

Chapter 657

Unemployment Compensation

DEFINITIONS

657.005	Short title
657.010	General definitions
657.015	Employee
657.020	Employing unit
657.025	Employer
657.030	Employment; generally
657.035	Employment; effect of place of performance of services
657.040	Employment; when service for pay excluded
657.045	Employment; agricultural labor excluded
657.050	Employment; domestic service and casual labor excluded
657.055	Employment; maritime service
657.060	Employment; family service excluded
657.065	Employment; governmental service
657.070	Employment; eleemosynary services excluded
657.075	Employment; service under Railroad Unemployment Insurance Act excluded
657.080	Employment; news delivery service
657.085	Employment; service by real estate and insurance agents
657.090	Employment; petroleum products distributors
657.095	Payroll
657.100	Unemployment
657.105	Wages; generally
657.110	Wages; fringe benefits prior to 1951
657.115	Wages; fringe benefits after 1950
657.120	Wages; retirement benefits
657.125	Wages; disability benefits
657.130	Wages; payments from certain trusts and annuities
657.135	Wages; payments to persons over 65

BENEFITS AND CLAIMS

657.155	Benefit eligibility conditions
657.160	Availability eligibility condition, effect of marriage or pregnancy on
657.165	Waiting period eligibility condition, limitation on
657.170	Extending base year for eligibility condition of minimum wage during base year
657.175	Disqualification for voluntarily leaving work without good cause
657.180	Disqualification if discharged for misconduct
657.185	Disqualification for refusal to accept suitable work
657.190	Suitable work factors
657.195	Suitable work exceptions
657.200	Labor dispute disqualification
657.205	Deduction of dismissal or separation pay
657.210	Disqualification for compensation in other jurisdictions
657.215	Disqualification for misrepresentation
657.220	Definitions for ORS 657.225 to 657.245
657.225	Annual determination of employer as seasonal employers on request
657.230	Determination of seasonal employer's off season and active season

657.235	Determination of seasonality after non-operation or change in operation
657.240	Notice of seasonality determination; hearing; judicial review
657.245	Amount of benefits for employees of seasonal employer
657.250	Amount of benefits for employees generally
657.255	Method of payment of benefits; payment of benefits due deceased person
657.260	Filing claims for benefits; employer to post statements concerning claim regulations
657.265	Initial determination of claim by deputy; request for a hearing
657.270	Hearing before referee; application for review
657.275	Review by commission
657.280	General procedure and records concerning disputed claims
657.285	Judicial review
657.290	Continuous jurisdiction of commission
657.295	Witness fees; disputed claim expenses; counsel fees
657.300	False statements by employer
657.305	Fraud in obtaining benefits
657.310	Recovery or deduction of benefits paid because of misrepresentation of recipient
657.315	Recovery or deduction of benefits paid erroneously
657.320	Cancellation of unrecoverable benefits

CONTRIBUTIONS BY EMPLOYERS; COVERAGE; RATE

657.405	Definitions
657.410	Minimum wage for employee without fixed wage
657.415	When employer ceases to be subject to this chapter
657.420	Election of coverage by employers not otherwise subject
657.425	Election of coverage for services that do not constitute employment as defined in this chapter
657.430	Contribution rates based on experience
657.435	Base rate for first three years
657.440	Rates for 1948 and 1949
657.445	Rates for 1950 and 1951
657.450	Rates for 1952 and after
657.455	Modification of rates; effect of gifts or voluntary payments
657.460	Minimum rate if fund falls below minimum amount
657.465	Manner of charging benefits to employer
657.470	Rate computed on basis of estimates if employer fails to file or files insufficient report
657.475	Where a number of the same workers are normally employed by several employers; records; contributions; charging benefits
657.480	Effect of transfer of employing unit

- 657.485 Notice of rate; procedure for redetermination; judicial review
 657.490 Employer or his employe has no prior right to employer's contributions
 657.495 Fraud in lowering contributions

COLLECTION OF CONTRIBUTIONS

- 657.505 Payment of and liability for contributions
 657.510 Refunds
 657.515 Delinquent contributions; interest; civil penalties; collection by civil action
 657.520 Claims for contribution are preferred
 657.525 Lien on subjects and products of labor for which contributions are due
 657.530 Lien on property used in connection with employment on which contributions are due
 657.535 Liens under ORS 657.525 or 657.530; priority; filing statement of lien; foreclosure
 657.540 Lien on all property of defaulting employer; recording; priority; foreclosure
 657.545 Release of lien of ORS 657.540 by bond
 657.550 Limitations on actions to collect contributions or foreclose liens
 657.555 Authority of commission to release, compromise or satisfy liens
 657.560 Joining commission in actions involving title of property subject to commission's lien
 657.565 Unlawful practices of employer

UNEMPLOYMENT COMPENSATION COMMISSION; ADMINISTRATION GENERALLY

- 657.605 Unemployment Compensation Commission; members; salary
 657.610 Powers and duties generally; rules and regulations
 657.615 Investigations and recommendations to the legislature
 657.620 Determination of adequate fund reserve; modification of benefits and eligibility regulations in case of emergency
 657.625 Publication of rules; annual and special reports
 657.630 Quasi-judicial powers in administrative hearings
 657.635 Circuit court to enforce obedience to subpoenas
 657.640 Attorney General to represent commission
 657.645 Appointment of administrator; qualifications; duties
 657.650 Appointment of officers and employes
 657.655 Certified copies of commission records as evidence

- 657.660 Records and reports of employing units
 657.665 Information from employing unit records confidential
 657.670 Disclosure of information to federal agencies permitted
 657.675 Experience-Rating Council; members; expenses
 657.680 Duties of council; report

OREGON STATE EMPLOYMENT SERVICE

- 657.705 Oregon State Employment Service
 657.710 Free public employment offices
 657.715 Wagner-Peyser Act accepted
 657.720 Cooperation with federal agencies, political subdivisions or private organizations in maintaining public employment service
 657.725 Employment districts

RECIPROCAL AND COOPERATION AGREEMENTS

- 657.755 Cooperation with federal agencies administering unemployment compensation laws
 657.760 Reciprocal agreements on coverage and collection of contributions
 657.765 Reciprocal agreements concerning payroll contributions for out-of-state work
 657.770 Reciprocal agreements concerning wages used as basis for benefits

FUNDS

- 657.805 Unemployment Compensation Trust Fund
 657.810 Deposit and use of fund
 657.815 Unemployment Compensation Benefit Fund
 657.820 Unemployment Compensation Administration Fund
 657.825 Expenditure of federal funds; restitution of moneys lost or improperly expended
 657.830 State Treasurer as custodian of funds

MISCELLANEOUS PROVISIONS

- 657.855 Assignment of benefits; exemption; waiver of rights
 657.860 Agreement of employe to pay contributions void
 657.865 No vested rights
 657.870 When operation of chapter ceases

PENALTIES

- 657.990 Penalties

CROSS REFERENCES

- 657.045
 See 12 U.S.C. 1141j(g) for section 15(g) of the Federal Agricultural Marketing Act
 657.510
 Refunds for contributions erroneously collected for certain governmental service, 657.065
 657.515
 Collection of contributions by action on bond of public contractor, 279.520 to 279.534
 657.605
 General provisions relating to state agencies, Ch. 182
 Salary of commissioners, 292.317, 656.404

- Salary of commissioners, one-half paid from Industrial Accident Fund, 656.404
 Subsistence and mileage allowances for travel by state officers and employes, 292.210 to 292.260
 657.610
 Rules and regulations of administrative agencies, Ch. 183
 657.645
 Salary of administrator, 292.317
 657.650
 Attorneys of state agencies, control of Attorney General over, Ch. 180
 Civil service, employes subject to, 240.205, 240.210

657.805

Auditing accounts of Unemployment Compensation
Commission, 297.220

657.870

For title IX of the Federal Social Security Act see
26 U.S.C.A. 1600 to 1611 and 42 U.S.C.A. 1104

DEFINITIONS

657.005 Short title. This chapter shall be known and may be cited as the Unemployment Compensation Law.

657.010 General definitions. As used in this chapter, unless the context requires otherwise:

(1) "Base year" means the calendar year immediately preceding the benefit year.

(2) "Benefits" means the money allowances payable to unemployed persons under this chapter.

(3) "Benefit year" means the period of 12 consecutive months ending June 30.

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

(5) "Commission" means the State Unemployment Compensation Commission.

(6) "Contributions" means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.

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

(8) "Fund" means the Unemployment Compensation Trust Fund.

(9) "State" includes, in addition to the states of the United States of America, Alaska, Hawaii and the District of Columbia.

(10) "Week" means any period of seven consecutive calendar days ending at midnight, as the commission may, by regulation, prescribe. The commission may by regulation prescribe that a "week" shall be "in," "within," or "during" that benefit year which includes the greater part of such week.

657.015 Employee. As used in this chapter, unless the context requires otherwise, "employee" means any person, including aliens and minors, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer subject to this chapter in an employment subject to this chapter.

657.020 Employing unit. As used in this chapter, unless the context requires otherwise, "employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock

company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, or the legal representative of a deceased person, who has or subsequent to January 1, 1937, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are deemed to be employed by a single employing unit for all the purposes of this chapter.

657.025 Employer. As used in this chapter, unless the context requires otherwise, "employer" means any employing unit which during any calendar quarter has a total payroll of \$500 or more, and which employs in any one day in each of six separate weeks during such period four or more persons in an employment subject to this chapter. Whenever any helper, assistant or employee of an employer engages any other person in the work which said helper, assistant or employee is doing for the employer, with the employer's actual, constructive or implied knowledge, such employer shall, for all purposes of this chapter, be deemed the employer of such other person, whether such person is paid by the said helper, assistant or employee, or by the employer. All persons employed by an employer in all of his several places of employment maintained within the state shall be treated as employed by a single employer for the purposes of this chapter. [Amended by 1953 c.494 §1]

657.030 Employment; generally. As used in this chapter, unless the context requires otherwise, and subject to ORS 657.035 to 657.090, "employment" means service for an employer, including service in interstate commerce within the United States, performed for remuneration or under any contract of hire, written or oral, express or implied.

657.035 Employment; effect of place of performance of services. (1) The term "employment" includes an individual's entire service, performed within or both within and without this state if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state and (A) the base of operations,

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

(2) Service performed within this state but not covered under subsection (1) of this section is deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the Federal Government.

(3) Services not covered under subsection (1) of this section, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the Federal Government, are deemed to be employment subject to this chapter if the commission approves the election of the employer for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter. Such an election may be canceled by the employer by filing a written notice with the commission between January 1 and January 15 of any year stating his desire to cancel such election or at any time by submitting to the commission satisfactory proof that the services designated in such election are covered by an unemployment compensation law of another state or of the Federal Government.

(4) Service is deemed to be localized within this state if:

(a) The service is performed entirely within this state; or

(b) The service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within the state.

657.040 Employment; when service for pay excluded. Services performed by an individual for remuneration are deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that:

(1) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(2) Such individual customarily is en-

gaged in an independently established business of the same nature as that involved in the contract of service.

657.045 Employment; agricultural labor excluded. (1) "Employment" does not include agricultural labor.

(2) "Agricultural labor" includes all services performed:

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

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

(c) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

(d) 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, but only if such service is performed as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. This paragraph does not apply to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) In the employ of any farmers' cooperative association, organized under the laws of the State of Oregon and operated for

the mutual benefit of its members; provided, that such association does not sell its commodities for nonmembers in any amount greater in value than such as are sold for its members, or does not sell its commodities to nonmembers in any amount greater in value than such as are sold to its members, and all earnings are apportioned as dividends in accordance with the amount of business transacted by each such member through the association.

(3) As used in this section, "farms" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

657.050 Employment; domestic service and casual labor excluded. "Employment" does not include:

(1) Domestic service in a private home and service performed after January 1, 1941, in the employ of a local college club, or local chapter of a college fraternity or sorority.

(2) Casual labor not in the course of the employer's trade or business.

657.055 Employment; maritime service. "Employment" does not include services performed as an officer or member of the crew of any seagoing vessel primarily engaged in interstate or foreign, open ocean or high seas navigation. However, it is not the intent of this section to exclude from the term "employment" services performed as an officer or member of the crew of any vessel or other craft having its home port in Oregon, and operated by an employer and primarily engaged in navigation of the Columbia and Willamette Rivers and their tributaries to the extent that this state has jurisdiction over such services.

657.060 Employment; family service excluded. "Employment" does not include service performed by a person in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother.

657.065 Employment; governmental service. "Employment" does not include:

(1) Service performed in the employ of the United States Government or any instrumentality of the United States, except that if the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an

unemployment fund under a state unemployment compensation law, then, to the extent permitted by Congress, and after the date such permission becomes effective, this chapter shall be effective as to such instrumentalities and as to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. However, if this state is not certified by the Secretary of Labor under section 1603(c) of the Federal Unemployment Tax Act for any year, then the payments required of such instrumentalities with respect to such year shall be deemed to have been erroneously collected within the meaning of ORS 657.510 and shall be refunded by the commission from the fund in accordance with ORS 657.510.

(2) Service performed in the employ of the state, or a political subdivision or instrumentality thereof.

657.070 Employment; eleemosynary services excluded. "Employment" does not include service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

657.075 Employment; service under Railroad Unemployment Insurance Act excluded. "Employment" does not include service performed under the Railroad Unemployment Insurance Act (52 Stat. 1094).

657.080 Employment; news delivery service. "Employment" does not include service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or service performed by an individual in the delivery or distribution of newspapers whose remuneration primarily consists of the difference between the amount he pays or is obligated to pay for the newspapers and the amount he receives or is entitled to receive on distribution or resale thereof.

657.085 Employment; service by real estate and insurance agents. "Employment" does not include service performed by a real estate broker, real estate salesman, real

estate agent, insurance agent or insurance solicitor to the extent that he is compensated by commission.

657.090 Employment; petroleum products distributors. "Employment" does not include service performed by an individual or partnership in the distribution of petroleum products whose remuneration for such service primarily consists of the difference between the amount he pays or is obligated to pay for the petroleum products and the amount he receives or is entitled to receive from the sale thereof or whose remuneration for such service primarily consists of commissions.

657.095 Payroll. As used in this chapter, unless the context requires otherwise, "payroll" means and includes all wages paid to employees in any employment subject to this chapter; provided, for payroll contribution purposes pursuant to this chapter, "wages" excludes remuneration earned by an employee from each employer in a calendar year which is in excess of \$3,000. The remuneration paid by an employer located in this state for work performed in other states by an employee who works part of the time in a calendar year in this and other states shall be included in computing the first \$3,000 of wages paid when the work in said other states is covered by unemployment compensation laws. Proof of the payment of payroll contributions on the wages of the employee while working in such other states shall be in such manner as the commission shall prescribe.

657.100 Unemployment. An individual is deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The commission shall prescribe such regulations as it deems necessary with respect to the various types of unemployment.

657.105 Wages; generally. As used in this chapter, unless the context requires otherwise, and subject to ORS 657.110 to 657.135, "wages" means all remuneration for employment, including the cash value, as determined by the commission under its regulations, of all remuneration paid in any medium other than cash.

657.110 Wages; fringe benefits prior to 1951. "Wages" does not include the amount of any payment made before January 1, 1951, to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund; to provide for any such payment), on account of retirement, sickness or accident disability, medical and hospitalization expenses in connection with sickness or accident disability or death, if the employee:

(1) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contribution to premiums) paid by his employer; and

(2) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his service with such employer.

657.115 Wages; fringe benefits after 1950. "Wages" does not include the amount of any payment made after 1950, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of:

(1) Retirement.

(2) Sickness or accident disability.

(3) Medical or hospitalization expenses in connection with sickness or accident disability.

(4) Death.

657.120 Wages; retirement benefits. "Wages" does not include the amount of any payment made by an employing unit after 1950 to an individual performing service for it, including any amount paid by an employing unit for insurance or annuities, or into a

fund, to provide for any such payment, on account of retirement.

657.125 Wages; disability benefits. "Wages" does not include the amount of any payment made on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, after 1950 by an employing unit to, or on behalf of, an individual performing service for it after the expiration of six calendar months following the last calendar month in which the individual worked for such employing unit.

657.130 Wages; payments from certain trusts and annuities. "Wages" does not include the amount of any payment made after 1950 by an employing unit to, or on behalf of, an individual performing service for it, or his beneficiary:

(1) From or to a trust exempt from tax under section 165(a) of the United States Internal Revenue Code at the time of such payment unless such payment is made to an individual performing service for the trust as remuneration for such service and not as a beneficiary of the trust; or

(2) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5) and (6) of the United States Internal Revenue Code.

657.135 Wages; payments to persons over 65. "Wages" does not include the amount of any payment, other than vacation or sick pay, made after 1950 to an individual after the month in which he attains the age of 65 years, if he did not work for the employing unit in the period for which such payment is made.

657.140 to 657.150 [Reserved for expansion]

BENEFITS AND CLAIMS

657.155 Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

(1) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe. However, the commission may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other

types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this chapter; provided, that no such regulation conflicts with ORS 657.255.

(2) He has made a claim for benefits with respect to such week in accordance with ORS 657.260.

(3) He is able to work, is available for work, and is actively seeking and unable to obtain suitable work.

(4) He has been unemployed for a waiting period of one week.

(5) He has during his base year earned wages for employment by employers equal to not less than \$400.

657.160 Availability eligibility condition, effect of marriage or pregnancy on. In addition to other individuals who may be unavailable for work:

(1) An individual who leaves work and gets married or who marries and leaves work is deemed to be unavailable for work for a period of four weeks subsequent to the termination of the employment.

(2) An individual who becomes pregnant is deemed unavailable for work for a period commencing six weeks before the probable date of her expected confinement and ending four weeks after the date her pregnancy was terminated.

657.165 Waiting period eligibility condition, limitation on. No week shall be counted as a week of unemployment for the purposes of subsection (4) of ORS 657.155:

(1) Unless it occurs within the benefit year that includes the week for which the unemployed individual claims payment of benefits; provided, this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment. The one week immediately preceding the benefit year that includes the week for which the unemployed individual claims payment of benefits, if a part of one uninterrupted period of unemployment which continues into such benefit year, is deemed, for the purposes of this section only, to be within such benefit year as well as within the preceding benefit year.

(2) If benefits have been paid with respect thereto.

(3) Unless the unemployed individual was eligible for benefits with respect thereto as provided in ORS 657.155 to 657.215, except for the requirements of subsection (4) of ORS 657.155.

657.170 Extending base year for eligibility condition of minimum wage during base year. If the commission finds that during his base year any individual has been incapable of work during the greater part of his working time in any calendar quarter, such base year shall be extended a calendar quarter. No such extension of an individual's base year shall exceed four calendar quarters. [Amended by 1953 c.646 §2]

657.175 Disqualification for voluntarily leaving work without good cause. An individual is disqualified for benefits for the calendar week in which such individual has left work voluntarily without good cause, if so found by the commission, and for the four weeks immediately subsequent thereto.

657.180 Disqualification if discharged for misconduct. An individual is disqualified for benefits for the calendar week in which he has been discharged for misconduct connected with his work, if so found by the commission, and for not less than four or more than eight weeks immediately subsequent thereto, as determined by the commission in each case, according to the seriousness of the misconduct.

657.185 Disqualification for refusal to accept suitable work. An individual is disqualified for benefits, if the commission finds that he has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the commission, or to accept suitable work when offered him, or to return to his customary self-employment, if any, when so directed by the commission. Such disqualification shall continue for the calendar week in which any such failure occurred and for the four weeks immediately subsequent thereto.

657.190 Suitable work factors. In determining whether or not any work is suitable for an individual, the commission shall consider, among other factors, the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation and the distance of the available work from his residence.

657.195 Suitable work exceptions. (1) Notwithstanding any other provisions of this chapter, no work is deemed suitable and benefits shall not be denied under this chapter to

any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute.

(b) If the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(2) On and after November 8, 1938, and for the purposes of this chapter only, this section shall have the same meaning as the provisions of section 1603(a) (5) of the Federal Unemployment Tax Act.

657.200 Labor dispute disqualification.

(1) An individual is disqualified for benefits for any week with respect to which the commission finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed or at which he claims employment rights by union agreement or otherwise.

(2) When an employer operates two or more premises in the conduct of his business they shall be considered one premises for the purposes of this chapter if the labor dispute at one makes it impossible or impractical to conduct work at the others or in a normal manner.

(3) This section does not apply if it is shown to the satisfaction of the commission that the individual:

(a) Is not participating in or financing or directly interested in the labor dispute which caused his unemployment; and

(b) Does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute.

657.205 Deduction of dismissal or separation pay. An individual is disqualified for benefits for any week with respect to which he is receiving or has received remuneration in the form of wages in lieu of notice or as a dismissal or separation allowance; provided, that if the remuneration received is less than the benefits which would otherwise be due

under this chapter, he is entitled to receive for such week; if otherwise eligible, benefits reduced by the amount of such remuneration.

657.210 Disqualification for compensation in other jurisdictions. An individual is disqualified for benefits for any week with respect to which or a part of which he has received unemployment benefits under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

657.215 Disqualification for misrepresentation. An individual is disqualified for benefits for a period not to exceed 26 weeks whenever the commission finds that he has wilfully made a false statement or misrepresentation, or wilfully failed to report a material fact to obtain any benefits under this chapter. The length of such period of disqualification and the time when such period begins shall be determined by the commission in its discretion, according to the circumstances in each case. The commission may cancel such disqualification wholly or in part as it deems proper and equitable.

657.220 Definitions for ORS 657.225 to 657.245. As used in ORS 657.225 to 657.245:

(1) "Nonseasonal wages" means all wages earned by an employee in employment during his base year other than the wages earned from all seasonal employers in such employer's active seasons.

(2) "Operating unit" is any unit or part of an employer's business which is substantially the same as the total operations of other employers who have been determined to be seasonal employers with respect to their total operations.

(3) "Primary seasonal employer" means the employer from whom the employee earned the greatest amount of wages in such employer's active season.

657.225 Annual determination of employer as seasonal employers on request. Annually, upon application of the employer only, the commission shall determine as seasonal employers any employer or operating unit which has reduced its employment in each of the last four completed calendar years during the same period or periods of 12 consecutive weeks or more to such an extent that the payroll for each week of such period or periods is less than 45 percent of the average

weekly payroll for the three four-week periods of the year in which the payroll is highest.

657.230 Determination of seasonal employer's off season and active season. (1) The commission shall determine the "off season" with respect to a seasonal employer as that period or periods of the year during which his employment in each of the last four completed calendar years has been reduced as described in ORS 657.225.

(2) "Active season" with respect to a seasonal employer means those weeks of the calendar year which are not included in the off season.

657.235 Determination of seasonality after nonoperation or change in operation. Whenever the commission finds that an employer has not operated during the entire period of the last four completed calendar years, or whenever the commission finds that an employer, within the last four completed calendar years, has so changed the type or location of his operations that his operating experience prior to the time of such change is not suitable for the purpose of determining whether he is at present a seasonal employer, or for the purpose of determining his present off season or active season, then the commission in its discretion may make a determination respecting such employer based on the practice of other employers in the same industry operating under essentially similar conditions.

657.240 Notice of seasonality determination; hearing; judicial review. (1) Whenever the commission has found an employer to be a seasonal employer, such employer and his employees shall be notified by means of notice, which shall be displayed in a conspicuous manner about such employer's works, and in a sufficient number of places reasonably to inform his workmen of the fact.

(2) Further notice also shall be given to employees by publishing notice that the employer has been determined to be a seasonal employer in a newspaper published in the county where the seasonal employer operates, and if there is no newspaper published in that county, then in a newspaper published within the state and of general circulation in that county. No determination shall become final until such notice has appeared in such newspaper for two consecutive weeks.

(3) If any interested party makes a written request for a hearing before the commis-

sion within 10 days from the date of last publication of the notice, the commission shall hold a hearing and allow any party to be heard.

(4) After the hearing the commission shall affirm, modify or retract its determination respecting the employer and promptly notify any party who had requested the hearing and at the discretion of the commission any other party who had participated in the hearing.

(5) Within 20 days after the decision of the commission has been rendered, any party who participated in the hearing may file a petition for review in the circuit court of the county in which he resides or in which the employer has his principal place of business. Such review shall proceed as provided in ORS 657.485.

657.245 Amount of benefits for employees of seasonal employer. (1) An employee of a seasonal employer who qualifies for benefits under ORS 657.155 to 657.215 shall, during that part of his benefit year which corresponds to the off season of his primary seasonal employer in his base year, be entitled to benefits amounting to one-third of his nonseasonal wages computed to the nearest multiple of \$1, provided such benefits equal or exceed his weekly benefit amount. During the balance of his benefit year he shall be entitled to the then remaining balance of his maximum total benefits.

(2) However, where a seasonal employer has more than one active season in any one year, the earnings of an employee in all of said employer's such active seasons shall be taken into consideration in determining said employee's primary seasonal employer, and all such active seasons of said employer in which said employee was employed shall be considered as one active season for the purpose of determining benefits payable to said employee.

(3) This section is not applicable with respect to any employee who during his base year has earned wages, other than those earned from his primary seasonal employer during the active season of such employer, in excess of 25 percent of his total base year wages, or has earned at least \$25 in bona fide employment in each of the completed four-week periods of his primary seasonal employer's off season. If said employment is not covered employment under this chapter, it may be proved by affidavit of the employer or by other evidence satisfactory to the commis-

sion, giving the same, stating that it was bona fide and giving the amount earned. Such affidavit otherwise shall be in such form and shall provide for such other information as the commission may require.

657.250 Amount of benefits for employees generally. (1) An individual shall be paid benefits during his benefit year in an amount which is to be determined by taking into account the claimant's earnings in subject employment in his base year.

(2) The total amount that may be paid as benefits to an eligible individual with respect to any one benefit year commencing after June 30, 1951, shall be one-third of such individual's base year wages, computed, if not a multiple of \$1, to the next lower multiple of \$1; provided, such total amount shall not exceed the sum of \$650.

(3) The weekly benefit amount that may be paid each eligible individual in any one benefit year subsequent to June 30, 1951, shall be determined in accordance with the following schedule:

Base Year Wage Credits	Weekly Benefit Amount
Less than \$400	None
\$ 400 to \$ 479.99	\$ 15
480 " 629.99	16
630 " 779.99	17
780 " 929.99	18
930 " 1079.99	19
1080 " 1229.99	20
1230 " 1379.99	21
1380 " 1529.99	22
1530 " 1679.99	23
1680 " 1829.99	24
1830 and over	25

(4) Each eligible individual who is employed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the remuneration, if any, payable to him with respect to such week which is in excess of \$2; provided, that when such resulting amount is not a multiple of \$1, it shall be computed to the nearest multiple of \$1.

657.255 Method of payment of benefits; payment of benefits due deceased person. (1) Benefits shall be payable from the fund and shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

(2) In the event of the death of any person to whom benefits are due under this chapter, but which benefits remain unpaid in whole or in part, such benefits may be

paid to any person or persons designated by the commission in the following order:

- (a) Surviving spouse.
- (b) Surviving children, including adopted children.
- (c) Mother or father of the deceased.

657.260 Filing claims for benefits; employer to post statements concerning claim regulations. (1) Claims for benefits shall be filed in accordance with such regulations as the commission may prescribe.

(2) Each employer shall post and maintain printed statements concerning such regulations or such other matters as the commission may by regulation prescribe in places readily accessible to individuals in his service and shall make available to each such individual copies of printed statements or materials relating to claims for benefits as the commission may by regulation prescribe. Such printed statements shall be supplied by the commission to each employer without cost to him.

(3) Every person making a claim shall certify that he has not, during the week with respect to which benefits are claimed, received wages or compensation for any employment, whether subject to this chapter or not, otherwise than as specified in his claim.

657.265 Initial determination of claim by deputy; request for a hearing. (1) A deputy designated by the commission shall promptly notify the claimant's most recent employer of the filing of the claim, shall examine promptly the claim and, on the basis of the facts found by him, shall determine the total amount of wages paid to the claimant during his base year and whether or not such amount is sufficient to qualify for benefits under such claim and, if so, the week with respect to which such benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof.

(2) Such decision shall be applicable to all weeks of the benefit year respecting which claim is filed, but may for good cause be amended with respect to unpaid benefits for any such weeks.

(3) The deputy shall notify promptly the claimant and all employers who have paid wages to the claimant in excess of \$100 during his base year of the initial decision or any amending decision. When any decision is amended, the deputy shall state the reasons therefor and likewise promptly notify the most recent employer of the claimant.

(4) Unless the claimant or one of the employers entitled to be so notified, within 10 days after delivery of such notification, or, if mailed, within 10 days after the same was mailed to his last known address, files with the commission a request for a hearing upon the claim, such decision shall be final and benefits shall be paid or denied in accordance therewith. However, if upon any such decision benefits are allowable irrespective of issues upon which a hearing is requested, the commission may pay such benefits regardless of any pending hearing on the claim.

657.270 Hearing before referee; application for review. (1) When a request for hearing upon the claim has been filed, as provided in ORS 657.265, the commission shall designate a referee to conduct such hearing.

(2) After the referee has afforded all parties reasonable opportunity for a fair hearing, he shall affirm promptly or modify the decision of the deputy with respect to the claim and promptly shall notify all parties entitled to notice of the decision of the deputy, as set forth in ORS 657.265, of his decision and reasons therefor.

(3) Unless such a party, within 10 days after the delivery to him of such notification, or if mailed, within 10 days after the same was mailed to his last known address, files with the commission an application for review, such decision shall be final and benefits shall be paid or denied in accordance therewith.

657.275 Review by commission. (1) Whenever any interested party files with the commission an application for review, the commission shall designate a special referee to secure any additional evidence which it may require to reach its decision, or the commission shall affirm, modify or set aside such findings and promptly notify the claimant and any other interested party of its decision.

(2) The decision of the commission shall become final 10 days after the date of notification or mailing thereof.

657.280 General procedure and records concerning disputed claims. (1) The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from the employers and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the commission for determining the rights of the

parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure.

(2) A full and complete record shall be kept of all proceedings in connection with the disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is appealed further.

657.285 Judicial review. (1) A judicial review, as provided in this section, shall be permitted only after any party claiming to be aggrieved by a decision has exhausted his remedies under ORS 657.265 to 657.275.

(2) Within 20 days after the decision of the commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the circuit court of the district of which the county in which the claim was filed is a part. In such action any other party to the hearing before the referee, or the review of such claim before the commission, shall be made a defendant. If an appeal is filed in the wrong county the court shall enter an order transferring it to the proper county.

(3) In such action, a petition which need not be verified but which shall state the grounds upon which a review is sought shall be served upon the commission or upon such person as it may designate and such service is deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants. The commission forthwith shall mail one such copy to each such defendant.

(4) With its answer, the commission shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings of fact and decisions therein.

(5) In any judicial proceeding under this section, the findings of the commission as to the facts if supported by evidence, in the absence of fraud, are conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions shall be heard in a summary manner and shall be given precedence over all other civil cases, except cases arising under the workmen's compensation law of this state.

(6) In case of the modification or reversal of the decision of the commission, the circuit court shall refer the claim back to

the commission with an order directing it to fix the benefits in accordance with the decision of the court.

(7) An appeal may be taken from the judgment of the circuit court to the Supreme Court as in other cases, regardless of the amount of the benefits involved. The cost of such proceedings shall be taxed against the unsuccessful party.

657.290 Continuous jurisdiction of commission. (1) Upon its own motion or upon application of any party to a claim for benefits, the commission may in its discretion at any time after the same was made and irrespective of whether it has become final under this chapter, reconsider any previous decision found to be erroneous with respect to the allowing or disallowing, in whole or in part, a claim for benefits.

(2) Such reconsideration shall be accomplished by the commission or any employee it may designate for the purpose, in accordance with such regulations as the commission may prescribe, and may include the making of a new decision which, if made, shall award, deny, terminate, continue, increase or decrease benefits to the extent found necessary and appropriate for the correction of previous error respecting such benefits. However, any such new decision shall be subject to hearing, review and appeal in accordance with ORS 657.265 to 657.285.

657.295 Witness fees; disputed claim expenses; counsel fees. (1) Witnesses subpoenaed pursuant to ORS 657.265 to 657.280 or 657.290 shall be allowed fees at a rate fixed by the commission. Such fees and all expenses of proceedings within the commission involving disputed claims, excepting charge for services rendered by counsel or other agent representing the claimant, employer or other interested person, are deemed a part of the expense of administering this chapter, and no individual claiming benefits shall be charged fees of any kind in any proceedings under this chapter by the commission or its representative.

(2) Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent but no such counsel or agent shall charge or receive for such services more than an amount approved by the commission.

657.300 False statements by employer. No employer shall intentionally and wilfully

make or cause to be made false or untrue statements regarding the claim of a claimant or regarding a claimant or claimant's eligibility for benefits under this chapter.

657.305 Fraud in obtaining benefits. No person shall wilfully make a false statement or misrepresentation to obtain any benefit or payment under the unemployment compensation law of this state or of any other state or of the United States, either for himself or for any other person.

657.310 Recovery or deduction of benefits paid because of misrepresentation of recipient. (1) Any person who makes, or causes to be made, a false statement or representation of, or fails to disclose, a material fact, and as a result thereof has received any amount as benefits under this chapter to which he was not entitled shall, irrespective of his knowledge or intent, if the existence of such nondisclosure or misrepresentation has been found in connection with a decision which was made and has become final pursuant to this chapter, be liable to repay such amount to the commission for the fund or to have such amount deducted from any future benefits payable to him under this chapter.

(2) No decision shall be construed to authorize the recovery of the amount of any benefits paid to a claimant unless such decision specifies that the claimant is liable to repay the same to the fund by reason of the nondisclosure or misrepresentation of a material fact, the nature of such nondisclosure or misrepresentation, and the week or weeks for which such benefits were paid, nor until such decision has become final.

(3) In any case in which a claimant is liable to repay to the commission any amount for the fund, such amount shall be collectible without interest by civil action in the name of the commission in the circuit court for the county where the claim was filed.

657.315 Recovery or deduction of benefits paid erroneously. If any person, because of any error not due to the misrepresentation or nondisclosure of a material fact by him, is paid as benefits under this chapter any amount to which he was not entitled, he shall not be liable to repay the same, but he shall be liable to have such amount deducted from any benefits payable to him with respect to the benefit year within which such amount was so paid and the benefit year immediately subsequent thereto.

657.320 Cancellation of unrecoverable benefits. If any amount paid to a person as benefits, which he has been found liable to repay or to have deducted from benefits payable to him, has neither been repaid nor so deducted within a period of three years following the last day of the benefit year within which it was paid, and is deemed by the commission to be uncollectible, the same together with the record thereof and the resulting shortage, shall be canceled, and such amount shall be permanently charged to the fund.

657.325 to 657.400 [Reserved for expansion]

CONTRIBUTIONS BY EMPLOYERS; COVERAGE; RATE

657.405 Definitions. As used in ORS 657.430 to 657.485:

(1) "Average annual payroll" means the average payroll of an employer during the three years immediately preceding the computation date, except that on and after January 1, 1940, it shall not include any remuneration in excess of \$3,000 paid to an individual with respect to employment during any calendar year.

(2) "Computation date" means the December 31 preceding each calendar year for contribution rates effective prior to January 1, 1948, and means the June 30 preceding each calendar year for contribution rates effective thereafter.

657.410 Minimum wage for employee without fixed wage. For the purpose of determining the contribution of an employer, if a workman is not employed at a fixed wage, after a fair hearing, the commission may establish a minimum wage at which such workman shall be carried on the payroll of the employer.

657.415 When employer ceases to be subject to this chapter. No employer subject to this chapter shall cease to be subject to it except upon a written application by him and after a finding by the commission that he has not, during and since the preceding calendar year, had in employment in any one day in each of six separate weeks four or more individuals in any calendar quarter wherein he had a total payroll of \$500 or more.

657.420 Election of coverage by employers not otherwise subject. (1) An employing unit, not otherwise subject to this

chapter, which files with the commission its written election to become an employer subject to this chapter for not less than two calendar years, shall, with the written approval of such election by the commission, become an employer subject to this chapter to the same extent as all other employers, as of the date stated in such approval.

(2) Such employing unit shall cease to be subject to this chapter as of January 1 of any calendar year subsequent to such two calendar years, only if at least 30 days prior to such January 1 it has filed with the commission a written notice of its intention to cancel such election.

(3) The election of any employing unit to become an employer subject to this chapter, as provided in this section, may be canceled by the commission at any time while such employing unit is in default in payment of contributions.

657.425 Election of coverage for services that do not constitute employment as defined in this chapter. (1) Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years, or if services performed for an employing unit do not constitute employment as defined by this chapter but such services are subject to the Federal Unemployment Tax Act, such employing unit may file with the commission a written election that such services shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years.

(2) Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval.

(3) Such services shall cease to be deemed employment subject to this chapter as of January 1 of any calendar year subsequent to such two calendar years, only if at least 30 days prior to such January 1, such employing unit has filed with the commission a written notice of its intention to cancel such election.

657.430 Contribution rates based on experience. The commission shall, for the calendar year beginning January 1, 1948, and for each calendar year thereafter, determine the contribution rate applicable to each employer on the basis of his actual experience in the payment of contributions on his own behalf and with respect to benefits paid to unemployed individuals on account of wages for services performed in the employ of such employer during the base years of such unemployed individuals subject to the conditions and exceptions contained in this chapter. Such rate shall be based upon the experience of such employer from the time he first became an employer subject to this chapter to and including June 30 immediately preceding such calendar year and shall be in accordance with the requirements, conditions and exceptions in ORS 657.435 to 657.460.

657.435 Base rate for first three years. Each employer's rate shall be two and seven-tenths percent unless and until there have been 36 consecutive months immediately preceding the computation date, except as otherwise provided, throughout which his account has been chargeable with benefits.

657.440 Rates for 1948 and 1949. Each employer's rate for the calendar years 1948 and 1949 shall be based upon his actual experience and in accordance with the following:

(1) One-half of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by 13 percent or more of the average annual payroll of such employer.

(2) One percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by 11 percent of the average annual payroll of such employer and such excess is less than 13 percent.

(3) One and one-half percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by nine percent of the average annual payroll of such employer and such excess is less than 11 percent.

(4) Two percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by seven percent of the average annual pay-

roll of such employer and such excess is less than nine percent.

(5) Two and seven-tenths percent, if contributions paid into the fund do not exceed benefits paid on account of wages for services performed by employees by seven percent of the average annual payroll of such employer.

657.445 Rates for 1950 and 1951. Each employer's rate for each of the calendar years 1950 and 1951 shall be based upon his actual experience and in accordance with the following:

(1) Three-tenths of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by 11 percent or more of the average annual payroll of such employer.

(2) Six-tenths of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by 10 percent of the average annual payroll of such employer and such excess is less than 11 percent.

(3) Nine-tenths of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by nine percent or more of the average annual payroll of such employer and such excess is less than 10 percent.

(4) One and two-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by eight percent of the average annual payroll of such employer and such excess is less than nine percent.

(5) One and five-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by seven percent of the average annual payroll of such employer and such excess is less than eight percent.

(6) One and eight-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by six percent of the average annual payroll of such employers and such excess is less than seven percent.

(7) Two and one-tenth percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by five percent of the average annual payroll of such employer and such excess is less than six percent.

(8) Two and four-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by three percent of the average annual payroll of such employer and such excess is less than five percent.

(9) Two and seven-tenths percent, if contributions paid into the fund do not exceed benefits paid on account of wages for services performed by employees by three percent of the average annual payroll of such employer.

657.450 Rates for 1952 and after. Each employer's rate for the calendar year beginning January 1, 1952, and for each calendar year thereafter shall be based upon his actual experience and in accordance with the following:

(1) Three-tenths of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by 10 percent or more of the average annual payroll of such employer.

(2) Six-tenths of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by nine percent of the average annual payroll of such employer and such excess is less than 10 percent.

(3) Nine-tenths of one percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by eight percent of the average annual payroll of such employer and such excess is less than nine percent.

(4) One and two-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by seven percent of the average annual payroll of such employer and such excess is less than eight percent.

(5) One and five-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by six percent of the average annual payroll of such employer and such excess is less than seven percent.

(6) One and eight-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by five percent of the average annual payroll of such employer and such excess is less than six percent.

(7) Two and one-tenth percent, if contributions paid into the fund exceed benefits

paid on account of wages for services performed by employees by four percent of the average annual payroll of such employer and such excess is less than five percent.

(8) Two and four-tenths percent, if contributions paid into the fund exceed benefits paid on account of wages for services performed by employees by two percent of the average annual payroll of such employer and such excess is less than four percent.

(9) Two and seven-tenths percent, if contributions paid into the fund do not exceed benefits paid on account of wages for services performed by employees by two percent of the average annual payroll of such employer.

657.455 Modification of rates; effect of gifts or voluntary payments. Subject to the limitations of ORS 657.460, the provisions of ORS 657.430 to 657.450 shall be modified by and contribution rates shall be determined under the following exceptions and conditions:

(1) The contribution rate applicable to each employer for any calendar year shall not exceed nor be reduced beyond the rate applicable to such employer for the next preceding calendar year by more than the difference between the amount of the rate for such prior year and the amount of the second next higher or lower rate specified in the applicable schedule in ORS 657.440 to 657.450. However, this subsection does not apply to the initial rate determination of an employer based upon his reserve ratio.

(2) A voluntary payment or gift to the fund shall be deemed a contribution under subsection (6) of ORS 657.010 and ORS 657.505. However, a voluntary payment or gift is not considered an advance payment of contributions required under this chapter. Moreover, an employer's contribution rate may be reduced not more than the next lower bracket in the applicable schedule in ORS 657.440 to 657.450 in any one year as the result of said voluntary payment or gift, and said bracket rate reduction shall not be limited by and shall be in addition to the bracket adjustments provided for in subsection (1) of this section.

(3) Any such voluntary payment or gift paid into the fund prior to December 15 of any year shall be used by the commission, together with other contributions credited to the employer as of the prior June 30, in determining the employer's rate of contribution for the following calendar year.

657.460 Minimum rate if fund falls below minimum amount. If at the end of any calendar quarter the amount of money in the Unemployment Compensation Trust Fund falls below three percent of the average total annual payroll for the preceding five calendar years, as reported on February 1 next following the last calendar year, no contribution shall be paid at a rate less than two and seven-tenths percent for any succeeding calendar quarter while the amount of money in the fund remains less than said three percent.

657.465 Manner of charging benefits to employer. The commission shall, upon receipt of recommendation from the Experience-Rating Council, by regulation, prescribe the manner in which benefits shall be charged to employers except that an employer's account shall not be charged:

(1) With benefits paid an unemployed individual in excess of one-fourth of the wages paid such individual while in the employ of such employer during any base year prior to 1950 or in excess of one-third of the wages paid such individual while in the employ of such employer during any base year after 1949.

(2) Whenever benefits are paid, without any disqualification, to an individual who has left work voluntarily for good cause not attributable to the employer.

(3) Whenever benefits are paid for unemployment immediately after the expiration of a period of disqualification for:

(a) Having left work voluntarily without good cause; or

(b) Having been discharged for misconduct; or

(c) Having failed, without good cause, either to apply for or to accept suitable work, or to return to customary self-employment.

657.470 Rate computed on basis of estimates if employer fails to file or files insufficient report. If the commission finds that on September 1 of any year any employer has failed to file any report required by the commission, for the purpose of determining said employer's rate of contributions, or has filed a report which the commission finds incorrect or insufficient, the commission shall make an estimate of the information required from such employer on the basis of the best evidence reasonably available to it at the time, and notify the employer thereof by registered mail addressed

to his last address as shown by the records of the commission. Unless such employer files the report or a corrected or sufficient report, as the case may be, within 15 days after the mailing of such notice, the commission shall compute such employer's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase, but not to reduction, on the basis of subsequently ascertained information.

657.475 Where a number of the same workers are normally employed by several employers; records; contributions; charging benefits. (1) Where a number of workers are normally employed in employment in the course of a year by several employers, such employers, with the approval of the commission, may appoint an agent who shall maintain such records and prepare and file such returns and reports as are required under this chapter in respect to such workers, including returns and reports of wages paid and payable to such workers, and may pay the employers' contributions levied under this chapter in respect to wages paid and payable to such workers and shall perform such other acts on behalf of such employers as the commission may authorize, all in the same manner as though such agent were the employer of such workers.

(2) The commission may, by regulation, provide for the manner of crediting to each such employer the employment experience of such group of employers who have appointed such agent with respect to such workers, for the purpose of any classification of employers made pursuant to this chapter for the determination of future rates of employers' contributions.

(3) Any of such employers who operate or do business in more than one place may, with the approval of the commission, appoint a separate agent in each such place.

(4) This section shall not be construed to make such agent the employer of such workers, or relieve any employer of his obligations to comply with the terms of this chapter, except to the extent that such obligations are discharged by such agent.

657.480 Effect of transfer of employing unit. If, on or after January 1, 1936, the organization, trade or business, including the entire employing enterprise and all its incidents for all purposes of this chapter, of any employer is by purchase or otherwise transferred to an employing unit,

whether or not such acquiring employing unit was an employing unit within the meaning of ORS 657.020 prior to such acquisition, the employing unit to which the transfer is made shall assume the position of such employer with respect to such employer's experience, payrolls and otherwise the same as if there had been no change in ownership and shall be required to assume and continue the experience of such employer pursuant to ORS 657.430 to 657.485. However, no employing unit to which the organization, trade or business of an employer has been transferred is entitled to a rate of contributions of less than two and sevenths percent until such employing unit, based upon its experience and the experience of the organization, trade or business transferred, would be entitled under the Federal Unemployment Tax Act to additional tax credit offset for good experience under this chapter.

657.485 Notice of rate; procedure for redetermination; judicial review. (1) The commission shall promptly notify each employer not later than November 15 of each year of his rate of contributions as determined pursuant to ORS 657.430 to 657.485.

(2) Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to his last address as shown by the records of the commission or, in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reasons therefor.

(3) If the commission grants such review, the employer shall promptly be notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to ORS 657.265 to 657.295, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination or decision or to any other proceeding under this chapter in which the character of such service was determined.

(4) The employer shall promptly be

notified of the commission's denial of his application, or of the commission's redetermination, both of which shall become final unless, within 15 days after the mailing of notice thereof to his last address as shown by the records of the commission, or, in the absence of mailing, within 15 days after the delivery of such notice, a petition for judicial review is filed in the circuit court of the county in which he resides or has his principal place of business.

(5) In any proceeding under this section, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the commission. The commission may, after hearing such additional evidence, modify its determination, and file such modified determination, together with a transcript of the additional record, with the court. Such proceeding shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under ORS 657.285, and the workmen's compensation law of this state.

(6) An appeal may be taken from the decision of the circuit court to the Supreme Court as in other cases, regardless of the amount in controversy. Costs and disbursements of such proceedings shall be taxed against the unsuccessful party.

657.490 Employer or his employee has no prior right to employer's contributions. This chapter shall not be construed to grant any employer or any individual in his service prior claims or rights to the amount paid by the employer into the fund.

657.495 Fraud in lowering contributions. No person shall wilfully make a false statement or misrepresentation to lower contributions paid to the fund.

657.500 [Reserved for expansion]

COLLECTION OF CONTRIBUTIONS

657.505 Payment of and liability for contributions. (1) On and after January 1, 1936, contributions shall be payable by each employer then subject to this chapter. Contributions shall become payable by any other employer on and after the date on which he becomes subject to this chapter.

(2) An employer shall be liable for contributions on all wages paid for services performed on or after the first day of a calendar quarter.

(3) Contributions of an employer shall not become payable until this chapter has been approved by the Secretary of Labor, and notice of such approval has been given to the Governor as provided in section 1603 of the Federal Unemployment Tax Act.

(4) All contributions shall be paid to and collected by the commission at such times and in such manner as the commission may prescribe and upon collection, shall be deposited in the Unemployment Compensation Trust Fund.

657.510 Refunds. If not later than three years after the date on which any contributions or interest thereon were paid, an employer who has paid such contributions or interest thereon makes application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission determines that such contributions or interest or any portion thereof were collected erroneously, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him or, if such adjustment cannot be made, the commission shall refund said amount, without interest, from the Unemployment Compensation Trust Fund. For like cause and within the same period, adjustment or refund may be so made on the commission's own initiative.

657.515 Delinquent contributions; interest; civil penalties; collection by civil action.

(1) If an employer defaults with respect to any payment required to be made by him to the fund, the amount due from him shall be collected by civil action against him brought in the name of the commission. This amount, when collected, shall be paid into the fund. Such employer's compliance with this chapter, requiring payments to be made to the fund, shall date from the time said money was collected.

(2) Interest upon the amount due from an employer shall be paid and shall be collected as a part of the payment required to be made by such employer to the fund at the rate of one-half of one percent per month or fraction of a month from the date prescribed for the payment to the fund.

(3) If any employer fails to make payment of contributions required by this chapter at the time prescribed by the commission for the payment thereof, such employer shall be in default.

(4) If any employer who is in default with respect to payment of any contributions fails to make payment thereof within 10 days after written demand therefor has been made by the commission, such employer shall be subject, in the discretion of the commission, to a penalty of 10 percent of the amount of such contributions. A demand for payment shall be deemed to have been made when deposited in the mail addressed to such employer at his last known address as shown by the records of the commission.

(5) If any part of any deficiency is due to fraud with intent to avoid payment of contributions to the fund, then 50 percent of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected and paid in the same manner as if it were a deficiency.

(6) Civil actions brought in the name of the commission under this section to collect contributions, interest or penalties from an employer, shall be entitled to preference upon the calendar over all civil cases which involve only private parties.

657.520 Claims for contribution are preferred. All contributions, interest charges, penalties or amounts due the Unemployment Compensation Trust Fund from any employer under this chapter and all judgments recovered by the commission against any employer under this chapter shall be given the same priority as taxes and shall be deemed preferred to all general claims in all bankruptcy proceedings, trustee proceedings, proceedings for the administration of estates, receiverships and assignments for the benefits of creditors involving the employer liable therefor or the property of such employer.

657.525 Lien on subjects and products of labor for which contributions are due. A lien is created in favor of the commission upon all real property within this state and any structure or improvement thereon and upon any mine, lode, deposit, mining claim, road, tramway, trail, flume, ditch, pipe line, building or other structure or equipment on or pertaining thereto, and upon all lumber, sawlogs, spars, piles, ties or other timber, and upon all other manufactured articles of whatsoever kind or nature upon

which labor is performed by the workmen of any employer subject to this chapter, in a sum equal to the amount at any time due from such employer to the commission on account of labor performed thereon by the workmen of such employer, together with interest and penalties.

657.530 Lien on property used in connection with employment on which contributions are due. The commission also shall have a lien upon all real or personal property of the employer used in connection with the employment on which contributions are due, in a sum equal to the amount at any time due from any employer subject to this chapter on account of labor performed by the workmen of such employer, together with interest and penalty.

657.535 Liens under ORS 657.525 or 657.530; priority; filing statement of lien; foreclosure. (1) The liens created by ORS 657.525 and 657.530 shall be prior to all other liens and encumbrances, except labor liens and taxes, and they shall have equal priority with other tax liens.

(2) In order to avail itself of such liens, the commission shall, within 60 days after the employer is in default, as provided in subsection (3) of ORS 657.515, file with the county clerk of the county within which such property is then situated, a statement in writing describing the property upon which a lien is claimed and stating the amount of the lien claimed by the commission. If a lien is claimed on real property not then owned by the employer, such statement must be filed within 60 days from the completion of the work.

(3) When a lien is claimed on real property, the commission shall, within one year from the filing of the statement, commence a suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property. If the lien is claimed on personal property, the commission may, within one year from the filing of the statement, commence foreclosure proceedings as provided in ORS 87.110 and 87.115.

657.540 Lien on all property of defaulting employer; recording; priority; foreclosure. (1) If an employer liable for the payment of contributions to the Unemployment Compensation Trust Fund is in default, as provided in subsection (3) of ORS 657.515, the amount due the fund, including

interest and penalties, shall be a lien in favor of the commission upon all property, whether real or personal, belonging to such employer and shall attach upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located.

(2) The notice of lien claim shall contain a true statement of the demand, after deducting all just credits and offsets, and the default of such employer. The county clerk shall record said claim of lien in a book kept for that purpose, which record shall be indexed as deeds and other instruments.

(3) The lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of notice of claim of lien, except taxes and labor liens.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property.

657.545 Release of lien of ORS 657.540 by bond. (1) The employer against whose property a lien has been filed under ORS 657.540 may cause his property to be released by filing with the county clerk of the county wherein such lien is recorded a bond in a sum double the amount claimed in said lien, executed by a surety company licensed to do business in Oregon or by two freeholders of this state, having the qualifications of bail upon arrest, to be approved by the circuit judge of the district in which said lien is filed, or, in the event of his absence from the county in which said lien is filed, then by the county judge of said county, running to the commission and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the commission against such employer or that may be found to be a lien upon or against the property of such employer.

(2) The clerk shall issue to such employer a certificate stating that the bond is substituted in lieu of the property of said employer and that the lien on said property is forever released and discharged. A marginal entry of said release and bond shall be made in the lien docket containing the original record of statement of claim.

(3) If the commission establishes the validity of its lien by a suit to foreclose the

same, it is entitled to judgment or decree against the sureties upon said bond.

657.550 Limitations on actions to collect contributions or foreclose liens. (1) No civil action shall be commenced under ORS 657.515 to collect contributions, interest or penalties thereon, or to foreclose liens created by ORS 657.525 to 657.540, unless such action is commenced within three years from the date upon which such contributions became due and payable, except that in case of a false or fraudulent report with intent to evade payment of contributions or of wilful failure to file a report, an action may be commenced at any time.

(2) If the cause of action accrues or has accrued against any employer who is out of the state or concealed therein, such action may be commenced within three years after the return of such employer into the state, or the time of his concealment; provided, however, actions to collect contributions, interest or penalties thereon which became due and payable prior to July 5, 1947, and actions to foreclose any lien therefor which is in existence on July 5, 1947, shall be commenced within three years after July 1, 1947.

657.555 Authority of commission to release, compromise or satisfy liens. Any lien provided for in ORS 657.525 to 657.540 may be released, compromised or satisfied by the commission, and the property against which a lien is claimed shall be released therefrom by filing a notice of such release or satisfaction with the county clerk of the county in which the notice of lien claim was filed.

657.560 Joining commission in actions involving title of property subject to commission's lien. The commission may be made a party to any suit or action involving the title to real or personal property against which the commission has or may claim a lien under this chapter.

657.565 Unlawful practices of employer. (1) No employer or agent of any employer shall wilfully refuse or fail to pay a contribution to the fund or to furnish any report, audit or information duly required by the commission under this chapter.

(2) No employer shall make a deduction from the wages or salary of any employee to pay any portion of the contribution which the employer is required to make.

657.570 to 657.600 [Reserved for expansion]

**UNEMPLOYMENT COMPENSATION
COMMISSION; ADMINISTRATION
GENERALLY**

657.605 Unemployment Compensation Commission; members; salary. (1) The State Unemployment Compensation Commission hereby is created.

(2) The members of the State Industrial Accident Commission shall constitute the members of the State Unemployment Compensation Commission.

(3) One-half of the annual salary of the members of the State Industrial Accident Commission shall be paid out of the Unemployment Compensation Administration Fund.

657.610 Powers and duties generally; rules and regulations. (1) The commission shall determine all questions of general policy, promulgate rules and regulations, hear appeals of contested claims, and be responsible for the administration of this chapter.

(2) The commission in its name may sue and be sued, and shall have a seal which shall bear the name of the commission.

(3) The commission may adopt proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings.

(4) The commission may prescribe the time, place and manner of making claims for benefits under this chapter, the kind and character of notices required thereunder and the procedure for investigation, hearing and deciding claims.

657.615 Investigations and recommendations to the legislature. The commission may:

(1) Carry on investigations of the operation of unemployment compensation in Oregon, including related subjects and publish the results thereof.

(2) Investigate the operations of the fund, the relation of contribution rates to the risks of unemployment, the adequacy of contribution rates.

(3) Recommend to the legislature from time to time any advisable changes in the contribution rates or benefits and any other changes in the state laws relating to unemployment compensation.

657.620 Determination of adequate fund reserve; modification of benefits and eligibility regulations in case of emergency. (1) The commission shall, from time to time, after investigation, reasonable public notice, and a

public hearing at which any interested party is afforded an opportunity to be heard, determine or redetermine what amount of reserve reasonably is needed in the fund to assure the payment of benefits under this chapter.

(2) In the event of general and extended unemployment, such that the reserve of the fund is reduced below the amount of reserve so determined, the commission may declare an emergency and announce a modified scale of benefits, an increased waiting period or other changes in the rules and regulations regarding eligibility for a receipt of benefits which it considers necessary to maintain the reserves of the fund.

657.625 Publication of rules; annual and special reports. (1) The commission shall cause to be printed in proper form for distribution its classification, rates, rules, regulations and rules of procedure and furnish the same to any person upon application therefor. The fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this chapter.

(2) The commission shall submit to the Governor an annual report of its operations.

(3) The commission may also publish from time to time any special reports of the results of any investigation which it may have conducted.

(4) The commission shall publish in suitable form information concerning the rights of employees under this chapter and such other information concerning this chapter and the regulations pursuant thereto as it considers suitable and proper, and require every employer to post such publications at his place of employment.

657.630 Quasi-judicial powers in administrative hearings. The commission may act in its own behalf or by any of its duly authorized agents or assistants in the following:

(1) To hold sessions at any place within the state.

(2) To administer oaths.

(3) To issue and serve by the commission's representative, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony.

(4) Generally to provide for the taking of testimony and for the recording of proceedings held in accordance with this chapter.

657.635 Circuit court to enforce obedience to subpoenas. The circuit court for any county or the judge thereof, on application of the commission, or any of its commissioners or assistants, shall compel obedience to subpoenas issued and served pursuant to ORS 657.630 and punish disobedience of any such subpoena or any refusal to testify at any session authorized in this chapter, or to answer any lawful inquiry of any of said commissioners or assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpoena issued from said court is punished.

657.640 Attorney General to represent commission. (1) The Attorney General shall be the legal adviser of the commission.

(2) Upon request of the commission, the Attorney General or, under his direction, the district attorney of any county, shall institute or prosecute actions or proceedings for the enforcement of this chapter, when such actions or proceedings are within the county in which such district attorney was elected, and shall defend in like manner all suits, actions and proceedings brought against the commission or the members thereof in their official capacity.

(3) The salaries of such assistants requested of the Attorney General by the commission shall be paid out of the Unemployment Compensation Administration Fund as the salaries of employees of said commission are paid.

657.645 Appointment of administrator; qualifications; duties. (1) The commission shall appoint, with the approval of the Governor, an administrator, who shall be the executive officer of the commission and under its supervision.

(2) The administrator must be a person of broad administrative experience and demonstrated executive ability.

(3) The administrator shall have direction of all administrative activities of the commission and shall serve as secretary to the commission.

657.650 Appointment of officers and employees. (1) The commission may appoint such officers and employees as are required for the administration of this chapter, selection to be on a merit basis, determine their salaries and duties and, in its discretion, require a bond of any of its employees engaged in carrying out this chapter. The commission shall not employ any person who is serving

as an officer or committee member of any political party.

(2) The commission is authorized to employ an attorney to represent it in making collection of delinquent contributions to the Unemployment Compensation Trust Fund and the interest and penalties accruing, and to conduct on behalf of the commission any and all suits, actions and proceedings whatsoever for such purpose. Such attorney or the commission may call upon the district attorney of any county in which such proceedings are instituted or pending for any service or assistance in connection therewith. The commission shall fix the compensation of such attorney, which shall be paid from the Unemployment Compensation Administration Fund as the salaries of other employees of the commission are paid.

657.655 Certified copies of commission records as evidence. If the original of any record, file, order, proceeding, decision, award or other document on file with the commission is competent and admissible in evidence, a certified copy thereof furnished by the administrator under the seal of the commission shall be received in evidence before the commission or any deputy or officer thereof and in all courts.

657.660 Records and reports of employing units. (1) Every employing unit shall keep true and accurate records of all persons employed by it and such records of hours worked, wages paid and other statistics as prescribed by the commission for the administration of this chapter.

(2) Such records shall be open to inspection by the commission or its authorized representative at any reasonable time. No person shall refuse to allow the commission or its authorized representative to inspect his payroll or other records or documents relative to the enforcement of this chapter.

(3) The commission may require from any employing unit such reports on the wages, hours, employment, unemployment and related matters concerning its employees as the commission deems necessary to the effective administration of this chapter.

(4) Every employing unit shall fully, correctly and promptly furnish the commission all information required by it to carry out the purposes and provisions of this chapter.

657.665 Information from employing unit records confidential. (1) Information

secured from employing units, employees or other individuals pursuant to this chapter:

(a) Shall be confidential and for the exclusive use and information of the commission in the discharge of its duties and shall not be open to the public (other than to public employees in the performance of their public duties under state or federal laws for the payment of unemployment compensation benefits and to public employees in the performance of their public duties under the recognized compensation and relief or welfare laws of this state), except to the extent necessary for the presentation of a claim.

(b) Shall not be used in any court in any action or proceeding pending therein unless the commission or the state is a party to such action or proceedings.

(2) However, any claimant or his legal representative, at a hearing before a referee or the commission, shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

(3) Any officer or employee of the commission who, except with authority of the commission or pursuant to its regulations, or as otherwise required by law, shall disclose confidential information under this section, thereafter is disqualified from holding any appointment or employment by the commission.

657.670 Disclosure of information to federal agencies permitted. Notwithstanding ORS 657.665, the commission shall:

(1) Upon request, submit such reports, in such form and containing such information as the Secretary of Labor may, from time to time, require, and shall comply with such provisions as the Secretary of Labor may, from time to time, find necessary to assure the correctness and verification of such reports.

(2) Make available, upon request, to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation benefits and a statement of such recipient's right to further compensation under this chapter.

657.675 Experience-Rating Council; members; expenses. (1) To assist the commission in carrying out ORS 657.615, and particularly with respect to conducting a study of merit rating for the purpose of determin-

ing employers' future rates of contribution to the fund, there hereby is created an Experience-Rating Council.

(2) The council shall be appointed by the Governor upon recommendations made by the commission, and shall be composed of two representatives of employers, two representatives of employees and two representatives of the public, together with the chairman of the commission who shall act as chairman of the council.

(3) The members of the council shall serve without compensation, but shall be reimbursed from the Unemployment Compensation Administration Fund for any necessary expenses.

657.680 Duties of council; report. The Experience-Rating Council shall investigate, study and report to the commission not later than December 31, 1940, which report shall be attached to the report of the commission contemplated by ORS 657.615. Such investigation and study shall be based upon the operation of this chapter and the actual experience under it, with a view to establishing an experience-rating system which will equitably rate the unemployment risk and fix the contribution to the fund of each employer subject to this chapter. The council, in the conduct of this study, shall consider the methods for the classification of employers, industries or organizations with respect to the unemployment hazard in each. In making provisions for such classification, the council shall take into consideration the degree of unemployment hazard and of any other facts (such as fluctuation or payroll indices, compensable separations from employment, experience and payment of benefits) which the council finds bears a reasonable relation to the purposes of this section, ORS 657.615 and 657.675.

657.685 to 657.700 [Reserved for expansion]

OREGON STATE EMPLOYMENT SERVICE

657.705 Oregon State Employment Service. There is created under the Unemployment Compensation Commission, a division to be known as the Oregon State Employment Service, which shall be affiliated with the United States Employment Service. Such division shall be administered by a director to be appointed by the commission with the approval of the Governor.

657.710 Free public employment offices.

The commission shall establish and maintain such free public employment offices, subject to any contract, agreements or obligations entered into or assumed under chapter 135, Oregon Laws 1935, including such branch offices as may be necessary for the proper administration of this chapter. The commission shall maintain a division for this purpose. All moneys made available by or received by the state for the Oregon State Employment Service shall be paid to and expended from the Unemployment Compensation Administration Fund.

657.715 Wagner-Peyser Act accepted.

The State of Oregon hereby accepts the provisions of the Act of Congress approved June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes."

657.720 Cooperation with federal agencies, political subdivisions or private organizations in maintaining public employment service. (1) The commission is designated and constituted the agency of this state for the purpose of the Wagner-Peyser Act. The commission shall cooperate with all authorities of the United States having powers and duties under the Wagner-Peyser Act and do and perform all things necessary to secure to this state the benefits of the Wagner-Peyser Act in the promotion and maintenance of a system of public employment offices.

(2) The commission may cooperate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance and use of free public employment service facilities. For the purpose of establishing and maintaining free public employment service the commission may enter into agreements with the Railroad Retirement Board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private nonprofit organization, and as a part of any such agreement may accept moneys, services or quarters as a contribution to the Unemployment Compensation Administration Fund.

657.725 Employment districts. The commission may divide the state into such number of employment districts as it finds nec-

essary and maintain a district office in each of said districts.

657.730 to 657.750 [Reserved for expansion]

RECIPROCAL AND COOPERATION AGREEMENTS

657.755 Cooperation with federal agencies administering unemployment compensation laws. The commission shall:

(1) Cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government in the administration of this chapter and of free public employment offices.

(2) Make the state's records relating to the administration of this chapter available to the Railroad Retirement Board and furnish to the Railroad Retirement Board, at the expense of such board, copies thereof as that board deems necessary for its purposes.

(3) Afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation insurance law and make all reports thereon requested by any directly interested federal agency or department.

(4) Accept any sums allotted or apportioned to the state for such administration and comply with all reasonable federal regulations governing the expenditures of such sums.

657.760 Reciprocal agreements on coverage and collection of contributions. The commission may enter into agreements with the appropriate agencies of other states or the Federal Government whereby:

(1) Potential rights to benefits accumulated under the unemployment compensation laws of the several states or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) Individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in subsection (2) of ORS 657.035 or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states

and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits.

(3) The collection and payment of contributions by employers with respect to employment not localized within this state is adjusted.

657.765 Reciprocal agreements concerning payroll contributions for out-of-state work. Whenever the unemployment compensation laws of other states provide for inclusion of out-of-state payment of wages in computing the first \$3,000 of wages paid in like manner as provided in ORS 657.095, the commission may enter into agreements with those empowered to administer the unemployment compensation laws of such other states for the purpose of:

(1) Waiving the further collection of payroll contributions in all the states when the aggregate amount of said wages is in excess of such \$3,000; and

(2) Securing uniformity for payroll reporting on such out-of-state work.

657.770 Reciprocal agreements concerning wages used as basis for benefits. (1) The commission may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government, or both, whereby wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the Federal Government, shall be deemed to be wages for insured work for the purpose of determining his benefits under this chapter; and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the Federal Government.

(2) No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such of the benefits paid under this chapter on the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law on the basis of wages for insured work, as the commission finds will be fair and reasonable to all affected interests.

(3) Reimbursements paid from the fund pursuant to this section are deemed to be benefits for the purposes of this chapter; except that no charge shall be made to an employer's account under ORS 657.465 in excess of the maximum benefits payable under ORS 657.250 or when no benefits would have been payable to an individual but for this section, because of the lack of wages for insured work necessary to qualify for benefits.

657.775 to 657.800 [Reserved for expansion]

FUNDS

657.805 Unemployment Compensation Trust Fund. There hereby is created the Unemployment Compensation Trust Fund. Such fund shall consist of:

(1) All contributions received and collected under this chapter, together with all interest thereon collected pursuant to ORS 657.515.

(2) All fines and penalties collected pursuant to this chapter.

(3) Interest earned upon any moneys in the fund.

(4) Any property or securities acquired through the use of moneys belonging to the fund and all earnings of such property or securities.

(5) All other moneys received for the fund from any other source.

657.810 Deposit and use of fund. (1) All moneys received for the Unemployment Compensation Trust Fund under ORS 657.805 shall be deposited with the State Treasurer subject to ORS 657.830.

(2) All moneys in the fund shall be mingled and undivided and shall be administered by the commission for the purpose of this chapter.

657.815 Unemployment Compensation Benefit Fund. (1) There hereby is created the Unemployment Compensation Benefit Fund. Such fund shall consist of all amounts withdrawn from the Federal Unemployment Trust Fund, upon requisition of the commission.

(2) This fund shall be used solely in the payment of benefits under this chapter, exclusive of administration, and in the payment of unemployment compensation under any agreement with another governmental agency whereby the latter will reimburse the

fund for such expenditure; provided that such use shall be consistent with the Federal Unemployment Tax Act.

(3) The Unemployment Compensation Benefit Fund shall be the sole and exclusive source for the payment of benefits payable under this chapter. Such benefits shall be deemed to be due and payable only to the extent that contributions, with increments thereon, actually collected and credited to the fund are available therefor.

657.820 Unemployment Compensation Administration Fund. (1) There hereby is created the Unemployment Compensation Administration Fund, to consist of all moneys received by the state or the commission for the expenses of administration of this chapter, including such proportion of total expenses of maintaining public employment offices incurred for the purposes of this chapter.

(2) Such fund shall be handled by the State Treasurer as other state moneys are handled, but it shall be expended solely for the purposes specified in this section, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditures consistent with this section.

(3) All federal moneys allotted or apportioned to the state by the Secretary of Labor, the Railroad Retirement Board or other federal agency, for the administration of this chapter shall be paid into such fund.

(4) All moneys made available by or received by this state under the Wagner-Peyser Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, (48 Statutes 113; United States Code, title 29, sec. 49 (c) as amended) shall be paid into the Unemployment Compensation Administration Fund and said moneys hereby are appropriated and made available to the commission to be expended as provided by this chapter and by the Wagner-Peyser Act.

(5) All moneys received from the Railroad Retirement Board as compensation for services or facilities supplied to said board shall be paid into the Unemployment Compensation Administration Fund.

657.825 Expenditure of federal funds; restitution of moneys lost or improperly expended. (1) All moneys in the Unemployment Compensation Administration Fund

which are received from the Federal Government or any agency thereof or which are appropriated by this state for the purposes described in ORS 657.820 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this chapter.

(2) If any moneys received after June 30, 1941, from the Secretary of Labor under title III of the Social Security Act, or any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, or any moneys granted after that date to this state pursuant to the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the Wagner-Peyser Act, are found by the Secretary of Labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the General Fund of this state to the Unemployment Compensation Administration Fund for expenditure as provided in ORS 657.820. Upon receipt of notice of such a finding by the Secretary of Labor, the commission promptly shall report the amount required for such replacement to the Governor. The Governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This section shall not be construed to relieve this state of its obligations with respect to funds received prior to July 1, 1941, pursuant to title III of the Social Security Act.

657.830 State Treasurer as custodian of funds. (1) The State Treasurer shall be the custodian of the Unemployment Compensation Trust Fund, the Unemployment Compensation Benefit Fund and the Unemployment Compensation Administration Fund and shall carry those funds in separate deposit accounts with the active depository of state funds. The security required by law to protect the moneys in the active depository account shall be of sufficient market value to protect also the separate deposit accounts, and shall be available for said purpose in like manner as for the active account.

(2) Refunds payable pursuant to ORS 657.510 may be paid from the fund upon

warrants issued by the State Treasurer under the direction of the commission. After clearance thereof, the State Treasurer immediately shall deposit all other moneys received from all sources, through contributions or otherwise, as accretion to the Unemployment Compensation Trust Fund, with the Secretary of the Treasury of the United States as custodian of the Unemployment Trust Fund created by the Federal Social Security Act.

657.835 to 657.850 [Reserved for expansion]

MISCELLANEOUS PROVISIONS

657.855 Assignment of benefits; exemption; waiver of rights. Benefits due under this chapter shall not be assigned, pledged, encumbered, released or commuted and shall, except as otherwise provided, be exempt from all claims of creditors and from levy, execution and attachment or remedy for recovery or collection of a debt, which exemption may not be waived. No agreement by an individual to waive his rights under this chapter is valid.

657.860 Agreement of employee to pay contributions void. No agreement by an employee to pay any portion of the contribution required of his employer by this chapter is valid and no employers shall make a deduction for such purpose from the wages or salary of an employee.

657.865 No vested rights. All the rights, privileges or immunities conferred by this chapter or by acts deemed pursuant thereto shall exist subject to the powers of the legislature to amend or repeal this chapter at any time, and there shall be no vested private right of any kind against such amendment or repeal.

657.870 When operation of chapter ceases. If title IX of the Federal Social Security Act becomes inoperative by Act of Congress or by decision of the United States

Supreme Court, payments of contributions and payment of benefits provided in this chapter shall cease.

657.875 to 657.985 [Reserved for expansion]

PENALTIES

657.990 Penalties. (1) Violation of ORS 657.295 is punishable for each offense, upon conviction, by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than six months, or both.

(2) Violation of ORS 657.300 is a misdemeanor.

(3) In addition to any penalties otherwise prescribed in this chapter, violation of ORS 657.305, 657.495, 657.565, subsection (2) of ORS 657.660 or any other provision of this chapter is a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not more than 90 days, or both. If an offending employer or the employer of an offending agent is a corporation, the president, secretary and the treasurer, or officers exercising corresponding functions, shall be subject to the penalties in this subsection in respect to any duties, of which they respectively had or, in the proper exercise of their duties, ought to have had knowledge.

(4) Wilful violation of this chapter or of any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under this chapter, and for which a penalty neither is prescribed in this section nor provided by any other applicable statute, is punishable, upon conviction, by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 60 days, or both. Each day such violation continues is considered a separate offense.

(5) Circuit courts, justice courts and district courts have concurrent jurisdiction of any offense under this section.

