

**COPY**

**In the Supreme Court of the State of California**

**UNITED EDUCATORS OF SAN FRANCISCO AFT/CFT, AFL-CIO, NEA/CTA,**

Plaintiff and Appellant,

v.

**CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,**

Defendant, Cross-Defendant, and Appellant;

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT,**

Real Party in Interest and Respondent.

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT,**

Plaintiff and Respondent,

v.

**CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD,**

Defendant and Appellant.

Case No. S235903

**SUPREME COURT FILED**

DEC 5 2016

Jorge Navarrete Clerk

Deputy

First Appellate District, Division One, Case Nos. A142858 & A143428  
San Francisco County Superior Court, Case No. CPF 12-512437  
The Honorable Richard B. Ulmer, Jr., Judge

**MOTION FOR JUDICIAL NOTICE**

KAMALA D. HARRIS  
Attorney General of California  
JANILL L. RICHARDS  
Principal Deputy Solicitor General  
JULIE WENG-GUTIERREZ  
Senior Assistant Attorney General  
SUSAN M. CARSON  
Supervising Deputy Attorney General

SAMUEL P. SIEGEL  
Associate Deputy Solicitor General  
\*GREGORY D. BROWN  
Deputy Attorney General  
State Bar No. 219209  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
(415) 703-5461  
Gregory.Brown@doj.ca.gov  
*Attorneys for California Unemployment Insurance Appeals Board*

## MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rules 8.252(a) and 8.520(g), the California Unemployment Insurance Appeals Board hereby moves the Court to take judicial notice of the following documents:

1. The Employment Security Amendments of 1970, Public Law No. 91-373 (Aug. 10, 1970) 84 Stat. 695. A true and correct copy of this Public Law is attached hereto as **Exhibit A**.

2. Excerpts from Senate Report No. 91-752, 2d Sess. (1970). A true and correct copy of these excerpts is attached hereto as **Exhibit B**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/empsca> [as of Dec. 2, 2016].

3. Excerpts from the Hearings Before the Senate Committee on Finance on H.R. No. 14705, 91st Cong., 2d Sess. (1970). A true and correct copy of these excerpts is attached hereto as **Exhibit C**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/empsca> [as of Dec. 2, 2016].

4. The Unemployment Compensation Amendments of 1976, Public Law No. 94-566 (Oct. 20, 1976) 90 Stat. 2667. A true and correct copy of this Public Law is attached hereto as **Exhibit D**.

5. Excerpts from Senate Report No. 94-1265, 2d Sess. (1976). A true and correct copy of these excerpts is attached hereto as **Exhibit E**. The full report is available at: <http://heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp> [as of Dec. 2, 2016].

6. Excerpts from the Joint Report of the Senate Committee on Finance and House Committee on Ways and Means on H.R. No. 10210, 94th Cong., 2d Sess. (1976). A true and correct copy of these excerpts is attached hereto as **Exhibit F**. The full report is available at: <http://>

heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp>  
[as of Dec. 2, 2016].

7. Excerpts from the House Debate on H.R. 10210, 94th Cong., 2d Sess., 122 Cong. Rec. H7404 (daily ed. July 20, 1976). A true and correct copy of these excerpts is attached hereto as **Exhibit G**. The full report is available at: <<http://heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp>> [as of Dec. 2, 2016].

8. Excerpts from the Senate Debate on H.R. 10210, 94th Cong., 2d Sess., 122 Cong. Rec. 33284 (daily ed. Sept. 29, 1976). A true and correct copy of these excerpts is attached hereto as **Exhibit H**. The full report is available at: <<http://heinonline.org/HOL/Index?collection=leghis&index=leghis/leguncomp>> [as of Dec. 2, 2016].

9. The Emergency Unemployment Compensation Act of 1977, Public Law No. 95-19 (Apr. 12, 1977) 91 Stat. 39. A true and correct copy of this Public Law is attached hereto as **Exhibit I**.

10. Excerpts from House of Representatives Report No. 95-82, 1st Sess. (1977). A true and correct copy of these excerpts is attached hereto as **Exhibit J**. The full report is available at: <<http://heinonline.org/HOL/Index?collection=leghis&index=leghis/legemuncp>> [as of Dec. 2, 2016].

11. Excerpts from the Collective Bargaining Agreement between San Francisco Unified School District and United Educators of San Francisco (July 1, 2014 – June 30, 2017). A true and correct copy of these excerpts is attached hereto as **Exhibit K**. The full agreement is available at: <[http://www.sfusd.edu/en/assets/sfusd-staff/contract%20and%20salary%20schedules/Certificated%20Collective%20Bargaining%20Agreement%207-1-14%20thru%206-30-17150106\\_20020.pdf](http://www.sfusd.edu/en/assets/sfusd-staff/contract%20and%20salary%20schedules/Certificated%20Collective%20Bargaining%20Agreement%207-1-14%20thru%206-30-17150106_20020.pdf)> [as of Dec. 2, 2016].

12. The San Francisco Unified School District TK-12 Instructional Calendar 2016-2017. A true and correct copy of this calendar is attached hereto as **Exhibit L**. The calendar is available at: <<http://www.sfusd.edu/>

en/assets/sfusd-staff/news-and-calendars/files/instructional-calendar/2016-17-calendar-ENG.pdf> [as of Dec. 2, 2016].

13. Excerpts from the Collective Bargaining Agreement between United Administrators of San Francisco American Federation of School Administrators, AFL/CIO, Local 3 and San Francisco Unified School District (July 1, 2013 – June 30, 2016, Extended to June 30, 2018). A true and correct copy of these excerpts is attached hereto as **Exhibit M**. The full agreement is available at: <[http://www.sfusd.edu/en/assets/sfusd-staff/contract%20and%20salary%20schedules/UASF%20Collective%20Bargaining%20Agreement%20July%201,%202013%20-%20June%2030,%202016%20extended%20to%20June%2030,%202017150202\\_20446.pdf](http://www.sfusd.edu/en/assets/sfusd-staff/contract%20and%20salary%20schedules/UASF%20Collective%20Bargaining%20Agreement%20July%201,%202013%20-%20June%2030,%202016%20extended%20to%20June%2030,%202017150202_20446.pdf)> [as of Dec. 2, 2016].

14. Excerpts from the Collective Bargaining Contract between Elk Grove Unified School District and Elk Grove Education Association (2015-2016). A true and correct copy of these excerpts is attached hereto as **Exhibit N**. The full agreement is available at: <<https://drive.google.com/file/d/0BzRd4zc79mR5RVdUTFFyZEtjMWc/view>> [as of Dec. 2, 2016].

15. The Elk Grove Unified School District 2016-2017 School Year Calendar. A true and correct copy of this calendar is attached hereto as **Exhibit O**. The calendar is available at: <[http://www.egusd.net/wp-content/uploads/2015/12/16-17\\_YR\\_Calendar\\_FINAL.pdf](http://www.egusd.net/wp-content/uploads/2015/12/16-17_YR_Calendar_FINAL.pdf)> [as of Dec. 2, 2016].

### **MEMORANDUM OF POINTS AND AUTHORITIES**

The Court should take judicial notice of the above-listed matters pursuant to Evidence Code sections 452 and 459.

The legislative history (Exhibits A – J) is judicially noticeable because it constitutes “resolutions and private acts of the Congress of the United States” (Evid. Code, § 452, subd. (a)), as well as “[o]fficial acts of

the legislative ... department[] of the United States” (*id.*, § 452, subd. (c)). Further, this legislative history is also judicially noticeable because it constitutes “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (*Id.*, § 452, subd. (h).) This legislative history is relevant to material issues in this case concerning the interpretation of Unemployment Insurance Code section 1253.3, which implements federal requirements under 26 U.S.C. § 3304(a)(6)(A). (See California Unemployment Insurance Appeals Board’s Opening Brief on the Merits (Opening Brief) at pp. 16-18; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135 fn. 1 [granting request for judicial notice of legislative history “relevant to a material issue in this case”].)

The collective bargaining agreements and school calendars (Exhibits K – O) are judicially noticeable because they are “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) These agreements and calendars are relevant to the interpretation of Unemployment Insurance Code section 1253.3 because they demonstrate some of the practical realities that this statute is intended to address. (See Opening Brief at pp. 28-31.)

The matters to be judicially noticed were not presented to the trial court or Court of Appeal, nor do they relate to proceedings occurring after the judgment that is the subject of this appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

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For these reasons, the Court should grant the Board's motion for judicial notice.

Dated: December 5, 2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JANILL L. RICHARDS  
Principal Deputy Solicitor General  
JULIE WENG-GUTIERREZ  
Senior Assistant Attorney General  
SUSAN M. CARSON  
Supervising Deputy Attorney General  
SAMUEL P. SIEGEL  
Associate Deputy Solicitor General



GREGORY D. BROWN  
Deputy Attorney General  
*Attorneys for California Unemployment  
Insurance Appeals Board*

# **EXHIBIT A**



Public Law 91-373  
91st Congress, H. R. 14705  
August 10, 1970

**An Act**

To extend and improve the Federal-State unemployment compensation program.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Employment Security Amendments of 1970".*

Employment  
Security  
Amendments of  
1970.

**TITLE I—UNEMPLOYMENT COMPENSATION  
AMENDMENTS**

**PART A—COVERAGE**

**SEC. 101. DEFINITION OF EMPLOYER.**

84 STAT. 695  
84 STAT. 696  
83 Stat. 91.  
26 USC 3306.

(a) Section 3306(a) of the Internal Revenue Code of 1954 is amended to read as follows:

“(a) **EMPLOYER.**—For purposes of this chapter, the term ‘employer’ means, with respect to any calendar year, any person who—

“(1) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$1,500 or more, or

“(2) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.”

(b) (1) Section 6157(a) (1) of such Code (relating to payment of Federal unemployment tax on quarterly or other time period basis) is amended to read as follows:

“(1) if the person—

“(A) during any calendar quarter in the preceding calendar year paid wages of \$1,500 or more, or

“(B) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment,

compute the tax imposed by section 3301 for each of the first three calendar quarters in the calendar year, and”.

68A Stat. 439;  
77 Stat. 51.

(2) Section 6157(b) of such Code is amended by striking out “the number of percentage points (including fractional points) by which the rate of tax specified in section 3301 exceeds 2.7 percent” and inserting in lieu thereof “0.5 percent”.

(c) (1) The amendments made by subsections (a) and (b) (1) shall apply with respect to calendar years beginning after December 31, 1971.

Effective  
dates.

(2) The amendment made by subsection (b) (2) shall apply with respect to calendar years beginning after December 31, 1969.

**SEC. 102. DEFINITION OF EMPLOYEE.**

(a) Section 3306(i) of the Internal Revenue Code of 1954 is amended to read as follows:

68A Stat. 452.

“(i) **EMPLOYEE.**—For purposes of this chapter, the term ‘employee’ has the meaning assigned to such term by section 3121(d), except that subparagraphs (B) and (C) of paragraph (3) shall not apply.”

(b) Section 1563(f) (1) of such Code (relating to surtax exemption in case of certain controlled corporations) is amended by striking out “in section 3306(i)” and inserting in lieu thereof “by paragraphs (1) and (2) of section 3121(d)”.

78 Stat. 124.

(c) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.

Effective  
date.



84 STAT. 697

**SEC. 103. DEFINITION OF AGRICULTURAL LABOR.**68A Stat. 453.  
26 USC 3306.

(a) Section 3306(k) of the Internal Revenue Code of 1954 is amended to read as follows:

“(k) **AGRICULTURAL LABOR.**—For purposes of this chapter, the term ‘agricultural labor’ has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

“(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;”.

Effective  
date.

(b) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.

**SEC. 104. STATE LAW COVERAGE OF CERTAIN EMPLOYEES OF NON-PROFIT ORGANIZATIONS AND OF STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION.**

68A Stat. 443.

(a) Section 3304(a) of the Internal Revenue Code of 1954 is amended by redesignating paragraph (6) as paragraph (13) and by inserting after paragraph (5) the following new paragraph:

Infra.

“(6) (A) compensation is payable on the basis of service to which section 3309(a) (1) applies, 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 such law; except that, with respect to service in an instructional, research, or principal administrative capacity for an institution of higher education to which section 3309(a) (1) applies, compensation shall not be payable based on such service for any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such period) to any individual who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and

“(B) payments (in lieu of contributions) with respect to service to which section 3309(a) (1) (A) applies may be made into the State unemployment fund on the basis set forth in section 3309(a) (2);”.

68A Stat. 454;  
74 Stat. 983.

(b) (1) Chapter 23 of the Internal Revenue Code of 1954 is amended by redesignating section 3309 as section 3311, and by inserting after section 3308 the following new section:

**“SEC. 3309. STATE LAW COVERAGE OF CERTAIN SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS AND FOR STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION.**Supra.

“(a) **STATE LAW REQUIREMENTS.**—For purposes of section 3304(a) (6)—

“(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

74 Stat. 984.

“(A) service excluded from the term ‘employment’ solely by reason of paragraph (8) of section 3306(c), and

“(B) service performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education

located in the State, if such service is excluded from the term 'employment' solely by reason of paragraph (7) of section 3306(c); and

68A Stat. 449.  
26 USC 3306.

"(2) the State law shall provide that an organization (or group of organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1)(A) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that organizations so electing will make the payments required under such elections.

"(b) SECTION NOT TO APPLY TO CERTAIN SERVICE.—This section shall not apply to service performed—

"(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

"(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

"(3) in the employ of a school which is not an institution of higher education;

"(4) in a facility conducted for the purpose of carrying out a program of—

"(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

"(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

"(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; and

"(6) for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution.

"(c) NONPROFIT ORGANIZATIONS MUST EMPLOY 4 OR MORE.—This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

74 Stat. 984.

"(d) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—For purposes of this section, the term 'institution of higher education' means an educational institution in any State which—

"(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

"(2) is legally authorized within such State to provide a program of education beyond high school;

"(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

"(4) is a public or other nonprofit institution."

(2) The table of sections for such chapter 23 is amended by redesignating the last item as section 3311 and by inserting after the item for section 3308 the following new item:

"Sec. 3309. State law coverage of certain services performed for nonprofit organizations and for State hospitals and institutions of higher education."

68A Stat. 440;  
68 Stat. 1130.  
26 USC 3303.

(c) Section 3303 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsections:

"(e) PAYMENTS BY CERTAIN NONPROFIT ORGANIZATIONS.—A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

Ante, p. 697.

"(f) TRANSITION.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount—

"(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

"(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate."

Effective date.

(d)(1) Subject to the provisions of paragraph (2), the amendments made by subsections (a) and (b) shall apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971. The amendment made by subsection (c) shall take effect January 1, 1970.

(2) Section 3304(a)(6) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.

**SEC. 105. COVERAGE OF CERTAIN SERVICES PERFORMED OUTSIDE THE UNITED STATES.**

68A Stat. 449;  
74 Stat. 984.

(a) That portion of section 3306(c) of the Internal Revenue Code of 1954 which precedes paragraph (1) thereof is amended to read as follows:

“(c) **EMPLOYMENT.**—For purposes of this chapter, the term ‘employment’ means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation or in the Virgin Islands) by a citizen of the United States as an employee of an American employer (as defined in subsection (j) (3)), except—”.

53 Stat. 183.

Infra.

(b) Section 3306(j) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (2) the following new paragraph:

74 Stat. 986.

26 USC 3306.

“(3) **AMERICAN EMPLOYER.**—The term ‘American employer’ means a person who is—

- (A) an individual who is a resident of the United States,
- (B) a partnership, if two-thirds or more of the partners are residents of the United States,
- (C) a trust, if all of the trustees are residents of the United States, or
- (D) a corporation organized under the laws of the United States or of any State.”

(c) The amendments made by this section shall apply with respect to service performed after December 31, 1971.

Effective date.

**SEC. 106. STUDENTS AND THEIR SPOUSES ENGAGED IN CERTAIN PROGRAMS; HOSPITAL PATIENTS.**

(a) Paragraph (10) of section 3306(c) of the Internal Revenue Code of 1954 is amended by striking out subparagraph (B) and inserting in lieu thereof the following new subparagraphs:

74 Stat. 985.

“(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

“(C) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to

the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

“(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;”.

Effective  
date.

(b) Subsection (a) shall apply with respect to remuneration paid after December 31, 1969.

**SEC. 107. EX-SERVICEMEN ACCRUED LEAVE TO BE TREATED IN ACCORDANCE WITH STATE LAWS.**

Repeal.  
80 Stat. 591.

Effective with respect to benefit years which begin more than 30 days after the date of the enactment of this Act, section 8524 of title 5 of the United States Code is repealed.

**SEC. 108. COVERAGE OF EMPLOYEES OF HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION OPERATED BY POLITICAL SUBDIVISIONS OF STATES.**

(a) Section 3304(a) of the Internal Revenue Code of 1954 (as amended by sections 104, 121(a), and 206 of this Act) is further amended by adding after paragraph (11) (as added by section 206 of this Act) the following new paragraph:

“(12) each political subdivision of the State shall have the right to elect to have compensation payable to employees thereof (whose services are not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision does elect to have compensation payable to such employees thereof (A) the political subdivision shall pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees will be entitled to receive, on the basis of such service, compensation payable on the same basis, in the same amount, on the same terms, and subject to the same conditions as compensation which is payable on the basis of similar service for the State which is subject to such law;”.

Ante, p. 698.

Effective  
date.

(b) The amendment made by subsection (a) shall apply with respect to certification of State laws for 1972 and subsequent years; except that section 3304(a) (12) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971, or prior to January 1, 1975, if compliance with such requirement would necessitate a change in the constitution of such State.

**PART B—PROVISIONS OF STATE LAW**

**SEC. 121. PROVISIONS REQUIRED TO BE INCLUDED IN STATE LAWS.**

(a) Section 3304(a) of the Internal Revenue Code of 1954 is amended by inserting after paragraph (6) (added by section 104(a) of this Act) the following new paragraphs:

“(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

“(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

“(9) (A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

“(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

“(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;”.

(b) (1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) shall take effect January 1, 1972, and shall apply to the taxable year 1972 and taxable years thereafter. Effective date.

(2) Paragraphs (7) through (10) of section 3304(a) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) shall not be requirements for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.

#### SEC. 122. ADDITIONAL CREDIT BASED ON REDUCED RATE FOR NEW EMPLOYERS.

(a) Section 3303(a) of the Internal Revenue Code of 1954 is amended by striking out “on a 3-year basis,” in the sentence following paragraph (3) and inserting in lieu thereof “on a 3-year basis (i)” and by striking out the period at the end of such sentence and inserting in lieu thereof “, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).” 68A Stat. 440;  
68 Stat. 1130.  
26 USC 3303.

(b) The amendments made by subsection (a) shall apply with respect to taxable years beginning after December 31, 1971. Effective date.

#### SEC. 123. CREDITS ALLOWABLE TO CERTAIN EMPLOYERS.

Section 3305 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection: 68A Stat. 445.

“(j) DENIAL OF CREDITS IN CERTAIN CASES.—Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year after December 31, 1971, if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with Ante, p. 697.

Post, p. 704.

respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c)."

### PART C—JUDICIAL REVIEW

49 Stat. 626;  
74 Stat. 982.  
42 USC 501.

SEC. 131. (a) Title III of the Social Security Act is amended by adding at the end thereof the following new section:

#### "JUDICIAL REVIEW

"Sec. 304. (a) Whenever the Secretary of Labor—

49 Stat. 626;  
68 Stat. 673.  
42 USC 503.  
64 Stat. 560;  
52 Stat. 1112.

"(1) finds that a State law does not include any provision specified in section 303(a), or

"(2) makes a finding with respect to a State under subsection (b) or (c) of section 303,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

72 Stat. 941;  
80 Stat. 1323.

"(b) The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

62 Stat. 928.

"(d)(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 302 until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

49 Stat. 626.  
42 USC 502.

"(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

"(e) Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible."

(b)(1) Chapter 23 of the Internal Revenue Code of 1954 is amended by inserting after section 3309 (added by section 104(b)(1) of this Act) the following new section:

**"SEC. 3310. JUDICIAL REVIEW.**

"(a) **IN GENERAL.**—Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

68A Stat. 441.  
26 USC 3303.  
Infra.

"(b) **FINDINGS OF FACT.**—The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

72 Stat. 941;  
80 Stat. 1323.

"(c) **JURISDICTION OF COURT; REVIEW.**—The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

62 Stat. 928.

"(d) **STAY OF SECRETARY OF LABOR'S ACTION.**—

"(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

"(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

"(e) **PREFERENCE.**—Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible."

(2) Section 3304(c) of the Internal Revenue Code of 1954 is amended to read as follows:

68A Stat. 444.

"(c) **CERTIFICATION.**—On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the taxable year failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending."



(3) The table of sections for such chapter 23 is amended by adding after the item relating to section 3309 (added by section 104(b) (2) of this Act) the following:

"Sec. 3310. Judicial review."

**PART D—ADMINISTRATION**

**SEC. 14L. RESEARCH PROGRAM, TRAINING GRANTS AND FEDERAL ADVISORY COUNCIL.**

74 Stat. 970;  
75 Stat. 14.  
42 USC 1101-  
1105.

Title IX of the Social Security Act is amended by adding at the end thereof the following new sections:

**"UNEMPLOYMENT COMPENSATION RESEARCH PROGRAM**

"Sec. 906. (a) The Secretary of Labor shall—

"(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

"(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

Appropriation.

"(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed \$8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

Contract authority.

**"PERSONNEL TRAINING**

"Sec. 907. (a) In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

"(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

"(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

Regulations.

"(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve