing in the office of the Secretary of State. The public announcement shall indicate the date of filing in the office of the Secretary of State and such rules shall become effective 30 days after such filing unless otherwise specified therein.
 3. Notices pursuant to paragraph (1) above and announcements pursuant to paragraph (2) above shall be made in such manner as the Industrial Commissioner deems expedient for the purpose of giving due notice to all reasonably interested parties.
- b. Gratuities, the value of which is not established by any rule promulgated under this section, shall be reported at the actual amount if ascertainable or, if this be impossible, shall be evaluated by the employer upon a reasonable basis and reported by him accordingly. Employers shall submit upon request a statement of the basis used in, and sustaining the reasonableness of, such evaluation.
- c. Whenever the value of gratuities has been determined and established by a rule promulgated in accordance with this section, such determination shall be binding for the purpose of the Unemployment Insurance Law on all parties concerned with respect to the basis on which contributions and benefits are payable pursuant to sections 570 and 590 of such law, respectively.
- d. If the employer makes a definite service charge which is added to each customer's bill, or if in those places of the employer's establishment where the usual services to customers are rendered, announcements are conspicuously displayed forbidding the acceptance of gratuities (tips) by employees, or if such practice is actually brought to each customer's attention in writing at or before the time the customer is advised of the amount due the employer as a charge for the

commodities sold or services rendered and the employer submits a sworn statement to the Department of Labor setting forth that his employees are not allowed to accept gratuities pursuant to an agreement or understanding with them, and that he adopts reasonable means to obtain compliance with such agreement or understanding, it shall be deemed that no gratuities are received by the employees of that employer unless the employer, directly or indirectly, encourages contravention of such practice.

- e. Any rule promulgated pursuant to subdivision (a) of this section may be modified in the Industrial Commissioner's discretion, after investigation and upon notice and hearing.
- f. If, after a rule promulgated pursuant to subdivision (a) of this section has been in effect two years or more, an application for a modification is made by representative organizations of employers or employees affected by such rule, new hearings shall be held within six months of such application. After proper hearings, a new rule shall be promulgated which may affirm or modify the rule in force and effect at the time such application was made. The provisions of subdivision (a) of this section shall apply to notices of hearings, promulgations of rules, and publications thereof under this subdivision.
- g. When, under any rule promulgated pursuant to subdivision (a) of this section, the value of gratuities received may be established by a statement submitted by an employee certifying the value of gratuities received by such employee, such statements shall be valid only if submitted not less frequently than once each calendar quarter, except that the statement for a period of employment shall not be valid unless submitted prior to the date of mailing or personal delivery of notice to the employer that the employee has filed an original claim for the first time subsequent to such period of employment.

Historical note: Section amendment filed September 10, 1974, effective immediately. Amended (d).

§ 470.4 Overpaid unemployment insurance benefits

The Commissioner of Labor shall, as provided for in section 18 of the State Finance Law, waive the assessment of interest and late charges on debts owed which occurred as a result of overpayment of unemployment insurance benefits.

§ 470.5 Setoff against unemployment insurance benefits

Established and outstanding overpaid unemployment insurance benefits shall be collected from a claimant's weekly benefit award as a setoff.

- a. Priority of liquidation. In the event that more than one overpayment is established against an individual claimant, setoff amounts will be debited to such overpayments in chronological order.
- b. Willful overpayment. A setoff of 100 percent of the weekly benefit amount will apply to one or more established and outstanding overpayments attributable to an individual claimant so long as at least one of such overpayments is determined to have been willful.
- c. Non-willful overpayment. A setoff of 50 percent of the weekly benefit amount will apply to one or more established and outstanding overpayments attributable to an individual claimant so long as none of such overpayments are determined to have been willful.

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ARTICLE 1
REGULATIONS OF THE INDUSTRIAL COMMISSIONER
PART 471 - COVERAGE

(Statutory authority: Labor Law, §530, 543; Article 18)

Section 471.1	Election to cover residents
Section 471.2	Application to cease to be liable for contributions
Section 471.3	Reimbursement election by governmental entities
Section 471.4	Reimbursement election by nonprofit organizations

§ 471.1 Election to cover residents.

- a. An election by an employer pursuant to and in accordance with subdivision 2 of section 561 of the Unemployment Insurance Law may be filed only by an employer liable for contributions under the law. The approval of such an election is subject to the conditions:
 1. that a separate election in writing on a form furnished by the Department of Labor be filed with respect to each employee; and
 2. that the services of the employee for the employer are deemed employment subject to the law beginning with the effective date prescribed in subdivision (b) of this section and will continue to be deemed such employment until:
 - i. the employee ceases to be a resident of New York; or
 - ii. contributions are required with respect to the employee's services for the employer on a compulsory basis under the unemployment compensation law of any other state or of the Federal government.
- b. The approval of an election filed in accordance with subdivision (a) of this section shall be effective as of the first day of the calendar quarter in which the election is filed or the first day of any subsequent calendar quarter designated by the employer.

Historical note: Section amendment filed September 10, 1974, effective immediately. Amended (a)(1).

§ 471.2 Application to cease to be liable for contributions.

An employer who, pursuant to section 562 of the Unemployment Insurance Law, is entitled to cease to be liable for contributions upon application to the Industrial Commissioner, shall notify the Department of Labor in writing stating that he wishes to cease to be liable for contributions under the Unemployment Insurance Law, specifying that he did not pay remuneration of \$300 or more in any quarter during the period specified by statute with respect to persons other than persons employed in personal or domestic service in private homes or, if the application relates to persons employed in personal or domestic service in private homes, that he did not pay remuneration in cash of \$500 or more with respect to such persons during such period, and indicating the place in which his payroll records will be preserved in accordance with section 472.2 of this Title.

Historical note: Section amendment filed August 10, 1971; September 10, 1974, effective immediately.

§ 471.3 Reimbursement election by governmental entities.

- a. A governmental entity liable for contributions which elects to become liable for payments in lieu of contributions shall file written notice of such election in such manner and on such forms as the Department of Labor may request.
 1. Such notice shall be filed before the beginning of the calendar year to which the election applies. However, if the governmental entity was not liable in the preceding calendar year, or

- became liable for contributions after the beginning of the calendar year, the notice shall be filed not later than 30 days after the end of the calendar quarter in which it first became liable.
2. If a group of governmental entities elect jointly to become liable for payments in lieu of contributions, the notice shall be signed by all members of the group and shall designate one of the members as agent for the others in relation to the group election.
- b. An election to become liable for payments in lieu of contributions shall continue to apply until it has been terminated in accordance with the provisions of this subdivision.
 1. It may be terminated by a governmental entity as of the first day of a calendar year by filing a written notice to this effect with the Department of Labor before the beginning of such year. If governmental entities are members of a group which elected jointly to become liable for payments in lieu of contributions, the designated agent for an individual member shall file such notice, which shall then be deemed to apply to all members of the group. Such notice of termination shall be filed not later than 30 days before the beginning of the calendar year, and such agent shall inform all members of the group of the action taken. However, any member of such group, individually or jointly as a group with other governmental entities, may file a new notice of election in accordance with the provisions of subdivision (a) of this section.
 2. It may be cancelled by the commissioner with respect to a governmental entity at any time by giving written notice to the governmental entity, or to the designated agent for a group of governmental entities (in which event the cancellation shall apply to all members of the group), if there is a failure to make timely payment, as required pursuant to subdivision (c) of this section, of benefits charged to the account of the governmental entity or, with respect to a member of a group having made a joint election, charged to the account of any member of the group.
 - c. Governmental entities, or the designated agent for a group of such entities which have made an election pursuant to the provisions of this section, shall be billed after the end of each calendar quarter for benefits charged to their accounts. Payments for these charges shall be made on or before the last day of the month following the close of that quarter, or within 15 days after the billing date, whichever is the later.
 - d. A governmental entity whose election has been cancelled pursuant to paragraph (b)(2) of this section may thereafter file a new notice of election in accordance with the provisions of subdivision (a) of this section, individually or as a member of a group, provided:
 1. its outstanding obligations or, if it was a member of a group having made a joint election, the outstanding obligations of all members of the group, have been liquidated; and
 2. it has satisfied the commissioner, and the commissioner has made a finding to this effect, that a failure to make payments as required is not likely to recur.

Historical note: Section amendment filed September 10, 1974; repealed. New section filed January 18, 1979; amended filed April 15, 1985 effective July 1, 1985. Amended (c).

§ 471.4 Reimbursement election by nonprofit organizations.

- a. A nonprofit organization liable for contributions which may elect to become liable for payments in lieu of contributions shall file written notice of such election in such manner and on such forms as the Department of Labor may request.
 1. Such notice shall be filed before the beginning of the calendar year to which the election applies. However, if the nonprofit organization became liable for contributions after the beginning of the calendar year, the notice shall be filed not later than 30 days after the end of that calendar quarter in such calendar year in which the event rendering it liable occurred.
 2. If a group of nonprofit organizations elect jointly to become liable for payments in lieu of contributions, the notice shall be signed by all members of the group and shall designate one of the members as agent for the others in relation to the group election.
- b. Nonprofit organizations, or the designated agent for a group of such organizations, which have made an election pursuant to the provisions of this section shall be billed after the end of each

calendar quarter for benefits charged to their accounts. Payments for these charges shall be made on or before the last day of the month following the close of that quarter, or within 15 days after the billing date, whichever is the later.

- c. An election to become liable for payments in lieu of contributions shall continue to apply until it has been terminated in accordance with the following:
 1. It may be terminated by a nonprofit organization as of the first day of a calendar year by filing a written notice to this effect with the Department of Labor before the beginning of such year. If nonprofit organizations are members of a group which elected jointly to become liable for contributions, the designated agent or an individual member may file such notice which shall then be deemed to apply to all members of the group. Such notice shall be filed not later than 30 days before the beginning of the calendar year, and such agent or such member shall inform all members of the group of the action taken. However, any member of such group, individually or jointly as a group with other nonprofit organizations, may file a new notice of election in accordance with the provisions of subdivision (a) of this section.
 2. It may be cancelled by the Industrial Commissioner with respect to a nonprofit organization at any time by giving written notice to the nonprofit organization, or to the designated agent for a group of nonprofit organizations (in which event the cancellation shall apply to all members of the group), if there is a failure to make timely payment, as required pursuant to subdivision (b) of this section, of benefits charged to the account of the nonprofit organization or, with respect to a member of a group having made a joint election, charged to the account of any member of the group.
- d. A nonprofit organization whose election has been cancelled pursuant to paragraph (c)(2) this section may thereafter file a new notice of election in accordance with the provisions of subdivision (a) of this section, individually or as a member of a group, provided:
 1. its outstanding obligations or, if it was a member of a group having made a joint election, the outstanding obligations of all members of the group have been liquidated; and
 2. it has satisfied the Industrial Commissioner, and the commissioner has made a finding to this effect, that a failure to make payments as required is not likely to recur.

Historical note: Section filed August 10, 1971. Amendments filed: September 10, 1974; April 15, 1985 effective July 1, 1985. Amended (b).

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ARTICLE 1
REGULATIONS OF THE INDUSTRIAL COMMISSIONER

PART 472 - CONTRIBUTIONS TO STATE UNEMPLOYMENT INSURANCE FUND
(Statutory authority: Labor Law, §530, 575; Article 18)

Section 472.1	Status report
Section 472.2	Employer records
Section 472.3	Reports and payments of contributions
Section 472.4	Reports of remuneration and employment
Section 472.5	Employees' social security account numbers
Section 472.6	Transfers of accounts
Section 472.7	Posting of notice for employees
Section 472.8	Notice upon separation
Section 472.9	Payment of contributions, reports in regard to seamen's remuneration paid under shipping articles
Section 472.10	Apportionment of remuneration, vacation payments or allowances in connection with experience rating
Section 472.11	Transfer of out-of-state experience
Section 472.12	Reporting on request

§ 472.1 Status report.

An employer upon becoming liable for contributions under the Unemployment Insurance Law shall submit a status report on forms furnished for this purpose by the Department of Labor and in accordance with instructions printed thereon.

Historical note: Section amended and filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor".

§ 472.2 Employer records.

- a. Every employer employing persons within New York State shall establish, maintain and preserve, for not less than three years, records with respect to his employees which shall show:
 1. for each payroll period:
 - i. the beginning and ending date of such period;
 - ii. the total amount of remuneration paid by the employer for such period as set forth in section 470.2(b)(1) of this Title;
 - iii. the total amount of remuneration paid during such period as set forth in section 470.2(b)(2) of this Title;
 - iv. the total amount of compensation on which contributions are due under the New York Unemployment Insurance Law solely because the employer is liable for a tax on such compensation under the Federal Unemployment Tax Act;
 2. for each employee:
 - i. his name;
 - ii. his social security account number;
 - iii. remuneration paid to him for a payroll period in accordance with subparagraph (1)(ii) of this subdivision or during a payroll period in accordance with subparagraph (1)(iii) of this subdivision, showing for each such period, separately:
 - a) remuneration paid in cash;
 - b) money equivalent of remuneration, other than in the form of money, paid by the employer, including reasonable money value of board, rent, housing, lodging or

- similar advantage received;
 - c) the value of gratuities (tips) received by the employer in the course of his employment from a person other than his employer to be determined in accordance with section 470.3 of this Title;
 - iv. compensation on which contributions are due under the New York Unemployment Insurance Law, solely because the employer is liable for a tax on such compensation under the Federal Unemployment Tax Act;
- 3. the calendar days on which each employee was employed reflecting the remuneration applicable to each such day.
- b. Every employer liable for contributions under the Unemployment Insurance Law shall preserve for a period of not less than three years copies of all reports which he is required to submit to the Department of Labor with respect to his payroll in accordance with section 472.3 of this Part, and which he may be required to submit with respect to individual employees' earnings in accordance with section 472.4 of this Part.
- c. Employers who maintain their records containing the information required pursuant to subdivision (a) of this section at a place outside of the State of New York shall make such records or sworn certified copies thereof available at a place within New York State upon demand by the commissioner.

Historical note: Section amendments filed August 10, 1971; September 10, 1974, effective immediately. Amended (b).

§472.3 Reports and payments of contributions.

- a. Contributions due under the Unemployment Insurance Law shall be payable quarterly based on wages paid in a quarter as set forth in section 470.2 of this Title, except that contributions based on compensation on which contributions are due under the New York Unemployment Insurance Law solely because the employer is liable for a tax on such compensation under the Federal Unemployment Tax Act shall be payable annually.
- b. Employers liable for contributions under the Unemployment Insurance Law shall report contributions due on forms furnished for this purpose by the Department of Labor, and in accordance with instructions printed thereon. Such report shall be accompanied by payment of contributions.
- c. Reports with respect to remuneration, as defined by section 517 of the Unemployment Insurance Law, and payments of contributions due thereon, shall become due on or before the last day of the month following the close of the quarter during which the wages were paid; providing, however, that in regard to wages definitely assignable to payroll periods, if the rate or amount of such wages has not been finally determined prior to the end of such quarter, reports of such portion of the wages is not paid in that quarter, and the payments of contributions thereon, shall become due on or before the last day of the month following the close of that quarter in which the rate or amount of such wages was finally determined; a separate contribution report shall then be filed for each quarter to which such wages as finally determined apply.
- d. Reports with respect to compensation on which contributions are due solely because the employer is liable for a tax on such compensation under the Federal Unemployment Tax Act, and payments of contributions thereon, shall become due not later than January 31 following the end of the calendar year during which the compensation was paid, except that, upon the application of an employer made prior to January 31, the commissioner may grant an extension to a date not later than April 30.
- e. Reports and payments of contributions by an employer liable for contributions under the Unemployment Insurance Law as the result of an application for voluntary coverage become due

for the first time on or before the last day of the month following the close of the calendar quarter during which the application for voluntary coverage was approved. The employer shall at such times file separate reports with respect to each of the calendar quarters for which contributions are payable by him.

Variation:

In light of the Governor's proclamation of a state of emergency within the State of New York caused by the New York City transit strike, I hereby make and promulgate a variation from section 472.3 governing transmittal of reports and payment of contributions. I do hereby declare that reports and payments of contributions normally due not later than January 31, 1966 may be substituted beyond such date but not later than February 28, 1966 without incurring any interest.

Historical note: Section amendments filed August 10, 1971; September 10, 1974, effective immediately. Amended (b).

Decisions

1. Defaults in answering information charging violation

Held that corporation which defaulted in answering an information charging it with violation of Labor Law § 575.1 and § 472 of the Industrial Commissioner's regulations (12NYCRR 472.3), may not have a judgment taken against it under section 681 of the Code of Criminal Procedure which applied only to "indicted corporations".

People v. Mineola Coal Co., 65 Misc 2d 731 (1971)

2. Payment of contributions - due date

Held that while the State could properly deduct from the amount of refund of a liquor license fee to an applicant's assignee franchise tax and unemployment insurance contribution which became due from the applicant prior to filing of such assignment on March 18, 1964 not due until "the last day of the month following the close of the quarter" (12 NYCRR 472.3(c)) could not be deducted since they were not payable at the time the assignment was filed.

Chase Bank NY Trust Co. v State of New York, 55 Misc 2d 425 (1967)

§472.4 Reports of remuneration and employment.

- a. Any employer liable for contributions under the Unemployment Insurance Law may be designated by the Industrial Commissioner as an employer required to file periodic reports of remuneration and employment. Such employer shall report, in accordance with instructions issued by the commissioner, any or all of the following with respect to employment in the period covered by the report:
 1. the name and social security account number of each employee who did some work for him;
 2. the remuneration paid by him to each employee;
 3. the number of weeks of employment of each employee; and
 4. the number of weeks of employment of each employee in which he earned less than \$40, and his total earnings for such weeks.
- b. Any employer liable for payments in lieu of contributions shall report, on forms furnished for this purpose by the Department of Labor and in accordance with instructions printed thereon, the number of his employees in the middle week of each month and wages as well as remuneration

paid in each calendar quarter. Such reports shall be due on or before the last day of the month following the close of the quarter during which the wages were paid.

- c. An employer liable for contributions or for payments in lieu of contributions who plans to shut down his business on a temporary, seasonal or permanent basis, and who wishes to be relieved of the request reporting requirements specified in subdivision 2 of section 575 of the Unemployment Insurance Law, shall give notice as prescribed in subdivision 3 of that section and thereafter, but prior to the date on which he seeks to be so relieved, he shall report, for the week in which such shutdown occurs, and for the 52 preceding weeks, separately for each week:
 1. the name and social security number of each employee who did some work for him; and
 2. the amount of remuneration paid to each employee in each such week.

*Historical note: Section amendments filed October 16, 1968;
August 10, 1971; September 10, 1974; January 18, 1979.
Amended (a)(4).*

§472.5 Employees' social security account numbers.

- a. An employer shall ascertain the Federal social security account number of each employee employed by him, list such number on his records in accordance with section 472.1 of this Part, and include it in his reports to be submitted pursuant to sections 472.3 and 472.12 of this Part.
- b. An employee shall report his Federal social security account number to every employer by whom he is employed.
- c. An employer shall inform each employee who has not secured an account number that an application for such number must be filed on or before the seventh day after the date on which the employee first performs services in employment, except that the application shall be filed on or before the date the employment is terminated if such date precedes such seventh day.
- d. An employer shall inform his employee in instances in which the information is pertinent that he should apply at a field office of the Social Security Board with respect to replacement of a lost Federal social security account number card, changes of the number desired by the employee, required changes of name because of marriage or otherwise, or corrections of any inaccurate information given when applying for a social security account number.

§472.6 Transfers of accounts.

- a. An employer who, subsequent to July 1, 1951, acquires the organization, trade or business, in whole or in part, of an employer liable for contributions shall report such fact, in writing, together with the date of acquisition and the name and other identification of the transferring employer. If only a part of the organization, trade or business is transferred, experience rating charges based on benefits paid to former employees of the transferring employer shall be debited to the account of the transferee.
- b. If only a part of the organization, trade or business is transferred, the transferring employer's account, including its balance and all other aspects of its experience under the Unemployment Insurance Law, shall be allocated in proportion to the payroll assignable to the transferred part during the last 12 completed calendar quarters prior to the date of transfer except that the allocation shall be made in proportion to the number of employees assignable to the transferred part in the following cases:
 1. if the transferred part of the organization, trade or business was not in existence for 12 completed calendar quarters prior to the date of transfer;

2. if the transferring employer and the transferee join in a request to allocate in accordance with the number of employees, and demonstrate that allocation in accordance with payroll would be inequitable.

§472.7 Posting of notice for employees.

- a. Every employer liable for contributions under the Unemployment Insurance Law, except employers of employees in personal or domestic service, shall post and maintain notices furnished by the Department of Labor indicating that he is registered with the department. Every employer liable for contributions with respect to employees in personal or domestic service shall inform each such employee of the fact that the employer is registered with the department.
- b. Notices must be posted conspicuously in easily accessible places customarily frequented by the employees and at or near each location where the employees' services are performed.
- c. An employer who is not liable for contributions under the law or who has ceased to be liable for contributions is not permitted to display such notices and must remove them if on display.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a); changed "division" to "department" in (a).

§472.8 Notice upon separation.

- a. Every employer liable for contributions shall inform each employee of his right to file an application for unemployment benefits with a field office of the Department of Labor. Such information shall be given at the time of each separation from his service if such separation is permanent or for an indefinite period. In case of temporary separation or any other interruption of continued services, such information shall be given only if the employer believes that it may result in more than three days of unemployment in any statutory week for which the employee's compensation does not exceed the amount set forth in section 523 of the Unemployment Insurance Law. Such notice shall be given in writing on a form furnished or approved by the Department of Labor and shall include:
 1. the employer's name and registration number;
 2. the address of the employer to which a request for remuneration and employment information with respect to such employee must be directed;
 3. a statement advising the employee that he should have the form in his possession if and when he reports to an insurance office of the Department of Labor for the purpose of filing an application for benefits; and
 4. such other information as is required by the commissioner. Such notice need not be given if the employer's pay vouchers, envelopes or pay check stubs furnished to employees contain the information and statement required by paragraphs (1), (2) and (3) of this subdivision.
- b. Every employer shall upon request submit to the office of the Department of Labor where an application for benefits is filed by the employee a statement giving the date and reasons for the separation and submitting other relevant information, including information concerning an employee's employment record in any statutory week for which certification of more than three days of total unemployment has been made by such employee. Every employer shall furnish this information on request within 10 days of the mailing or personal delivery of such request except that an extension of time may be allowed if it is shown to the commissioner's satisfaction that compliance within 10 days would occasion undue hardship to the employer.

Historical note: Section amendments filed July 8, 1965; October 16, 1968; July 6, 1970; September 10, 1974, effective September 30, 1974 and immediately. Respectively amended (a) and (b).

§472.9 Payment of contributions and reports in regard to seamen's remuneration paid under shipping articles.

- a. For the purpose of this section, the term pay period established by shipping articles means the period of a voyage or engagement of the crew of a vessel under "Articles of Agreement" pursuant to Title 46 of the United States Code. This section shall not apply to remuneration payable on fixed paydays for regularly recurrent payroll periods which are not longer than one month.
- b. Notwithstanding any other provisions of sections 470.2, 472.2 and 472.3 of this Title, all reports required thereunder with respect to remuneration and wages including advances, allotments, and payment in kind, such as board and lodging, paid in any pay period established by shipping articles shall be submitted as of the calendar quarter in which any such remuneration in cash was actually paid or such remuneration in kind was furnished.
- c. Reports required under subdivision (b) of this section together with contributions due thereon need not be submitted prior to the time when reports regarding remuneration paid at the termination of such pay period must be filed. However, separate reports must in that event be filed for each calendar quarter involved during which remuneration in cash was paid and remuneration in kind furnished.

§472.10 Apportionment of remuneration, vacation payments or allowances in connection with experience rating

- a. A request pursuant to section 581 of the Labor Law for the apportionment of remuneration paid in the form of annual bonuses or other lump sum payments shall be made in writing to the Department of Labor on or before October 1 next following the fiscal year during which such remuneration was paid. The request shall state the total amount of such remuneration paid during each calendar quarter of such fiscal year for services performed over a period or more than three months.
- b. A request pursuant to section 581 of the Labor Law for the apportionment of remuneration paid regularly on a biweekly basis shall be made in writing to the Department of Labor on or before October 1st next following the fiscal year during which such remuneration was paid. The request shall state the total amount of such remuneration in excess of six biweekly payments so paid during each calendar quarter of the fiscal year.
- c. A request pursuant to section 581 of the Labor Law for the apportionment of vacation payments or allowances made in advance shall be made in writing to the Department of Labor on or before October 1st next following the fiscal year during which such payments or allowances were paid. The request shall state the dates and the applicable amounts of vacation payments or allowances made in advance and shall set forth the dates, with the applicable amounts, when remuneration covering the vacation periods would have been paid in the usual course of business for work actually performed.

Historical note: Section amendments filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor".

§472.11 Transfer of out-of-state experience.

- a. An employer who has transferred operations from another state to this State and invokes the provisions of subdivision 5 of section 581 of the Unemployment Insurance Law as of an effective date, must:
 1. give written notice of such transfer prior to the computation date; such notice must specify the nature of the transferred operations and identify the state in which they were previously performed;
 2. furnish, prior to the effective date, for the calendar year in which that date occurs and the three preceding calendar years, all information which the commissioner requires to compute his experience rating;
 3. submit prior to each subsequent effective date, all information which the commissioner requires relating to benefits paid subsequent to the transfer and prior to the corresponding computation date on the basis of wages paid in such other state.
- b. Information required under this section shall be submitted on such forms as the Department of Labor may furnish for this purpose and in accordance with prescribed instructions.

Historical note: Section amendments filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (b).

§472.12 Reporting on request.

- a. Within 10 days of the mailing or personal delivery of a request for information relating to an individual employee, an employer shall report, to the Department of Labor, employment information with respect to such employee and the remuneration paid to him on forms furnished or approved for the purpose by the department and in accordance with instructions printed thereon.
- b. If the commissioner determines that it is impossible or impracticable for any employer or group of employers to comply with subdivision (a) of this section with respect to all or a class of their employees, he may exempt such employer or group of employers from such compliance with respect to such employees. Employers so exempted shall report in accordance with instructions issued by the commissioner with respect to employment in the period covered by the report, separately for each week, or in such other manner and for such other period as the department may prescribe:
 1. the name and social security account number of each employee who did some work for him; and
 2. the amount of remuneration paid to each employee in each such week or such other period as the commissioner may prescribe.

Historical note: Section amendments filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a); changed "division" to "department" in (a) and (b).

ARTICLE 1
REGULATIONS OF THE INDUSTRIAL COMMISSIONER

PART 473 - BENEFITS AND CLAIMS

(Statutory authority: Labor Law § 530; Article 18)

Section 473.1	Filing of benefit claim
Section 473.2	Reporting by benefit claimants
Section 473.3	Reporting for employment
Section 473.4	Interstate benefit claims

§473.1 Filing of benefit claim.

- a. A claimant shall file an original claim and register for employment on any day from Monday through Friday. Any such claim filed in accordance with this section shall be deemed filed as of the first day of the claimant's unemployment in the statutory week in which filed, excluding, however, any prior day on which a disqualifying condition would have existed if he had actually filed on such day.
- b.
 1. He shall file an additional claim in his benefit year in the week for which he seeks benefits if his claim has lapsed because of intervention of any week in which he accrued no effective days, or in which he failed to report, or in which he was not eligible for benefits for other reasons.
 2. Such additional claim shall be filed on his regular reporting day assigned to him in accordance with section 473.2 of this Part, and any claim so filed shall be deemed filed as of the first day of his unemployment occurring in such week, excluding, however, any prior day on which a disqualifying condition would have existed if he had actually filed on such day. If he is employed on his regular reporting day, or if that day falls on a holiday, he shall file the additional claim on his next day of unemployment on which the filing of claims is accepted, and any claim so filed shall be deemed filed as of the first day of his unemployment occurring in such week, excluding, however, any prior day on which a disqualifying condition would have existed if he had actually filed on such day. If such requirement is not met, but an additional claim is filed subsequently in the same week, the claimant may not be credited with any days of total unemployment preceding the day on which such additional claim was filed.
 3. If a claimant has been unable to file an additional claim in compliance with the foregoing paragraph, he may be excused from such compliance provided that:
 - i. he reports in person at the office at which his claim is on file before the expiration of four weeks from the end of the week for which he is seeking benefits; or
 - ii. he files a written statement with the department at the office where his claim is on file before the expiration of four weeks from the end of the week for which he is seeking benefits and shows to the commissioner's satisfaction that he will be unable to report in person before the expiration of such four weeks. Special reporting hours, allowing reporting in person, may in such event be provided, or, if this be impossible, filing of the additional claim by mail for such week may be permitted. Such additional claim shall be valid only for any days of unemployment in the week with respect to which it should have been filed and the claim shall lapse as of the end of that week.
- c. Notwithstanding any other provisions of this section, the commissioner may permit individuals engaged in specified industries or occupations, or unemployed under specified circumstances, to file their claims later than in the first week for which they seek benefits. If such permission is granted, the crediting of days falling in any week before the filing of a claim as days of total unemployment shall be subject to the conditions established by the commissioner.
- d. The claim for benefits shall be filed by the claimant in person at the unemployment insurance office or itinerant point of the Department of Labor which serves the area in which he was last

employed or in which he resides; provided, however, that a claimant for whom personal filing would be excessively costly or unreasonable may be granted the privilege to file a claim and register for employment by mail. The date of the postmark shall be the date on which the claim was filed.

- e. Each claimant shall present his social security account card at an unemployment insurance office upon demand. If the claimant does not have a social security account card, he shall file an application for the issuance of such card at the appropriate field office of the Social Security Administration immediately after filing a claim for unemployment insurance benefits. A claimant shall also present, at the time of filing his original claim, all notices received upon separation, in accordance with section 472.8 of this Part, together with any other available information serving to identify the names and addresses of his employers in the 52 weeks or, upon request by the Department of Labor, the 104 weeks preceding the filing of such claim and the period of employment with and remuneration paid by each such employer.
- f. Each claimant shall sign an insurance record form in the presence of a staff member of the unemployment insurance office in which he files his claim.
- g. If the claimant files an original claim at an itinerant point, it shall be deemed filed as of the first day of the claimant's unemployment following the day on which the filing of claims was last accepted at such point, excluding, however, any prior day on which a disqualifying condition would have existed if he had actually filed on such day.
- h. The failure to file a claim in compliance with this section may be excused by the commissioner upon proper presentation by the claimant of the facts and circumstances if it is shown to the commissioner's satisfaction that they constitute good cause.

Historical note: Section amendments filed September 10, 1974, effective immediately. Amended (b)(3), (d) and (e).

§473.2 Reporting by benefit claimants.

- a. Each claimant shall report and certify to his or her unemployment, at specified days and hours established as specified by the unemployment insurance office, during the course of each week following a statutory week in which the claimant suffered more than three days of total unemployment and did not earn more than the amount set forth in section 523 of the Unemployment Insurance Law and at such other times as such office may direct.
- b. Such reports shall be made in person unless the privilege of mail or electronic certification has been granted to a claimant. Such claimant shall, however, report in person at the office or itinerant point where his or her claim for benefits is on file at such days and hours as may be required by such office and shall observe all reporting requirements pertaining to mail or electronic certification.
- c. A claimant may not receive credit for any period of unemployment from the day on which a failure to report occurred until he or she next reports or until the beginning of the week in which he or she next filed an additional claim in accordance with section 473.1 of this Part, whichever is earlier.
- d. 1. If a claimant, who fails to report as required, has four or more days of total unemployment in a week to which he or she had not certified in accordance with subdivision (a) of this section, he or she may certify to such week within four weeks from the last day of that week. Such later certification shall cover only the week during which he or she last reported or filed a claim ;under section 473.1 of this Part, and the next succeeding days which precede the first day on which he

or she was instructed to report but did not do so.

2. 2. If the claimant cannot report in person within the period of four weeks, he or she may be excused from doing so upon written application filed before the expiration of such period in the unemployment insurance office where his or her claim is on file provided he or she shows to the commissioner's satisfaction that he or she will be unable to report in person within this period. In such event, special reporting hours, allowing reporting in person, may be provided, or, if this be impossible, certification by mail may be permitted.
- e. A claimant shall notify the unemployment insurance office where his or her claim for benefits is on file of any change of address not later than the next time he or she is required to report.
 - f. The failure to report in compliance with this section may be excused by the commissioner upon proper presentation by the claimant of the facts and circumstances if it is shown to the commissioner's satisfaction that they constitute good cause.

§473.3 Reporting for employment.

- a. A claimant may be directed by the office of the Department of Labor where his claim for benefits is on file (hereinafter referred to as insurance office) to report, for the purpose of interview or any other action in connection with his registration for employment, to any other office maintained by this department or by the United States Employment Service (hereinafter referred to as placement office) serving the area in which the claimant resides or was last employed or to the nearest such office serving the occupation or industry in which the claimant may be expected to find employment.
- b. A claimant who has been directed in accordance with subdivision (a) of this section shall report to the placement office on the days and hours specified by it or by the insurance office in which his claim is on file. A claimant shall present his identification form each time he reports at a placement office.
- c. The day on which a claimant fails to report in accordance with this section and any subsequent day prior to the date of a report to the placement office shall not be registered as days of total unemployment.
- d. A claimant who reports at a placement office in accordance with this section shall also continue to report to the insurance office in accordance with section 473.2 of this Part.
- e. The failure to report to a placement office in compliance with this section may be excused by the commissioner upon presentation of the facts and circumstances to the insurance office and if it is shown to the commissioner's satisfaction that they constitute good cause.

Historical note: Section amendments filed September 10, 1974, effective immediately. Amended (a).

§ 473.4 Interstate benefit claims.

- a. A claimant who, pursuant to the provisions of the interstate benefit payment plan, files a claim at a State employment office in New York State for benefits payable under the unemployment compensation law of another state shall comply, in the matter of registration and reporting, with sections 473.1, 473.2 and 473.3 of this Part and with such other requirements as may be established for this purpose.
- b. A claimant who, pursuant to the provisions of the interstate benefit payment plan, files in another state a claim for benefits payable under the New York State Unemployment Insurance Law shall

comply with regulations and other requirements concerning registration and reporting established by such other state for this purpose.

- c. A benefit claim filed pursuant to subdivision (b) of this section shall not be valid until a claimant who is qualified for benefits under the law of any state against which he has previously elected to file a claim exhausts or otherwise terminates his benefit rights under such election.

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ARTICLE 2
RULES OF THE INDUSTRIAL COMMISSIONER

PART 480 - REMUNERATION

(Statutory authority: Labor Law § 517, 530; Article 18)

Section 480.1	Value of board and lodging
Section 480.2	Tips of beauty parlor operators
Section 480.3	Tips of garage, gas station and parking lot attendants
Section 480.4	Tips of service employees in restaurants
Section 480.5	Tips of dining room employees in American Plan hotels and in eating clubs
Section 480.6	Tips of hotel service employees
Section 480.7	Tips of taxicab drivers
Section 480.8	Tips of employees in barber shops
Section 480.9	Tips of baggage porters in bus and airline terminals
Section 480.10	Tips of pinboys at bowling alleys
Section 480.11	Tips for checkroom attendants
Section 480.12	Tips of maritime service employees

§480.1 Value of board and lodging.

- a. Section 517 of the Unemployment Insurance Law provides that the reasonable money value of board, rent, housing, lodging or similar advantage furnished by employers to their employees constitutes remuneration.
- b. In the absence of evidence furnished to the commissioner pursuant to subdivisions (c) and (d) of this section, the reasonable money value of board and lodgings shall be the greater of:
 1.

each meal	\$1.15
lodging, per night	\$1.85
 2. the money value used by an employer for compliance with New York Minimum Wage Orders (12 NYCRR Chapter II, Subchapters B and F).
- c. A lower money value may be used if an employer shows to the commissioner's satisfaction that the values prescribed in subdivision (b) of this section are in excess of the actual value.
- d. A higher money value may be used if an employee shows to the commissioner's satisfaction that the values prescribed in subdivision (b) of this section are less than the actual value.

*Historical note: Section repealed, new filed February 1, 1984
effective April 1, 1984.*

§480.2 Tips of beauty parlor operators.

- a. For the purposes of this section, the term beauty parlor operator includes all employees of any employer performing personal service on female customers in operations useful to the care, cleansing, or beautification of the hair, nails or skin, or in the enhancement of personal appearance and in operations incidental thereto; but it excludes maids, receptionists, physical training instructors, nurses, desk clerks, office workers and other employees not performing the aforementioned operations.
- b. No value of gratuities or tips need be included in the amount of remuneration as defined in

section 517 of the Unemployment Insurance Law if in a given beauty shop:

1. acceptance of tips or gratuities is not allowed;
 2. customers are apprised by conspicuously displayed announcements or otherwise in writing, at or before the time bills for services are rendered to them, that acceptances of tips or gratuities is not allowed;
 3. the owner adopts reasonable means to insure that tips or gratuities are not received by his employees; and
 4. the owner submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by customers and employees.
- c. The value of gratuities received by beauty parlor operators, except as otherwise provided under subdivision (b) of this section, is hereby determined to be an amount equal to 10 per centum of the wages paid to them by their employers.

Historical note: Section amendment filed September 10, 1974, effective immediately. Amended (b)(4)

§480.3 Tips of garage, gas station and parking lot attendants.

- a. The value of gratuities or tips received by employees engaged as attendants in garages, gas stations and parking lots shall be determined as follows:
 1. Such value shall be equal to the amount certified by each employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. No gratuities or tips shall be deemed received for the purpose of this section if such statement is not submitted by an employee.
- b. Employers shall give notice to each of their employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information or the fact that no tips or gratuities shall be deemed received in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Amended (a)(1)

§ 480.4 Tips of service employees in restaurants.

- a. The following definition of terms shall apply to this section:
 1. The term restaurant means any eating or drinking place where food or beverages for human consumption on the premises are offered, including places whose patrons, in whole or in part, consist of members of any club, association or similar organization, but excluding places where patrons pay a fixed amount for meals over any given period of time, not dependent upon the number of meals actually taken.
 2. The term service employee means any employee whose duties relate to the serving of food or beverages, or both, in a restaurant, or to the performance of duties incidental thereto.
- b. The value of gratuities or tips received by a service employee is hereby determined to be as follows:
 1. Such value, except as provided in subdivision (c) of this section, shall be:
 - i. equal to the amount certified by each employee to his employer in a signed statement as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request; or
 - ii. if such statement has not been submitted by an employee, equal to seven and one-

half per centum of the amount charged for food and beverages served by all such employees, except that such value shall be five per centum of such amount in regard to food and beverages served at counters and in drug stores. The amount charged for food and beverages served by all such employees shall be established on the basis of an allocation to them of a reasonably calculated proportion of the total charges for food and beverages served by all service employees. Such value shall be established for each such employee by allocating to him a reasonably calculated proportion of such value as established for all such employees.

2. If an employer adds to each patron's bill a definite service charge for the benefit of his employees, such value shall be equal to the total amount of such service charge. This value shall be in addition to a value if any, established under paragraph (1) of this subdivision.
 3. In regard to service employees serving catered or banquet meals, such value shall be 100 percent of their cash wages, notwithstanding any other provision of this subdivision, except that no gratuities or tips shall be deemed received if no tipping by collection or otherwise is permitted and the employer submits a sworn statement to this effect to the Department of Labor.
- c. No gratuities or tips shall be deemed received for the purposes of paragraph (1) of subdivision (b) of this section if:
1. acceptance of tips or gratuities is prohibited by the employer, and
 2. patrons are apprised by conspicuously displayed announcements or otherwise in writing, at or before the time bills for food and beverages served are rendered to them that acceptance of tips or gratuities by service employees is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by his employees, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by patrons and employees.
- d. Employers shall give notice to each of their service employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as provided in subparagraph (i) of paragraph (1) of subdivision (b) of this section. Such notice shall include information on the percentage of charges for food and beverages and on the method of calculation which will be used in reporting the value of tips or gratuities in the event that such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (b)(1)(d), (c)(4)

§ 480.5 Tips of dining room employees in American plan hotels and in eating clubs.

- a. The following definitions of terms shall apply to this section:
 1. The term American plan hotel means an establishment where the majority of patrons pay fixed charges for room and meals for fixed periods of time, not dependent upon the meals actually taken.
 2. The term eating club means any eating place where food for human consumption on the premises is offered and where patrons pay a fixed amount for meals over any given period of time, not dependent upon the number of meals actually taken.
- b. The value of gratuities or tips received by an employee whose duties relate to the serving of food in an American plan hotel or an eating club, or to the performance of duties incidental thereto, is hereby determined to be as follows:
 1. Such value shall be equal to the amount certified by each employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by

- the employer and submitted to the Department of Labor upon request.
2. If such statement is not submitted by an employee, such value shall be equal to:
 - i. two dollars per day for waiters and waitresses;
 - ii. one dollar per day for busboys.
 - c. No gratuities or tips shall be deemed received for the purposes of this section, if:
 1. acceptance of tips or gratuities is prohibited by the employer, and
 2. patrons are apprised by conspicuously displayed announcements, or otherwise in writing when arrangements for the taking of meals are made, that acceptance of tips or gratuities by employees serving food is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by his employees, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by patrons and employees.
 - d. Employers shall give notice to each of their employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the method of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (b)(1) and (c)(4)

§ 480.6 Tips of hotel service employees.

- a. The following definition of terms shall apply to this section:
 1. The term hotel means any establishment which is operated for the purpose of furnishing lodgings with chambermaid service.
 2. The term hotel service employee means any person engaged by a hotel in any of the following occupations:
 - i. bellhops;
 - ii. porters and baggage porters (any person employed by the hotel whose duties involve contact with the public and which relate to the handling and transportation of guests' luggage or baggage, and obtaining transportation for guests). This item does not include porters employed as housemen, cleaners, lobby porters, etc.;
 - iii. chambermaids;
 - iv. doormen.
- b. The value of gratuities or tips received by a hotel service employee is hereby determined to be as follows:
 1. Such value shall be equal to the amount certified by each hotel service employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. If such statement has not been submitted by a hotel service employee, such value shall be equal to:
 - i. bellhops, porters, baggage porters, doormen, two dollars per diem;
 - ii. chambermaids, nil.
- c. No gratuities or tips shall be deemed received for the purpose of this section, if:
 1. acceptance of tips or gratuities is prohibited by the employer, and
 2. patrons are apprised by conspicuously displayed announcements, or otherwise in writing when they register at the hotel, that acceptance of tips or gratuities by hotel service employees is prohibited, and

3. the employer adopts reasonable means to insure that tips or gratuities are not received by such employees, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by patrons and employees.
- d. Employers shall give notice to each of their hotel service employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the method of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (b)(1) and (c)(4)

§ 480.7 Tips of taxicab drivers.

- a. The value of gratuities or tips received by taxicab drivers shall be determined as follows:
 1. Such value shall be equal to the amount certified by each employee upon a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. If such statement is not submitted by an employee, such value shall be equal to:
 - i. twelve and one-half percent of the total bookings of a driver operating a taxicab in cities with population of 100,000 or more and in the counties of Westchester, and Nassau;
 - ii. nine dollars per week for a driver operating a taxicab in localities other than those listed under subdivision (a) of this section;
 - iii. three and one-half dollars for each round trip made by a driver of an automobile operating between New York City and vicinity and the Catskill mountains.
- b. No gratuities or tips shall be deemed received for the purpose of this Section if:
 1. acceptance of tips or gratuities is prohibited by the employer, and
 2. patrons are apprised by conspicuously displayed announcements or otherwise in writing, at or before the time taxicab fares are collected that acceptance of tips or gratuities by the driver is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by his employees, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by patrons and employees.
- c. Employers shall give notice to each of their employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the method of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a)(1) and (b)(4)

§ 480.8 Tips of employees in barber shops.

- a. The value of gratuities or tips received by employees engaged by barber shops shall be determined as follows:

1. Such value shall be equal to the amount certified by each employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. If such statement is not submitted by an employee, such value shall be equal to:
 - i. fifteen percent of the cash wages received by a barber;
 - ii. twenty-five percent of the cash wages received by a manicurist;
 - iii. five cents with respect to each customer of the barber shop for employees shining shoes or brushing and otherwise attending to customer's clothes.
- b. No gratuities or tips shall be deemed received for the purpose of this section, if:
1. acceptance of tips or gratuities is prohibited by the employer, and
 2. customers are apprised by conspicuously displayed announcements or otherwise in writing, at or before the time bills for the services of barbers, manicurists and shoe shiners are rendered to them that acceptance of tips or gratuities by such employees is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by his employees, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by customers and employees.
- c. Employers shall give notice to each of their employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the method of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a)(1) and (b)(4)

§ 480.9 Tips of baggage porters in bus and airline terminals.

- a. The value of gratuities or tips received by employees engaged as baggage porters in bus or airline terminals shall be established as follows:
1. Such value shall be equal to the amount certified by each employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. If such statement is not submitted by an employee, such value shall be equal to:
 - i. two dollars per day if the employee worked as a baggage porter for at least seven hours on such day, or
 - ii. thirty cents per hour during which the employee worked as a baggage porter on any day in the course of which he did not so work for at least seven hours.
- b. No gratuities or tips shall be deemed received for the purposes of this section if:
1. acceptance of tips or gratuities is prohibited by the employer, and
 2. passengers are apprised by conspicuously displayed announcements or otherwise in writing, at or before the time baggage is accepted for porter services that acceptance of tips or gratuities by porters is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by baggage porters, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that the baggage porters are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by passengers and employees.
- c. Employers shall give notice to each of their employees of the privilege to certify the amount of

gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the method of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a)(1) and (b)(4)

§480.10 Tips of pinboys at bowling alleys.

- a. The value of gratuities or tips received by employees engaged as pinboys at bowling alleys shall be determined as follows:
 1. Such value shall be equal to the amount certified by each employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. If such statement is not submitted by an employee, such value shall be equal to two cents per game for which he sets up pins.
- b. No gratuities or tips shall be deemed received for the purpose of this section if:
 1. acceptance of tips or gratuities is prohibited by the employer, and
 2. patrons are apprised by conspicuously displayed announcements or otherwise in writing, at or before the time the bowling alley is used by them, that acceptance of tips or gratuities by pinboys is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by pinboys, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that pinboys are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by patrons and employees.
- c. Employers shall give notice to each of their employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the methods of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a)(1) and (b)(4)

§ 480.11 Tips for checkroom attendants.

- a. The value of gratuities or tips received by employees engaged as checkroom attendants, provided they are not required to remit such gratuities or tips to their employer, shall be determined as follows:
 1. Such value shall be equal to the amount certified by each employee in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. No gratuities or tips shall be deemed received for the purpose of this section if such statement is not submitted by an employee.
- b. Employers shall give notice to each of their employees of the privilege to certify the amount of gratuities or tips received and retained by him in a signed statement as herein provided. Such notice shall include information on the fact that no gratuities or tips will be deemed received in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (a)(1)

§ 480.12 Tips of maritime service employees.

- a. The following definition of terms shall apply to this section:
 1. The term vessel means any American vessel as that term is defined in the Interstate Maritime Reciprocal Arrangements which is engaged in service as a passenger vessel as such term is defined in the International Convention for Safety of Life at Sea, 1929.
 2. The term maritime service employee means any person engaged aboard such vessel in any of the following occupations:
 - i. Bartender
 - ii. Bellboy. The term bellboy includes bell captain and assistant bell captain.
 - iii. Deck steward. The term deck steward includes chief deck steward.
 - iv. Headwaiter. The term headwaiter includes stewards acting in the capacity of the headwaiter. It does not include persons who act in a supervisory capacity only and who do not as a matter of fact receive tips.
 - v. Night steward. The term night steward includes the chief night steward.
 - vi. Room steward. The term room steward includes the chief bedroom steward.
 - vii. Salon steward. The term salon steward includes lounge stewards, ballroom stewards, library stewards and smoke room stewards but excludes public room stewards not customarily engaged in serving passengers.
 - viii. Stewardess. The term stewardess includes a child's nurse.
 - ix. Waiter. The term waiter includes the salonman.
- b. The value of gratuities or tips received by the maritime service employees is hereby determined to be as follows:
 1. Such value shall be equal to the amount certified by each such maritime employee engaged aboard the vessel in a signed statement to his employer as received in the form of gratuities or tips, which statement shall be retained by the employer and submitted to the Department of Labor upon request.
 2. If such statement has not been submitted by the maritime service employee such value shall be equal to the following amounts per diem for each day of employment:

<u>Title</u>	<u>Per diem gratuity or tip</u>
Bartender	\$1.70
Bell boy	\$1.80
Deck Steward	\$2.00
Headwaiter	\$3.35
Night Steward	\$1.00
Room Steward	\$2.90
Salon Steward	\$1.75
Stewardess	\$1.65
Waiter	\$2.50

- c. No gratuities or tips shall be deemed received for the purpose of this section, if:
 1. acceptance of tips or gratuities is prohibited by the employer, and
 2. patrons are apprised by conspicuously displayed announcements, or otherwise in writing that acceptance of tips or gratuities by maritime service employees is prohibited, and
 3. the employer adopts reasonable means to insure that tips or gratuities are not received by such employees, and
 4. the employer submits to the Department of Labor a sworn statement setting forth that his employees are not allowed to accept tips or gratuities and describing the methods adopted by him in order to obtain compliance with this prohibition by patrons and employees.

- d. Employers shall give notice to each of their maritime service employees of the privilege to certify the amount of gratuities or tips received by him in a signed statement as herein provided. Such notice shall include information on the method of establishing the value of tips or gratuities in the event such statements are not submitted.

Historical note: Section amendment filed September 10, 1974, effective immediately. Changed "Division of Employment" to "Department of Labor" in (b)(1) and (c)(4)

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ARTICLE 2
RULES OF THE INDUSTRIAL COMMISSIONER

PART 481 - JOINT ACCOUNTS

(Statutory authority: Labor Law § 530; 581.3; Article 18)

Section 481.1 Joint Accounts

§ 481.1 Joint accounts.

- a. Upon the application of any two or more qualified employers engaged in the same or a related trade, occupation, profession or enterprise, or having a common financial interest, a joint account shall be established for a period which begins with the calendar quarter in which the application is filed and includes at least the two calendar years following the year in which the application is filed. Such application shall be submitted to the Department of Labor. The rate of contribution applicable to the joint account shall be computed as of the computation date in the preceding calendar year, and such rate shall apply from the first day of the calendar quarter in which the application is made to the end of that calendar year. The rate of contribution applicable to the joint account with respect to any calendar year following the calendar year in which the application is made shall be determined or redetermined as of the computation date in the preceding calendar year.
- b. The addition of a new employer or employers to an existing joint account shall be subject to the following conditions: the existing joint account shall for the purposes of establishing a new joint account be considered as though it were a single employer and the conditions governing the establishment of the joint account prescribed in subdivision (a) of this section shall apply.
- c. Not earlier than in the second calendar year following the year in which the joint account was established, an application for its dissolution may be filed by one or more of the employers included in such joint account. Such application shall be submitted to the Department of Labor. Such application shall indicate that prior notice has been given by the applicant to any employer who has not joined in the application. Upon such dissolution and as of the computation date in the calendar year in which the application is made,
 1. with respect to joint accounts established among qualified employers pursuant to subdivision 3 of section 581 of the Unemployment Insurance Law, there shall be established for each of the several employers an account balance on the basis of their individual experience as of that date;
 2. with respect to joint accounts established pursuant to subdivision 7 of section 577 of the Unemployment Insurance Law in effect on June 3, 1951 and pursuant to subdivisions (b) and (c) of this section in effect on September 7, 1951, the employer account balance credited to the Joint account on the computation date in the calendar year in which the application was filed, shall be apportioned among the individual employers in proportion to their total payrolls in the three most recently completed calendar years prior to such date. The rate of contribution applicable to the account of each employer included in any dissolved joint account shall be respectively determined or redetermined as of the computation date in the calendar year in which such application is filed, and such rates shall apply to wages paid in the following calendar year.
- d. Any employer who has filed an application for a joint account on or before December 31, 1967 may, notwithstanding the provisions of subdivision (c) of this section, dissolve the joint account as of December 31 of any year

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ARTICLE 2
REGULATIONS OF THE INDUSTRIAL COMMISSIONER

PART 482 - APPROVAL OF CAREER AND RELATED TRAINING
PURSUANT TO SECTION 599 OF THE LABOR LAW

(Statutory authority: Labor Law, §530, 599; Article 18)

Section 482.1	Statement of intent
Section 482.2	Definitions
Section 482.3	Standards for approving career and related training
Section 482.4	Standards for approving an individual for career and related training
Section 482.5	Additional factors for exercising discretion
Section 482.6	Determining the availability of funds and payment of additional benefits

Historical note: Part filed (§ 482.1 - 482.5) October 1, 1991 as emergency measure; December 23, 1991 as an emergency measure, expired 60 days after filing; February 26, 1992 as emergency measure; April 24, 1992 as emergency measure effective April 24, 1992; April 24, 1992 effective May 13, 1992.

§482.1 Statement of intent.

- a. The intent of section 599 of the Labor Law is to return the unemployed worker to the labor market with the necessary skills required to provide the claimant with the opportunity to secure employment of a substantially equal or higher skill level than the claimant's past employment. Subject to the availability of funds, additional unemployment insurance benefits provided by section 599 of the Labor Law shall be paid to a claimant who is in regular attendance at an approved career and related training program and who has exhausted regular unemployment insurance benefits and, if in effect, any other extended benefits, and provided that entitlement to a new benefit claim cannot be established.
- b. In order to avoid the dissipation of limited training funds, the Commissioner of Labor is exercising discretion not to pay additional unemployment benefits based on protracted waiting periods of more than six weeks before the claimant enters training. Accordingly, no more than 12 weeks of additional unemployment insurance benefits will be paid based on the effective days of regular benefits remaining between the time a claimant is accepted in or demonstrates application for approved training and the date the claimant begins such training.
- c. Approval to receive additional benefits while attending approved career and related training is subject to the availability of funds. The Commissioner of Labor has established uniform procedures for denying additional benefits to individuals when sufficient funds are not available, and for payment of additional benefits prospectively in the event additional funds become available at a later time.

Historical note: Section filed December 23, 1991 as emergency measure, expired 60 days after filing; February 26, 1992 as emergency measure; April 24, 1992 as emergency measure effective April 24, 1992; April 24, 1992 effective May 13, 1992.

§ 482.2 Definitions.

The following definitions of terms shall apply to this Part:

- a. Approved means approved by the Commissioner of Labor.

- b. Career and related training means any training program clearly leading to the qualifications or skills for a specific occupation, including but not limited to basic education skills, occupational skills training and skills upgrading; and consisting of one or more approved training courses or activities which require attendance at training for at least 12 hours in each week and a training period requiring not more than 24 months to complete.
- c. Competent and reliable agency means an entity approved by the State Department of Education or other appropriate State agency, or a provider of employment training services that has a record of demonstrated effectiveness in providing such services under the auspices of a government agency, or an established entity that provides satisfactory evidence to the Commissioner of Labor that it is capable of providing a program of career and related training.
- d. An approved training course means one offered by a competent and reliable agency and which:
 - 1. has a defined curriculum of appropriate duration to impart the intended skills and knowledge;
 - 2. is taught by competent instructors;
 - 3. uses appropriate instructional materials and equipment, including a written description of the skills and knowledge to be imparted and the hours devoted to instruction of pertinent skills;
 - 4. is taught in an appropriate training facility;
 - 5. requires tests for students to measure their successful achievement of the competencies taught by the course or training;
 - 6. will upgrade the claimant's existing skill or train the claimant for an occupation likely to lead to more regular long-term employment; and
 - 7. relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the State.
- e. Demonstrates application for appropriate training means the date on which the claimant applied in writing for an approved training course which accepted the claimant and was approved for the claimant.
- f. Committed funds means funds needed to pay additional benefits during the current program year to claimants in approved career and related training.
- g. Accrued obligations means funds needed to pay additional benefits in a subsequent program year to claimants in approved career and related training.
- h. Program year means a year beginning on July 1st and ending on the following June 30th.

Historical note: Section filed October 1, 1991 as emergency measure; December 23, 1991 as emergency measure, expired 60 days after filing; February 26, 1992 as emergency measure; April 24, 1992 as emergency measure effective April 24, 1992; April 24, 1992 effective May 13, 1992.

§482.3 Standards for approving career and related training.

Career and related training will be considered for approval if it is offered by a competent and reliable agency and will enhance the claimant's regular long-term employment opportunities or provide assistance where employment opportunities are or may be substantially impaired. The training need not consist of a single course or activity, nor even be given by a single agency, so long as the training is related to a single occupational goal.

Historical note: Section filed October 1, 1991 as emergency measure; December 23, 1991 as emergency measure, expired 60 days after filing; February 26, 1992 as emergency measure;

*April 24, 1992 as emergency measure effective April 24, 1992;
April 24, 1992 effective May 13, 1992.*

§482.4 Standards for approving an individual for career and related training.

- a. The course or training will upgrade the claimant's existing skill or train the claimant for an occupation likely to lead to more regular long-term employment.
- b. Employment opportunities for the claimant are or may be substantially impaired because of:
 1. existing or prospective conditions of the labor market in the locality or in the State or reduced opportunities for employment in the claimant's occupation or skill; or
 2. technological change, plant closing or plant removal, discontinuance of specific plant operations, or similar reasons; or
 3. limited opportunities for employment throughout the year due to the seasonal nature of the industry in which the claimant is customarily employed; or
 4. the claimant's personal traits such as physical or mental handicap.
- c. The course or training relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the State.
- d. The course or training is offered by a competent and reliable agency and does not require more than 24 months to complete except that the individual may be considered for approval at a later date when the course or training period remaining is 24 months or less.
- e. The claimant has the required qualifications and aptitudes to complete the course or training successfully.
- f. Approval of the individual for training for unemployment insurance purposes is required by another law.

Historical note: Section filed October 1, 1991 as emergency measure; December 23, 1991 as emergency measure, expired 60 days after filing; February 26, 1992 as emergency measure; April 24, 1992 as emergency measure effective April 24, 1992; April 24, 1992 effective May 13, 1992.

§ 482.5 Additional factors for exercising discretion.

- a. The commissioner may exercise discretion to consider other relevant factors for disapproving training in order to prevent inappropriate use of unemployment insurance funds such as the claimant does not demonstrate that he or she is achieving the competencies being taught. For good cause shown, the commissioner may waive a standard not required by statute in order to approve training. In order to establish good cause, the applicant for a waiver must demonstrate that compliance with the regulation is impossible or would cause extreme hardship to an applicant, and present convincing evidence that participation in proposed training is likely to lead to long-term employment even though the training does not meet the regulatory standards.
- b. A claimant attending an approved training course or program under this section may receive additional benefits of up to 104 effective days following exhaustion of regular and, if in effect, any other extended benefits, provided that entitlement to a new benefit claim cannot be established. Certification of continued satisfactory participation and progress in such training course or program must be submitted to the commissioner prior to the payment of any such benefits. The duration of such additional benefits shall in no case exceed twice the number of effective days of regular

benefits to which the claimant is entitled at the time the claimant is accepted in, or demonstrates application for appropriate training. In no event shall a claimant receive additional benefits for more than 48 effective days based on the time elapsed between the date claimant is accepted in or demonstrates application for appropriate training and the date the claimant begins such training.

Historical note: Section filed October 1, 1991 as emergency measure; December 23, 1991 as emergency measure, expired 60 days after filing; February 26, 1992 as emergency measure; April 24, 1992 as emergency measure effective April 24, 1992; April 24, 1992 effective May 13, 1992.

§482.6 Determining the availability of funds and payment of additional benefits.

- a. Approval to receive additional benefits while attending approved career and related training is subject to the availability of funds. The commissioner has established uniform procedures for denying additional benefits to individuals when sufficient funds are not available, and for payment of additional benefits respectively in the event additional funds become available at a later time.
- b. At the beginning of each program year, to the extent funds are available, the commissioner will establish the priority for the payment of committed funds as follows:
 1. the accrued obligations from the prior program year for individuals who were previously approved for additional benefits and who remain eligible to receive additional benefits;
 2. the amounts needed to pay prospective additional benefits to otherwise eligible individuals who were previously not paid additional benefits because funds were not available; and
 3. the amounts needed to pay new claimants who are otherwise eligible for additional benefits.
- c. The commissioner will determine the availability of funds on an ongoing basis by subtracting actual expenditures and committed funds from the amount of money allocated by the Legislature to pay additional benefits in the program year.
 1. When the sum of actual expenditures and committed funds equal or exceed the amount of money allocated by the Legislature for any program year, new applications for the payment of additional benefits will not be authorized.
 2. At the time that the commissioner determines that additional funds have become available, new applications for payment of additional benefits will be authorized and paid pursuant to subdivision (c) of this section.
- d. In the event an individual is not approved for additional benefits because funds are not available, the individual will have priority to receive additional benefits prospectively pursuant to subdivision (a) of this section if additional funds become available and the individual is still attending the same approved career and related training. Such priority will be determined based on the date that the individual was approved by the commissioner for such career and related training. Prospective benefit payments will commence as of the date that the commissioner determines that funds are available and the individual is eligible to receive additional benefits.

ARTICLE 3
REGULATIONS OF THE INDUSTRIAL COMMISSIONER
PART 490 - ADMINISTRATIVE INTERPRETATIONS

Section 490.1	Payments to persons in military services
Section 490.2	Status of pickets
Section 490.3	Agricultural labor
Section 490.4	Day of work
Section 490.5	Total unemployment
Section 490.6	Personal or domestic service
Section 490.7	Tips of service employees serving catered or banquet meals

§ 490.1 Payments to persons in military services.
(*Unemployment Insurance Law, §517, 518*).

Any payments made by an employer voluntarily and without contractual obligation, to or in behalf of a person for periods during which such person performs military services in the armed forces of the United States or any State, do not constitute wages on which contributions are payable under the New York State Unemployment Insurance Law.

§ 490.2 Status of pickets
(*Unemployment Insurance Law, § 511, 512, 517, 592*).

- a. All persons engaged by a labor union for the purpose of picketing are employees of the union provided remuneration is paid for such services. The fact that a person so engaged for the purpose of picketing is a member of the union, is on strike, or is or was an employee of the employer whose business is picketed does not affect his status as an employee of the union.
- b. Payments made by labor unions to persons performing picket services are not "remuneration" within the meaning of the Unemployment Insurance Law:
 1. if they represent reimbursement for expenses which are either separately accounted for to the union by the person performing picket services or fixed in a reasonable amount by agreement between the parties before the services as a picket are rendered, or
 2. if they represent strike benefits. Strike benefits are payments made by a labor union, pursuant to union rules and regulations, because of a strike, to its members participating in the strike, to assist them financially during the strike, provided such benefits are not conditioned in fact or in amount upon the rendering of services during the strike.
- c. An employee who lost his employment because of a strike continues to have lost his employment on account thereof even after intervening performance of picket services for remuneration. The period of suspension of benefit rights is not lifted by such intervening services.

§ 490.3 Agricultural labor
(*Unemployment Insurance Law, §511*)

- a. Services as an incident to farming operations.
 1. The provision that services 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" any agricultural or horticultural commodity, are excluded from the definition of "employment" if performed as an incident to farming operations, pertains to any such commodity, including fruits and vegetables.

2. Such services can be an "incident to farming operations" only if performed by employees of the producer of the commodity but irrespective of the location of the point at which such performance takes place.
 3. In order than any such performance be considered "an incident to farming operations" it must be definitely established that production of agricultural or horticultural commodities is the primary purpose in the over-all operations of the employer.
- b. Services as an incident to preparation of fruits or vegetables for market.
1. The application of the provision that in the case of fruits and vegetables, such services are excluded from the definition of "employment", if performed "as an incident to the preparation of such fruits or vegetables for market", requires that the producer have title in or control over the commodity, or both, at the time of such performance but does not require that the services be performed by the employees of the producer.
 2. "Preparation of such fruits or vegetables for market" does not include:
 - i. storing or handling during storage after the commodity has reached the condition in which the producer intends to dispose of it, or
 - ii. operations in connection with the conversion of the primary product into a secondary derivative, such as the manufacture of cider from apples or grape juice from grapes.
- c. Terminal market.
1. Services in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption constitutes "employment" within the meaning of the law even if performed by employees of the producer.
 2. A commodity has been delivered to "a terminal market for distribution for consumption" when it has reached the condition in which the producer intends to dispose of it by transferring title and control and has reached the point at which such disposal is ultimately made.

§ 490.4 Day of work

(Unemployment Insurance Law, § 522, 523).

- a. A day, for purposes of determining employment or unemployment, is the calendar day running from midnight to midnight. If an employee begins a shift of work before midnight of one calendar day and the shift continues through midnight into the next calendar day, the day on which the shift began is the day of employment.
- b. If an employee works on a shift beginning before midnight and continues working beyond the end of the shift but does not complete the succeeding shift and midnight occurs during the first or succeeding shifts, only the day on which the first shift began is a day of employment.
- c. If an employee works for two successive shifts and midnight occurs during the second of these shifts, only the day on which the first shift began is a day of employment.
- d. If an employee works for two or more complete shifts and midnight occurs during the first one of these shifts, both the calendar day ending with that midnight and the succeeding calendar day are days of employment.

§ 490.5 Total unemployment

(Unemployment Insurance Law, § 522).

- a. Days of rest and absence with pay. A claimant who is capable of and available for work is totally unemployed on Sundays, holidays and other days of rest scheduled by his employer, even if an employer-employee relationship exists on such days, provided he does not work on such days and they are not days of paid vacation or other paid leave.

- b. Termination of employment if dismissal payment is made. An employee's "employment" by an employer who has discharged him permanently or has laid him off for an indefinite period (no date for his return to work having been established) is terminated after the last day on which he was required to report for work even if he receives payments from the employer in addition to remuneration for the specific hours, days, weeks, or other periods during which he performed actual services. This principle applies likewise if such payments are made in lieu of paid vacation to which the employee is entitled or in lieu of notice.

§ 490.6 Personal or domestic service

(Unemployment Insurance Law, §560)

The term persons employed in personal or domestic service in private homes shall include all persons employed by an employer in his capacity as a house holder, as distinguished from persons employed by the employer in the pursuit of a trade, occupation, profession, enterprise, or avocation.

§ 490.7 Tips of service employees serving catered or banquet meals

(Unemployment Insurance Law, § 517, 530)

- a. Whenever an employer and patron agree, under any of the conditions outlined in paragraphs (1) through (3) of this subdivision, that a service employee serving catered or banquet meals shall receive a specified amount or percentage called a gratuity, tip or other similar designation, the aggregate of the wages and the gratuities actually disbursed to the service employee by the employer shall constitute remuneration as that term is defined by section 517 of the Unemployment Insurance Law. No other gratuities shall be deemed to have been received:
 1. If there is an agreement between the employer and the union having jurisdiction over the banquet waiters providing that the service employees shall receive from the employer for each function a fixed sum designated as "wages and tips" and the agreement prohibits any soliciting of gratuities by waiters from patrons.
 2. If there is an agreement between the employer and the union providing:
 - i. that the service employees shall receive from the employer an aggregate amount which includes the payment at an agreed rate per hour and a sum designated as "tips";
 - ii. that the amount of such tips by agreement shall represent a proportionate share or a stipulated percentage of the patron's bill or a fixed amount per person;
 - iii. that the agreement specifically prohibits the solicitation of gratuities.
 3. If there is an agreement providing that the service employee shall receive a specified amount for services performed and a proportionate share of a total gratuity given by the patron to the employer and there is no prohibition in the agreement against solicitation for gratuities, but where in actual practice there is no solicitation because of arrangements between the employer and the patron.
- b. Provisions of section 480.4 insofar as it applies to catered or banquet meals shall not be applicable to fact situations covered in paragraphs (a)(1), (2) and (3) of this section but shall apply whenever the service employee receives from an employer an agreed amount as cash wages for services performed and in addition receives gratuities from the individual to whom the catered or banquet meals are served and when gratuities are not the subject of prior negotiation by and between the employer and the patron.

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