

RULES OF GEORGIA DEPARTMENT OF LABOR EMPLOYMENT SECURITY LAW

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CHAPTER 300-2-1 DEFINITIONS

- 300-2-1-.01 Meanings of Terms Used

300-2-1-.01 Meaning Of Terms Used. Amended.

(1) "Law" means the Employment Security Law of Georgia, Official Code of Georgia Annotated (OCGA), Title 34, Chapter 8.

(2) "Commissioner" means the Commissioner of Labor of Georgia. Where appropriate, Commissioner shall also mean any duly authorized representative of the Commissioner.

(3) "Department" means the Georgia Department of Labor.

(4) "Division" means the Unemployment Insurance Service Division in the Georgia Department of Labor.

(5) "Reimbursable Basis" means the method of payment wherein an employing unit has elected to reimburse this department for the amount of benefits chargeable to such unit in lieu of making quarterly contributions to the department.

(6) Such terms as "employing unit" (OCGA Section 34-8-34), "employer" (OCGA Section 34-8-33), "employment" (OCGA Section 34-8-35), "wages" (OCGA Section 34-8-49), and "calendar quarter" (OCGA Section 34-8-25) are used in a special and restricted sense; and their meaning should be carefully noted.

(7) Total, Part-Total, and Partial Unemployment.

(a) "Total Unemployment" means the unemployment of any individual in any week during which the individual performs no services and with respect to which no wages are payable to the individual.

(b) "Part-Total Unemployment" means any claim week during which an otherwise qualified individual performs services and earns wages not exceeding his weekly unemployment insurance amount plus \$ 30.00.

(c) "Partial Unemployment" means any complete pay-period week during which an individual is attached to the individual's regular employer and works less than full-time, due only to lack of work, and earns wages not exceeding the individual's weekly unemployment insurance amount plus \$ 30.00. Partial unemployment claims are initiated by the employer.

NOTE: The Georgia Employment Security Law provides for benefit payments to be made in multiples of \$ 1.00. Therefore, earnings in excess of \$ 30.00 must be adjusted to the nearest dollar, i.e., the odd cents .01 through .50 will be adjusted to the next lower dollar; .51 through .99 will be adjusted to the next higher dollar.

(8) Week of Total, Part-Total, or Partial Unemployment.

(a) A week of total or part-total unemployment is defined as the calendar week beginning on Sunday and ending at midnight the following Saturday.

(b) A week of partial unemployment shall consist of an employer's established pay-period week. A week of partial unemployment, for one not paid on a weekly basis, shall consist of a calendar week beginning on Sunday and ending the following Saturday night at midnight.

(9) The following definitions shall apply in the application of the disqualification provisions of OCGA Sections 34-8-194 and 34-8-195:

(a) "Bodily Injury" is physical harm, damage or injury inflicted on an individual by another individual.

(b) "Conscious Neglect" is a failure to use that degree of care which would be exercised by an ordinarily prudent person under the same or similar circumstances. It does not require a willful intent to abuse an employer's business but it does require a showing of disregard for the normal or acceptable consequences of the action or the failure to perform one's job duties. It is to be distinguished from the claimant's inability to satisfactorily perform the duties of the job. A

showing by the employer that the claimant failed to perform a task for which the claimant had previously demonstrated a degree or level of proficiency by satisfactorily performing the task in the past will shift the burden of proof to the claimant to show that the individual had an inability to perform the task in question.

(c) "Fault" is a failure to follow rules, orders or instructions, or failure to discharge the duties for which the claimant was employed. Fault which is of a disqualifying nature cannot be a technical failing, a minor mistake or the mere inability to do the job. Rather, a breach of duty to constitute fault must take into consideration such factors as length of service, nature of duties, prior warnings, equal enforcement of all progressive discipline programs and any other factors which might be used to establish reasonable expectations that the discharge was imminent. The claimant must have been aware that a discharge would likely result from the violation of the rule. In the case of a discharge due to a violation of an employer's rule, order or instruction, an employer has the burden of proving that the claimant knew or should have known that the violation of the rule, order or instruction could have resulted in termination.

(d) "Full-time Continuous Employment" for the purposes of OCGA Section 34-8-24 is normally considered to be at least thirty (30) hours of work in a week or such other number of hours as is normal in a particular industry. A claimant shall be expected to look for full-time continuous employment and shall be expected to accept an offer to such work after filing an otherwise valid claim for benefits.

(e) "Intentional Conduct" is that personal behavior or action by an individual which is willful, conscious or deliberate that results in damage to another person's property or results in bodily harm to another individual. A claimant who commits an act which a reasonably prudent person would contemplate to result in damage may be said to intend that result, whether he desired it or not; for every person is presumed to intend the natural consequences of his or her own actions.

(f) "Misconduct" is conduct evincing such willful or wanton disregard of an employer's interest as is found in violation or disregard of standards of behavior which the employer has the right to expect of an employee, or in carelessness or negligence in such degree, or recurrence as to manifest fault, or to show a disregard of the employer's interests or of the employee's duties and obligation to the employer. Misconduct includes but is not limited to a violation of a known work rule which is reasonable and related to the job being performed.

(g) "Part-time Employment" shall be construed to be work which is other than full-time continuous employment as defined above, without regard to whether it is of limited duration as to days, weeks or months. A claimant is encouraged to accept part-time work at any time as long as the part-time work does not unreasonably interfere with the claimant's search for full-time continuous employment, but the claimant must report all earnings for such work to the department.

(h) "Physical Assault" is touching the person of another against his/her will with physical force, in an intentional, hostile or aggressive manner.

(i) "Suitable Work" means work in the individual's usual occupation or work for which the individual is reasonably fitted. In determining whether an individual is reasonably fitted for a particular job, the department shall consider the totality of circumstances, including, but not limited to:

1. The degree of risk involved to the claimant's health, safety and morals;

2. The claimant's physical fitness;
3. The claimant's prior training;
4. The claimant's experience;
5. The claimant's prior earnings;
6. The length of the claimant's unemployment;
7. If the work is not directly related to claimant's recent work experience, the claimant's prospects for obtaining local work in such claimant's customary occupation; and
8. The distance and time for commuting.

(j) "Theft" is the taking of an employer's property, or the property of any other employee or the property of any other person while on the employer's premises or otherwise within the scope of the employee's job duties, without the consent of the owner of the property, with the intent to deprive the owner of the value of the property, and to appropriate it for the use and benefit of the person taking the property. The value of the property taken shall be the fair market value at the time of replacement.

(10) "Personal services" mean work performed by an individual for personal remuneration. Work performed by an individual or sole proprietorship is presumed to be personal services unless otherwise exempted by the Employment Security Law or the Rules of the Georgia Department of Labor. Work performed by a corporation or a partnership does not meet the definition of personal services.

(11) "Rate buy down" with respect to voluntary contributions pursuant to OCGA Section 34-8-178 means the payment of such additional amounts in response to notice from the Department as to enable an employer to receive a lower rate of contributions.

(12) "Most Recent Employer" as defined under OCGA 34-8-43 shall not include an employer subject to the provisions of the federal Railroad Unemployment Insurance Act.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190.

CHAPTER 300-2-2

REPORTS

300-2-2-.01 Employer Liability Reports (Form DOL-1)
300-2-2-.02 Employer Tax and Wage Reports

300-2-2-.04 Labor Information Reports
300-2-2-.05 Allocation By Quarter of
Non Taxable Wages

300-2-2-.03 Common Paymaster

300-2-2-.01 Employer Liability Reports (Form DOL-1). Amended.

Pursuant to the provisions of OCGA Section 34-8-121, a "Statement of Employment by Employer or Employing Unit" shall be executed on Form DOL-1 or Form DOL-1A, "Employer Status Report", or Form DOL-1G, "Registration of Governmental Organizations", in accordance with the instructions on such form, and shall be returned to the department within ten (10) days from the date such form was received by such employer, unless such employer or employing unit has been granted an extension, in writing, by the Commissioner or his duly authorized representative.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-83, 34-8-121, 34-8-150.

300-2-2-.02 Employer Tax and Wage Reports. Amended.

- (1) (a) Except as otherwise provided in these rules for the annual reporting of wages and taxes by employers with domestic employment only, each employer, pursuant to the provisions of O.C.G.A. Sections 34-8-121 and 34-8-165, shall complete and file with the department on or before the last day of the month following the end of each calendar quarter an "Employer's Quarterly Tax and Wage Report" on a Form DOL-4 or other forms, or by such other methods or in such other formats, including internet filing, as may hereafter be adopted or required for report of wages paid and taxes due with respect to such quarter, listing the name, social security number, and amount of wages paid to each individual employee. For all quarterly reporting periods after December 31, 2003, employers with more than 100 employees, if not reporting by internet filing, shall submit reports by magnetic media in a format approved or provided by the department. Employers with 100 employees or less, which employers do not elect to file internet reports but prefer to file by magnetic media instead of the Form DOL-4 "Employer's Quarterly Tax and Wage Report," may submit reports by magnetic media, if submitted in a format approved or provided by the department.
- (b)
 1. Whenever additional wage information is needed by the department to determine alternative base period wages pursuant to O.C.G.A. Section 34-8-21(b), or to determine regular or alternative base period wages for any individual employed in domestic service by an employer under O.C.G.A. Section 34-8-22(a)(2) with domestic employment only, each employer shall report such additional wage information as may be requested by the department. Employers shall report the additional wage information to the department by the date designated by the department in its request. An employer shall have ten (10) days from the date of mailing of the department's request to report such additional information.
 2. A report of additional wage data made in response to a department request under subparagraph (b)(1) is not a substitute for quarterly wage reports required under paragraph (a) above or for annual reports required of employers with domestic employment only. A report of additional wage data made in response to a department request under subparagraph (b)(1) shall not relieve the employer from properly reporting all wage information with the appropriate quarterly or annual report, when such report is due.
 3. Whenever additional wage information requested by the department under subparagraph (b)(1) above is not received by the department within the time required, the department may use documentary information supplied by the claimant (cash

receipts, wage check stubs, and Internal Revenue Service tax forms 1099 or W-2) to determine base period wages.

(2) An employer receiving Form DOL-10, "Notice of Status Determination", or other forms that may hereafter be adopted for notice to employer of liability for taxes, shall immediately complete and file such reports for all completed calendar quarters from the effective date of liability.

(3) Instructions on or prescribed for any report form, method or format now or hereafter required by the Commissioner shall have the force and effect of rules issued pursuant to O.C.G.A. Sections 34-8-70, 34-8-121 and 34-8-150.

(4) The "Employer's Quarterly Tax and Wage Report", regardless of the form, method or format used by the employer, is considered as received only when report is complete. Such reports shall be completed in accordance with the instructions on the forms or as prescribed for the report method or format used.

(a) All wages paid an employee in insured employment by an employer shall be reported for the quarter in which payment was actually made to the employee. When payment has been made by check, the remuneration shall be reported for the quarter in which the employee's paycheck is dated. In the event the remuneration is paid in cash, or any medium other than cash or check, the remuneration shall be reported for the quarter in which the cash or benefit was received by the employee. Such reports shall include all information with respect to administrative assessments pursuant to O.C.G.A. Section 34-8-180, et seq.

1. This information shall be reported on the same form, by the same method, or in the same format, and shall be submitted at the same time, as all other information on the "Employer's Quarterly Tax and Wage Report" except as otherwise provided herein. Employers of domestic workers under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only shall complete and file reports annually with the department on or before January 31st of each year for the prior calendar year; such annual reports shall be on such form(s) as may hereafter be adopted for report of wages paid and taxes due with respect to such domestic employment during each calendar year, listing the name, social security number, and amount of quarterly wages paid to each individual domestic employee. Except for the annual reporting of wages and taxes and the additional wage data reporting requirements of subparagraph (1)(b)1. above and Rule 300-2-3-.01(6), when applicable, requirements for reporting wages by employers of domestic employment only shall be the same as for other employers.

2. All wages as described above in this subparagraph shall be applied against the employer's rate of contribution as well as the administrative assessment.

3. Any assessments which are not paid when due shall be collected in the same manner as that provided in the Employment Security Law for the collection of contributions, taxes, penalties, interest, costs and reimbursements in lieu of contributions. Any amount due as an assessment may be included in tax executions along with other such payments due, or may be collected by separate tax executions.

(i) Any assessment which becomes delinquent, regardless of whether other funds are due from the respective employer, shall bear interest at the rate provided for delinquent contributions in O.C.G.A. Section 34-8-166.

(ii) Any delinquent assessment shall become the personal debt of the person required under the provisions of O.C.G.A. Section 34-8-167 to file returns or to pay assessments provided under O.C.G.A. Section 34-8-180, et seq.

(b) Wages omitted from the regular report filed for any quarter shall be reported on separate forms by quarters, properly identified as "supplemental", and showing the reason for omission from the regular report. Taxes on such wages shall be computed at the rate in effect during the quarter in which the wages were paid.

(c) Any employer who discontinues business or transfers a part or all of the assets of a business shall, within ten (10) days after such discontinuance or transfer, file wage reports covering all operations not theretofore reported and give notice to the department in writing of the following:

1. The date of such discontinuance or transfer;
2. Whether there are any insolvency proceedings involved;
3. Whether there is a successor or acquirer of such business;
4. The name and address of such acquirer, if any; and
5. The date on which the employer ceased to employ workers.

(d) The acquirer of any portion of a business of another shall notify the department in writing, within ten (10) days from the date of the acquisition, of the following:

1. From whom acquired;
2. Whether acquirer is an individual, partnership or corporation (if a partnership, the name, address and legal domicile of each partner); and
3. The date on which such acquisition occurred.

(e) The acquirer of any portion of a business shall comply with all of the conditions of O.C.G.A. Section 34-8-175 relating to the filing of reports, the payment of contributions, interest and penalties.

(f) An employer which has no employment in a calendar quarter, shall, within the prescribed time, write across the face of the report "No Employment" and shall date, sign and mail the report.

(g) Any receiver, trustee in bankruptcy or other representative of any legal trust shall within ten (10) days after succeeding to the control or management of any business or estate of any employer, notify the department giving the following information:

1. The number and style of the case in which an order was entered authorizing it to act; and
2. A copy of the order of appointment.

(5) Unless a different format or method such as magnetic media is specifically required, employers are encouraged to use the preprinted "Employer's Quarterly Tax and Wage Report" but may use their own forms with prior written approval of its format from the department.

(a) Such employer forms and reports, when authorized, must be compatible with the department's mechanical optic scanning and other processing equipment. Employer reports which are not compatible with such equipment shall subject the report to all applicable penalty and interest charges unless the employer has received prior written approval of its format from the department.

(b) Reports submitted by magnetic media must be in a format prescribed by the department or approved by the department in writing prior to submission. Reports submitted by magnetic media that are incompatible with the department's systems will be subject to applicable penalty and interest charges unless the employer has received prior written approval of its format from the department.

Authority O.C.G.A. Secs. 34-8-21, 34-8-49, 34-8-70, 34-8-150, 34-8-158, 34-8-159, 34-8-165, 34-8-166, 34-8-180, 34-8-181, 34-8-184, 34-8-190, 34-8-191, and 34-8-192.

300-2-2-.03 Common Paymaster. Amended.

(1) As provided in OCGA Section 34-8-27, a common paymaster established for a group of related corporations is any member thereof that disburses remuneration to employees of two or more of those corporations on their behalf. However, the common paymaster is not required to disburse remuneration to all employees of the two or more related corporations.

(a) A common paymaster making disbursements on behalf of related corporations to employed individuals shall be responsible for taxes, interest and penalties imposed by the Employment Security Law on all wages disbursed by it.

(b) For purposes of charging benefits paid and mailing notices to chargeable employers, the common paymaster shall be considered the employer for all wages disbursed to individuals by the common paymaster whether payment was for services performed for the common paymaster or for a related corporation.

(2) If the common paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required by the Employment Security Law, the Commissioner may hold each of the related corporations liable for a proportionate share of the obligation. Such proportionate share may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations. When there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Commissioner may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

(3) Two or more corporations shall be considered related corporations for an entire calendar quarter if they satisfy any of the following tests at any time during that calendar quarter:

(a) More than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the value of shares of all classes of stock of each corporation is owned by one or more of the other corporations, and the common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one of the other corporations.

(b) Five or fewer persons who are individuals, estates or trusts own more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation.

(c) A group of two or more corporations is combined with a common parent corporation as described in subsection (a) of this section and also such parent corporation is a member of a group of corporations as described in subsection (b) of this section.

(d) Fifty percent (50%) or more of one corporation's officers are concurrently officers of the other corporation.

(e) Thirty percent (30%) or more of one corporation's employees are concurrently employees of the other corporation.

(f) When a corporation that does not issue stock is involved, either:

1. Fifty percent (50%) or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or

2. The holders of fifty percent (50%) or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than fifty percent (50%) of that power with respect to the other corporation.

(4) For purposes of paragraph (3) of this rule, concurrent employment means the simultaneous existence of an employment relationship (within the meaning of the Employment Security Law) between an individual and two or more corporations. Such a relationship contemplates the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations.

(a) The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial.

(b) Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for the corporation.

(c) An individual who does not perform substantial services for a corporation is presumed not employed by that corporation.

(d) A corporation which has no employees performing services for it in Georgia cannot be the common paymaster for Georgia employees of its related corporations.

(5) Related corporations which compensate their employees through a common paymaster shall file with the Commissioner the details of their plan. The details shall include the names of the related corporations, the name of the common paymaster corporation and the class or classes of workers involved. The filing shall include documentation to substantiate that the corporations are related as defined in section (3) of this rule and that employees are concurrently employed. An amendment to the plan shall be filed whenever there is a change in the related corporations participating in the plan, a change in the common paymaster or a change in the class or classes of workers involved.

(6) Plans submitted pursuant to section (5) of this rule shall be filed within the thirty (30) day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a common paymaster shall be determined on a quarterly basis.

(7) A common paymaster is not a successor corporation pursuant to OCGA Section 34-8-153 for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the common paymaster corporation.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-83, 34-8-121, 34-8-150.

300-2-2-.04 Labor Information Reports. Amended.

(1) Pursuant to the provisions of OCGA Section 34-8-121, each employer shall complete and file with the department such reports with respect to statistical data as are furnished to the employer by the department.

(2) Employers with multiple business locations, including but not limited to employee leasing companies, shall keep records and submit reports to the department in accordance with the directions contained in such reports. These reports shall be submitted each quarter and shall include the street address of each establishment, branch, outlet or office of such employer, the nature of the operation, the number of persons employed and the wage paid at each establishment, branch, outlet or office.

Authority O.C.G.A. Secs. 34-8-70, 34-8-121, 34-8-150, 34-8-165.

300-2-2-.05 Allocation By Quarter Of Nontaxable Wages.

Pursuant to the provisions of OCGA Section 34-8-49, an individual who has been paid wages in excess of the taxable wage base by an employer with respect to employment during a calendar year shall be credited with wages for unemployment insurance purposes in the amount actually paid for each calendar quarter of such year in which the individual was employed by the employer.

Authority O.C.G.A. Sec. 34-8-70.

CHAPTER 300-2-3 TAX RATES AND COVERED EMPLOYMENT

300-2-3-.01	Quarterly Reports	300-2-3-.12	Casual Labor
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300-2-3-.07	Included Employment: Localization of Services	300-2-3-.18	Partial Transfer of Employment Experience
300-2-3-.08	Repealed	300-2-3-.19	Inactivation of Accounts
300-2-3-.09	Domestic Service Included in Employment	300-2-3-.20	Voluntary Contributions
300-2-3-.10	Domestic Service Excluded from Employment		
300-2-3-.11	Family Service		

300-2-3-.01 Quarterly Reports. Amended.

- (1) (a) Except as otherwise provided in these rules for the annual reporting of wages and taxes by employers with domestic employment only, pursuant to the provisions of O.C.G.A. Sections 34-8-121, 34-8-150, 34-8-158, 34-8-159, 34-8-160, 34-8-161, and 34-8-180, "Employer's Quarterly Tax and Wage Reports", Form DOL-4, shall be filed on a quarterly basis and all taxes thereon shall be due and paid on or before the last day of the month which follows the end of the quarter to which they apply. Employers of domestic workers under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only shall file reports annually on or before January 31st of each year for the prior calendar year on such form(s) as may hereafter be adopted for report of wages paid and taxes due with respect to such domestic employment for the prior calendar year, and all taxes thereon shall be due and paid on or before January 31st immediately following the calendar year to which such taxes apply.
- (b) Report Form DOL-4 must be filed and taxes and administrative assessments paid within ten (10) days from the date any employer discontinues or makes a transfer of the assets of the business.
- (c) Any amount owed the department by an employing unit which has elected to reimburse benefits paid in lieu of contributions shall be due and payable on or before the thirtieth (30th) day after the release date of the "Reimbursable Employer's Quarterly Bill", Form DOL-621.
- (2) Each employer (other than those who have elected the Reimbursable Option) is required to pay taxes and administrative assessments on the taxable wage base portion of wages paid to each individual employee during the calendar year as defined in O.C.G.A. Section 34-8-49. Wages paid during such calendar year with respect to employment performed in another state for the same employer (legal entity), which wages were reported to another state and the taxes thereon paid, shall be considered as wages reported to the State of Georgia for the purposes of computing taxable wages paid to an individual during such calendar year (if the other state has a lower taxable wage base the difference will be taxable wages of Georgia). When a change in ownership (successorship) occurs, all taxable wage base wages paid and reported by the predecessor employer, excluding wages paid by a reimbursable employer, for the same individual for the same calendar year shall be treated as taxable wages paid by the successor employer.

(a) Wages. Salaries, commissions, drawing accounts, lodging and board, bonuses, holiday and vacation pay are wages within the meaning of the Employment Security Law. Flat fee expense payments shall be considered wages, whereas reimbursement expenses for which adequate documentation of actual expense reimbursed is maintained shall not be considered wages.

(b) Bonus means the sum paid to or other thing of value received by an employee from an employer as additional payment for services performed in insured employment.

(c) Drawing accounts, or advances against commissions, shall be deemed wages for services in insured employment in the amount actually drawn by the employee at the time so drawn. Any advance against commission, including that paid to insurance agents, shall not be exempt from the definition of wages.

(d) Board and lodging furnished an employee by an employer shall be construed as wages for services in insured employment.

1. In the case of employees of apartment complexes, the value of an apartment given in lieu of wages shall be the same value accepted as rent for a like apartment in the same complex. Such value placed thereon shall be included as wages for reporting purposes.

2. For the purpose of reporting wages and taxes the minimum value of board and lodging shall be computed as follows, and no agreement between the employer and the employee shall reduce the value of said meals and lodging below these amounts: meals--breakfast \$ 3.00, lunch \$ 4.00, dinner \$ 6.00; lodging--\$ 200.00 per month, \$ 50.00 per week, or \$ 10.00 per day.

(3) All payroll tax payments shall be made directly to the Georgia Department of Labor by check, draft or money order, payable to the Georgia Department of Labor. Payments by cash may be remitted only by registered mail or paid to an authorized representative of the Georgia Department of Labor. The authorized representative who received the cash must issue a receipt to the payer.

NOTE: The payment of this tax is covered by the criminal bad check law, O.C.G.A. Section 16-9-20 and civil damages are as specified in O.C.G.A. Section 13-6-15.

(4) The tax payment of any employing unit which becomes liable for payroll taxes, except those employers who have elected to make payments in lieu of contributions and employers of domestic workers under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only, shall become due and payable on the last day of the month next following the end of the calendar quarter within which:

(a) The twentieth (20th) calendar week occurred during the calendar year in which there were employed four or more individuals for some portion of a day in each of any twenty different weeks within a calendar year under O.C.G.A. Sections 34-8-33(a)(4) or 34-8-33(a)(9). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year, or from the first day of employment within such calendar year; or

(b) Such employing unit became an employer under O.C.G.A. Sections 34-8-33(a)(5), 34-8-33(a)(6) or 34-8-33(a)(8). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of

employment within such calendar year; or

(c) Such employing unit was notified of its liability by this department under O.C.G.A. Sections 34-8-33(a)(7) or 34-8-33(a)(10). The first payment of such employer shall include taxes with respect to all wages paid for employment from the effective date of liability; or

(d) Such employing unit paid for service in employment wages of \$ 1,500.00 or more in any calendar quarter under O.C.G.A. Section 34-8-33(a)(1)(A). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(e) The twentieth (20th) calendar week matured during the calendar year in which there were employed one or more individuals for some portion of a day in each of any twenty (20) different weeks within a calendar year under O.C.G.A. Section 34-8-33(a)(1)(B). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(f) Such employing unit paid for service in domestic employment cash remuneration of \$ 1,000.00 or more in any calendar quarter under O.C.G.A. Section 34-8-33(a)(2). The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year; or

(g) Under O.C.G.A. Section 34-8-33(a)(3), the twentieth (20th) calendar week occurred during the calendar year in which there was employed in agricultural labor ten (10) or more individuals for some portion of a day in each of any twenty (20) different weeks within a calendar year, or such employing unit paid for service in agricultural employment cash remuneration of \$ 20,000.00 or more in any calendar quarter. The first payment of such employer shall include taxes with respect to all wages paid for employment from the first day of the calendar year or from the first day of employment within such calendar year. (See Rule 300-2-3-.18.)

(5) All provisions of these regulations with respect to taxes, contributions, penalty, interest and costs shall apply with equal force and effect to the administrative assessment specified in O.C.G.A. Section 34-8-180 et seq. All information with respect to the administrative assessments imposed under O.C.G.A. Section 34-8-180 et seq. shall be submitted on the Form DOL-4, "Employer's Quarterly Tax and Wage Report" except that employers with domestic employment only shall submit all information with respect to the administrative assessments imposed under O.C.G.A. Section 34-8-180 et seq. on the report required to be made annually by such employers on or before January 31st of each year for the prior calendar year on such form(s) as may hereafter be adopted for report of wages paid and taxes due with respect to domestic employment for such calendar year.

(6) All employers shall report additional wage information whenever requested by the department to determine alternative base period wages in compliance with O.C.G.A. Section 34-8-21(b), or to determine regular or alternative base period wages for any individual employed in domestic service by an employer under O.C.G.A. Section 34-8-33(a)(2) with domestic employment only. Employers shall provide such additional wage information in accordance with the Rules of the department.

Authority O.C.G.A. Secs. 34-8-21, 34-8-49, 34-8-70, 34-8-150, 34-8-158, 34-8-159, 34-8-165, 34-8-166, 34-8-180, 34-8-181, 34-8-184, 34-8-190, 34-8-191, and 34-8-192.

300-2-3-.02 Penalty and Interest. Amended.

(1) Pursuant to the provisions of O.C.G.A. Sections 34-8-49, 34-8-158, 34-8-159, 34-8-160, 34-8-161, 34-8-166 and 34-8-184 interest on delinquent unemployment insurance tax contributions, administrative assessments and reimbursements in lieu of contributions shall be computed from the first day following the due date thereof at the rate specified in the Employment Security Law. Interest will be charged from due date until payment is received.

(2) Form DOL-4, "Employer's Quarterly Tax and Wage Report", is considered as received only when report is complete.

(a) Such reports are deemed filed when received by the department as further provided in Rule 300-2-2-.02, or when placed in the mail service. When placed in the mail service, the postmark cancellation date shall control over any prior postage meter date shown on the envelope or package.

(b) Penalty shall be assessed at the greater of \$ 20.00 per report, per month or .05 percent of total wages for each month or fraction of a month that a Form DOL-4, "Employer's Quarterly Tax and Wage Report" is late in filing.

(3) Liability under O.C.G.A. Section 34-8-33(a)(8) -- acquisition of a liable business:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the acquisition occurred or from the end of the month following the month in which the employer was notified of the liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the acquisition occurred.

(4) Liability under O.C.G.A. Section 34-8-33(a)(9) -- combined employment of two or more not liable employing units:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the twentieth (20th) week during the calendar year was reached or from the end of the month following the month in which the employer was notified of its liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer reached the twentieth (20th) week during the calendar year.

(5) Liability under O.C.G.A. Section 34-8-33(a)(6) -- re-registration of an employer after being inactive (unless terminated):

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the employer re-entered business.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the employer re-entered business.

(6) Liability under O.C.G.A. Section 34-8-33(a)(7) -- election of coverage:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the month in which the employer was notified of liability or from the end of the month following the initial quarter of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer was notified of its liability.

(7) Liability under O.C.G.A. Section 34-8-33(a)(10) -- liability under federal law:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the month in which the employer was notified of liability or from the end of the month following the initial quarter of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the employer employed its first worker in Georgia.

(8) Liability under O.C.G.A. Section 34-8-33(a)(1)(A) -- payment of \$ 1,500.00 or more in wages for any one quarter in either the current or preceding calendar year:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the employer had \$ 1,500.00 or more in wages or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer had \$ 1,500.00 or more in wages.

(9) Liability under O.C.G.A. Section 34-8-33(a)(1)(B) -- employment of one or more employees:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the twentieth (20th) week during the calendar year was reached or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer reached the twentieth (20th) week during the calendar year.

(10) Liability under O.C.G.A. Section 34-8-33(a)(5) -- operation of a governmental organization:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the employer was notified of liability.

(b) Interest. In all cases, where an employer is on a contributory basis, interest will be charged on delinquent taxes from the regular due date of each Form DOL-4 "Employer's Quarterly Tax and Wage Report" (which the employer must file and pay), regardless of when the employer was notified of liability.

(c) In all cases, where an employer is on a reimbursable basis, interest will be charged beginning thirty (30) days after the release date of Form DOL-621, "Reimbursable Employer's

Quarterly Bill".

(11) Liability under O.C.G.A. Section 34-8-33(a)(4) -- operation of a non-profit organization:

(a) Penalty. In all cases, penalty will be charged from the regular due date for the quarter in which the twentieth (20th) week during the calendar year was reached or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, where an employer is on a contributory basis, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer reached the twentieth (20th) week during the calendar year.

(c) In all cases, where an employer is on a reimbursable basis, interest will be charged beginning thirty (30) days after the release date of Form DOL-621, "Reimbursable Employer's Quarterly Bill".

(12) Liability under O.C.G.A. Section 34-8-33(a)(8) -- acquisition by a not liable employer of a liable business causing liability:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the quarter in which the acquisition occurred or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the end of the month following the quarter in which the acquisition occurred.

(13) Liability under administrative decision -- coverage of employer under administrative decision:

(a) Penalty. In all cases, penalty will be charged from the end of the month following the month in which the employer was notified of liability.

(b) Interest. In all cases, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer was notified of liability.

(14) Liability under O.C.G.A. Section 34-8-33(a)(2) -- employment of employees in domestic service:

(a) Penalty. Except as otherwise provided herein, penalty will be charged from the regular due date for the quarter in which the employer paid \$ 1,000.00 or more in cash remuneration or from the end of the month following the month in which the employer was notified of liability, whichever is the later date. Employers with domestic employment only shall be charged penalty from the regular due date for the calendar year in which the employer paid \$ 1,000.00 or more in cash remuneration or from the end of the month following the month in which the employer was notified of liability, whichever is the later date.

(b) Interest. Except as otherwise provided herein, interest will be charged on delinquent taxes from the last day of the month following the quarter in which the employer paid \$ 1,000.00 or more in cash remuneration. Employers with domestic employment only shall be charged interest from the last day of the month following the calendar year in which the employer paid \$ 1,000.00 or more in cash remuneration.

Authority O.C.G.A. Secs. 34-8-49, 34-8-70, 34-8-150, 34-8-158, 34-8-159, 34-8-165, 34-8-166, 34-8-180, 34-8-181, and 34-8-184.

300-2-3-.03 Refund and Adjustment Procedure. Amended.

(1) Initiation by department. The Commissioner may make refunds or adjustments to an account upon discovery of errors with respect to overpayment of amounts due.

(2) Request by employer.

(a) Any request for refund or adjustment of unemployment tax, interest, cost, administrative assessments or any combination of the foregoing must be made in writing and directed to the Commissioner.

(b) Such written request must be received by the Commissioner within three (3) years from the date the report was due or was assessed by the department.

(c) The specific basis of the request must be stated in the request.

(3) Review of the request.

(a) The Commissioner or his authorized representative shall have a reasonable time, normally not to exceed one hundred twenty (120) days, in which to review the request and furnish a written decision thereon if the request is denied.

(b) The decision may be reviewed or reconsidered by the Commissioner if a written request for such review or reconsideration is received by the Commissioner within fifteen (15) days of the release date of the original decision denying the refund or adjustment request.

(c) A decision not to grant a refund or adjustment shall be final within fifteen (15) days as described herein and shall not be subject to review in the absence of such a request for reconsideration or review.

(d) If a request for reconsideration or review as stated in (c) above, of a decision is timely received, it will be processed under the provisions of OCGA Section 34-8-220, except that decisions from this level of administrative appeal must be appealed to the courts, as stated in (e) below, without review by the board of review.

(e) The decision of the Commissioner not to grant a reconsideration or review request shall be final unless there is an appeal therefrom to the Superior Court of the county in which such decision was rendered within fifteen (15) days of the release date of the denial.

(4) If the request for refund or adjustment is granted by the Commissioner a refund shall be made, if the account of the employer is currently inactive; there are no current employees of the employer; the account is current with the department and the employer does not owe the department money for any purpose. The refund shall not include interest.

(5) If a refund or adjustment request is granted and the account of the employer with the Department is still active, the employer may, at its option, receive a refund without interest, or make the appropriate credit adjustment in future "Employer's Quarterly Wage and Tax Reports", Form DOL-4, provided the account is current in every respect. If the account is not current then no refund shall be made, but rather adjustments will be made out of future quarters as deemed appropriate by the department.

(6) The experience rate history account created pursuant to OCGA Section 34-8-154 is strictly an account used to track the history of a particular employer's unemployment tax history. Nothing establishes an employer or any individuals in its employ the right to claim funds paid by the employer into the fund, regardless of whether the employer ceases business, or the experience rate history account of that employer is inactivated, terminated or otherwise ceases to exist.

Authority O.C.G.A. Secs. 34-8-4, 34-8-70.

300-2-3-.04 Computation of Rates. Amended.

(1) Pursuant to the provisions of OCGA Section 34-8-152 a newly covered employer's experience rating account must have been chargeable with benefits throughout the thirty-six (36) consecutive calendar month period ending on the computation date, as that term is defined in OCGA Section 34-8-28, before becoming eligible to earn a rate reduction below the new employer rate.

(2) As used in OCGA Section 34-8-156, total covered wages means all wages paid to an employee during his or her employment by a contributory employer which were covered under the Employment Security Law. Wages paid by employers who have elected to reimburse payments under the provisions of OCGA Section 34-8-158 are not included in total covered wages for purposes of computing the State-wide Reserve Ratio.

(3) Any predecessor employing unit's experience rate history account shall be transferred upon written request of the successor employer within 30 days from the date of notice by the department advising the successor employer that the experience rate history has not been transferred.

Authority O.C.G.A. Secs. 34-8-70, 34-8-122, 34-8-150, 34-8-153, 34-8-157.

300-2-3-.05 Charges to Experience Rating Account. Amended.

(1) An employer shall be charged for all benefits paid as a consequence of the employer's failure to provide a timely written response to a claim for unemployment insurance benefits, regardless of whether the previous determination to pay benefits is later reversed on appeal or if an overpayment is established.

(2) The statutory "cap" on benefit charges provided in OCGA Section 34-8-157 shall not apply to Extended Benefits paid under OCGA Section 34-8-197.

Authority O.C.G.A. Secs. 34-8-70, 34-8-157.

300-2-3-.06 Constructive Knowledge of Work Performed. Amended.

(1) General definition. The purpose of this section of the rules is to establish who is liable for the employment of an individual hired to assist in performing the work of an employee. In a situation where an individual is employed to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by the employee.

(2) Constructive knowledge. An employer is deemed to have constructive knowledge if the employer should have reasonably known or expected that an employee would engage another individual to assist in performing the work. If an employer has a rule against the employee hiring another worker or has instructed the employee not to hire another worker, the employee who hired the extra worker is the employer unless it is unreasonable to expect one person to complete the work assigned.

(3) Examples of actual or constructive knowledge. The following situations demonstrate when there is actual or constructive knowledge and show the employer's responsibility.

(a) The employer who operates a trucking business, employs A to drive a truck to a certain location, unload the truck and return. A hires B to help unload the truck. The following examples show whether the employer is considered to have actual or constructive knowledge of the work performed by B.

1. If the employer knows B is helping A, the employer has actual knowledge of the work performed by B and therefore, B is considered to be employed by the employer.

2. If the employer does not know about B but knows that the unloading A is engaged to perform requires more than one person, the employer has constructive knowledge of the work performed by B and, therefore, B is considered to be employed by the employer.

3. The employer tells A to do the work himself, however, A still hires B and the employer finds out but takes no action to prevent B from helping A in the future. In this case the employer has actual knowledge of the work performed by B and, therefore, B is considered to be employed by the employer for both the past and future work performed. However, if the employer takes action to prevent A from hiring help in the future, then B would not be considered to be employed by the employer even for the work already performed.

4. The employer tells A that he may do the work himself or hire someone to help him. A hires B but the employer is not told and does not know about B. The employer is considered to have constructive knowledge because he knows A might hire B.

(b) Reporting requirement (constructive knowledge). The employer has a responsibility to report all employment for which he is liable, therefore, the employer in the examples above should require that A report B's employment to him in those situations where the employer had actual or constructive knowledge of B's employment. However, A's failure to report B to the employer does not relieve the employer of the liability for the employment.

300-2-3-07 Included Employment: Localization of Services. Amended.

(1) General definition. The objective of this rule is to explain when employment is covered under Georgia law if an individual worked for one employer in more than one state. Unemployment insurance programs in all states use the parameters established in this section of the rules.

(2) Service is localized in this state. The service is considered to be localized in Georgia if it is performed entirely within Georgia. The service is also considered to be localized in Georgia if performed both inside and outside of Georgia, but the service outside of Georgia is incidental to the service in Georgia. The service is incidental if it is temporary or transitory in nature or consists of isolated transactions. The intent of the employer and employee will be used to determine whether the service is incidental to the service performed in Georgia.

(3) Service is not localized in any state. If the service is not localized in any state but some of the service is performed in Georgia by the individual, the entire service is covered in Georgia if one of the following conditions apply:

(a) The base of operations is in Georgia. The individual's base of operations is in Georgia. The base of operations is the place from which the employee starts work and to which he or she customarily returns for instructions from the employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the individual's trade or profession. The base of operations may be an individual's residence.

(b) The place from which service is controlled or directed is in Georgia. If the individual has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(c) The place of residence is in Georgia. If the conditions in paragraphs (a) or (b) do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Georgia provided the individual lives in Georgia and performs some of the services in Georgia.

(4) Employer may elect one state for coverage. If the conditions in paragraphs (2) or (3) of this rule do not apply, the employer may elect to cover all of the individual's service in one state. This election must be made under the provisions for reciprocal coverage arrangements (See OCGA Section 34-8-35).

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-08 Repealed.

300-2-3-.09 Domestic Service Included in Employment. Amended.

(1) General definition. This section of the rules shows when domestic services become subject employment.

(2) \$ 1000.00 in a calendar quarter. Domestic service is employment if performed in a private home, local college club or local chapter of a college fraternity or sorority for a person who paid cash remuneration of \$ 1000.00 or more in a calendar quarter in the current calendar year or the preceding calendar year.

(3) All remuneration is reportable. Once the \$ 1000.00 cash test is met, all remuneration including cash and noncash payments such as room and board are reportable as wages.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-.10 Domestic Service Excluded from Employment. Amended.

(1) General definition. This section of the rules defines domestic services which are exempt under the law, provided they are not included under OCGA Section 34-8-33.

(2) Domestic service.

(a) Services which are domestic services. Domestic services include services of a household nature in or about a private home, local college club, or local chapter of a college fraternity or sorority, performed by individuals such as cooks, maids, baby-sitters, handymen, gardeners, and chauffeurs of automobiles for family use. The domestic services must be performed by an individual in or about the private home, local college club or local chapter of a college fraternity or sorority of the person employing the individual.

(3) Services which are not domestic services. Some examples of services, which are not domestic services, are secretarial services performed in a private home and services in relation to remodeling or building a private home, local college club or local chapter of a college fraternity or sorority.

(a) Private home. A private home is a fixed place of abode of an individual or family; this may include a dwelling unit in an apartment building or hotel. It shall also include a nursing home when the family of the patient hires sitters who are not employees of the nursing home.

(b) Local college club or local chapter of a college fraternity or sorority. A local college club does not include an alumni club or chapter.

(c) Services not exempt. Services of a household nature are not exempt if performed in or about rooming or boarding houses, hotels, hospitals, commercial offices or for home-owners associations. Services not of a household nature, regardless of where performed, are not exempt. Authority OCGA Sections 34-8-70 and 34-8-150.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-11 Family Service. Amended.

(1) General definition. Family service is exempt under the law only if a required family relationship exists between the employee and all members of the employing unit (individual owner or partners). Services performed in the employ of a corporation are not exempt.

(2) Family relationship requirement.

(a) One of the following relationships must exist for family service to be exempt:

1. An individual employed by his or her spouse;
2. A parent employed by his or her son or daughter; or
3. A child under the age of twenty-one (21), married or single, employed by a parent.

(b) In the parent-child employment situation, the exempt family relationship is met even if the child is an adopted child, stepchild, or foster child; the foster child, however, must be living with the foster parent.

(3) Examples of family relationships which are or are not exempt. A required family relationship (not necessarily the same relationship) must exist between the employee and each member of the employing unit. Examples are:

(a) A woman who is employed by a partnership composed of her husband and her son is exempt from "employment";

(b) A woman who is employed by a partnership composed of her husband and his brother is not exempt from "employment" because the required family relationship between the woman and her brother-in-law does not exist; or

(c) A man who is employed by a partnership composed of his wife and his son-in-law is not exempt from "employment" because the required family relationship between the man and his son-in-law does not exist.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-12 Casual Labor. Amended.

(1) General definition. Casual labor is exempt under the law only if it is not in the course of the employing unit's trade or business. Casual labor does not apply to exempt domestic service.

(2) Casual labor. Services performed by an individual for an employing unit which are not in the course of the employing unit's trade or business are casual labor, unless:

(a) Cash remuneration for such service is \$ 50.00 or more in a calendar quarter; and

(b) The individual performs such service on each of twenty-four (24) days during the calendar quarter or twenty-four (24) days during the preceding calendar quarter.

(3) Not in the course of the employing unit's trade or business. Services not in the course of the employing unit's trade or business include services that do not promote or advance the trade or business, for example; services performed in connection with the employer's hobby or repairs to the employer's private home. Casual labor (as defined above) performed by an individual for a property owner in regard to building or remodeling the owner's home is exempt under this section.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-13 Commissioned Insurance Agents. Amended.

(1) General definition. "Employment" does not include services performed as an insurance agent if remuneration for such services is solely by way of commission.

(2) Services performed as an insurance agent. Services performed by an individual as an insurance agent are exempt if all such services are paid solely by way of commission. For example, if this individual works for an insurance company both as an insurance agent and an accountant, is paid for services as an insurance agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services (commissions and salary) is for the same pay period, the "included and excluded service" provision of OCGA Section 34-8-35 must be applied.

(3) Solely by way of commission.

(a) If any part of remuneration for services as an insurance agent is a salary, all of these services are considered to be employment and the total remuneration (salary and commission) is included.

(b) If the individual performing services as an insurance agent is guaranteed a minimum salary for any pay period in which his commissions are less than the guaranteed minimum, all remuneration paid during that particular pay period shall not be considered as payment "solely by way of commission".

(c) If the individual performing services as an insurance agent is given advances against future commissions and the individual is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded. The employer must provide satisfactory proof that advances are, in fact, repaid.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-14 Real Estate Agents. Amended.

(1) General definition. "Employment" does not include services as a licensed real estate agent if remuneration for such services is solely by way of commission.

(2) Services performed as a licensed real estate agent. Services performed by an individual as a licensed real estate agent are exempt if all such services are paid solely by way of commission. For example, if this individual works for a real estate company both as a real estate agent and an accountant, is paid for services as a real estate agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services (commissions and salary) is for the same pay period, the "included and excluded service" provision of OCGA Section 34-8-35 must be applied.

(3) Solely by way of commission.

(a) If any part of the remuneration for services as a real estate agent is a salary, all of these services are considered to be employment and the total remuneration (salary and commission) is included.

(b) If the individual performing services as a real estate agent is guaranteed a minimum salary for any pay period in which the commissions are less than the guaranteed minimum, the individual's earnings are included when the individual is paid the guaranteed salary. In any pay period in which the individual's commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are excluded.

(c) If the individual performing services as a real estate agent is given advances against future commissions and is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-15 Included and Excluded Service During a Pay Period. Amended.

(1) General definition. When some of an individual's services performed for the person employing the individual during a pay period are included and some excluded from employment, all the services are considered to be included or excluded for that pay period. Whether all the services are considered to be included or excluded depends on the time spent in each activity.

(2) Time spent in a pay period.

(a) If fifty percent (50%) or more of an individual's time in the employ of a particular person is spent in performing services which constitute employment, all the services are considered to be employment.

(b) This fifty percent (50%) test must be applied to each pay period. An individual could have all services performed included in one period and excluded in another.

(3) Employer must verify time spent. In order to have all services performed by an individual excluded, the employer must show to the satisfaction of the department that less than fifty percent (50%) of the time spent in any pay period is for services which constitute employment.

(4) Pay period. This section of the Law does not apply if there is no regular pay period, the pay period covers more than thirty-one (31) consecutive days or there are separate pay periods for the included and excluded services.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-16 Agricultural Labor. Amended.

(1) General definition. Generally, agricultural labor is exempt under OCGA Section 34-8-35, unless it is covered under OCGA Section 34-8-33(a)(3). OCGA Section 34-8-33 covers larger agricultural employers based on wages paid or number of individuals employed.

(2) Definition of terms. The terms used in this section are defined as follows:

(a) Agricultural commodities. Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts, vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.

(b) Horticultural commodities. Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.

(c) Raising and harvesting. Raising includes such things as planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes caring for, feeding, shearing, breeding, training and managing. Harvesting includes such things as picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are available for sale.

(d) Farm. A farm is any place used mainly for raising agricultural or horticultural commodities such as a ranch, orchard, nursery, greenhouse or other similar structure.

(3) Agricultural labor. "Agricultural labor" means any service performed in any one of the following:

(a) On a farm, in the employ of any person in connection with:

1. Cultivating the soil, which includes plowing, dragging and fertilizing; or
2. Raising or harvesting any agricultural or horticultural commodity.

(b) In the employ of the owner or operator of a farm, if the major part of the service is performed on a farm, in connection with:

1. The operation, management, conservation, improvement or maintenance of the farm and its tools and equipment. This includes clearing land, leveling land, selling agricultural commodities raised by the operator and services performed by painters, mechanics, farm supervisors and bookkeepers, provided the individual is not an employee of another firm hired by the farm operator; or
2. Salvaging timber or clearing land of brush or other debris left by a hurricane, storm, flood or other natural disaster.

(c) In the employ of any person in connection with:

1. The production or harvesting of agricultural commodities defined in Section 15(g) of the Federal Agricultural Marketing Act. These commodities are limited to crude gum (oleoresin) from a living tree, and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum; or
2. The ginning of cotton; or
3. The operation or maintenance of ditches, canals, reservoirs or waterways if not owned or operated for profit and used primarily for farming purposes.

(d) In the employ of the operator of a farm or group of operators of farms who produce more than one-half of the commodity and perform services with respect to such commodity in its unmanufactured state in:

1. Handling, planting, drying, packing, packaging, processing, freezing, grading or storing the commodity. However, services performed in connection with commercial canning or commercial freezing do not constitute agricultural labor; or
2. Delivery to storage or to market or to a carrier for transportation to market of the commodity. However, services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with the wholesaling and retailing of the commodity do not constitute agricultural labor. The selling activity, however, is agricultural when it is performed on the farm.

(4) Examples of the application of the definition of agricultural labor.

(a) Raising and selling. Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

(b) Included and excluded services (agricultural labor). If in example (a) above, the same individual performs both agricultural and nonagricultural labor, the entire service will be considered to be agricultural labor if fifty percent (50%) or more of the individual's time in a pay period was spent in agricultural labor (see OCGA Section 34-8-33).

(c) Poultry hatchery. Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the commodity (the eggs). Services for a commercial hatchery that is not

part of a farm that raises poultry are not agricultural labor.

(d) Raising livestock. Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is agricultural labor only if it is performed on a farm. Services in connection with racing, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

(e) Forestry, lumbering and landscaping. Services performed in forestry, lumbering and landscaping are not agricultural labor.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150.

300-2-3-17 Successorship.

Any legal entity who acquires by purchase, merger, consolidation or other means substantially all of the trade, business or assets of any employer and continues such business shall be deemed a successor to the employer from whom the business was acquired, subject to the mandatory and prohibited successorship provisions in subsections (g) and (h) of O.C.G.A. Section 34-8-153. Pursuant to Section 303(k) of the federal Social Security Act, as amended by the SUTA-Dumping Prevention Act of 2004 (P.L. 108-295), the requirements of mandatory and prohibited transfers of unemployment experience rates of contribution stated therein shall be applicable effective January 1, 2006 to all transfers of experience on or after that date. Factors to be considered by the Commissioner in making a determination of whether a successorship has occurred and whether successorship treatment is required or prohibited include, but are not limited to, the following:

(a) When successorship is not otherwise required or prohibited, a rebuttable presumption of successorship shall arise if 90% or more of the predecessor's trade, business or assets were transferred;

(b) Continuity of workforce;

(c) Continuity of the predecessor's business enterprise;

1. Whether the same facility is used;

2. Whether the same customers are used;

3. Whether the business services the same geographic area;

4. Whether the same trade or business enterprise is continued;

5. Whether there are any significant changes in management and supervision of employees;

(d) Continuity of bargaining unit, if any; if there is a bargaining unit, did the acquirer:

1. Expressly assume the bargaining unit?
2. Expressly reject the bargaining unit?
3. Make any change in the craft designations?
4. Continue to use the same hiring hall?
5. Hire new employees such that the bargaining unit no longer represents a majority of the workers?

(e) Whether there occurred a hiatus in the business activities. The length of the hiatus shall be considered by the Commissioner.

1. When successorship is not otherwise required or prohibited, there shall be a rebuttable presumption in favor of successorship if the hiatus is less than two (2) weeks.
2. When successorship is not otherwise required or prohibited, there shall be a rebuttable presumption against successorship if the hiatus is two (2) weeks or more.

(f) Whether the employees of the predecessor had reason to believe that employment would continue.

(g) Substantially common ownership, management, or control over the trade or business acquired;

1. Whether there are any significant changes in ownership of the predecessor and the successor before, during or after the acquisition;
2. Whether the predecessor and the successor are owned by any of the same individual(s), any of the same legal entities, or any of the same legal entities which are owned by any of the same individual(s);
3. Whether any of the owners of the predecessor and the successor have familial or financial relationships without regard to the acquisition;
4. Whether there are any significant changes in the management and supervision of employees before and after the acquisition;
5. Whether any officer, major stockholder, or other person having charge of the affairs of the predecessor, or of the successor, has meaningful authority, directly or indirectly, by contract or in fact, regarding the affairs of the other;
6. Whether capital investments in the predecessor and the successor were supplied by any of the same individual(s) or legal entities;
7. Whether the operational financing of the predecessor and the successor are controlled or directed by any of the same individual(s) or legal entities.

(h) Whether or not the successor acquired the trade, business or assets of the predecessor solely or primarily for the purpose of obtaining a lower rate of unemployment tax contributions;

1. Whether the predecessor's business enterprise was active at the time of the acquisition;
2. The cost of acquiring the predecessor's trade or business;
3. Whether the cost of acquiring the predecessor was reasonably related to the market value of the predecessor's trade or business;
4. Whether the successor actually continued the business enterprise of the predecessor;
5. How long the successor continued the business enterprise activity of the predecessor;
6. Whether a substantial number of new employees were hired by the successor for performance of duties unrelated to the business enterprise activity conducted by the predecessor before the acquisition;
7. The potential unemployment insurance tax savings in contributions costs which favorable successorship treatment might achieve compared to the cost of the acquiring the predecessor's trade or business.

Authority O.C.G.A. Secs. 34-8-70, 34-8-153, 34-8-157, 42 U.S.C. 503(k), SUTA-Dumping Prevention Act of 2004 (P.L. 108-295).

300-2-3-.18 Partial Transfer of Employment Experience.

(1) Partial transfers of experience shall be subject to the mandatory and prohibited successorship provisions in subsections (g) and (h) of O.C.G.A. Section 34-8-153. The department shall consider, without limitation, the factors listed in Section 300-2-3-.17 to determine the applicability of subsections (g) and (h) of O.C.G.A. Section 34-8-153 to partial transfers of employment experience. Pursuant to Section 303(k) of the federal Social Security Act, as amended by the SUTA-Dumping Prevention Act of 2004 (P.L. 108-295), the requirements of mandatory and prohibited transfers of unemployment experience rates of contribution stated therein shall be applicable effective January 1, 2006 to all transfers of experience on or after that date attributable to transfers of any part of an existing trade or business, including transfers of any clearly identifiable or separable portion of the organization.

(2) When successorship is not otherwise required or prohibited, upon mutual agreement by both predecessor and successor, partial transfer of employment experience and payroll records of an employer may be approved if:

- (a) A clearly identifiable or separable portion of the organization, trade or business was transferred as provided in O.C.G.A. Section 34-8-153.

(b) The acquiring unit continues to operate the acquired portion of such organization, trade or business and is a liable employer or becomes liable as provided by O.C.G.A. Section 34-8-153.

1. Where the successor is an employer or becomes an employer, application and agreement signed by both predecessor and successor are made by the successor employer within the two (2) calendar quarters following the quarter in which the acquisition occurred;

2. For good cause shown, time for filing such application may be extended not exceeding thirty (30) days;

3. Application and agreement shall be made on Georgia Department of Labor forms and shall include payroll and other information as required by such form; and

(c) Notice of said transfer was made as provided by Rule 300-2-2-.02.

(3) The predecessor and successor employers, after the formal application shall, upon request, file with the Georgia Department of Labor such other reports and forms as are deemed necessary.

(4) Upon receipt of the application and agreement, a transfer percentage will be determined by relating the total taxable payroll of the acquired portion for the eighteen (18) month period immediately preceding the date of acquisition to the total taxable payroll of the predecessor for the same period. In cases where taxable payroll information for the eighteen (18) month period is not available, taxable payroll for a lesser period may be used.

(5) When not otherwise required or prohibited, where the successor is a liable employer and acquires a liable employer and, at the time of acquisition, the predecessor's tax rate is higher than that of the successor, the successor's current rate shall continue until the end of the calendar year. The experience history of the predecessor shall not be transferred to the successor. If the predecessor's tax rate at the time of acquisition is lower than or equal to the rate of the successor, the experience history shall be transferred to the successor and used in future rate calculations.

(6) When not otherwise required or prohibited, where a successor who is not a liable employer acquires an existing business and, at the time of acquisition, the tax rate is greater than the new employer rate, the successor shall be assigned the new employer tax rate. The experience history of the predecessor shall not be transferred to the successor. The successor shall retain the new tax rate until eligible for a rate computation based on the successor's own experience history.

(7) When not otherwise required or prohibited, where a successor who is not a liable employer acquires an existing business and, at the time of acquisition, the predecessor's tax rate is lower than the new employer tax rate, the experience history shall be transferred to the successor, and the successor shall retain the predecessor's tax rate for the remainder of the calendar year. The successor's tax rate for future years will be computed based on the combined experience history of the predecessor and successor.

(8) When not otherwise required or prohibited, where a successor employer acquires multiple predecessors, the experience history of any predecessor with a tax rate lower than the new employer tax rate shall be transferred, but the experience history of any predecessor with a tax rate higher than the new employer tax rate shall not be transferred.

(9) Termination of an employing unit's unemployment experience history account means the employer either has ceased doing business in Georgia, with no reasonable expectation or intention to resume doing business in Georgia in the future, or the employer has fallen below the threshold of minimum coverage for a particular category of employer as more fully described in O.C.G.A. Section 34-8-33. For example, an agricultural employer which no longer has ten or more individuals in the employ, or a non-profit employer which no longer has four or more individuals in its employ may request termination of coverage. In either event, an employer must specifically request, in writing, termination of its account, and specify the reason for the termination. A statement to the effect that the employer no longer has employees or has ceased doing business shall not suffice as a request for termination, but shall constitute grounds for inactivation of an account.

(a) Inactivation of an account means the account may be re-activated in the future. In such event, the unemployment insurance experience tax rate history of the account remains, and will be merged with future experience for purposes of tax rate calculation.

(b) The unemployment insurance experience tax rate history of a terminated account ceases to exist. In the remote event such an employer were to reactivate its account in the future, it would be assigned a new employer rate, without regard for its prior tax rate history or experience.

Authority O.C.G.A. Secs. 34-8-70, 34-8-33, 34-8-153, 34-8-157, 42 U.S.C. 503(k), SUTA-Dumping Prevention Act of 2004 (P.L. 108-295).

300-2-3-19 Inactivation of Accounts.

The experience rated account of any employer which submits eight (8) successive reports showing no wages paid shall be automatically inactivated. In the event such employer resumes employment at some future date, the employer shall be assigned the new employer rate, until such employer has accumulated at least thirty-six (36) consecutive calendar months of employment ending on the computation date for that calendar year. After that time, the entire experience rating history shall be used in computing the contribution rate.

Authority O.C.G.A Secs. 34-8-70, 34-8-157.

300-2-3-20 Voluntary Contributions.

OCGA Section 34-8-178 of the law allows employers the annual option of making voluntary contributions for the purpose of lowering their tax rate. All employers are notified annually of the provision and their eligibility for a rate buy down.

(a) Employers who qualify for a rate buy down shall pay in certified funds which are postmarked no later than 30 days from the issue date of the Voluntary Contribution notice.

(b) Employers ineligible for the buy down are those who have the lowest tax rate, or have delinquent report(s) or have insufficient experience history for a rate computation.

(c) Voluntary contributions when accepted from an employer will not be refunded in whole or part.

Authority O.C.G.A. Secs. 34-8-70, 34-8-178.

CHAPTER 300-2-4 UNEMPLOYMENT INSURANCE BENEFIT PAYMENTS

300-2-4-.01	Regular Unemployment Insurance Benefit Payments	300-2-4-.06	Issuance of Replacement Checks
300-2-4-.02	Registration of Claimants for Possible Referrals to Job Openings	300-2-4-.07	Repealed
300-2-4-.03	Reporting Requirements on Claims	300-2-4-.08	Waiver of Overpayments
300-2-4-.04	Unemployment Insurance Extended Benefit Payments	300-2-4-.09	Partial Unemployment
300-2-4-.05	Employer Supplemental Unemployment Benefit Payments	300-2-4-.10	Mass Separation
		300-2-4-.11	Extended Benefits

300-2-4-.01 Regular Unemployment Insurance Benefit Payments. Amended.

Pursuant to the provisions of OCGA Sections 34-8-190, 34-8-191, and 34-8-195, filing claims:

(a) Total and part-total claims. To file a claim for total or part-total unemployment, an individual must report in person at the local Georgia Department of Labor office most accessible to the individual, and file a claim on forms specified by the Department of Labor. Registration for work with the department is required as directed by the department and failure to register may cause benefits to be withheld.

(b) Partial Claims. Form DOL-408, "Weekly Report of Low Earnings", properly completed, shall constitute a claim for compensable credit with respect to such week of partial unemployment covered by the claim. Form DOL-408, "Weekly Report of Low Earnings", shall be completed by the employer and furnished to the employee no more than thirty (30) days from the end of the employer's payroll week during which employee worked less than full-time. Provided such employee may, upon failure of the employer to provide such forms, file such claim at the nearest claims office of the department. Such claims must be filed within sixty (60) days from the end of the employer's payroll week in which said claimant worked less than full-time. Provided, further, that the limitations imposed hereunder may, in the discretion of the Commissioner or the Commissioner's designee, be waived upon the showing of extenuating circumstances.

Authority O.C.G.A. Secs. 34-8-70, 34-8-170, 34-7-190.

300-2-4-.02 Registration of Claimants for Possible Referrals to Job Openings. Amended.

(1) Claimants are required to report as directed by the department to register with the department's Field Service Office for screening and referral to employers who are currently offering employment (except as provided below). Unemployment benefits will cease to be payable unless registration has been completed as directed. The department will notify claimants from time to time to report to the department to give reports on work search activities and for the department to make job referrals as appropriate.

(2) Exceptions to registration requirements are granted to qualified applicants who are:

- (a) On short term layoff but who have a definite date of recall to their previous employment within six (6) weeks of the last day worked;
- (b) Partial claimants as described in Section 300-2-4-.01 of these rules;
- (c) Claimants who are attending training approved by the Commissioner;
- (d) Members of unions who routinely and regularly receive all of their job referrals from so-called hiring halls or similar placement facilities and whose eligibility for membership in the union would automatically cease upon acceptance of other work; and
- (e) Claimants involved in a strike or similar labor dispute, provided, however, claimants who have been locked out of their job must register with the department for possible job referrals if so directed by the department.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150, 34-8-155, 34-8-158(3), 34-8-170, 34-8-191.

300-2-4-.03 Reporting Requirements on Claims. Amended.

(1) Total claims. To claim credit for weeks of unemployment subsequent to a claim filed pursuant to this Section the claimant shall report as directed by the local office of the department at which the claim was filed.

(a) For reasons found to constitute good cause, a claimant unable to report on the claimant's regular reporting day to the local office at which the claimant filed the claim may be permitted to report at any local office of the department within the two (2) day period following the claimant's regular reporting day.

(b) A claimant may report by mail for the week of unemployment which immediately precedes the date of the claimant's reemployment to a full-time job, provided the claimant filed a claim at the beginning of the week for which the claimant claims unemployment insurance.

(c) Partial claims. Form DOL-408, "Weekly Report of Low Earnings", mailed or delivered by the employer to the Georgia Department of Labor, shall constitute such claimant's report on the individual's claim, provided that such form is properly executed by both employer and claimant. (See Rule 300-2-4-.09).

(2) Notwithstanding any provision of this rule, any notice of appeal must be filed within the time limitations specified in Chapter 5 of these rules.

Authority O.C.G.A. Secs. 34-8-51(b)(2), 34-8-70, 34-8-170, 34-8-190.

300-2-4-.04 Unemployment Insurance Extended Benefit Payments. Amended.

Except where the result would be inconsistent with provisions of OCGA Section 34-8-197, all portions of these rules which apply to claims for, or the payment of regular benefits shall apply to claims for, and the payment of extended benefits.

Authority O.C.G.A. Secs. 34-8-70, 34-8-151, 34-8-155, 34-8-170, 34-8-190.

300-2-4-.05 Employer Supplemental Unemployment Benefit Payments. Amended.

(1) All employers who have signed a contract agreeing to make contributions to a trust fund from which supplemental unemployment benefits may be paid to its unemployed workers, shall immediately furnish to the department a copy of the agreement and subsequent changes or amendments. It shall be determined whether the contract in reality provides for a supplemental plan such as is permitted under OCGA Section 34-8-49(b)(2) and 34-8-45 and one which will not prevent payment of unemployment insurance to employees who meet all eligibility requirements.

(2) To be approved as a valid supplemental unemployment benefit plan, the following conditions must be met:

(a) The employer must submit a written request for approval of the plan to the Policy and Procedures Section of this Department at least thirty (30) days prior to the implementation of such plan, plant closure, or mass layoff;

(b) The request must be accompanied by a copy of the agreement between the company and its workers;

(c) Payments under the proposed supplemental unemployment benefit plan must be specifically designated as such, and must be intended solely as a supplement to unemployment insurance benefits;

(d) The payments of the proposed plan must be guaranteed to all employees, and set aside by the employer in a designated trust fund; and

(e) Payments made in accordance with the plan must be issued in weekly increments, and be conditional based on eligibility for unemployment insurance benefits.

Authority O.C.G.A. Secs. 34-8-51(b)(2), 34-8-70, 34-8-170, 34-8-190.

300-2-4-.06 Issuance of Replacement Checks. Amended.

(1) A replacement for any check that has not been received by the claimant nor cleared the account of the department shall not be processed until thirty (30) days after the original check date and, only upon proper completion of Form Claims Memorandum DOL-157.3, or other documentation that the Commissioner determines to be acceptable, certifying that neither the claimant nor any person authorized by or acting on behalf of the claimant received the check or any portion of its proceeds.

(2) A replacement check may be issued when an identifiable part of the original unpaid check is returned to the department in a torn or mutilated condition.

(3) A replacement check may be issued for a check with forged or erroneous endorsement upon completion of the following actions:

(a) Claimant reviews and denies validity of signature;

(b) Claimant completes "Affidavit of Forged Endorsement and Application For New Check", Form DOL-477A, certifying that neither the claimant nor any person authorized by or acting on behalf of the claimant has cashed said check or received any portion of the proceeds therefrom; and

(c) The department has had the proceeds of the original forged or erroneous check restored to the account of the department.

Authority O.C.G.A. Secs. 34-8-70, 34-8-152, 34-8-170, 34-8-190.

300-2-4-.07 Repealed.

300-2-4-.08 Waiver of Overpayments. Amended.

(1) An individual shall be required to repay an overpayment of unemployment insurance benefits unless a timely application for waiver is filed and such repayment, in the discretion of the Commissioner or the Commissioner's designee, is determined to be inequitable under this rule and fault is not found to be attributable to that individual. Such determination shall not be appealable.

(2) A waiver of an unemployment insurance overpayment may not be granted if the request for such waiver is filed later than fifteen (15) calendar days following the release date of the Notice of Overpayment. Provided, however, that such time limitation may be extended, in the discretion of the Commissioner or the Commissioner's designee, upon a showing of extenuating circumstances which prevented the filing of a timely waiver request by the claimant and such circumstances were beyond the claimant's control.

(3) A waiver of an unemployment insurance overpayment may not be granted to any individual who has been expressly determined to have brought about such overpayment by the presentation of false or misleading statements or representations, whether or not such action has been determined fraudulent, when such individual could have or should have known such information presentation was false or misleading.

(4) A waiver of an unemployment insurance overpayment may be granted to an individual only if:

(a) a timely application for waiver is filed;

(b) fault is not attributable to the individual, as outlined in paragraph (3) of this rule;

(c) the individual provides, at the time of the individual's request for a waiver, satisfactory evidence of circumstances showing repayment would genuinely work a financial hardship on the individual; and

(d) the individual provides, at the time of the individual's request for a waiver, satisfactory evidence that he or she has no reasonable prospect of future employment nor ability to repay the overpayment in the future, due to age, disability, or other good cause.

(5) Financial hardship exists if recovery of the overpayment would result directly in the individual's loss of or inability to obtain the minimal necessities of food, medicine, and shelter for a substantial period of time and such circumstances may be expected to endure for the foreseeable future.

(6) A waiver of an unemployment insurance overpayment may be issued by the department in whole or in part upon the finding of a court of law having proper subject matter jurisdiction which rules that error existed in the information utilized to establish such overpayment, whether or not such overpayment was determined to be fraudulent in nature. Additionally, if a court finds repayment of an overpayment should be waived by virtue of discharge in bankruptcy granted under provision of Chapter 7 or Chapter 13 of the Bankruptcy Code, waiver will be granted.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190, 34-8-254.

300-2-4-.09 Partial Unemployment.

(1) "Weekly Report of Low Earnings", Form DOL-408, shall be filed by an employer with respect to any complete pay-period week during which an otherwise full-time employee works less than full-time, due to lack of work only, and earns an amount not exceeding his unemployment insurance weekly amount, if known, plus \$ 50.00 or earns an amount not exceeding the maximum weekly amount provided in the Employment Security Law plus, \$ 50.00, if the individual's unemployment insurance weekly benefit is not known. Partial unemployment claims shall not be submitted or allowed for vacation days regardless of whether such vacation days were requested by the employee or established by the employer.

(2) Payments shall be made for partial unemployment only upon the approval by the Commissioner. Approval shall be based upon consideration of the conditions set forth in these regulations.

(a) The employer shall complete an affidavit in such form as approved by the Commissioner with respect to the partial unemployment for partial claims which are submitted on magnetic tape.

(b) Normally employers who have over twenty-five (25) employees affected by the partial unemployment may have such partial unemployment approved.

(c) Such unemployment must have been directly caused by lack of work and no other issues as to entitlement of unemployment benefits may be present; if other issues are involved the employee must report to the nearest field service office in order to claim unemployment benefits.

(d) Form DOL-408, the questionnaire and any other correspondence shall be signed by both the employer and the employee and mailed or delivered to:

Georgia Department of Labor
Claims Administration
Suite 900, Sussex Place
148 International Blvd., N.E.
Atlanta, Georgia 30303-1751

(e) The employer's physical address, telephone number and DOL account number must be shown on forms. Forms with only post office mailing addresses or without telephone number and account number shall not be accepted.

(3) Six (6) consecutive weeks of total unemployment immediately following a week of full-time or part-time employment may be reported by an employer on Form DOL-408 or magnetic tape.

(4) Following those six (6) consecutive weeks of total unemployment for any worker reported on Form DOL-408, an employer who requests permission and shows justifiable cause may, upon approval of the Commissioner report four (4) additional weeks of total unemployment on Form DOL-408, provided the employer provides a firm return to work date for such employees within the four (4) week time period.

(a) If the employer can provide no firm return to work date or upon expiration of the approved time period for acceptance of partial unemployment claims, or when employer ceases to file Form DOL-408 for any totally unemployed worker, the employer shall immediately advise the employee to report in person to the nearest local field service office of the department for the purpose of registering for work and reporting on his or her claim.

(b) Employers will not be authorized to file low earnings reports for regular breaks in seasonal employment. They may be filed when unusual circumstances require a break in employment at a time of normal, non-seasonal work.

(c) Any employer found by the Commissioner to be abusing the purpose and intent of the partial claims program will be restricted from using the partial system for a period of three (3) years from time of discovery of the violation. This restriction may be appealed to the Commissioner for possible reconsideration. Such appeal shall follow standard appeal

provisions specified in the Employment Security Law.

(5) Because partial unemployment claims are employer-initiated claims based upon lack of work, such employers will receive no Form DOL-1199FF (notice of initial claim). The employer will receive its quarterly notification of charges against its account as provided by OCGA Section 34-8-157(d) and OCGA Section 34-8-159(4), provided, however, such employer will be furnished notice of the approval by the department of the initial partial claims.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190.

300-2-4-.10 Mass Separation.

(1) Mass separation due to lack of work or reason other than labor dispute. Whenever twenty-five (25) or more workers employed in one establishment are separated on the same day, for the same reason, and the separation is permanent, for an indefinite period or for an expected duration of seven (7) or more days, the employer or employing unit shall, within forty-eight (48) hours following such separation, furnish the local office of the department nearest its place of business, Form DOL-402, "Mass Separation Notice (in duplicate)", and a copy of Form DOL-402A, "Mass Separation Notice (Continuation Sheet)", setting forth the information required thereon.

(2) Separation due to labor dispute.

(a) In the case of total or part-total unemployment due to a strike, lockout or other labor dispute, the employer or employing unit shall file only Form DOL-402 (in duplicate) within forty-eight (48) hours after such unemployment first occurs. The Form DOL-402 will set forth the existence of such dispute and will be mailed to:

Georgia Department of Labor
UI Legal Section
Suite 826, Sussex Place
148 International Boulevard, N.E.
Atlanta, Georgia 30303-1751

(b) Upon request of the Georgia Department of Labor, the employer or employing unit shall within four (4) business days following such request furnish the department the name and social security numbers of the workers ordinarily attached to the department or the establishment where unemployment is caused by a strike, lockout, or other labor dispute.

Authority O.C.G.A. Sec. 34-8-70.

300-2-4-.11 Extended Benefits. Amended.

(1) The purpose of this section of the rules is to identify certain provisions of federal law which establish requirements for extended benefits, as described in OCGA Section 34-8-197, and to define certain limitations under state law for payment of such extended benefits by the department on or after February 17, 2009.

(2) Extended benefits are made available to unemployment claimants through state unemployment insurance programs pursuant to requirements of the Federal-State Extended Unemployment Compensation Act of 1970, Public Law 91-373, Section 201 et seq., as amended. Said law establishes certain insured unemployment rate and total unemployment rate triggers which the states must adopt for the payment of extended benefits.

(3) Section 2005 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, hereinafter referred to as ARRA, directed the Secretary of Labor to provide instructions to states to identify new, alternate unemployment rate triggers which states could adopt on a temporary or permanent basis for payment of extended benefits to individuals who had exhausted all current eligibility to state unemployment compensation and federal extended benefits in 2009. Section 2005 of ARRA provides for full federal funding, also known as 100% federal funding, of the costs of extended benefits paid by states under the Secretary's instructions.

(4) Alternate Temporary Extended Benefit Triggers.

(a) In 2009, Georgia enacted the Georgia Works Job Creation and Protection Act of 2009, Georgia House Bill 581, Ga. L. 2009, p. 139, Section 9 of which adopted new alternate, temporary triggers permitted by Section 2005 of ARRA, thereby making extended unemployment benefits available to eligible individuals under OCGA Code Section 34-8-197. For the purposes of extended benefits authorized under amended Code Section 34-8-197 and in accordance with the intent of the legislature in adopting the permitted triggers, the legislature stated at OCGA Code Section 34-8-197(a)(3)(B)(ii):

(ii) This subparagraph shall apply through the week ending three weeks prior to the last week for which 100 percent federal funding is authorized and provided pursuant to either Section 2005(a) of Public Law 111-5 or any extension thereof that does not impose any new condition upon receipt of such federal funding.

Such language is a limitation upon the payment of extended benefits under the amended Code Section. Extended benefits are only payable under the provisions cited during such period of time as 100% federal funding, also known as full federal funding, is available to the state for reimbursement of extended benefits paid.

(b) In 2011, Georgia enacted Georgia House Bill 500, Ga. L. 2011, Act 93, Section 1 of which adopted an additional new alternate, temporary trigger with a three-year look back provision permitted by Section 2005 of ARRA, as amended, effective until December 31, 2011. Georgia 2011 House Bill 500 provides for retroactive eligibility and payment of weekly extended benefits to those individuals who establish eligibility from the effective date of prior Georgia 2009 House Bill 581 until December 31, 2011. The Commissioner, in his discretion, may direct that payments of extended benefits be made, without interruption, to all eligible claimants from the date of the last week of eligibility under OCGA Section 34-8-197(a)(3)(B)(i) until the first week of payment eligibility under OCGA Section 34-8-197(a)(3)(B)(ii), as amended, subject to the 100 percent federal funding limitation identified in subparagraph (4)(a) above.

(5) Any future payment period of extended benefits under OCGA Section 34-8-197, if not specifically authorized by Section 2005 of ARRA or an extension thereof, shall be made in accordance with the applicable federal and state legislation authorizing such payment period.

Authority O.C.G.A. Secs. 34-8-70, 34-8-197, as amended.

CHAPTER 300-2-5 APPEALS

300-2-5-.01	Employer Tax Liability Appeals	300-2-5-.05	Repealed
300-2-5-.02	Benefit Appeals to an Administrative Hearing Officer	300-2-5-.06	Repealed
300-2-5-.03	Appeals to the Board of Review	300-2-5-.07	Repealed
300-2-5-.04	General Rules for Appeals to an Administrative Hearing Officer and Board of Review Appeals		

300-2-5-.01 Employer Tax Liability Appeals. Amended.

(1) Pursuant to the provisions of O.C.G.A. Section 34-8-70 the determination as to the unemployment insurance tax liability of any employing unit shall be based upon the information contained in a properly executed Form DOL-1 or Form DOL-1A, "Employer Status Report", or Form DOL-1G, "Registration of Governmental Organizations", together with other available information and reports of investigations.

(a) For the purpose of determining liability of any employing unit as defined in O.C.G.A. Section 34-8-33, "week" means a period of seven (7) consecutive calendar days beginning with the first day of the calendar week and ending at midnight on the last day of such calendar week during a calendar year. Except, if any such week includes December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

(b) The employing unit shall be promptly notified of the determination and the reasons thereof.

(2) Appeals from determination of tax liability. Any interested party who claims to be aggrieved by a determination of unemployment insurance tax liability may protest the findings contained in the determination and such protest, in writing, shall be deemed as an appeal from such determination.

(a) The protest shall set forth the specific grounds for the protest and shall be filed with the unit in the department which released the determination within fifteen (15) days of the date of mailing of the liability determination. An appeal shall be considered timely filed with the department if it is postmarked or hand delivered within fifteen days of the mailing date of the determination of liability. For purpose of these rules, a postal meter mark will not be considered to be a postmark. Determinations which are appealed via alternative means of delivery such as private courier, facsimile transmittal, or otherwise in parcels lacking physical evidence of delivery by the U.S. Postal Service shall be deemed filed the date the appeal is received by the department pursuant to Official Code of Georgia Annotated Section 50-13-23.

(b) The department shall promptly compile sufficient copies of the record and forward them with the appeal to the Office of State Administrative Hearings (OSAH) where it will be processed in accordance with the Georgia Administrative Procedures Act (O.C.G.A. Section 50-13-1 et seq.).

(c) In preparation for a hearing before the Office of State Administrative Hearings, any interested party shall be allowed to examine or review confidential department records in addition to those filed with the record and appeal to the Office of State Administrative

Hearings. A written request for such examination or review must be received by the department in reasonable advance of the scheduled hearing. The request must be consistent with the disclosure provisions of the Employment Security Law at Official Code of Georgia Annotated 34-8-120 et seq.

(3) Appeals from the employer tax liability determination rendered by the Administrative Law Judge shall be made directly to Superior Court and not to the board of review. The decision of the Administrative Law Judge shall become final and binding thirty (30) days from the date the Administrative Law Judge's final order is dated and filed with the Office of State Administrative Hearings unless, prior to the expiration of the thirty (30) day period, a petition for judicial review is filed with the Superior Court as provided by Official Code of Georgia Annotated Section 50-13-19. No stay shall operate after the expiration of the thirty (30) day appeal rights to Superior Court. The Commissioner shall be a party at interest to such decision.

(a) A party at interest who has filed an appeal for judicial review to the Superior Court, may, upon request, be supplied information from the records of the department to the extent necessary for the proper presentation of an appeal to the Superior Court. The request must be consistent with the confidentiality provisions of O.C.G.A. Section 34-8-120 et seq.

(b) Service. A petition for judicial review to Superior Court must join the Commissioner as a party at interest in the action. Timely service may be perfected upon the Commissioner either personally or by mail at the Georgia Department of Labor, 148 International Boulevard, N.E., Atlanta, Georgia 30303-1751. Service by facsimile transmission shall not be sufficient.

Authority O.C.G.A. Secs. 34-8-70, 34-8-174.

300-2-5-.02 Benefit Appeals to an Administrative Hearing Officer.

(1) The appeal.

(a) Any party of interest dissatisfied with an administrative determination may file in writing a notice of appeal with the department, setting forth the name of the claimant and the social security number contained on the determination and the date of such determination.

(b) A determination establishing a right to draw benefits shall be deemed final unless a written appeal is filed within fifteen (15) days after the determination is handed to or mailed to an interested party. An appeal will be considered timely if postmarked, delivered or filed in person within fifteen (15) days of the mailing date of the determination. For purposes of these rules, a postal meter mark will not be considered to be a postmark.

(c) An employer who is liable for the payment of unemployment insurance tax, is reimbursable or is a governmental agency; who has paid that individual insured wages for services; and who is entitled to notice of claim filed by that individual as the most recent employer, as defined by O.C.G.A. Section 34-8-43, shall be deemed to be an interested party to the administrative determination of such claim.

(2) The notice of hearing.

(a) Claimant benefit hearings shall be scheduled promptly and may be conducted in whole or in part by telephone. The Chief Administrative Hearing Officer shall determine the time, place, and manner in which appeals shall be conducted. The record of a telephone hearing must reflect the consent of the parties to the transacting of the hearing by telephone and that the use of telephonic communications has not jeopardized the rights of any party. In the absence of such consent, an in-person hearing will be scheduled. If any party anticipates a conflict with any possible hearing dates within the next four weeks after the receipt of notice from the department that an appeal has been filed, that party should immediately notify the appeals tribunal of the date(s) of unavailability. Once a hearing has been scheduled, postponement or continuation of the hearing is within the discretion of the Chief Administrative Hearing Officer.

(b) All in-person appeals, except where waiver is given, shall be heard by an administrative hearing officer at the earliest possible date, but no earlier than seven (7) days after written notice of the time and place is mailed to the interested parties. Hearings conducted telephonically, except where waiver is given, shall be heard by an administrative hearing officer no earlier than ten (10) days after written notice of the time and place is mailed to the interested parties.

(c) The notice of hearing shall cite the sections of law pertinent to the appeal and include a general statement of the issues involved.

(3) The hearing.

(a) The administrative hearing officer shall administer the oath to all witnesses prior to accepting testimony and shall conduct the hearing in an orderly manner, maintaining control and preventing any disruption of the hearing process. The administrative hearing officer shall develop the record by conducting appropriate inquiries and shall allow each party an opportunity to examine and cross-examine witnesses on all matters pertinent to the issues. No testimony shall be taken that does not permit the parties of interest an opportunity for cross-examination. Any individual who disrupts the procedures, after warning, may be ejected and denied any further participation in the hearing.

(b) Issuance of subpoenas. Subpoenas to compel the attendance of witnesses and the production of records pertinent to any hearing of an appeal shall be issued by the Chief Administrative Hearing Officer upon request therefor from a party of interest. The party requesting said subpoenas must show the necessity therefor and shall have the responsibility of serving said subpoenas.

(c) A witness fee of \$10.00 per day shall be paid upon request to a subpoenaed person in attendance; other than an employee of an employer subpoenaed by that employer. The total fee shall not exceed \$30.00 and shall be mailed to the address of the subpoenaed witness. In addition, an allowance of \$.20 per mile shall be paid, up to a maximum of \$20.00, for attendance of a witness at a hearing.

(d) Appeals involving multi-claimants or a labor dispute may be heard by a three-person tribunal consisting of an administrative hearing officer, as chairman, and two other members appointed by the Commissioner for that purpose, except when the administrative hearing officer is designated to hear the matter alone. When heard by a three-person tribunal, the decision of two-members of the tribunal shall constitute the decision of the tribunal. The other

member may file a dissenting report giving reasons for not agreeing with the decision.

(e) Appeals involving multi-claimants or involving a labor dispute may be heard at any place designated by the chairman of the three-person tribunal or the designated administrative hearing officer hearing these appeals.

(4) Form and contents of decision. The administrative hearing officer shall observe the suggestions of the Employment and Training Administration, United States Department of Labor in regard to the form and contents of benefit decisions.

(5) A postponement of the hearing may be granted upon request showing providential cause will prevent the attendance of a party or essential witnesses. A request for postponement must be made at the earliest practical time and must be made in writing or by facsimile transmission. In the absence of very unusual circumstances, a business engagement will not constitute good cause for postponement. Such requests may be granted or denied at the discretion of the Chief Administrative Hearing Officer.

(6) Requests for resetting of a hearing. Any interested party who fails to appear may request a resetting of the hearing within fifteen (15) days after the administrative hearing officer's decision is issued. The petition shall state fully the ground upon which the request for a resetting of the hearing is sought, giving complete details for the failure to appear as scheduled. A new hearing will then be scheduled to cover the issue of the party's failure to appear as scheduled and may also include the issues raised on the initial appeal. In the absence of very unusual circumstances a business engagement will not constitute good cause for resetting the hearing. The petition to reset the hearing may be granted upon a showing of providential cause for failure to attend or failure to give timely notice of inability to attend the original hearing.

(7) Correction of error and augmentation of the record. Any party may request correction of an administrative hearing officer or the board of review decision if the request is made in writing and filed or mailed within fifteen (15) calendar days of the date of the decision. The administrative hearing officer or the board of review retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to O.C.G.A. Section 34-8-220 unless the board of review has accepted an appeal. Whenever a request for correction is submitted to the administrative hearing officer or the board of review, a decision will be issued and new appeal rights will be established.

(8) Requests for removal of an administrative hearing officer from a case. A party may request that an administrative hearing officer remove himself or herself from a case on the basis of partiality, interest or prejudice. The request for removal must be made in writing prior to the hearing, unless the reason for the request was not or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the administrative hearing officer agrees that he or she should be reassigned, another administrative hearing officer will be assigned to the case. However, if the administrative hearing officer finds no reason to remove himself or herself, he or she will rule on the request verbally during the hearing and explain the basis for the ruling. Challenges to the partiality of the administrative hearing officer will not result in a delay of the hearing. Appeals pertaining to the partiality of the administrative hearing officer may be filed consistent with the time limitations for appealing the decision.

Authority O.C.G.A. Secs. 34-8-70, 34-8-172, 34-8-174.

300-2-5-.03 Appeals to the Board of Review. Amended.

(1) The appeal. Any party authorized by the Employment Security Law to appeal to the board of review may do so in person by filing with the local office of the department where the claim was filed, a "Notice of Appeal", on Form DOL-423, setting forth the information required, or by writing to the department.

(2) The review.

(a) All appeals to the board of review shall be decided upon the evidence in the record made before the administrative hearing officer.

(b) In the review of an appeal, the board of review may limit the parties to oral argument, or to filing of written briefs or both.

(c) If, in the discretion of the board of review, additional evidence is deemed necessary to enable it to determine the appeal, the board on its own motion, shall remand the case to the Chief Administrative Hearing Officer for the taking of such additional evidence and the parties shall be notified as to the time and place such evidence shall be taken. Any party to any proceeding in which testimony is to be taken may present and cross-examine whatever evidence may be deemed pertinent to the issues on which the board of review has directed the taking of additional evidence. Upon the completion of the taking of evidence by the administrative hearing officer, the appeal shall be returned to the board of review, unless the administrative hearing officer is directed to render a new decision in the light of the additional evidence.

(3) The decision.

(a) Following the conclusion of a review on an appeal, or the return of a case to the board following a remand for the taking of additional evidence, the board of review shall promptly announce its decision with respect to the appeal. The decision shall be in writing and shall be signed by members of the board of review and shall adhere to such form and content for such decisions as may be prescribed from time to time by the Employment and Training Administration of the United States Department of Labor.

(b) If a decision of the board of review is not unanimous, the decision of the majority shall control, provided, however, when a member is unable or unwilling to participate in a decision and a majority vote is not obtainable, the hearing officer decision shall stand affirmed. Any member of the board of review may file a dissenting opinion in the case setting forth the reasons why the member fails to agree with the majority.

(c) Copies of the decision, together with findings of law and fact, shall be mailed by the secretary of the board of review to the parties at interest.

(4) Rehearing.

(a) Any interested party who might be aggrieved by any decision of the board of review may move for a reconsideration of any such decision at any time prior to the end of the fifteen (15) day period fixed by OCGA Section 34-8-223 for the board's decision to become final. The term

"interested party" means the parties to the appeal and shall include the Commissioner.

(b) Any party moving for reconsideration hereunder shall file with the board of review the grounds therefor, and shall furnish the board a sufficient number of copies to enable it to furnish one such copy to each of the parties at interest.

(c) The board of review in its discretion may grant or deny any motion for reconsideration, either ex parte or after hearing. It may, in its discretion, notify the parties to appear before it at a specified time and place for argument on the motion. The board of review shall promptly issue its order on said motion.

(d) In any case in which a new hearing is granted, the board shall enter an order providing for such rehearing and shall fix in said order the time and place for rehearing, which shall be as soon after the issuance of the order as is deemed practicable by the board.

(e) No order of the board of review allowing a motion for reconsideration shall operate to stay payment of benefits previously allowed.

Authority O.C.G.A. Secs. 34-8-70, 34-8-174.

300-2-5-.04 General Rules for Appeals to an Administrative Hearing Officer and Board of Review Appeals. Amended.

(1) Attorney fees. Counsel for claimant shall, upon application and approval by the board of review, be authorized to charge and receive from the claimant, for an appearance before either an appeals tribunal or the board of review, a fee in an amount not to exceed \$ 300.00 for each appearance; provided that for an appearance before the board of review which required counsel to travel a distance of more than twenty-five (25) miles, an additional amount may be authorized by the board. Provided, further, that the total allowance authorized on any claim shall not be in excess of fifty percent (50%) of the amount involved in the claim. Only for good cause shown to the satisfaction of the board of review may an allowance in excess of these amounts be approved.

(2) Supplying information from the department. Information from the records of the department to the extent necessary for the proper presentation of a claim before an administrative hearing officer or the board of review shall be available to the interested parties upon request. Any interested party may have access to the information in the records pertinent to the claim or claims to the extent of reviewing the file or files. The department shall release the entire file whenever a case is taken to court, but shall not be compelled to release a copy or permit the copying of any confidential or privileged communications prior to such proceedings in a court of record. Copies may be obtained only as otherwise provided in Section 300-2-6-.02 of these rules.

(3) Representation before appeals tribunals and board of review.

(a) Any individual may appear in person in any proceeding before any appeals tribunal or before the board of review. A partnership may be represented by any member. A corporation or association may be represented by any of its officers or agents. Any party may be

represented by counsel or any agent of their choice, as provided in OCGA Section 34-8-251.

(b) Appearance before the board of review on behalf of the department shall be limited to members of the staff designated by the Commissioner.

(4) Excused for cause. No administrative hearing officer, member of a three-person tribunal or member of the board of review shall participate in a hearing to determine the issues in any appeal in which that individual has an interest in the outcome.

(5) An appeal shall be considered to be timely filed if the appeal is filed on the next day the office of the department is open and the last day for filing the appeal fell on a Saturday, Sunday, official holiday for which the department's offices were closed or the department's office was closed due to a temporary emergency. An appeal shall be considered to be filed on the same date as the postmark cancellation date shown on its envelope, or the actual date of receipt by the department if there is no postmark cancellation date or if the date on the envelope is illegible. A postage meter date shall not be considered for purposes of timeliness. An appeal may be filed in person, by mail or by facsimile transmittal ("FAX") sent to the office of the department where the claim was initially filed or was transferred by the department. For purposes of these rules, a postal meter mark will not be considered to be a postmark.

(6) Ex parte communications. No parties will be permitted to discuss the merits or facts of any pending case with the administrative hearing officer assigned to the case or the board of review either before or after the hearing, prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any discussions between the parties and the administrative hearing officer or the board of review on procedural issues or inadvertent ex parte information regarding the merits of the case will be reported to the parties at the time of the hearing and made a part of the record. Discussions with department employees who are not designated to represent the department on the issue or who do not provide factual information and are not expected to participate in the hearing of the case, are not ex parte communications and do not need to be made a part of the record.

Authority O.C.G.A. Secs. 34-8-6, 34-8-8, 34-8-70, 34-8-174.

300-2-5-.05 Repealed.

300-2-5-.06 Repealed.

300-2-5-.07 Repealed.

CHAPTER 300-2-6 RECORDS

300-2-6-.01 Employer Records
300-2-6-.02 Supplying Information from the Records of the
Department

300-2-6-.03 Access to Records by Public Officials

300-2-6-.01 Employer Records. Amended.

Each employing unit shall maintain such records as is hereinafter required and shall preserve such records for a period of not less than four (4) years after the calendar year in which the remuneration with respect to such services was paid or if not paid, was due. For each individual engaged in employment the following information shall be maintained by the employing unit:

(a) Name;

(b) Social Security Number;

(c) State or states in which the services are performed; and if any of such services are performed outside this state and are not incidental to the service within the state, the employee's base of operations (or if there is no base of operations, then the place from which such services are directed or controlled) and the employee's residence (by state);

(d) Date on which the individual was hired, rehired or returned to work after temporary layoff, and date separated from work and reason therefor;

(e) Remuneration paid for services and date of payment, showing separately:

1. Cash remuneration, including special payments (such as bonuses, gifts, etc.);
2. Remuneration in any medium other than cash (determined in accordance with the rules or regulations prescribed by the Commissioner), including special payments (such as bonuses, gifts, etc.).

(f) Amounts paid the individual as allowance of reimbursement for traveling or other business expenses, dates of payment, amounts of payment, and amounts of such expenditures actually incurred and accounted for by the individual;

(g) With respect to any period for which the individual is paid:

1. At a fixed rate of pay per week or longer period;
2. On a fixed daily basis, the daily rate;
3. On a fixed hourly basis, the hourly rate;
4. On a piece-rate or other variable-pay basis, the method by which the remuneration is computed.

(h) With respect to pay periods in which the individual performs services in both covered and exempt employment:

1. Hours spent in covered employment;
2. Hours spent in exempt employment.

(i) Beginning and ending dates of each pay period;

(j) Total amount of remuneration paid in each quarter for services;

(k) Records shall be maintained by each employing unit in such form as to make it possible to determine from an inspection thereof with respect to any worker:

1. Earnings by pay-period weeks, if paid on a weekly basis, or if not so paid, then by calendar weeks or by other seven (7) consecutive day periods;
2. Weeks of less than full-time work;
3. Time lost due to the individual's unavailability for work.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78.

300-2-6-.02 Supplying Information from the Records of the Department. Amended.

- (1) (a) Records of the department collected in the administration of the unemployment insurance program and other federally funded programs for which the department has responsibility are private and confidential, except as provided in the Georgia Employment Security Law or by these regulations in accordance with Code Section 34-8-120 et seq. Pursuant to Code Section 50-18-70(b), such records are not generally subject to inspection under Georgia's Open Records law.
- (b) To the extent necessary for the proper presentation of a claim before an administrative hearing officer or the board of review or any court, or to dispute tax liability in any proceeding before the Georgia Office of State Administrative Hearings or any court, records of the department pertaining to a claim or tax determination shall be made available for inspection to the interested parties upon request. A copy will be provided upon payment in advance of the fees required under paragraph (2) below, except in the following limited circumstances:
1. An individual claiming benefits shall not be charged a fee of any kind with respect to their claim; and
 2. Fees for copies of records may be waived for individuals who establish to the satisfaction of the Commissioner that payment of the fees would present a hardship.

(c) Information from the records of the department with respect to an individual, a claim filed by an individual and/or wages reported to the department with respect to an individual, may be disclosed to that individual or, on the basis of informed consent, to others in the following limited circumstances—

1. To an agent who acts for or in the place of an individual, by the authority of that individual, if the agent presents a written release (which may include an electronically submitted release if acceptable to the department) from the individual being represented which release the State determines is authentic and specifically identifies the information and type of information to be released;
2. To an elected official performing constituent services, if the official presents reasonable evidence (such as a letter from the individual requesting assistance) that the individual has authorized such disclosure;
3. To an attorney retained for purposes related to the unemployment insurance law, if the attorney asserts in writing that he or she is representing the individual.
4. To a third party that is not acting as an agent who will receive confidential information following an informed consent disclosure on an ongoing basis (even if such entity is an agent), but only if that entity obtains a written release from the individual to whom the information pertains.

(i) The release must be signed and must include a statement—

- (I) Specifically identifying the information that is to be disclosed;
- (II) That state government files will be accessed to obtain that information;
- (III) Of the specific purpose or purposes for which the information is sought and a statement that information obtained under the release will only be used for that purpose or purposes; and
- (IV) Indicating all the parties who may receive the information disclosed by the requester;

(ii) The purpose specified in the release must be limited to—

- (I) Providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release; or
- (II) Carrying out administration or evaluation of a public program to which the release pertains.

(iii) The department shall determine the cost and charges for providing disclosure under this subparagraph 4, and the recipient of such data shall execute an agreement to pay all such charges in advance of delivery of the data. In no event shall the information provided under subparagraph 4 be released, disclosed or redisclosed in any manner. Such data shall not be captured or stored in the recipient's databases except as necessary to fulfill the associated, authorizing consumer initiated transaction. Such data shall not be used for purposes of marketing, including, but not limited to, prescreened firm or conditional offers of credit.

(d) Except as otherwise provided under paragraph (1) of this rule or other applicable law, including 20 CFR 603, when disclosure of departmental records is permitted under Code Sections 34-8-120 et seq., a fee and copy costs shall be charged and paid in advance for requested records, as follows:

1. A minimum fee of \$20.00 shall be charged for copies of records which can be accessed and produced by department staff from readily retrievable computer records and equipment;
2. A fee of \$20.00 plus \$25.00 per hour for the time required to identify, locate, redact, collate, and otherwise prepare such records for copying for disclosure, with a minimum charge of \$45.00 for the first hour, shall be charged for any records which cannot be accessed and produced by department staff solely from readily retrievable computer records and equipment;
3. The amount of \$.25 per page shall be charged for each page copy supplied, regardless of the format (paper copy, electronic copy) in which such copies are provided; and
4. Fees in accordance with subparagraphs 1, 2, and 3 of this subparagraph shall be charged for each records request made and charges must be paid in advance.

(2) Records with respect to the federal Workforce Investment Act of 1998 (WIA) shall be subject to access and review as follows:

(a) Individual employee and employer files shall be subject to review as necessary for the proper administration of the WIA program in Georgia. Information released to a "One-Stop Operator" or "One-Stop Partner", as those terms are defined in WIA, or to any other authorized participant in the WIA program in Georgia shall be provided on an as-needed basis only and shall be used exclusively for WIA purposes and for activities that assist in the operation and management of the department in fulfillment of its duties; such departmental duties include, but are not limited to, participant follow-up surveys, provider performance assessments, and the collection and reporting of labor market information;

(b) Information with respect to WIA bid proposals and grants or contract data for any successful WIA grant or sub grant recipients shall be available for public access and review concerning all unsuccessful bidders; and

(c) Pursuant to Section 185(a)(4)(B) of the Workforce Investment Act, some records are excluded from disclosure. These exceptions include the disclosure of information that would constitute a clearly unwarranted invasion of personal privacy and privileged and confidential financial information. Specifically, disclosure of a participant's social security number is subject to this exception.

(3) Records with respect to the state's Employment Service Program, including such records as may be utilized under WIA by any "One-Stop Operator" or "One-Stop Partner", as those terms are defined in WIA, or by any other authorized participant in the WIA program in Georgia, shall not be disclosed or redisclosed, provided, however, the department may release data concerning individuals or employing units as necessary to perform follow-up surveys or similar administrative functions, provided, further, the department shall require by contract that any agency or entity performing such functions must protect the data and use it only for the purposes as described in the contract.

(4) Any request to disclose or redisclose confidential data which was entrusted to the Commissioner of Labor in the administration of the unemployment insurance program or other federally funded programs for which the department has responsibility shall provide the Commissioner with notice and an opportunity to respond; otherwise, such request shall not be honored. Any individual or entity in possession of such confidential data under the provisions of this rule is subject to this requirement.

(5) Disclosure of confidential unemployment insurance benefit or wage data or other claim information in response to a court order, subpoena, discovery, request for production of documents,

notice to produce or similar court-enforceable inquiry, or in response to a non-court official with subpoena authority, is permissible when issued in compliance with O.C.G.A. 34-8-126 and 20 CFR 603.7(b) and in such a manner that the Commissioner was first provided a meaningful opportunity to respond to the order, subpoena, request for production of documents or similar compulsory process.

(6) In conjunction with the administration of OCGA Section 34-9-243 which allows for credit or reduction in worker's compensation benefits for the amount of unemployment insurance benefits received by a claimant, the department shall divulge to an employer or its agent, evidence of unemployment insurance benefits paid. An employer will have a right to records that pertain to the amount of unemployment benefits paid, subject to the maintenance of confidentiality for the individual claimant. No subpoena, order, or similar compulsory process shall require disclosure of confidential data other than to identify the dates and amounts of payment as necessary to compute such credit.

Authority O.C.G.A. Secs. 34-8-70, 34-8-120 et seq., 20 CFR 603.

300-2-6-.03 Access to Records by Public Officials. Amended.

Governmental agencies may be provided access to confidential unemployment benefit or wage data only upon full compliance with the provisions of Code Section 34-8-125 and Rule 300-2-6-.02, including provisions regarding fees and copy costs. Any governmental agency requesting access to such confidential data on an ongoing basis must enter into a data sharing agreement with the department with at least the following terms and conditions of the disclosure of information.

- (a) A description of the specific information to be furnished and the purposes for which the information is sought;
- (b) A statement that those who request or receive information under the agreement will be limited to those with a need to access it for purposes listed in the agreement;
- (c) The methods and timing of requests for information and responses to those requests, including the format to be used;
- (d) Provision for paying the department for any costs of furnishing information;
- (e) Provision for safeguarding the information disclosed;
- (f) A requirement that the information requested and received under the agreement may not be disclosed or redisclosed to any other individual, agency, or entity;
- (g) A provision identifying contacts with full contact information for both the proposed use of the information and security of the information received;
- (h) A requirement to notify the department immediately upon receipt of any request to disclose or redisclose the information received from the department, including but not limited to any court order, subpoena, civil litigation discovery request, request for production of documents, notice to produce, or similar compulsory process, all of which requests shall be subject to Rule 300-2-6-.02(5); and

(i) Provision for on-site inspections of the agency, entity, or contractor, to assure that the requirements of the State's law and the agreement or contract required by this rule are being met.

(j) The requirements of subparagraphs (a) through (i) of this rule with respect to disclosures on an ongoing basis do not apply to disclosures of UC information to a Federal agency which the U. S. Department of Labor has determined, by notice published in the Federal Register, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1) of the Social Security Act and an appropriate method of paying or reimbursing the state unemployment insurance agency (which may include a reciprocal cost arrangement) for costs involved in such disclosures. Such determinations will be published in the Federal Register.

Authority O.C.G.A. Secs. 34-8-70, 34-8-120 et seq., 20 CFR 603.

CHAPTER 300-2-7 REQUIREMENTS FOR EMPLOYEES AND EMPLOYERS

300-2-7-.01	Identification of Employees	300-2-7-.09	Repealed
300-2-7-.02	Repealed	300-2-7-.10	Repealed
300-2-7-.03	Repealed	300-2-7-.11	Repealed
300-2-7-.04	Repealed	300-2-7-.12	Limited Liability Companies
300-2-7-.05	Repealed	300-2-7-.13	Independent Contractors
300-2-7-.06	Notices Required From Employers Furnishing Separation Information	300-2-7-.14	Registration Of Job Opening With State Employment Service
300-2-7-.07	Employee Leasing Companies	300-2-7-.15	Display of Posters For Information of Employees
300-2-7-.08	Repealed		

300-2-7-.01 Identification of Employees. Amended.

(1) Each employer shall ascertain the correct social security number of each such individual employed by such employer.

(2) Each individual shall report to every employer for whom he is engaged in employment the individual's social security number and the individual's name exactly as shown on the account number card issued to the individual by the Social Security Administration. Each such employee who has not secured an account number shall file an application for an account number on Form SS-5, "Application for Social Security Number". The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages; except, the application shall be filed on or before the date the employee leaves the employer or employment, if such date precedes such seventh day.

(3) If the employee fails to comply with this requirement, the employer shall execute a Form SS-5, "Application for Social Security Account Number", giving all the information required thereon which is known or ascertainable by the employer. The completed Form SS-5 shall be mailed to the nearest field office of the Social Security Administration.

(4) The employer, when forwarding completed Form SS-5 to the Social Security Administration, shall request notice of the number assigned to the employee.

(5) When for any reason an employee's name is changed, the employer shall require the employee to complete Form OANN-7003, "Employees Request for Change in Records". Completed Form OANN-7003 shall be mailed to the nearest field office of the Social Security Administration.

(6) The employer shall report each employee's social security number in making any report required by the Georgia Department of Labor.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-113.

300-2-7-.02 Repealed.

300-2-7-.03 Repealed.

300-2-7-.04 Repealed.

300-2-7-.05 Repealed.

300-2-7-.06 Notices Required From Employers Furnishing Separation Information. Amended.

(1) Employers are required to complete Form DOL-800, "Separation Notice", for each worker separated regardless of the reason for separation (except when mass separation Form DOL-402 and Form DOL-402A notices are filed).

(a) The "Separation Notice" must be completed, signed by the employer or authorized agent, dated and delivered to the separated employee on the last day of work in accordance with printed instructions on the Form DOL-800.

(b) If the employee is no longer available at the time employment ceases, the notice shall be mailed to the last known address of the employee within three (3) days of the date that the

separation occurred or became known to the employer.

(c) A copy of Form DOL-800, properly executed by the former employer as required by Georgia law, shall be presented to the Georgia Department of Labor local office by any individual filing a claim for unemployment insurance.

(2) The employer, if it is the most recent employer as defined by OCGA Section 34-8-43, may receive a Form DOL-1199FF or DOL- 403FF, "Notice of Claim Filed and Request for Separation Information".

(a) If the Form DOL-800 was presented, the employer may respond and provide separation information on Form DOL-1199FF or Form DOL-403FF if they wish to do so. This shall constitute a timely response to the claim.

(b) If the Form DOL-800 was not presented, in order to be considered a timely response to the claim, the employer must respond to the claimant's statement on the Form DOL-403FF or Form DOL- 1199FF in the manner prescribed herein and in accordance with the instructions printed on the Form 403FF or Form DOL-1199FF.

(3) Form DOL-800 or Form DOL-403FF or Form DOL-1199FF must be signed and otherwise complete for the employer's account to be considered as a timely response to the claim.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-122, 34-8-123, 34-8-157.

300-2-7-.07 Employee Leasing Companies.

(1) An employee leasing company (or professional employer organization) as that term is defined in O.C.G.A. Section 34-8-32 shall not be considered a succeeding employer under the provisions of O.C.G.A. Section 34-8-153 and O.C.G.A. Section 34-8-155 with respect to its clients or customers and shall not acquire the unemployment experience history of its clients or customers. The applicable rate of an employee leasing company shall be determined solely on its own unemployment experience after it became an employee leasing company, subject to the provisions of O.C.G.A. Section 34-8-153.

(2) An employee leasing company shall post a surety bond in the amount of the greater of \$10,000.00 or two and seven-tenths percent (2.7%) of its taxable payroll for the four (4) calendar quarters ending June 30th immediately preceding the effective date of the bond to meet the requirements of O.C.G.A. Section 34-8-172. Such surety bond must be issued by an organization currently licensed and authorized to issue such bond in the State of Georgia and renewed on an annual basis in an adjusted amount as deemed appropriate. The bond shall cover a minimum of one full calendar year and shall also cover the remainder of the calendar year in which it is issued. The bond may not include a cancellation clause. In lieu of such bond, an employee leasing company may deposit with the Commissioner a cash deposit, irrevocable letter of credit or equivalent financial securities acceptable to the Commissioner. The cash deposit shall be a comparable amount as described above. Any deposit of money shall be retained by the Commissioner in an escrow account. Securities shall be in an amount equal to the greater of \$10,000.00 or two and seven-tenths percent (2.7%) of the taxable payroll for the four (4) calendar quarters ending June 30th immediately preceding the effective date of the election. At the sole discretion of the Commissioner, an adjustment in the amount of the bond, cash deposit, irrevocable letter of credit or securities may be required upon sixty (60) days prior written notice.

(3) Notwithstanding the foregoing, an employee leasing company may post a surety bond, irrevocable letter of credit or cash deposit in the amount of \$5,000.00 and thereby comply with the provisions of this rule if all of the following conditions are met:

(a) The employee leasing company must have been a positive reserve employer as that term is used in O.C.G.A. Section 34-8-155 for at least four (4) consecutive quarters during the last twelve (12) quarters immediately preceding the effective date of the bond;

(b) The employee leasing company has not failed during the last twelve (12) quarters immediately preceding the effective date of the bond to file timely all required tax and wage reports, including all such reports of all predecessor employers; and

(c) The employee leasing company submits timely prepayments of unemployment contributions to the department monthly attributable to the applicable portion of the employee leasing company's taxable wage base of the employee leasing company's payroll for each calendar month just completed. This payment is due on the fifteenth (15th) of each month.

(4) The failure of the employee leasing company to submit the prepayment or to attach the supporting data as described herein shall subject the employer to a denial of the privilege to prepay and enjoy the lower bond rate. Should any employee leasing company so fail to submit prepayments and be notified by the Commissioner of the revocation of the privilege, all future employment on behalf of the employee leasing company's clients shall be under that client's name and separate DOL account number.

(5) Any employee leasing company which fails to obtain, or to keep in full force and effect the applicable surety bond, irrevocable letter of credit, cash deposit or acceptable securities must report all employment of its clients under the client's name and DOL account number, provided, however, the department shall notify any such client in writing of this eventuality. No employer who is a client of an employee leasing company shall be liable for unemployment contributions for employment previously reported by an employee leasing company until such notification has been received by that employer. Such employer will be liable for contributions only for the period of employment which occurs after the notice has been received. An employee leasing company which elects to treat its clients' employees as its own employees must post the bond required by O.C.G.A. Section 34-8-172. An employee leasing company which is unable to obtain a bond automatically elects to treat each client's employees as the client's employees and not employees of the employee leasing company. An employee leasing company cannot do both, i.e., it cannot add certain clients' employees to its own payroll but not include others simply to take advantage of lower unemployment tax rates. A wilful violation of this rule may result in termination of the employee leasing company's privilege to make such election. In the event of such termination of election, under the provisions of these rules, no successorship will occur, therefore a new taxable wage base for the particular calendar year will apply at the time of the termination of election.

(6) If an employee leasing company is new in Georgia and has no previous employment history, the amount of the initial bond, irrevocable letter of credit, cash deposit or securities shall be \$10,000.00 for the first calendar year. Once the employee leasing company has been in business over six (6) months, the amount for the next calendar year's bond, cash deposit or securities may be computed based upon a pro rata estimate of its taxable wages for the four (4) calendar quarters ending June 30th immediately preceding the effective date of the bond. Any surety bond in effect will cease to be in force and effect as of the expiration date of such bond, provided all applicable unemployment contributions which cover this time period have been paid.

(7) All employee leasing companies doing business in Georgia, regardless of whether an adequate bond, irrevocable letter of credit, cash deposit or securities are posted shall maintain and furnish to the department upon request the following records:

- (a) A current list of all clients or customers in Georgia by corporate name and by trade name;
- (b) A physical and mailing address, if different, for all such clients or customers;
- (c) A listing of previous DOL registrations by DOL account number for the clients or customers;
- (d) Separate books or records with respect to each client or customer must be maintained, showing, at a minimum, all evidence of wages and other compensation paid to, or on behalf of, the employees, records of hours and days worked and the location where the worker's services were performed;
- (e) Names, residence addresses, social security numbers, ownership interests in the employee leasing company, and positions of employment in the employee leasing company of all officers of the employee leasing company;
- (f) The federal employer identification number for all clients or customers; and
- (g) The employee leasing company must notify the department of any additions, deletions or corrections to the above-described information at least quarterly.

(8) If, after the employee leasing company makes the required deposit, the employee leasing company fails to comply with the Employment Security Law, the department will use the bond, irrevocable letter of credit, cash deposit or securities (or proceeds from the sale of the same) to pay contributions, interest, and penalty due on the account. The department may then require a new deposit, or may require the employee leasing company to separately report all employment under its clients' names and account number and applicable tax rate of each client or customer.

(9) Interest earned on cash deposits will be paid into the same fund as other interest and penalties are paid as provided in O.C.G.A. Section 34-8-92.

(10) All information furnished to the department under this rule shall be treated as confidential information as provided in Code Section 34-8-121.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-123, 34-8-172.

300-2-7-.08 Repealed.

300-2-7-.09 Repealed.

300-2-7-10 Repealed.

300-2-7-11 Repealed.

300-2-7-12 Limited Liability Companies.

(1) Limited liability companies ("LLC") and other similar pass-through entities shall be treated the same as partnerships for purposes of unemployment contributions. If such entity can demonstrate to the satisfaction of the Commissioner that it is receiving some other type treatment for purposes of federal taxation, then the Commissioner shall consider that fact in determining whether remuneration paid constitutes taxable wages for purposes of the Employment Security Law. If an LLC is treated as a corporation for federal tax purposes, the LLC shall likewise be treated as a corporation for purposes of taxation under the Employment Security Law.

(2) If management of the LLC is vested in its members, those members who are actively involved in management shall be deemed jointly and severally liable for payment of unemployment contributions. If management of the LLC is vested in one or more appointed managers who are not members of the LLC, then all members of the LLC may nonetheless be deemed jointly and severally liable for payment of unemployment contributions, provided, however, any member who can demonstrate to the satisfaction of the Commissioner of Labor that the member has no legal authority or control over whether unemployment contributions are paid or employers' quarterly wage and tax reports are filed can be relieved of liability.

Authority O.C.G.A. Sec. 34-8-70.

300-2-7-13 Independent Contractors.

(1) To prove independent contractor status, an employing unit must prove an individual who receives wages, as that term is defined in OCGA Section 34-8-49, meets the three-pronged test for exemption from the definition of "employment" as provided in OCGA Section 34-8-35, Paragraph (f). An individual who received more than 80% of his or her total income for personal services rendered from a single employing unit in the previous calendar year shall be conclusively presumed to be an employee of the employing unit for purposes of the Employment Security Law. The presumption can be overcome only upon a showing by said employing unit that the individual legitimately is in business for himself or herself and that income from other sources for personal services rendered now push the percentage of such income received from the employing unit by this individual to under 80% of the individual's total annual income for personal services rendered.

(2) In applying the third prong of the test specified in OCGA Section 34-8-35, paragraph (f), it shall not be sufficient that the individual simply holds a professional license. It must be proved the individual performs the professional services in question for clients, patients or customers other than the employing unit. Such services must be in the same occupation or line of work as the employing unit.

Authority O.C.G.A. Sec. 34-8-70.

300-2-7-14 Registration Of Job Opening With State Employment Service.

Whenever an employer has work to offer a claimant such employer should communicate directly with the local office of the department where the claim was filed, furnishing full and complete information as to type of work, hours, rate of pay, etc.

Authority O.C.G.A. Sec. 34-8-70.

300-2-7-15 Display of Posters For Information of Employees.

(1) Employers shall post and maintain in places readily accessible to their employees all printed statements, posters, etc., released and required by the Commissioner of Labor or the Georgia Department of Labor pertaining to the rights of employees under the Employment Security Law. A packet of required posters may be obtained by contacting the nearest local office of the Georgia Department of Labor.

(2) An employer who is not liable for unemployment insurance taxes under the Employment Security Law or who ceased to be liable for unemployment insurance taxes is not permitted to display such notices and must remove them if on display.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190.

CHAPTER 300-2-8 GOVERNMENTAL AND NON-PROFIT ACCOUNTS

300-2-8-01	Repealed	300-2-8-04	Establishment, Administration and Dissolution of Group Accounts
300-2-8-02	Repealed	300-2-8-05	Reimbursable Employer Appeal to the Department of Amount Due
300-2-8-03	Employers Electing to Reimburse in Lieu of Paying Contributions		

300-2-8-01 Repealed.

300-2-8-02 Repealed.

300-2-8-03 Employers Electing to Reimburse in Lieu of Paying Contributions.

(1) No eligible employer may change its method of payment from a reimbursable basis to a contributory basis or from a contributory basis to a reimbursable basis unless:

(a) There are no unpaid debts, taxes, contributions, reimbursement amounts, penalty, interest or recording fees outstanding against such employer; and

(b) The employer has completed two (2) calendar years under the prior method (reimbursable basis or contributory basis).

(2) Election to change from reimbursable to contributory.

(a) In any case in which an employer was first a contributor, then a reimbursing, and now terminates such election; according to OCGA Section 34-8-158(d)(2), such employer shall have an employment experience rating computation as provided in OCGA Section 34-8-155. This computation shall be computed on the basis of all the employer's experience (contribution period and reimbursement period). The period of reimbursement will be considered a zero balance period; provided, however, that all reimbursements billed to the employer are paid.

(b) In any case in which any employer having no prior coverage elects to be on a reimbursable basis and who, at a later date, terminates such election; according to OCGA Section 34-8-158(d)(2), such employer shall have an employment experience rating computation as provided in OCGA Section 34-8-155. The computation shall be computed on the basis of all the employer's experience (the reimbursement period only). The period of reimbursement will be considered a zero balance period; provided, however, that all reimbursements billed to the employer are paid.

(3) Election to change from contributory to reimbursable.

(a) In any case in which an employer was first a reimbursing, then a contributor, and now elects reimbursement, such employer shall have its reserve balance (positive or negative) remain fixed as of the completion of processing of the last quarter of the year preceding the change in method of payment. Such reserve shall be frozen in the event the employer subsequently elects to return to the contributory method.

(b) In any case in which an employer on contributory basis now elects reimbursement, such employer shall have its reserve balance (positive or negative) remain fixed as of the completion of processing of the last quarter of the year preceding the change in method of payment. Such reserve will be frozen in the event the employer subsequently elects to return to the contributory method of payment.

(4) The standard of acceptance of securities for deposit, as required by law, shall be the same as that required of trustees under Georgia law for investment in bonds and other securities as set forth in OCGA Sections 53-8-6 or 53-13-54. Such securities shall include, but are not limited to, the following:

(a) Bonds or other securities authorized by or issued by this state;

(b) Direct and general obligations of the United States Government;

(c) Obligations unconditionally guaranteed by the United States Government;

(d) Obligations of agencies of the United States Government issued by the

1. Federal Land Bank;

2. Federal Home Loan Bank;
3. Federal Intermediate Credit Bank; or
4. Central Bank for Cooperatives.

- (e) Deposits of funds at interest in any chartered state or national bank or trust company located in this state and which is insured by the Federal Deposit Insurance Corporation to the extent of the insurance;
- (f) Accounts and certificates of state chartered associations and federal savings and loan associations, which are insured by the Federal Savings and Loan Insurance Corporation to the extent of the insurance.

- (g) Irrevocable letters of credit which name the Commissioner of Labor as obligee.

(5) Acceptance of cash deposit, surety bond and/or acceptable securities may be subject to the approval of a committee of no less than three (3) employees of the department (one of whom is an attorney) appointed by the Commissioner.

(a) Amount. The amount of the securities required by this subsection shall be equal to two and seven-tenths percent (2.7%) of the organization's taxable wages paid for employment as defined in OCGA Section 34-8-49 for the four (4) calendar quarters immediately preceding the effective date of election or anniversary of the effective date of election, whichever date shall be most recent and applicable, or twenty-six (26) times the maximum potential weekly benefit amount as provided in OCGA Section 34-8-193, whichever amount is higher. If the organization did not pay wages in each of such four (4) calendar quarters the amount of the securities shall be as determined by the Commissioner.

(b) The effective date of a bond, irrevocable letter of credit or other type security instrument shall cover the period of time which equals the benefit year of any claim for benefits which could have been filed by an employee of the employing unit as of the date of notification by the Department to the employing unit of the option to be a reimbursable employer.

(6) Any amount owed to the department by an employing unit which has elected to reimburse benefits paid in lieu of contributions shall be due and payable on or before the thirtieth (30th) day after the release date of the Reimbursable Employers Quarterly Bill, Form DOL-621.

Authority O.C.G.A. Sec. 34-8-70.

300-2-8-.04 Establishment, Administration and Dissolution of Group Accounts.

Two or more employers, as defined in OCGA Section 34-8-161, in the same or related trade, occupation, profession or enterprise; or having a common financial interest, hereinafter referred to as an "Employer Group", may enter into an agreement with the Georgia Department of Labor to establish a Group Account. Such employer group shall be treated as a separate employer account and subject to the following provisions:

- (a) An employer group may not be established for a period of less than five (5) years;
- (b) No employer may become a member of an employer group until such employer has been liable under this law for a minimum of two (2) calendar years;
- (c) Separate accounts shall be maintained for each employer in an employer group for identification;
- (d) The successor who acquires the business of a member of an employer group shall continue to be a member of such group until the employer group is dissolved;
- (e) An employer group may be dissolved on any five (5) year anniversary date, provided a written request is made ninety (90) days prior to such anniversary date:
 - 1. By the parent employer, if each member of the employer group is owned or controlled by such parent employer; or
 - 2. By fifty percent (50%) or more of the employers in the employer group.
- (f) Each member of an employer group shall be liable individually or collectively for past due payments owed to the department by any member;
- (g) No provision in this rule shall be construed as giving any member of any employer group any authority over the operation of another member with respect to the administration of the employer group account.

Authority O.C.G.A. Sec. 34-8-70.

300-2-8-.05 Reimbursable Employer Appeal to the Department of Amount Due.

- (1) Pursuant to OCGA Section 34-8-159(4), the amount due specified in any bill to a reimbursable employer shall be conclusive on the organization unless the organization files an application with the Commissioner for a redetermination, setting forth the grounds to support a redetermination, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it.
- (2) The Commissioner shall promptly review the application for redetermination and shall issue a redetermination. The reimbursable employer shall have an additional fifteen (15) days after the redetermination is mailed or delivered in which to appeal in writing for a hearing. If no such request is made within that time the redetermination becomes final and no further appeal is allowed.
- (3) Hearings on such appeals shall be conducted by the Office of State Administrative Hearings. The amount due as found by the decision of said office shall be conclusive on the organization and the Department of Labor unless the organization or the Department of Labor files an appeal to the Superior Court setting forth the grounds for its appeal, not later than fifteen (15) days after the written decision was mailed or otherwise delivered to the last known address of the organization and the Department of Labor.

Authority O.C.G.A. Sec. 34-8-70.

CHAPTER 300-2-9 QUALIFICATIONS AND PENALTIES FOR UNEMPLOYMENT INSURANCE BENEFITS CLAIMS

300-2-9-.01	Separation by Discharge and the Application of the Provisions of O.C.G.A. Section 34-8-194(2)	300-2-9-.05	Separation by Quitting
300-2-9-.02	Disqualification for Failure to Apply for or Accept Work	300-2-9-.06	Vacation
300-2-9-.03	Drug Adjudication Policy	300-2-9-.07	Educational Service Workers
300-2-9-.04	Alcohol Adjudication Policy	300-2-9-.08	Eligibility of Temporary/Intermittent Workers
		300-2-9-.09	Services in Professional Sports

300-2-9-.01 Separation by Discharge and the Application of the Provisions of O.C.G.A. Section 34-8-194(2). Amended.

(1) An individual shall be disqualified for violation of an employer's rule whenever the employee knew or had reason to know (as an ordinarily prudent person) of the rule, either having been made aware thereof by the employer or through common knowledge; provided, however, no employee shall be disqualified for violating any rule, order or instruction unless the same shall be lawful and reasonably related to the job environment and job performance. Such factors as inconsistency of prior enforcement, unlawfulness and unreasonableness of the rule may be proven by the individual to show that the individual is entitled to benefits. In instances in which there is a dispute as to the true cause of discharge, the claimant shall be afforded the opportunity to challenge or rebut the employer's version of the facts as to the stated reason for the discharge. The employer has the burden of persuasion as to the true cause of discharge.

(2) In determining whether an individual should be disqualified for benefits under OCGA Section 34-8-194(2), the Commissioner shall consider the factors as set out in (a) through (f) below. In each instance, the warning factor shall not be essential, but may be considered under the totality of circumstances; the absence of a warning may likewise be considered, particularly with respect to mitigation of an offense committed by an employee. In each instance, the Commissioner shall not be limited to a consideration of the factors enumerated herein but may consider such other factors as the totality of circumstances dictates. Once an employer has met its burden of proof with respect to a failure of a claimant to obey rules, orders or instruction or to perform the duties for which he was employed, the Commissioner shall consider any of these factors in mitigation of the offense, action or inaction of the employee.

(a) Where the employee was discharged for absenteeism or tardiness, the Commissioner shall consider:

1. The employer's policy on absenteeism or tardiness and whether the policy was communicated to the employee;
2. Whether the employee had been absent or tardy on prior occasions and had been warned about absenteeism or tardiness;
3. What the employer's policy is with respect to notice of the absence or tardiness and whether the employer was properly notified by the employee;

4. The reason(s) for the absenteeism or tardiness;
5. The frequency of the absenteeism or tardiness; and
6. Whether, upon consideration of the totality of circumstances which surrounded the absences or tardiness, the employee was at fault in the discharge.

(b) Where the employee was discharged for a violation of rules, orders, instructions or failure to discharge the duties for which employed, the Commissioner shall consider:

1. The manner in which the rules, orders, instructions or duties were made known to the employees including, but not limited to, whether or not the rules were posted or otherwise published prior to the incident causing discharge;
2. Whether a violation of the rules, orders, instructions or duties occurred;
3. Whether the employee failed to discharge the duties for which employed;
4. Whether the violation or the failure to discharge duties was a result of the employee's fault, intentional conduct, conscious neglect or misconduct as defined in these Rules;
5. The extent of the infraction;
6. The impact of the infraction on the employer's operation.

(c) Where the employee was discharged for property loss or damage, the Commissioner shall consider:

1. Whether the behavior that caused the loss or damage was due to negligence on the part of the employee or was due to intentional conduct on the part of the employee;
2. Whether the employee had been warned (the warning factor is not essential to a disqualification but shall be weighed in light of the circumstances);
3. The extent and amount of the loss or damage;
4. Other aggravating or mitigating circumstances.

NOTE: Although a disqualification will be imposed if the loss or damage was found to be the fault of the claimant but there was no evidence of intentional conduct, for a disqualification to be imposed under the provisions of OCGA Section 34-8-194(2)(A)(ii)(I), the Commissioner must determine the act was intentional and the loss or damage amounted to \$ 2,000.00 or more;

(d) Where the employee was discharged for intentional conduct which results in bodily injury to the employer, fellow employees, customers, patients, bystanders or the eventual consumer of products, the Commissioner shall consider:

1. Whether the act was intentional;
2. The extent of the physical harm resulting from the act;

3. Any other aggravating or mitigating circumstances (e.g., past provocation; the warning factor is not essential but shall be weighed in light of the circumstances); and
4. The foreseeability of the injury as a result of the act.
5. The term "bystanders" shall include anyone who was legally entitled to be in such close proximity to the location of the occurrence of the act as to be physically injured. The term "bystanders" could include, but shall not be limited to, governmental officials, independent contractors or other persons.

NOTE: Although a disqualification will be imposed if the act by the claimant was found to be the fault of the claimant but there was no evidence of intentional conduct, for a disqualification to be imposed under the provisions of OCGA Section 34-8-194(2)(A)(i)(I), the Commissioner must determine the act was intentional;

(e) Where the employee was discharged for engaging in a physical fight or threatening behavior on the employer's premises or while on the job under the provisions of OCGA Section 34-8-194(2)(A)(i)(I), the Commissioner shall consider:

1. Whether or not the discharged employee used a weapon;
2. Whether or not anyone was injured;
3. The extent of any provocation to or threat to the discharged employee; and
4. Whether or not the discharged employee had been involved in fighting on the employer's premises on prior occasions and had been warned about fighting.

NOTE: Although a disqualification will be imposed if the act by the claimant was found to be the fault of the claimant but there was no evidence of intentional conduct, for a disqualification to be imposed under the provisions of OCGA Section 34-8-194(2)(A)(i)(I), the Commissioner must determine the act was intentional.

(f) Where the employee was discharged for the falsification of employer records, the Commissioner shall consider:

1. Whether the omission/misstatement was intentional;
2. Whether the omission/misstatement was material; and
3. Information or documentation with respect to proof of citizenship as required by, or in compliance with, the Federal Immigration Reform and Control Act of 1986 including any subsequent amendments to said Act and applicable state laws.

(3) Federal law protects freedom of expression through the First Amendment and it protects an employee's right to protest hours, working conditions and job safety under the National Labor Relations Act and other legislation. A claimant may not be disqualified for action protected under federal law.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150, 34-8-158(2), 34-8-191.

300-2-9-.02 Disqualification for Failure to Apply for or Accept Work. Amended.

(1) Disqualification under OCGA Section 34-8-194(3) is required if a claimant was offered employment that is suitable work or was directed to apply for such employment by the department, but the offer was refused, or the claimant failed to apply and the refusal or failure to apply was without good cause, or after acceptance of a job offer made by the employer, claimant failed to report to work for that employer.

(a) An offer of work or referral to employment shall be considered properly made when:

1. A job opening existed at the time the offer was made or referral was given and claimant had been given sufficient information concerning the conditions of the job (such as, but not limited to, the duties, location of work, hours of work, wages, working conditions and equipment needed, if any) to determine the suitability of the offer or the referral; and
2. The claimant knew and understood that an offer or referral was being made, and had been notified of the job offer or referral in adequate time to respond; and
3. The claimant, upon accepting a referral, was given adequate information as to where and how to apply.

(2) No claimant shall be ruled ineligible for benefits where new work is offered, but the distance or time for commuting is substantially greater than that distance to all other places to which an ordinarily prudent person living in the same locality, town or city would travel for work which utilizes similar or related skills or services, and also to where the claimant earned base period wages.

(3) Notwithstanding any other provisions in this section, no work shall be deemed suitable and benefits shall not be denied under OCGA Section 34-8-194(3) to any otherwise eligible individual for refusing to accept new work if:

- (a) The position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (b) The wages, hours or other conditions of the work are less favorable to the individual than those prevailing for similar work in the locality; or
- (c) As a condition of being employed the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Disqualification shall not be imposed if claimant did not apply for or accept work due to occurrences such as:

- (a) An "act of God" or similar event beyond the control of the claimant which prevented the claimant from timely responding to a call-in notice, job referral or job offer, (e.g., an automobile accident involving the claimant's vehicle which prevented the claimant from responding on time);

(b) Death of an individual's immediate family member. The eligibility requirements of availability and reporting shall be waived for the day of the death and for four (4) consecutive calendar days thereafter. As used in this subparagraph, "immediate family member", means a spouse, child, stepchild, adopted child, grandchild, parent, grandparent, brother or sister of the individual or his or her spouse and the spouse of any of the foregoing;

(c) Personal illness or disability of a temporary nature of claimant or a dependent family member which occurred in such a way to prevent the claimant from timely appearing in person, and the claimant made diligent efforts to give notice to the department or the employer prior to the time for the scheduled call-in or report to work date;

(d) The offer of work or referral to a job opening was for a job opening with an employer who previously employed the claimant and from which the claimant quit or was discharged from employment under such adverse conditions that the ordinarily prudent person would not be expected to return to work with the former employer. The Commissioner shall consider the totality of circumstances in such a case.

Authority O.C.G.A. Secs. 34-8-70, 34-8-150, 34-8-151, 34-8-158(3), 34-8-191.

300-2-9-.03 Drug Adjudication Policy. Amended.

(1) These policies are general guidelines for adjudication of drug usage and drug testing related cases. The policies do not, and are not intended to establish what employers may or may not do in their own businesses. The policies address only the payment or denial of benefits under the Employment Security Law.

(2) "Drug" means any controlled substance as defined in O.C.G.A. Section 16-13-20 et seq.

(3) Drug testing must be based upon "reasonable grounds." The following are reasonable grounds for testing:

(a) If the employer has a reasonable suspicion that an individual has used drugs. Reasonable suspicion includes, but is not limited to:

1. Unusual change in behavior;
2. Substantial loss of productivity;
3. Repeated tardiness;
4. Repeated absences;
5. Noticeable signs of drug intoxication;
6. Reliable information or credible report that the employee is using a drug; and
7. Other reasonable indicators that suggest the individual is taking drugs.

(b) An on-the-job accident resulting in a personal injury or more than minor property damage;

(c) If the employee has previously tested positive for a drug and has been given a second chance;

(d) Random or blanket testing of employees if all the employees in a job group are equally subject to the random or blanket test;

(e) Testing of applicants if either all applicants or all persons offered a job for a job group are subject to the test (pre-employment drug test);

(f) Any testing required by local, state or federal law or regulations;

(g) Testing pursuant to an employer's "Drug-Free Workplace Program", established in accordance with OCGA Section 34-9-410 et seq. (Georgia Workers' Compensation Drug-Free Workplace Program Premium Credit Discount); or

(h) Any testing policy established by an employer to discourage the use of drugs by its employees which complies with the provisions of this rule.

(4) An employer requirement that a job candidate take a drug test does not, by itself, render the work unsuitable. An employer may require that job candidates show that they are not users of illegal drugs.

(a) If, after being referred to work by the department, an employee fails to apply for work because the employer requires a preemployment drug test, the claimant has failed to apply without good cause.

(b) If the employee refuses work because he or she is required to take a pre-employment drug test, the employee has refused work without good cause.

(c) Failing a pre-employment drug test, by itself, is grounds for disqualification under OCGA Section 34-8-195, provided, however, the drug test must comply with the provisions of these rules.

(5) When employers with a drug-free workforce policy require employees and prospective employees to consent to participate in the employer's program:

(a) The requirement that an employee consent to drug testing is not unreasonable when the consent is designed to inform the employee of the program and to secure the employee's acknowledgement that the employee will participate in the program. Mere agreement to participate in a drug testing program is not, by itself, inimical to an employment situation, unless the agreement calls for submission to an unreasonable testing program. In disputes over consent, where there is reasonable drug testing as described in these rules, the following applies:

1. If, after being referred to work, the employee fails to apply because he/she is required to consent to participate in a reasonable drug testing program, the employee has failed to apply for work without good cause;

2. If an employee fails to accept work rather than consent to participate in the employer's reasonable drug testing program, the employee has failed to accept work without good cause;

3. If an employee quits rather than consent to participate in the employer's reasonable drug testing program, the employee has left work without good cause;

4. If the employee is discharged for refusing to consent to participate in the employer's reasonable drug testing program, the employee is discharged under disqualifying conditions and is considered to be at fault in the separation.

(6) Where an employer has reasonable grounds for drug testing and an employee quits rather than be tested, the employee has quit without good cause. When an employee is discharged for refusal to submit to such drug testing, the employee shall be deemed discharged for cause.

(7) For purposes of unemployment insurance it is reasonable for an employer to require employees to submit to blanket or random drug testing.

(a) If the employer has reasonable grounds for blanket or random drug testing and the employee quits rather than be tested, the employee has quit without good cause connected with the work.

(b) If the employer has reasonable grounds for blanket or random drug testing and the employee is discharged for refusing to submit to such a test, the employee is discharged for misconduct.

(8) For drug test results to be a determinative factor under this rule, proper custody, testing and confirmation procedures must be followed; and the individual must have tested positive for a drug. Unless gas chromatography is used as the initial test, a second test of a different type must be conducted to confirm the accuracy of the first test. The laboratory which conducts the test must meet or exceed the minimum standards specified in OCGA Section 34-9-415. The results must be admitted in conformity with the requirements of OCGA Section 34-8-194.

(9) When test results are properly authenticated and the individual tested positive for a drug, the following apply:

(a) If an employee is discharged for failing a drug test it is a disqualifying discharge;

(b) If an employee fails a test and quits because a discharge is imminent, the quit is treated the same as any other quit in lieu of discharge. If discharge is not imminent and the employee quits, the quit is without good cause.

(10) When an employee fails a reasonable drug test; was previously shown to have been under the influence of drugs on the job; admits to use of drugs on the job; or violates Section (11) of these Rules, an employer may, as a condition of continued employment, require the employee to adhere to certain reasonable conditions.

(a) Reasonable conditions include, but are not limited to:

1. Agreeing to remain drug free;

2. Attending, at reasonable cost to the employee, rehabilitation or similar programs; and
3. Submitting to random drug testing to demonstrate the employee remains drug free.

(b) In adjudicating violations of last chance agreements, the following apply:

1. A discharge is disqualifying if:

- (i) The employee refuses to agree to reasonable conditions required by the employer; or
- (ii) The employee fails to adhere to reasonable conditions required by the employer.

2. An employee voluntarily leaves work without good cause if:

- (i) The employee leaves work rather than agree to reasonable conditions required by the employer; or
- (ii) The employee leaves work rather than adhere to reasonable conditions required by the employer.

(11) If the employee is discharged for illegally possessing a drug, distributing a drug, or selling a drug, the employee is considered to be at fault in the separation.

(12) Drug tests shall not be used to discriminate against employees for reasons prohibited by law.

Authority O.C.G.A. Secs. 34-8-70, 34-8-158(1), 34-8-170, 34-8-190.

300-2-9-.04 Alcohol Adjudication Policy. Amended.

(1) These policies are general guidelines for adjudication of alcohol related cases. These policies do not, and are not intended to establish what employers may or may not do in their businesses. The policies address only the payment or denial of benefits under the Employment Security Law.

(2) For purposes of OCGA Section 34-8-194 an employer may require a breathalyzer, blood alcohol or similar test of an employee or prospective employee, as part of the employer's substance abuse program, or if there are reasonable grounds to believe the individual is under the influence of alcohol.

(3) An individual is deemed under the influence of alcohol when the individual's blood alcohol content exceeds the amount prescribed in a collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the amount prescribed in the employer's published work rules, or in the absence of either of the foregoing, meets or exceeds the amount prescribed in OCGA Section 40-6-391 as constituting being under the influence of alcohol. In the absence of a test, an individual may be found to be under the influence of alcohol when there is clear observable evidence of intoxication.

(4) An individual who is discharged as a result of being under the influence of alcohol while on the job, is discharged under disqualifying conditions.

(5) An individual who is discharged for failing to appear for work as a result of the use of alcohol is discharged under disqualifying conditions, unless the individual establishes that the absence was resulting from the individual seeking treatment for alcoholism from a recognized treatment program, and the individual followed the employer's procedure for notifying the employer of his/her absence from work.

(6) Alcohol testing shall not be used to discriminate against employees for reasons prohibited by law.

(7) An employee who violates a known work rule of the employer which forbids the consumption of alcohol during the working day can be disqualified from receiving unemployment compensation even without proof that the employee is under the influence of alcohol.

Authority O.C.G.A. Secs. 34-8-70, 34-8-151, 34-8-170, 34-8-190.

300-2-9-.05 Separation by Quitting. Amended.

(1) An employee who voluntarily quits is to be disqualified unless he/she can show that the employer had changed the terms and conditions of work in a manner that the employee, applying the judgment of a reasonable person, would not be expected to continue that employment. Factors which the Commissioner shall consider in making this determination may include, among others, the following:

(a) Whether the employee was downgraded for reasons other than the fault of the claimant;

(b) Whether the employee had undergone harassment on the job of a substantial nature which would induce a reasonable person to quit in order to seek other employment;

(c) Whether the hiring contract had otherwise been broken in a material way;

(d) An economic downgrade based on the employer's inability to continue the former salary will not be considered as a good cause to quit if the reduction in salary is not a substantial reduction below a reasonable rate for that industry or trade. However, a seasonal or temporary reduction in pay or work hours does not constitute good cause for quitting; or

(e) Whether the employee's health was placed in jeopardy by conditions on the job. There must be some clear connection between the health problem and the performance of the job, and professional medical advice is required unless the reason would be obvious that harm to the employee would result from continued employment. This includes such obvious things as broken limbs, violent reactions such as allergies due to the environment on the job and similar circumstances. Provided, however, the employee must discuss the matter with the employer to seek a solution by another assignment or other changes that would be appropriate to relieve the medical problem before the employee can show good work-connected cause for quitting.

(2) Disqualification is not required if an employee quits because the rules of the employer prove to be unreasonable as related to proper job performance.

(3) In situations in which it is not clear whether a quit or a discharge occurred to cause the separation, the burden of persuasion shall be on the employer to show that a quit rather than a discharge occurred. If the employer meets this burden of persuasion, then the burden of proof is then placed on the claimant to show that the quit was for good cause connected with the work. If the employer fails to meet this burden of persuasion, the separation shall be treated as a discharge and the burden of

proof of just discharge shall be on the employer.

(4) When an individual accepts a separation from employment due to lack of work, pursuant to a labor management contract or agreement, or pursuant to an established employer plan, program, policy, layoff, or recall, the Commissioner will determine eligibility based on the individual circumstances of the case. In such cases, to show that the individual quit for good cause connected with the most recent work the facts must demonstrate at minimum:

- (a) That the individual was advised of an actual impending layoff with a date certain, and
- (b) That the effective date of the layoff was no more than six (6) months after the announcement date.

Authority O.C.G.A. Secs. 34-8-70, 34-8-152, 34-8-190.

300-2-9-.06 Vacation. Amended.

(1) An individual shall not be considered available for work if on vacation. An individual shall not be considered to be on vacation if the employer-employee relationship no longer exists. However, this relationship shall be deemed to exist if:

- (a) An employer is submitting Form DOL-408 for partial unemployment on behalf of the individual; or
- (b) The individual has a firm return to work date within six (6) weeks of the date the individual last worked for the employer.

(2) No individual shall receive unemployment insurance:

- (a) While on vacation at his own request regardless of whether or not the individual was paid by or on behalf of the employer during the vacation period; or
- (b) For any week of vacation if paid vacation pay.

(3) When an individual is separated, any money paid for previously accrued vacation rights will not affect claimant's benefit payments.

(4) Any claimant who is not receiving pay during a period of vacation shutdown shall not be denied benefits for any weeks of such shutdown unless the employer has established a vacation plan as set forth in OCGA Section 34-8-195(a)(3)(A).

- (a) For purposes of computing two (2) weeks discussed in OCGA Section 34-8-195(a)(3)(B), if the last week of December has three (3) or more work days, that week is to be considered in the prior calendar year, even though the week ending date is in January of the current calendar year.

Authority O.C.G.A. Secs. 34-8-70, 34-8-170, 34-8-190.

300-2-9-07 Educational Service Workers. Amended.

(1) Benefits based upon service in employment described in subparagraphs (a)(1) and (a)(2) of OCGA Section 34-8-196 performed for, with, or on behalf of an educational employer (including service for an educational institution, educational service agency or an entity providing services to or on behalf of an educational institution) are subject to the benefit payment limitations described in OCGA Section 34-8-196(a) with respect to all service in covered employment under any provisions of OCGA Section 34-8-35, including private employment.

(2) Benefits shall be denied to an individual in accordance with OCGA Section 34-8-196(a) only if such individual has earned base period wages with an educational employer (as defined above) or the individual's most recent employer in accordance with OCGA Section 34-8-43 is an educational employer (as defined above).

(3) Retroactive benefits with respect to non-professional educational workers in accordance with OCGA Section 34-8-196(a)(2) are payable only under the following conditions:

- (a) Despite reasonable assurance having been provided to the individual that the same or substantially similar work would be available in the second academic term or year, no such work is available; and
- (b) Timely claims for benefits were filed for each week claimed during the break between terms or years; and
- (c) All other eligibility conditions of the Employment Security Law including, but not limited to, OCGA Section 34-8-195 were met for each week claimed; and
- (d) The individual reopens the claim within fourteen (14) calendar days after the beginning of the next successive school term or year or after being informed by the educational employer (as defined above) that the expected work would not be available, whichever date occurred first.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190, 34-8-196.

300-2-9-08 Eligibility of Temporary/Intermittent Workers.

(1) An individual who is working on a part-time, intermittent, or temporary assignment basis shall not be denied benefits solely as a consequence of such employment. When such individuals are between assignments, it shall be considered that a rebuttable presumption of voluntary unemployment exists. In determining eligibility for such persons, the Commissioner may consider, but is not limited to, the following facts:

- (a) Whether the claimant's employment was of a temporary/intermittent nature;
- (b) Whether the claimant and employer are maintaining an ongoing employment relationship;
- (c) Whether the claimant considers temporary/intermittent work as an occupation, or as "stop-

gap work" to earn income while seeking employment; and

(d) Whether the claimant is seeking and is available for full time work.

(2) In accordance with paragraph (c) of OCGA Section 34-8-195, an individual who is contracted to a temporary help contracting firm may not be considered unemployed with respect to any work week, during which a comparable work assignment is offered by the employer and is refused by the claimant without good cause.

(3) Such temporary help contracting firm must promptly notify the department in writing, providing proof of the work assignment offer, such as a copy of a telephone call log sheet. The burden of proof shall be on the employer to show the temporary assignment is comparable to previous work or assignments performed by the individual or otherwise meets the conditions of employment as previously agreed. If the job or assignment offer was comparable, then the claimant must establish he or she had good cause to refuse the job or assignment. To be eligible for benefits the claimant must have complied with all of the employer's reasonable rules with respect to work assignments, such as providing the employer a current address and telephone number by which to contact the claimant concerning possible work assignments, and otherwise meet all reasonable communication requirements of the employer to stay in touch with the employer. The employer must likewise comply with all of its own communication rules.

(4) To be considered a timely response, an employer's response to a claim for benefits filed by an employee of a temporary help contracting firm must be postmarked or received by the date the individual was scheduled for a predetermination interview. This date shall typically be seven (7) days or more after the claim for benefits was filed. The employer's written response as to the work assignment offer must be sent to the department on or before the claimant's scheduled predetermination interview date. Any subsequent refusal which occurs within the claimant's benefit year requires the employer to notify the department within four (4) days of such refusal. Notification shall be in writing, addressed to the local office of the department where the claim was filed.

(5) Claimants whose most recent work, or work last performed, was for a temporary help contracting firm must report his or her refusal of all job offers or job assignments to the department promptly. The department will then make a determination of whether the job assignment was comparable to work previously performed or agreed to be performed and whether such refusal was for good cause.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190.

300-2-9-.09 Services in Professional Sports.

(1) Pursuant to OCGA Section 34-8-196, paragraph (b), an individual shall be considered as "participating in professional sports or athletic events or to be in training or preparing to so participate" if such individual is a professional athlete, coach, manager or trainer who is employed by the professional team or as a referee or umpire employed by a professional league or association or other individual in similar situations who performs services in professional sports.

(2) For purposes of this paragraph and OCGA Section 34-8-196, "substantially all" means 90% or more of the wages shown in the base period of an individual worker's claim for unemployment insurance benefits.

Authority O.C.G.A. Sec. 34-8-196.