

1                                   **UNEMPLOYMENT INSURANCE AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Margaret Dayton**

5 AN ACT RELATING TO WORKFORCE SERVICES; REMOVING THE AUTOMATIC  
6 DISQUALIFICATION OF UNEMPLOYMENT BENEFITS TO A PERSON WHO  
7 VOLUNTARILY TERMINATES EMPLOYMENT TO ACCOMPANY A SPOUSE TO A NEW  
8 LOCATION; REDUCING THE PENALTY FOR FRAUDULENTLY OBTAINING  
9 UNEMPLOYMENT BENEFITS BY REMOVING THE MANDATORY TIME PERIOD FOR  
10 INELIGIBILITY, PERMITTING INDIVIDUALS TO KEEP BENEFITS THAT THEY ARE  
11 ELIGIBLE FOR, AND PLACING A CAP ON CIVIL PENALTIES; AND PROVIDING AN  
12 EFFECTIVE DATE.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15                   **35A-4-405**, as renumbered and amended by Chapter 240, Laws of Utah 1996

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

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

18                   **35A-4-405. Ineligibility for benefits.**

19                   An individual is ineligible for benefits or credit for [~~purposes of establishing~~] a waiting  
20 period:

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

25                   (b) A claimant shall not be denied eligibility for benefits if the claimant leaves work under  
26 circumstances of such a nature that it would be contrary to equity and good conscience to impose  
27 a disqualification.

28 (c) The division shall, in cooperation with the employer, consider for the purposes of this  
29 chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence  
30 a genuine continuing attachment to the labor market in reaching a determination of whether the  
31 ineligibility of a claimant is contrary to equity and good conscience.

32 [~~(d) Notwithstanding any other subsection of this section, a claimant who has left work~~  
33 ~~voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so~~  
34 ~~without good cause for purposes of Subsection (1).]~~

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

40 (b) For the week in which he was discharged for dishonesty constituting a crime or any  
41 felony or class A misdemeanor in connection with his work as shown by the facts, together with  
42 his admission, or as shown by his conviction of that crime in a court of competent jurisdiction and  
43 for the 51 next following weeks. Wage credits shall be deleted from the claimant's base period,  
44 and are not available for this or any subsequent claim for benefits.

45 (3) (a) If the division finds that the claimant has failed without good cause to properly  
46 apply for available suitable work, to accept a referral to suitable work offered by the employment  
47 office, or to accept suitable work offered by an employer or the employment office. The  
48 ineligibility continues until the claimant has performed services in bona fide covered employment  
49 and earned wages for the services in an amount equal to at least six times the claimant's weekly  
50 benefit amount.

51 (b) (i) A claimant shall not be denied eligibility for benefits for failure to apply, accept  
52 referral, or accept available suitable work under circumstances of such a nature that it would be  
53 contrary to equity and good conscience to impose a disqualification.

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

58 (c) In determining whether or not work is suitable for an individual, the division shall

59 consider the:

- 60 (i) degree of risk involved to his health, safety, and morals;
- 61 (ii) individual's physical fitness and prior training;
- 62 (iii) individual's prior earnings and experience;
- 63 (iv) individual's length of unemployment;
- 64 (v) prospects for securing local work in his customary occupation;
- 65 (vi) wages for similar work in the locality; and
- 66 (vii) distance of the available work from his residence.

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

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

- 74 (i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- 75 (ii) if the wages, hours, or other conditions of the work offered are substantially less  
76 favorable to the individual than those prevailing for similar work in the locality; or
- 77 (iii) if as a condition of being employed the individual would be required to join a  
78 company union or to resign from or refrain from joining any bona fide labor organization.

79 (4) For any week in which the division finds that his unemployment is due to a stoppage  
80 of work that exists because of a strike involving his grade, class, or group of workers at the factory  
81 or establishment at which he is or was last employed.

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

88 (b) If the division finds that the employer, his agent or representative has conspired,  
89 planned, or agreed with any of his workers, their agents or representatives to foment a strike, that

90 strike shall not render the workers ineligible for benefits.

91 (c) A worker may receive benefits if, subsequent to his unemployment because of a strike  
92 as defined in Subsection (4), he has obtained employment and has been paid wages of not less than  
93 the amount specified in Subsection 35A-4-401(4) and has worked as specified in Subsection  
94 35A-4-403(1)(f). During the existence of the stoppage of work due to this strike the wages of the  
95 worker used for the determination of his benefit rights shall not include any wages he earned from  
96 the employer involved in the strike.

97 ~~[(5) (a) For each week with respect to which the claimant willfully made a false statement  
98 or representation or knowingly failed to report a material fact to obtain any benefit under the  
99 provisions of this chapter, and an additional 13 weeks for the first week the statement or  
100 representation was made or fact withheld and six weeks for each week thereafter; the additional  
101 weeks not to exceed 49 weeks.]~~

102 ~~[(b) The additional period shall commence on the Sunday following the issuance of a  
103 determination finding the claimant in violation of Subsection (5).]~~

104 (5) (a) For that portion of benefits or credit for which the individual was not eligible, but  
105 received as a result of wilfully making a false statement or representation of, or knowingly failing  
106 to report, a material fact in seeking benefits or credit under this chapter.

107 ~~[(c) Each]~~ (b) An individual found in violation of Subsection (5)(a) shall repay to the  
108 division [the amount of benefits the claimant actually received and, as];

109 (i) that portion of benefits that the individual received under Subsection (5)(a) as a result  
110 of a false statement, representation, or omission; and

111 (ii) a civil penalty[, ] that is the lesser of:

112 (A) an amount equal to [the benefits the claimant received by direct reason of his fraud.]  
113 that imposed by Subsection (5)(b)(i); or

114 (B) 50% of the individual's weekly benefit amount for each week in which some portion  
115 of the benefit was received as a result of a false statement, representation, or omission.

116 (c) The division may not provide benefits or waiting week credit, or otherwise take into  
117 account any earned wage credits for the purpose of paying benefits to an individual to whom  
118 Subsection (5)(a) applies, until that individual has repaid to the division the amount required under  
119 Subsection (5)(b).

120 (d) The [penalty] amount [shall be regarded as any other penalty under this chapter. These

121 amounts shall] imposed by Subsection (5)(b) may be [collectible] collected by civil action or  
122 warrant in the manner provided in [Subsections] Section 35A-4-305[(3) and (5)].

123 [~~(d) A claimant is ineligible for future benefits or waiting week credit, and any wage  
124 credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount  
125 owed under Subsection (5) remains unpaid.~~]

126 (e) Determinations under this Subsection (5) shall be [made only upon a sworn written  
127 admission of the claimant or after due notice and recorded hearing. If a claimant waives the  
128 recorded hearing, a determination shall be made based upon all the facts that the division,  
129 exercising due diligence, has obtained. Determinations by the division are] appealable in the same  
130 manner provided by this chapter for appeals from other benefit determinations.

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

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

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

139 (b) If the remuneration is less than the benefits that would otherwise be due, he is entitled  
140 to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection  
141 35A-4-401(3).

142 (8) (a) For any week in which the individual's benefits are based on service for an  
143 educational institution in an instructional, research, or principal administrative capacity and that  
144 begins during the period between two successive academic years, or during a similar period  
145 between two regular terms, whether or not successive, or during a period of paid sabbatical leave  
146 provided for in the individual's contract if the individual performs services in the first of those  
147 academic years or terms and if there is a contract or reasonable assurance that the individual will  
148 perform services in that capacity for an educational institution in the second of the academic years  
149 or terms.

150 (b) For any week in which the individual's benefits are based on service in any other  
151 capacity for an educational institution, and that week begins during a period between two

152 successive academic years or terms if the individual performs those services in the first of the  
153 academic years or terms and there is a reasonable assurance that the individual will perform the  
154 services in the second of the academic years or terms. If compensation is denied to any individual  
155 under this subsection and the individual was not offered an opportunity to perform the services for  
156 the educational institution for the second of the academic years or terms, the individual shall be  
157 entitled to a retroactive payment of compensation for each week for which the individual filed a  
158 timely claim for compensation and for which compensation was denied solely by reason of this  
159 subsection.

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

166 (d) With respect to services described in Subsection (8)(a) or (b), compensation payable  
167 on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an  
168 individual who performed those services in an educational institution while in the employ of an  
169 educational service agency. For purposes of Subsection (8)(d), "educational service agency"  
170 means a governmental agency or entity established and operated exclusively for the purpose of  
171 providing the services described in Subsection (8)(a) or (b) to an educational institution.

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

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

180 (10) (a) For any week in which the benefits are based upon services performed by an alien,  
181 unless the alien is an individual who has been lawfully admitted for permanent residence at the  
182 time the services were performed, was lawfully present for purposes of performing the services or,

183 was permanently residing in the United States under color of law at the time the services were  
184 performed, including an alien who is lawfully present in the United States as a result of the  
185 application of Subsection 212 (d)(5) of the Immigration and Nationality Act, 8 U.S.C.  
186 1182(d)(5)(A).

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

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

193 Section 2. **Effective date.**

194 This act takes effect on October 1, 1999.

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**Legislative Review Note**  
**as of 1-25-99 11:34 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**