

RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING

RULE 21

VACATION PAY

A. When an individual meets the eligibility requirements as set forth in Section 28-44-21 of the Employment Security Act for the receipt of waiting period credit or benefits during a bona-fide vacation period at the establishment in which the individual was employed, any vacation pay received for such period shall be allocated as follows:

- (1) If the total amount received is less than or equal to his/her average weekly wage, such amount shall be apportioned to the first week of unemployment during such vacation period.
- (2) If the total amount received is more than his/her average weekly wage, such amount shall be apportioned to each week of unemployment during such vacation period in such a manner that no more than an amount equal to his/her average weekly wage will be apportioned to any one week; provided, however, that where vacation pay is paid on the basis of a contract designed to give the employee a week's pay for each week of vacation, such amounts may be substituted for the "Average Weekly Wage."
- (3) Vacation pay will be allocated as indicated in the two preceding subsections even though the claimant has been separated by the employer prior to the last working day preceding the vacation period except as follows:
 - (a) The employer has discontinued operations in whole or in part on a permanent basis.
 - (b) The claimant has permanently retired.
 - (c) The claimant has been separated by two weeks or more prior to the start of the vacation period.

The term "Average Weekly Wage" as used in this Rule means the average straight time weekly earnings exclusive of bonuses or overtime during an employee's last four weeks of employment immediately preceding his/her vacation period.

B. Upon request of the Director, an employer shall furnish information regarding the individual's total amount of vacation pay, the dates of the vacation period prescribed, and the individual's average weekly wage.

- C. If the claimant is not unemployed during a bona fide vacation period as described in Section 28-44-21 of the Employment Security Act, and is not unemployed due to a request on his/her part for a vacation, the vacation pay shall be considered as wages received by the individual and shall be allocated to the last day of work.
- D. If the employer pays the claimant excess vacation pay which is not in conjunction with an official vacation period shutdown, this vacation pay shall be considered as wages allocated to the last day of work.

[Reference to Employment Security Act: Section 28-44-21]