

CHAPTER 52-06 BENEFITS

52-06-01. Conditions required to be eligible for benefits. An unemployed individual is eligible to receive benefits with respect to any week only if the bureau finds that:

1. The individual has made a claim for benefits with respect to such week in accordance with such regulations as the bureau may prescribe;
2. The individual has registered for work and thereafter continued to complete all assigned services and report to a local office as required in accordance with such regulations as the bureau may prescribe, except that the bureau may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of the North Dakota unemployment compensation law; provided, that no such regulation shall conflict with section 52-06-03;
3. The individual is able to work and is available for suitable work and actively seeking work, provided:
 - a. That notwithstanding any other provisions in this section, no otherwise eligible individual may be denied benefits for any week because the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work; and
 - b. That no claimant may be considered ineligible in any week of unemployment for failure to comply with this subsection, if the failure is due to an illness or disability not covered by workforce safety and insurance and which occurred after the claimant has registered for work and no work has been offered the claimant which is suitable;
4. The individual has been unemployed for a waiting period of one week. No week may be counted as a week of unemployment for the purposes of this subsection:
 - a. Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits;
 - b. If benefits have been paid with respect thereto; and
 - c. Unless the individual was eligible for benefits, with respect thereto as provided in this section and section 52-06-02; and
5. The individual participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the bureau, unless the bureau determines that:
 - a. The individual has completed these services; or
 - b. There is justifiable cause for the claimant's failure to participate in these services.

52-06-02. Disqualification for benefits. An individual is disqualified for benefits:

1. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
 - a. Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left the individual's most recent employment under disqualifying circumstances.

A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

This subsection does not apply if job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base-period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.

2. For the week in which the individual has been discharged for misconduct in connection with the individual's most recent employment and thereafter until such time as the individual:
 - a. Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least ten times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left the individual's most recent employment under disqualifying circumstances.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and was discharged for misconduct in connection with the claimant's employment or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding ten times the claimant's weekly benefit amount.

3. If the individual has failed, without good cause, either to accept suitable employment; to apply for suitable employment; or to return to the individual's customary self-employment, if any, when so directed to do so by the bureau or its authorized representative. Such disqualification must continue for the week in which such failure occurred and thereafter until such time as the individual:
 - a. Can demonstrate that the individual has earned remuneration for personal services in employment equivalent to at least ten times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left the individual's most recent employment under disqualifying circumstances.
4. For any week with respect to which it is found that the individual's unemployment is due to a strike, sympathy strike, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed; provided, that this subsection does not apply if it is shown that:
 - a. The individual is not participating in or directly interested in the labor dispute which caused the strike, sympathy strike, or a claimant's work stoppage dispute of any kind; and

- b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the strike, sympathy strike, or a claimant's work stoppage dispute of any kind occurs, any of whom are participating in or directly interested in the dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.
5. For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification does not apply.
6. For any week of unemployment if such individual is a student registered for a full-time curriculum at, and is regularly attending, an established school, college, or university, and the scheduled class hours are the same time period or periods as the normal work hours of the occupation from which that individual earned the majority of the wages in that individual's base period, unless that individual is authorized to receive benefits while in training pursuant to subsection 3 of section 52-06-01. However, this disqualification does not apply to students registered for a full-time curriculum who have earned the majority of the wages in their base periods for services performed during weeks in which the individual was so registered and attending school. As used in this subsection, the term "full-time curriculum" means a course load of twelve or more credit hours or a course load found to be equivalent by rule adopted by job service North Dakota.
7. For any week in which the individual is partially or totally unemployed by reason of a disciplinary suspension of not more than thirty days by the individual's employer for misconduct connected with the individual's employment, and the bureau so finds.
8. For the week in which the individual has filed an otherwise valid claim for benefits and:
 - a. For one year from the date on which a determination is made that such individual has made a false statement for the purposes of obtaining benefits to which the individual was not lawfully entitled. Provided, however, that this disqualification does not apply to cases in which it appears to the satisfaction of job service North Dakota that the false statement was made by reason of a mistake or misunderstanding of law or of facts without fraudulent intent; or
 - b. For one year when the individual has been separated from the individual's last employment because of gross misconduct in connection with work.
9. Which are based on service performed in an instructional, research, or principal administrative capacity for any educational institution, for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performed such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. Except for the provisions of this subsection,

benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota unemployment compensation law.

10. Which are based on services performed in any other capacity not described in subsection 9 for any educational institution, for any week which commences during a period between two successive academic years or terms if the individual performed such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota unemployment compensation law. If compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, that individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.
11. Which are based on any services described in subsection 9 or 10 for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.
12. Which are based on any services described in subsection 9 or 10 if the individual performed the services in an educational institution while in the employ of an educational service agency. The disqualification must be as specified in subsections 9, 10, and 11. For this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.
13. Which are based on service, substantially all of which consists of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.
14. Which are based on service performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the Immigration and Nationality Act.
 - a. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status must be uniformly required from all applicants for benefits.

- b. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status may be made except upon a preponderance of the evidence.
15. For any week with respect to which an individual is receiving a pension, including a governmental pension other than federal social security retirement benefits, and any other pension, retirement pay, retired pay, annuity, and any other similar periodic payment under a plan maintained or contributed to by a base-period or chargeable employer as determined under applicable law, unless the weekly benefit amount payable to such individual for such week is reduced, but not below zero:
 - a. By the prorated weekly amount of the pension after deduction of three-fourths of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed after June 30, 1985, and by the prorated weekly amount of the pension after deduction of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed after June 30, 1986;
 - b. By the entire prorated weekly amount of the pension if subdivision a or c does not apply; or
 - c. By one-fourth of the pension if the entire contributions to the plan were provided by such individual, by the individual and an employer, or by any other person that is not a base-period or chargeable employer as determined under applicable law, for claims filed after June 30, 1985, and by no part of the pension if the entire contributions to the plan were provided by such individual, by the individual and an employer, or by any other person that is not a base-period or chargeable employer as determined under applicable law, for claims filed after June 30, 1986.

A reduction may not be made under this subsection by reason of the receipt of a pension if the services performed by the individual during the base period, or remuneration received for such services, for the employer did not affect the individual's eligibility for, or increase the amount of, the pension, retirement pay, retired pay, annuity, or similar payment. This limitation does not apply to pensions paid under the Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under the Railroad Retirement Act of 1974 must be treated solely in the manner specified by subdivisions a, b, and c. A reduction may not be made under this subsection by reason of receipt of federal social security retirement benefits.

16. Except that no otherwise eligible individual may be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the Trade Act of 1974 [19 U.S.C. 2296(a)(1)], nor may such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in the North Dakota unemployment compensation law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

17. With respect to services to which subdivisions f and g of subsection 17 of section 52-01-01 apply, if the services are provided to or on behalf of an educational institution, benefits are not payable under the same circumstances and subject to the same terms and conditions as described in subsections 9, 10, 11, and 12.

52-06-03. When benefits payable. Beginning twenty-four months after the date when contributions first accrued under the North Dakota unemployment compensation law, benefits become payable from the fund. Benefits must be paid through public employment offices in accordance with such regulations as the bureau may prescribe.

52-06-04. Weekly benefit amount - Average annual wage - Average weekly wage - Minimum weekly benefit amount - Maximum weekly benefit amount - Qualifying wage - Insured worker and insured work defined.

1. The procedures, provisions, and conditions of this section must determine the "weekly benefit amount" of those individuals who establish a benefit year:

- a. For the purpose of this section, the bureau shall each year, on or before the first day of June, determine the average annual wage paid to insured workers and, from that determination, an "average weekly wage", by the following computation:

The total wages reported on contribution reports for the preceding calendar year must be divided by the average monthly number of covered workers, whose number must be determined by dividing by twelve the total covered employment reported on contribution reports for the preceding calendar year, and the quotient obtained by dividing the total wages by the average monthly number of covered workers is the average annual wage; and such quotient must be divided by fifty-two and the amount thus obtained, rounded to the nearest cent, is the "average weekly wage".

- b. An individual's "weekly benefit amount" is one sixty-fifth, if not a multiple of one dollar to be computed to the next lower multiple of one dollar, of the sum of:

- (1) The individual's total wages for insured work paid during the two quarters of the individual's base period in which the individual's wages were the highest; and
- (2) One-half of the individual's total wages for insured work paid during the third highest quarter in the individual's base period.

However, if that amount is less than the "minimum weekly benefit amount" the individual is monetarily ineligible for benefits. The "minimum weekly benefit amount" is forty-three dollars. The "maximum weekly benefit amount" is sixty-two percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. However, if on October first of any calendar year this state's average contribution rate is below the nationwide average for the preceding calendar year, the maximum weekly benefit amount is sixty-five percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar.

2. To qualify as an insured worker an individual must have been paid wages for insured work in at least two calendar quarters of the individual's base period totaling not less than one and one-half times the individual's total wages paid during the quarter of the individual's base period in which the individual's wages were the highest. However, the wage credits of an individual earned during the period commencing with the end of the prior base period and ending on the date on which the individual filed a valid claim are not available for benefit purposes in a subsequent benefit year

unless, in addition thereto, the individual has subsequently earned wages for insured work in an amount equal to at least ten times the individual's current weekly benefit amount. Base-period wages used to determine an individual's monetary eligibility under this subsection, as a result of the following employment, may not exceed ten times the individual's weekly benefit amount:

- a. Employment by a partnership, if one-fourth or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
 - b. Employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
 - c. Employment by a limited liability company, if one-fourth or more of the ownership interest, however designated or evidenced in the limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
 - d. The exceptions in subdivisions a, b, and c do not apply if, at the time of making the claim, the ownership interest described in those subdivisions has been ceded. An ownership interest is ceded within the meaning of this subdivision if:
 - (1) The appropriate official of the partnership, corporation, or limited liability company has officially filed articles of dissolution, a notice of intent to dissolve, or a notice of termination with the secretary of state, and presents proof of that filing to job service North Dakota;
 - (2) The appropriate official of the corporation has received a certificate of dissolution from the secretary of state;
 - (3) The partnership, corporation, or limited liability company has sold or otherwise transferred to uninvolved third parties substantially all the assets of the partnership, corporation, or limited liability company with an intent to end the business operation and terminate or dissolve the partnership, corporation, or limited liability company. As used in this subdivision, "uninvolved third parties" excludes all relatives of the partners, directors, members of a board of governors, or substantial stockholders or holders of a substantial membership interest in a limited liability company; and excludes any corporation, limited liability company, or partnership, in which the relative holds a one-fourth or greater ownership interest. As used in this paragraph, "relative" means the following persons whether related by blood, marriage, or adoption: grandparents, parents, siblings, spouses, children, grandchildren, uncles, aunts, and first cousins; or
 - (4) Substantially all of the assets of the partnership, corporation, or limited liability company have been legally seized by creditors rendering the business incapable of further operation.
3. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:

- a. Which were not employment as defined in subsection 17 of section 52-01-01 and were not services covered pursuant to section 52-05-03 at any time during the one-year period ending December 31, 1975; and
- b. Which are:
 - (1) Agricultural labor as defined in subdivision m of subsection 17 of section 52-01-01, or domestic service as defined in subdivision n of subsection 17 of section 52-01-01; or
 - (2) Services performed by an employee of this state or a political subdivision thereof, as provided in subdivision f of subsection 17 of section 52-01-01, or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in paragraph 3 of subdivision h of subsection 17 of section 52-01-01; except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.
4. For the purpose of the North Dakota unemployment compensation law, the term "insured worker" means an individual who, with respect to a base period, meets the wage and employment requirements of this chapter and "insured worker" means employment for "employers".

52-06-05. Maximum potential benefits. Any otherwise eligible individual is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line which includes the individual's ratio of total base-period wages to highest quarter base-period wages:

Ratio of Total Base-Period Wages to High Quarter	Times Weekly Benefit Amount
1.50 to 2.29	12
2.30 to 2.44	14
2.45 to 2.59	16
2.60 to 2.74	18
2.75 to 2.89	20
2.90 to 3.04	22
3.05 to 3.19	24
3.20 or more	26

52-06-06. Weekly benefit for unemployment. Each eligible individual who is unemployed with respect to any week must be paid with respect to such week a benefit in an amount equal to the individual's weekly benefit amount less that part of the wages, if any, payable to the individual with respect to such week which is in excess of sixty percent of the individual's weekly benefit amount. Such benefit, if not a multiple of one dollar, must be computed to the next higher multiple of one dollar. For the purposes of this section, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed in those weeks.

52-06-06.1. Weekly benefit reduction for child support.

1. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection 7. If any such individual discloses that the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the bureau shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

2. The bureau shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under subsection 7:
 - a. The amount specified by the individual to the bureau to be deducted and withheld under this subsection, if neither subdivision b nor c are applicable;
 - b. The amount, if any, determined pursuant to an agreement submitted to the bureau under section 454(20)(B)(i) of the Social Security Act [42 U.S.C. 654(20)(B)(i)] by the state or local child support enforcement agency, unless subdivision c is applicable; or
 - c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 459(i)(5) of the Social Security Act [42 U.S.C. 659(i)(5)], properly served upon the bureau.
3. Any amount deducted and withheld under subsection 2 must be paid by the bureau to the appropriate state or local child support enforcement agency.
4. Any amount deducted and withheld under subsection 2 must for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.
5. For purposes of subsections 1 through 4, the term "unemployment compensation" means any compensation payable under the North Dakota unemployment compensation law, including amounts payable by the bureau pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.
6. This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the bureau under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.
7. The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act [42 U.S.C. 654] which has been approved by the secretary of health and human services under part D of title IV of the Social Security Act.
8. The term "state or local child support enforcement agency", as used in these provisions, means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection 7.

52-06-07. Wages payable prior to January 1, 1941, deemed wages paid within calendar quarter. For the purposes of section 52-06-04 and subsection 30 of section 52-01-01, wages payable to an individual for insured work performed prior to January 1, 1941, must be deemed to be wages paid within the calendar quarter with respect to which such wages were paid.

52-06-08. Claims for benefits - How made. Claims for benefits under the North Dakota unemployment compensation law must be made in accordance with such regulations as the bureau may prescribe.

52-06-09. Determinations upon claim filed - Contents. A determination upon a claim filed pursuant to section 52-06-08 must be made promptly by an examiner and must include a

statement as to whether and in what amount the claimant is entitled to benefits for the weeks with respect to which the determination is made and in the event of a denial must include a statement of the reasons therefor. A determination with respect to the first week of a benefit year also must include a statement as to whether the claimant has been paid the wages required under section 52-06-04 and if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the claimant with respect to such benefit year.

52-06-10. Determinations in labor dispute cases. Whenever any claim for benefits under the North Dakota unemployment compensation law involves the application of the provisions of subsection 4 of section 52-06-02, the examiner handling the claim, if so directed by the bureau, shall transmit such claim promptly to the appeals referee for the purpose of making a determination upon the issues involved under that section or upon such claim. The appeals referee shall make the determination on the claim after such investigation as the appeals referee deems necessary and after affording the parties entitled to notice an opportunity for a fair hearing in accordance with the provisions of the North Dakota unemployment compensation law with respect to hearings and determinations of the appeal tribunals. The parties must be notified promptly of the determination, together with the reasons therefor, in the event of the denial of the claim. Such determination must be deemed to be the final decision on the claim, unless within seven days of the mailing of the notice to a party's last-known address, or in the absence of such mailing, within ten days after the delivery of such notice, an appeal is filed with the bureau.

52-06-11. Determination of benefits for individual who secures work on a regular attachment basis. Notwithstanding any other provisions of the North Dakota unemployment compensation law, the bureau, by regulation, may prescribe that the existence of unemployment, the eligibility for benefits, and the amount of benefits shall be determined for that portion of the week occurring before or after a separation from, or securing of, work in the case of any otherwise eligible claimant who, within a week of unemployment, is separated from or secures work on a regular attachment basis. Such rules must be reasonably calculated to secure general results substantially similar to those provided by the North Dakota unemployment compensation law with respect to weeks of unemployment.

52-06-12. Notice of determinations - Dispensing with. Notice of a determination upon a claim must be given promptly to the claimant by delivery thereof or by mailing such notice to the claimant's last-known address. In addition, notice of any determination which involves the application of the provisions of section 52-06-02 together with the reasons therefor, must be given promptly in the same manner to the last employing unit by whom the claimant was employed. The bureau may dispense with the giving of notice of any determination to any employing unit and such employing unit shall not be entitled to such notice if it has failed to indicate prior to the determination if and as required by regulation of the bureau, that such employing unit was the claimant's base-period employer, as defined in the North Dakota unemployment compensation law, and that the claimant may be ineligible or disqualified under any provisions of the North Dakota unemployment compensation law.

52-06-12.1. Determination of eligibility - Notification of charges. The bureau shall, upon determination of an individual's eligibility for benefits chargeable against each base-period employer's account, notify each of the individual's base-period employers, including employers electing to finance benefit payments on a reimbursable basis, of the individual's eligibility and maximum potential charges against the base-period employer's account resulting from the individual's eligibility for benefits.

52-06-13. Notice of appeal from determination - Filing - Hearing - Special notice required. The claimant or any other party entitled to a notice of a determination as provided in the North Dakota unemployment compensation law may file an appeal from such determination with the appeal tribunal within twelve days after the date of mailing of the notice to the person's last-known address or, if such notice is not mailed, within twelve days after the service of such notice. Unless the appeal is withdrawn with the permission of the appeal tribunal or is removed to the bureau, the appeal tribunal after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof shall affirm, modify, or

reverse such determination. Whenever an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the bureau, both of whom thenceforth shall be parties to the proceeding and must be afforded a reasonable opportunity to adduce evidence bearing on such question.

52-06-14. Appeal tribunals - How comprised - Duties - Fees - Alternates - Chairman. The bureau shall appoint one or more impartial appeal examiners known as the appeal tribunal, who shall hear and decide appealed claims. Each such tribunal shall consist of a referee selected in accordance with chapter 52-02, or a body composed of three members, one of whom must be a referee who shall serve as chairman and who must be a salaried full-time member of the staff of the job insurance division, and one of whom must be a representative of employers, and the other of whom must be a representative of employees. Each of the latter two members may be selected without regard to section 52-02-06 and shall serve at the pleasure of the bureau and be paid a fee of twenty-five dollars per day of active service on such tribunal, plus necessary expenses. The bureau may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member or member's alternates. In no case may the hearings proceed unless the chairman of the appeal tribunal is present.

52-06-15. Appeal tribunal's decision - Copy to be furnished - To be final - Exception. The parties must be notified promptly of an appeal tribunal's decision upon an appeal taken as is provided in section 52-06-13 and must be furnished with a copy of the decision and the findings and conclusions in support thereof. The decision is final unless, within twelve days after the date of mailing the notice thereof to the party's last-known address, or in the absence of such mailing, within twelve days after the delivery of such notice, further review is initiated pursuant to section 52-06-19.

52-06-16. When redeterminations made by division - Notice. The job insurance division may reconsider a determination of a claim whenever it finds:

1. That an error in computation or identity has occurred in connection therewith;
2. That wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or
3. That benefits have been allowed or denied or the amount of benefits fixed on the basis of a misrepresentation of facts.

No such redetermination may be made after two years from the day of the original determination, except that a reconsidered determination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentations of fact may be made within three years from the date of the determination. Notice of any such redetermination must be given promptly to the parties entitled to the notice or original determination and in the manner prescribed in section 52-06-12.

52-06-17. Appeal from redetermination - Regulations governing. If the amount of benefits is increased upon such redetermination, an appeal from the redetermination, solely with respect to the matters involved in such increase, may be filed in the manner and subject to the limitations provided in this chapter. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the same reasons, the job insurance division may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the bureau, or a court and may apply to that body or court which rendered such final decision to issue a revised decision.

52-06-18. When appeal from original determination treated as appeal from redetermination. If an appeal involving an original determination is pending as of the date a

redetermination thereof is issued, such appeal, unless withdrawn, must be treated as an appeal from such redetermination.

52-06-19. Review of decision of appeal tribunal by the bureau. The bureau, on its own motion, and within the time specified in section 52-06-15, may initiate a review of the decision of the appeal tribunal or may allow an appeal from such decision upon an application filed within such time by any party entitled to notice of such decision. An appeal filed by such parties must be allowed as a matter of right if such decision was not unanimous or if the examiner's determination was not affirmed by the appeal tribunal. Upon a review on its own motion, or upon an appeal, the bureau upon the basis of the evidence previously submitted in such case or upon the basis of such additional evidence as it may direct to be taken, may affirm, modify, or reverse the findings and conclusions of the appeal tribunal. The bureau may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings removed to the bureau prior to the completion of a fair hearing must be heard by the bureau in the same manner as proceedings before an appeal tribunal. The bureau shall notify promptly the parties to any proceeding before it of its decision, including its findings and conclusions in support thereof. Such decision is final unless within thirty days after the mailing of a notice thereof to the party's last-known address, or in the absence of such mailing, within thirty days after service of such notice, a proceeding for a judicial review is initiated pursuant to section 52-06-27. Upon a denial by the bureau of an application for appeal from the decision of the appeal tribunal, the decision of the appeal tribunal must be deemed to be a decision of the bureau within the meaning of this section for the purposes of judicial review and is subject to judicial review within the time and in the manner provided with respect to decisions of the bureau, except that the time for initiating such review must run from the date of notice of the order by the bureau denying the application for appeal.

52-06-20. Procedure in hearings and appeals - Consolidating claims. The bureau and appeal tribunal shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before such tribunals must be conducted in such manner as to ascertain the substantial rights of the parties. The bureau shall adopt reasonable regulations governing the manner of filing appeals and the conduct of hearings and appeals, consistent with the provisions of the North Dakota unemployment compensation law. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence adduced with respect to one proceeding considered as introduced in the others when, in the judgment of the appeal tribunal having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person may participate on behalf of the bureau in any case in which the person has a direct or indirect interest.

52-06-21. Conclusiveness of determinations and decisions. Any right, fact, or matter in issue directly passed upon or necessarily involved in a determination or redetermination which has become final, or which has become final following a decision or appeal under the North Dakota unemployment compensation law, is conclusive for all the purposes of the North Dakota unemployment compensation law as between the bureau, the claimant, and all employing units who had notice of such determination, redetermination, or decisions. Any determination, redetermination, or decision as to rights to benefits which has become final and conclusive in accordance with this section is not subject to collateral attack by any employing unit, irrespective of notice. As used in this section, "collateral attack by any employing unit" includes a collateral attack by a reimbursing or contributory base-period employer on a final and conclusive determination of benefits involving a different employer provided that an employer challenging the propriety of charging any benefits paid as a result of a final determination, redetermination, or decision is entitled to receive data and information from job service North Dakota concerning the monetary basis for the claimant's right to the benefits at issue. Provided further, that at any hearing on the challenge, job service North Dakota is not required to call or subpoena the claimant or the claimant's last or most recent employer as a witness.

52-06-22. Rule of decision. The final decisions of the bureau or of an appeal tribunal and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the bureau or by a court of competent jurisdiction, are binding upon the bureau and any appeal tribunal in subsequent proceedings which involve similar questions of law. In any subsequent proceeding, if the job insurance division or any appeal tribunal has serious doubt as to the correctness of any principle so declared, the division or appeal tribunal may certify its findings of fact in the case, together with the question of law involved, to the bureau, which after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceeding thereupon shall certify to the division, or to the appeal tribunal, and the parties, its answer to the questions submitted. If the question thus certified to the bureau arises in connection with a claim for benefits, the bureau in its discretion may remove to itself the entire proceedings on such claim, and after proceeding in accordance with the requirements of the North Dakota unemployment compensation law with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim. Any decision made under the North Dakota unemployment compensation law after the removal of the proceedings upon a claim to the bureau has the effect of a decision under section 52-06-19 and is subject to judicial review within the same time and to the same extent.

52-06-23. Administering oaths - Taking depositions - Compelling attendance of witnesses and memoranda - Penalty. In the discharge of the duties imposed by the North Dakota unemployment compensation law, the chairman of an appeal tribunal, or any duly authorized representative or member of the bureau, may administer oaths and affirmations, take depositions, certify to official acts, and issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of the North Dakota unemployment compensation law. Any person who willfully fails to obey a subpoena issued under this section, unless good cause for failure to obey is shown, is guilty of a class B misdemeanor.

52-06-24. Record of testimony to be kept - Witness fees. A record must be kept of all testimony and proceedings before the bureau or in connection with any appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this chapter must be allowed fees at the rate specified by law, and the fees of such witnesses subpoenaed either by the bureau or on behalf of any party to said appeal must be deemed part of the expenses of administering the North Dakota unemployment compensation law.

52-06-25. Order issued by court upon failure to obey subpoena - Failure to obey order. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal or the bureau or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before an appeal tribunal or the bureau, or its duly authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

52-06-26. Self-incrimination not to exempt person from testifying - Regulations governing. No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the chairman of an appeal tribunal, the bureau or any member thereof, or any duly authorized representative of the bureau, in any cause or proceeding before the bureau, on the grounds that the testimony or evidence, documentary or otherwise, required of the person, may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed the individual's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

52-06-27. Judicial review of decision - Petition - Filing. A party to proceedings before the bureau may obtain a judicial review of the decision of the bureau by filing a petition for review within thirty days after the date of mailing the bureau's decision to the party at the party's last-known address, or in the absence of mailing, within thirty days after delivery of the decision to the party. The petition for review must be filed in the district court of the county in which the petitioner resides, must be verified, and must state the grounds upon which review is sought. All other parties to the proceeding before the bureau must be parties respondent. The bureau is deemed to be a party to any such proceeding. If the bureau is a party respondent, the petition must be served upon it by leaving with it or its chairman, or any other representative as it may designate for that purpose, as many copies of the petition as there are respondents. With its answer or petition, the bureau shall certify and file with the court a verified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the bureau's findings, conclusions, and decision therein. Upon the filing of a petition for review by the bureau or upon the service of the petition upon it, the bureau forthwith shall send by registered mail to each other party to the proceeding a copy of such petition and such mailing is deemed to be completed service upon all such parties. In any proceeding under this section the finding of the bureau as to the facts, if supported by evidence and in the absence of fraud, is conclusive and the review by the court must be confined to questions of law. Such proceedings must be heard by the court and must be given precedence over all other civil cases except cases arising under the workforce safety and insurance statute of this state. An appeal may be taken from the decision of the district court to the supreme court of this state in the same manner as is provided in civil cases. Upon the final termination of such judicial proceeding, the bureau shall enter an order in accordance with the mandate of the court.

52-06-28. Bureau entitled to notice upon claim for benefits - Attorney upon judicial review. The bureau is entitled to notice as a party in any proceeding involving a claim for benefits before the bureau or an appeal tribunal. In any proceeding for judicial review pursuant to section 52-06-27, the bureau may be represented by the attorney employed by it for that purpose.

52-06-29. Payment of benefits. Benefits must be promptly paid in accordance with a determination or redetermination regardless of any appeal or pending appeal. If a determination allowing benefits is affirmed in any amount by an appeals referee or is so affirmed by the bureau or if a decision of an appeals referee allowing benefits is affirmed in any amount by the bureau, such benefits must be promptly paid regardless of any further appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits may be issued by any court but if such decision is finally reversed, no employer's account may be charged with benefits so paid pursuant to the erroneous determination, except on those employer accounts which make payments in lieu of contributions, and benefits may not be paid for any subsequent weeks of unemployment involved in such reversal. Benefits due and payable to a deceased or judicially declared incompetent person may be paid in accordance with such regulations as the bureau shall prescribe, to the person or persons, payment to whom the bureau finds would effectuate the purposes of the North Dakota unemployment compensation law. Such regulations need not conform to the statutes applicable to the descent and distribution of decedents' estates. A receipt from the person or persons to whom the bureau makes payment shall fully discharge the fund and the bureau from liability for such benefits.

52-06-30. Assignment of benefits prohibited - Benefits exempt from remedies for collection of debt - Exception.

1. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the North Dakota unemployment compensation law is valid. Such rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of a debt. Benefits received by any individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to the individual, that person's spouse, or dependents during the time when the individual was unemployed. No waiver of any exemption provided for in this subsection is valid. However, this subsection does not impair the

operation of subsection 2 or section 52-06-06.1 or the continuous levy authorized under Public Law No. 105-34, section 1024 [111 Stat. 923-924; 26 U.S.C. 6331(h)].

2. An individual filing a new claim for unemployment compensation benefits, at the time of filing the claim, must be advised that:
 - a. Unemployment compensation is subject to federal income tax and state income tax;
 - b. Requirements exist pertaining to estimated federal and state tax payments;
 - c. The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation benefits at the amount specified in the federal Internal Revenue Code;
 - d. The individual, having elected to have federal income tax withheld, may also elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation at a rate determined by the tax commissioner pursuant to section 57-38-59; and
 - e. The individual is permitted to change a previously elected withholding status. Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal and state taxing authority as payment of income tax. The bureau shall follow all procedures specified by the United States department of labor, the federal internal revenue service, and the tax commissioner pertaining to the deducting and withholding of income tax. Amounts must be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, or any other amounts required to be deducted and withheld under this chapter.

52-06-31. Waiver of rights of individual prohibited. No agreement by any individual to waive, release, or commute the individual's rights to benefits or any other rights under the North Dakota unemployment compensation law is valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under the North Dakota unemployment compensation law from such employer, is valid. No employer may make, require, or accept, directly or indirectly, any deduction from wages to finance the employer's contributions required from the employer, nor require nor accept any waiver of any right hereunder by any individual in the employer's employ. However, this section does not impair the operation of section 52-06-06.1.

52-06-32. Individual claiming benefits not to be charged fees by bureau - Fees of individual's attorney. A claimant may not be charged fees by the bureau or by any court or officer thereof in any proceeding under this chapter. Any party in any proceeding before the bureau may be represented by counsel or other duly authorized agent. A claimant's attorney's fees for representation in district court must be paid by the bureau, in an amount determined to be reasonable by the bureau, if the claimant finally prevails; however, the bureau may not pay attorney's fees if the claimant's attorney is employed by or contracting with a legal services organization funded totally or in part by public funds. A claimant's attorney's fees are those fees charged to the claimant by the attorney and which would otherwise be payable by the claimant to the attorney. The bureau may not pay attorney's fees for representation in any proceeding before the bureau or its representatives.

52-06-33. Recovery and recoupment. A person who has received any amount of benefits under the North Dakota unemployment compensation law to which the person is not entitled shall be liable to refund to the bureau for the fund the amount so paid or to have such amount deducted from any future benefits payable to the person under the North Dakota unemployment compensation law or the unemployment compensation law of another state or the federal government following a finding that such payment occurred. Such findings shall have

become final and shall specify the reason for such finding, the week or weeks for which such benefits were paid, and the amount of benefits so paid. The bureau, in its discretion, may release such person from liability to refund when it finds that recovery would be contrary to equity and good conscience. Amounts determined collectible may be so collected by civil action in the name of the bureau. Amounts unpaid on the date on which they are due and payable, as determined by the bureau, may bear interest at the rate of one and one-half percent per month from and after that date until payment plus accrued interest is received by the bureau. However, no interest may be assessed for the first one hundred eighty days on any overpayment occurring without fault on the part of the individual.

52-06-34. Benefits payable only to extent provided - State or bureau not liable for excess sums. Benefits may be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund. Neither the state nor the bureau is liable for any amount in excess of such sums.

52-06-35. Statements relating to benefit rights and claims to be posted - Regulations governing. Each employer shall post and maintain in places readily accessible to individuals in the employer's employ printed statements concerning benefit rights, claims for benefits, and such other matters relating to the administration of the North Dakota unemployment compensation law as the bureau may prescribe by regulation. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the bureau may prescribe by regulation. Such printed statements and other materials must be supplied by the bureau to each employer without cost.

52-06-36. Factors considered in determining suitability of work and good cause for voluntary leaving. In determining whether or not any work is suitable for an individual and in determining the existence of good cause for voluntarily leaving the individual's work under subsections 1 and 3 of section 52-06-02, there must be considered among other factors, and in addition to those enumerated in this section, the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the length of the individual's unemployment, the individual's prospects for obtaining work in the individual's customary occupation, the distance of available work from the individual's residence, and the prospects for obtaining local work. However, any work paying wages equal to the maximum weekly benefit amount must be determined suitable for an individual who has filed for and received benefit payments for eighteen consecutive weeks; provided, that consideration must be given to the degree of risk involved to the individual's health, safety, morals, the individual's physical fitness, and the distance of the work from the individual's residence. No work may be deemed suitable and benefits may not be denied under the North Dakota unemployment compensation law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
2. If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

52-06-37. Action for libel or slander not to be predicated upon disqualification for benefits. No action for slander or libel, either civil or criminal, may be predicated upon information furnished by an employer to the job insurance division in connection with the imposition of any of the disqualifications set forth in section 52-06-02.

52-06-37.1. Applicability of decision to separate proceedings. Any finding of fact or law, judgment, conclusion, or decision made by a claims examiner, appeals referee, the bureau,

or any person with the authority to make findings of fact or law in any action or proceeding before the bureau is not conclusive or binding on, nor may it be used as evidence in, any separate or subsequent action or proceeding unrelated to the North Dakota unemployment compensation law, except for workforce safety and insurance purposes, between an individual and the individual's present or prior employer brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

52-06-38. Penalty for making false statement or failure to disclose material fact to obtain or increase benefits. Repealed by S.L. 1975, ch. 106, § 673.

52-06-39. Penalty for false statement or failure to disclose material fact to prevent or reduce benefits. Repealed by S.L. 1975, ch. 106, § 673.

52-06-40. Penalty for violation or failure to perform duty when no penalty provided. Any person who willfully violates any provision of this title, or any order, rule, or regulation thereunder, and for which a penalty is neither prescribed in this title nor provided by any other applicable statute, is guilty of a class B misdemeanor.