

**WORKFORCE SERVICES AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies the Employment Security Act by amending the penalty provisions for fraud in obtaining unemployment insurance benefits and the unemployment insurance division's disposition of collected penalties for fraud.

**Highlighted Provisions:**

This bill:

- ▶ requires that when the unemployment insurance division issues a determination that a claimant has willfully made a false statement or representation or knowingly failed to report a material fact to obtain unemployment insurance benefits, the penalty weeks begin on the Sunday before the day on which the determination is issued;
- ▶ requires that beginning on October 1, 2013, the unemployment division deposit 15% of a civil penalty collected from a claimant for false statements or knowingly failing to report a material fact in obtaining unemployment insurance benefits into the Unemployment Compensation Fund in compliance with the federal Social Security Act; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**35A-4-405**, as last amended by Laws of Utah 2012, Chapters 54 and 314**35A-4-506**, as last amended by Laws of Utah 2012, Chapter 146

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*Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **35A-4-405** is amended to read:

34 **35A-4-405. Ineligibility for benefits.**

35 Except as otherwise provided in Subsection (5), an individual is ineligible for benefits  
36 or for purposes of establishing a waiting period:

37 (1) (a) For the week in which the claimant left work voluntarily without good cause, if  
38 so found by the division, and for each week thereafter until the claimant has performed services  
39 in bona fide, covered employment and earned wages for those services equal to at least six  
40 times the claimant's weekly benefit amount.

41 (b) A claimant may not be denied eligibility for benefits if the claimant leaves work  
42 under circumstances where it would be contrary to equity and good conscience to impose a  
43 disqualification.

44 (c) Using available information from employers and the claimant, the division shall  
45 consider for the purposes of this chapter the reasonableness of the claimant's actions, and the  
46 extent to which the actions evidence a genuine continuing attachment to the labor market in  
47 reaching a determination of whether the ineligibility of a claimant is contrary to equity and  
48 good conscience.

49 (d) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to  
50 accompany or follow the claimant's spouse to a new locality does so without good cause for  
51 purposes of this Subsection (1).

52 (e) A claimant who has left work voluntarily to accompany or follow the claimant's  
53 spouse to a new locality does so with good cause for purposes of this Subsection (1) and is  
54 eligible to receive benefits if:

55 (i) the claimant's spouse is a member of the United States armed forces and the  
56 claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180  
57 days while on:

58 (A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or

59 (B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);

60 (ii) it is impractical as determined by the division for the claimant to commute to the  
61 previous work from the new locality;

62 (iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start  
63 date of the spouse's active-duty assignment; and

64 (iv) the claimant otherwise meets and follows the eligibility and reporting requirements  
65 of this chapter, including registering for work with the division or, if the claimant has relocated  
66 to another state, the equivalent agency of that state.

67 (2) (a) For the week in which the claimant was discharged for just cause or for an act or  
68 omission in connection with employment, not constituting a crime, which is deliberate, willful,  
69 or wanton and adverse to the employer's rightful interest, if so found by the division, and  
70 thereafter until the claimant has earned an amount equal to at least six times the claimant's  
71 weekly benefit amount in bona fide covered employment.

72 (b) For the week in which the claimant was discharged for dishonesty constituting a  
73 crime or any felony or class A misdemeanor in connection with the claimant's work as shown  
74 by the facts, together with the claimant's admission, or as shown by the claimant's conviction of  
75 that crime in a court of competent jurisdiction and for the 51 next following weeks.

76 (c) Wage credits shall be deleted from the claimant's base period, and are not available  
77 for this or any subsequent claim for benefits.

78 (3) (a) (i) If the division finds that the claimant has failed without good cause to  
79 properly apply for available suitable work, to accept a referral to suitable work offered by the  
80 employment office, or to accept suitable work offered by an employer or the employment  
81 office.

82 (ii) The ineligibility continues until the claimant has performed services in bona fide  
83 covered employment and earned wages for the services in an amount equal to at least six times  
84 the claimant's weekly benefit amount.

85 (b) (i) A claimant may not be denied eligibility for benefits for failure to apply, accept  
86 referral, or accept available suitable work under circumstances where it would be contrary to  
87 equity and good conscience to impose a disqualification.

88 (ii) The division shall consider the purposes of this chapter, the reasonableness of the  
89 claimant's actions, and the extent to which the actions evidence a genuine continuing  
90 attachment to the labor market in reaching a determination of whether the ineligibility of a  
91 claimant is contrary to equity and good conscience.

92 (c) In determining whether work is suitable for an individual, the division shall  
93 consider the:

94 (i) degree of risk involved to his health, safety, and morals;

- 95 (ii) individual's physical fitness and prior training;  
96 (iii) individual's prior earnings and experience;  
97 (iv) individual's length of unemployment;  
98 (v) prospects for securing local work in his customary occupation;  
99 (vi) wages for similar work in the locality; and  
100 (vii) distance of the available work from his residence.

101 (d) Prior earnings shall be considered on the basis of all four quarters used in  
102 establishing eligibility and not just the earnings from the most recent employer. The division  
103 shall be more prone to find work as suitable the longer the claimant has been unemployed and  
104 the less likely the prospects are to secure local work in his customary occupation.

105 (e) Notwithstanding any other provision of this chapter, no work is suitable, and  
106 benefits may not be denied under this chapter to any otherwise eligible individual for refusing  
107 to accept new work under any of the following conditions:

108 (i) if the position offered is vacant due directly to a strike, lockout, or other labor  
109 dispute;

110 (ii) if the wages, hours, or other conditions of the work offered are substantially less  
111 favorable to the individual than those prevailing for similar work in the locality; or

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

114 (4) For any week in which the division finds that the claimant's unemployment is due  
115 to a stoppage of work that exists because of a strike involving the claimant's grade, class, or  
116 group of workers at the factory or establishment at which the claimant is or was last employed.

117 (a) If the division finds that a strike has been fomented by a worker of any employer,  
118 none of the workers of the grade, class, or group of workers of the individual who is found to  
119 be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However,  
120 if the division finds that the strike is caused by the failure or refusal of any employer to  
121 conform to any law of the state or of the United States pertaining to hours, wages, or other  
122 conditions of work, the strike may not render the workers ineligible for benefits.

123 (b) If the division finds that the employer, the employer's agent or representative has  
124 conspired, planned, or agreed with any of the employer's workers, their agents or  
125 representatives to foment a strike, that strike may not render the workers ineligible for benefits.

126 (c) A worker may receive benefits if, subsequent to the worker's unemployment  
127 because of a strike as defined in this Subsection (4), the worker has obtained employment and  
128 has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has  
129 worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of  
130 work due to this strike the wages of the worker used for the determination of his benefit rights  
131 may not include any wages the worker earned from the employer involved in the strike.

132 (5) (a) For each week ~~[with respect to which the claimant willfully made a false~~  
133 ~~statement or representation or knowingly failed to report a material fact to obtain any benefit~~  
134 ~~under the provisions of this chapter, and an additional 13 weeks for the first week the~~  
135 ~~statement or representation was made or fact withheld and six weeks for each week thereafter;~~  
136 ~~the additional weeks not to exceed 49 weeks.] a claimant obtains a benefit under this chapter by  
137 willfully making a false statement or representation or by knowingly failing to report a material  
138 fact and a penalty of no more than 49 additional weeks as follows:~~

139 (i) 13 weeks for the first week the false statement or representation was made or fact  
140 withheld to receive a benefit; and

141 (ii) six weeks for each additional week the false statement or representation was made  
142 or fact withheld to receive a benefit.

143 (b) The additional ~~[period]~~ penalty weeks shall ~~[commence]~~ begin on the Sunday  
144 ~~[following the issuance of a]~~ of the week the determination finding the claimant in violation of  
145 this Subsection (5) is issued.

146 (c) (i) Each claimant found in violation of this Subsection (5) shall repay to the  
147 division the overpayment and, as a civil penalty for fraud, an amount equal to the overpayment.

148 (ii) The overpayment is the amount of benefits the claimant received by direct reason  
149 of fraud.

150 (iii) ~~[The]~~ Subject to the requirements of Subsection 35A-4-506(7), the civil penalty  
151 for fraud amount shall be ~~[regarded]~~ treated as any other penalty under this chapter.

152 (iv) ~~[These amounts]~~ The repayment of an overpayment and a civil penalty for fraud  
153 shall be collectible by civil action or warrant in the manner provided in Subsections  
154 35A-4-305(3) and (5).

155 (d) A claimant is ineligible for future benefits or waiting week credit, and any wage  
156 credits earned by the claimant shall be unavailable for purposes of paying benefits, if any

157 amount owed under this Subsection (5) remains unpaid.

158 (e) Determinations under this Subsection (5) shall be appealable in the manner  
159 provided by this chapter for appeals from other benefit determinations.

160 (f) If the fraud determination is based solely on unreported or underreported work or  
161 earnings, or both, and the claimant would have been eligible for benefits if the work or  
162 earnings, or both, had been correctly reported, the individual does not lose eligibility for that  
163 week because of the misreporting but is liable for the overpayment and subject to the penalties  
164 in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

165 (6) For any week with respect to which or a part of which the claimant has received or  
166 is seeking unemployment benefits under an unemployment compensation law of another state  
167 or the United States. If the appropriate agency of the other state or of the United States finally  
168 determines that the claimant is not entitled to those unemployment benefits, this  
169 disqualification does not apply.

170 (7) (a) For any week with respect to which the claimant is receiving, has received, or is  
171 entitled to receive remuneration in the form of:

- 172 (i) wages in lieu of notice, or a dismissal or separation payment; or  
173 (ii) accrued vacation or terminal leave payment.

174 (b) If the remuneration is less than the benefits that would otherwise be due, the  
175 claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided  
176 in Subsection 35A-4-401(3).

177 (8) (a) For any week in which the individual's benefits are based on service for an  
178 educational institution in an instructional, research, or principal administrative capacity and  
179 that begins during the period between two successive academic years, or during a similar  
180 period between two regular terms, whether or not successive, or during a period of paid  
181 sabbatical leave provided for in the individual's contract if the individual performs services in  
182 the first of those academic years or terms and if there is a contract or reasonable assurance that  
183 the individual will perform services in that capacity for an educational institution in the second  
184 of the academic years or terms.

185 (b) (i) For any week in which the individual's benefits are based on service in any other  
186 capacity for an educational institution, and that week begins during a period between two  
187 successive academic years or terms if the individual performs those services in the first of the

188 academic years or terms and there is a reasonable assurance that the individual will perform the  
189 services in the second of the academic years or terms.

190 (ii) If compensation is denied to any individual under this Subsection (8) and the  
191 individual was not offered an opportunity to perform the services for the educational institution  
192 for the second of the academic years or terms, the individual shall be entitled to a retroactive  
193 payment of compensation for each week for which the individual filed a timely claim for  
194 compensation and for which compensation was denied solely by reason of this Subsection (8).

195 (c) With respect to any services described in Subsection (8)(a) or (b), compensation  
196 payable on the basis of those services shall be denied to an individual for any week that  
197 commences during an established and customary vacation period or holiday recess if the  
198 individual performs the services in the period immediately before the vacation period or  
199 holiday recess, and there is a reasonable assurance that the individual will perform the services  
200 in the period immediately following the vacation period or holiday recess.

201 (d) (i) With respect to services described in Subsection (8)(a) or (b), compensation  
202 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be  
203 denied to an individual who performed those services in an educational institution while in the  
204 employ of an educational service agency in accordance with the Federal Unemployment Tax  
205 Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).

206 (ii) For purposes of this Subsection (8)(d), "educational service agency" means a  
207 governmental agency or entity established and operated exclusively for the purpose of  
208 providing the services described in Subsection (8)(a) or (b) to an educational institution.

209 (e) With respect to services described in Subsection (8)(a) or (b), compensation  
210 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be  
211 denied to an individual who performed those services:

212 (i) to or on behalf of an educational institution in accordance with the Federal  
213 Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and

214 (ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to  
215 which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.

216 (f) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d)  
217 and (e) are payable in the same amount, on the same terms and subject to the same conditions  
218 as compensation payable on the basis of other service subject to this chapter.

219 (9) For any week that commences during the period between two successive sport  
220 seasons or similar periods if the individual performed any services, substantially all of which  
221 consists of participating in sports or athletic events or training or preparing to participate in the  
222 first of those seasons or similar periods and there is a reasonable assurance that individual will  
223 perform those services in the later of the seasons or similar periods.

224 (10) (a) For any week in which the benefits are based upon services performed by an  
225 alien, unless the alien is an individual who has been lawfully admitted for permanent residence  
226 at the time the services were performed, was lawfully present for purposes of performing the  
227 services or, was permanently residing in the United States under color of law at the time the  
228 services were performed, including an alien who is lawfully present in the United States as a  
229 result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8  
230 U.S.C. 1182(d)(5)(A).

231 (b) Any data or information required of individuals applying for benefits to determine  
232 whether benefits are not payable to them because of their alien status shall be uniformly  
233 required from all applicants for benefits.

234 (c) In the case of an individual whose application for benefits would otherwise be  
235 approved, no determination that benefits to the individual are not payable because of his alien  
236 status shall be made except upon a preponderance of the evidence.

237 Section 2. Section **35A-4-506** is amended to read:

238 **35A-4-506. Special Administrative Expense Account.**

239 (1) There is created a restricted account within the General Fund known as the "Special  
240 Administrative Expense Account."

241 (2) (a) [~~Interest~~] Subject to Subsection (7), interest and penalties collected under this  
242 chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted  
243 account from the clearing account of the restricted account at the end of each calendar month.

244 (b) A contribution to the restricted account and any other money received for that  
245 purpose shall be paid into the restricted account.

246 (c) The money in the restricted account may not be expended in any manner that would  
247 permit its substitution for, or a corresponding reduction in, federal funds that would in the  
248 absence of the money be available to finance expenditures for the administration of this  
249 chapter.

250 (3) Nothing in this section shall prevent the money from being used as a revolving fund  
251 to cover expenditures, necessary and proper under this chapter, for which federal funds have  
252 been duly requested but not yet received subject to the charging of those expenditures against  
253 the funds when received.

254 (4) Subject to [~~Subsection (6)~~] Subsections (6) and (7), money in the restricted account  
255 shall be deposited, administered, and dispersed in accordance with the directions of the  
256 Legislature.

257 (5) Subject to Subsection (6), money in the restricted account is made available to  
258 replace, within a reasonable time, any money received by this state under Section 302 of the  
259 Social Security Act, 42 U.S.C. Sec. 502, as amended, that because of any action of contingency  
260 has been lost or has been expended for purposes other than or in amounts in excess of those  
261 necessary for the proper administration of this chapter.

262 (6) If money in the restricted account is used for a purpose unrelated to the  
263 administration of the unemployment compensation program as described in Subsection  
264 303(a)(8) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended, the division shall  
265 develop and follow a cost allocation plan in compliance with United States Department of  
266 Labor regulations, including the cost principles described in 29 C.F.R. 97.22(b) and 2 C.F.R.  
267 Part 225.

268 (7) Beginning October 1, 2013, 15% of a civil penalty for fraud collected under  
269 Subsection 35A-4-405(5)(c)(i) shall be deposited into the Unemployment Compensation Fund,  
270 described in Section 35A-4-501, in compliance with Subsection 303(a)(11) of the Social  
271 Security Act, 42 U.S.C. Sec. 503(a)(8), as amended.

272 [~~(7)~~] (8) Money in the restricted account shall be available to the division for  
273 expenditure in accordance with this section.

274 [~~(8)~~] (9) The state treasurer shall pay all warrants drawn upon it by the division or its  
275 duly authorized agent in accordance with rules made by the department.

276 [~~(9)~~] (10) (a) The state treasurer is liable on the state treasurer's official bond for the  
277 faithful performance of the treasurer's duties in connection with the Special Administrative  
278 Expense Account described in this chapter.

279 (b) Liability on the official bond exists in addition to any liability upon any separate  
280 bond that exists on the effective date of this provision or that may be given in the future.

281           (c) Any money recovered on any surety bond losses sustained by the Special  
282   Administrative Expense Account shall be deposited in the restricted account or in the General  
283   Fund if directed by the Legislature.