

UNEMPLOYMENT INSURANCE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Jeff Alexander

AN ACT RELATING TO WORKFORCE SERVICES; MAKING THE CHAIR OF THE WORKFORCE APPEALS BOARD A PART-TIME EMPLOYEE AND CLARIFYING WHEN A PERSON HAS A RIGHT OF APPEAL BEFORE THE BOARD; REQUIRING UNEMPLOYMENT COMPENSATION TO BE USED TO REPAY AN OVERISSUANCE OF FOOD STAMPS; CHANGING THE NAME OF THE EMPLOYMENT SECURITY ADVISORY COUNCIL AND MODIFYING THE COUNCIL'S DUTIES; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

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

AMENDS:

35A-1-202, as last amended by Chapter 375, Laws of Utah 1997

35A-1-205, as last amended by Chapter 375, Laws of Utah 1997

35A-1-304, as repealed and reenacted by Chapter 375, Laws of Utah 1997

35A-4-103, as renumbered and amended by Chapter 240, Laws of Utah 1996

35A-4-502, as last amended by Chapters 148, 296 and 375, Laws of Utah 1997

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

Section 1. Section **35A-1-202** is amended to read:

35A-1-202. Divisions -- Creation -- Duties -- Workforce Appeals Board, councils, and regional services areas.

(1) There is created within the department the following divisions:

(a) the Division of Employment Development to administer the development and implementation of employment assistance programs that are:

(i) related to the operations of the department; and

(ii) consistent with federal and state law;

(b) the Division of Workforce Information and Payment Services to administer those services that are not delivered through the regional workforce services areas; and

(c) the Division of Adjudication to adjudicate claims or actions in accordance with this title.

(2) In addition to the divisions created under this section, within the department are the following:

(a) the Workforce Appeals Board created in Section 35A-1-205;

(b) the State Council on Workforce Services created in Section 35A-1-206;

(c) the [~~employment security~~] unemployment insurance advisory council created in Section 35A-4-502;

(d) the child care advisory committee created in Section 35A-3-205; and

(e) the regional workforce services areas and councils created in accordance with Chapter 2, Regional Workforce Services Areas.

Section 2. Section **35A-1-205** is amended to read:

35A-1-205. Workforce Appeals Board -- Chair -- Appointment -- Compensation -- Qualifications.

(1) There is created the Workforce Appeals Board within the department consisting of one or more panels to hear and decide appeals from the decision of an administrative law judge.

(2) (a) A panel shall consist of three impartial members appointed by the governor as follows:

(i) the board chair, appointed in accordance with Subsection (5);

(ii) one member appointed to represent employers, in making this appointment, the governor shall consider nominations from employer organizations; and

(iii) one member appointed to represent employees, in making this appointment, the governor shall consider nominations from employee organizations.

(b) No more than two members of a panel may belong to the same political party.

(3) (a) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except that the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately one third of the members are appointed every two years.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(c) The governor may remove a member only for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.

(d) A member shall hold office until a successor is appointed and has qualified.

(4) (a) [~~A member~~] Except as provided in Subsection (4)(c), a member of [a panel] the board may not receive compensation for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member may decline to receive per diem and expenses for the member's service.

(c) The member appointed as board chair in accordance with Subsection (5) shall be a part-time employee designated under Subsection 67-19-15(1)(q) and compensated for up to 40 hours of work in a two-week pay period at an hourly rate determined by the Department of Human Resource Management in accordance with Title 67, Chapter 19, Personnel Management.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The chair shall be appointed by the governor to represent the public and may be removed from that position at the will of the governor.

(c) The chair shall be experienced in administration and possess any additional qualifications determined by the governor.

(6) (a) The chair shall designate an [~~alternative~~] alternate from a panel appointed under this section:

- (i) in the absence of a regular member or the chair; or
- (ii) if the regular member or the chair has a conflict of interest.

(b) Each case shall be decided by a full three-member panel.

(7) The department shall provide the Workforce Appeals Board necessary staff support, except, the board may employ, retain, or appoint legal counsel.

Section 3. Section **35A-1-304** is amended to read:

35A-1-304. Review authority of the Workforce Appeals Board.

(1) (a) In accordance with this title and Title 63A, Chapter 46b, Administrative Procedures

Act, the Workforce Appeals Board may allow an appeal from a decision of an administrative law judge if a motion for review is filed with the Division of Adjudication within the designated time by any party entitled to the notice of the administrative law judge's decision.

(b) An appeal filed by the party shall be allowed as of right if the decision of the administrative law judge did not affirm the [~~decision of an administrative law judge being appealed~~] department's prior decision.

(c) If the Workforce Appeals Board denies an application for appeal from the decision of an administrative law judge, the decision of the administrative law judge is considered a decision of the Workforce Appeals Board for purposes of judicial review and is subject to judicial review if further appeal is initiated under this title.

(2) On appeal, the Workforce Appeals Board may on the basis of the evidence previously submitted in the case, or upon the basis of any additional evidence it requires:

- (a) affirm the decision of the administrative law judge;
- (b) modify the decision of the administrative law judge; or
- (c) reverse the findings, conclusions, and decision of the administrative law judge.

(3) The Workforce Appeals Board shall promptly notify the parties to any proceedings before it of its decision, including its findings and conclusions, and the decision is a final order of the department unless within 30 days after the date the decision of the Workforce Appeals Board is issued, further appeal is initiated under this title.

Section 4. Section **35A-4-103** is amended to read:

35A-4-103. Void agreements -- Child support obligations -- Penalties.

(1) (a) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter is void.

(b) Any 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 this chapter from the employer, is void.

(c) [~~No~~] An employer may not directly or indirectly:

(i) make, require, or accept any deduction from wages to finance the employer's contributions required from the employer;

(ii) require or accept any waiver of any right under this chapter by any individual in [his] the employer's employ;

(iii) discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of [his] the individual claiming benefits under this chapter; or

(iv) in any manner obstruct or impede the filing of claims for benefits.

(d) (i) Any employer or officer or agent of an employer who violates Subsection (1)(c) is, for each offense, guilty of a class B misdemeanor.

(ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under Subsection (1) shall be not less than \$100, and a penalty of imprisonment shall be not more than six months.

(2) [~~No~~] An individual claiming benefits [~~shall~~] may not be charged fees or costs of any kind in any proceeding under this chapter by the department or its representatives, or by any court or any officer of the court.

(3) (a) Any individual claiming benefits in any proceeding before the department or its representatives or a court may be represented by counsel or any other duly authorized agent.

(b) [~~No~~] A counsel or agent [~~shall~~] may not either charge or receive for [his] the counsel's or agent's services more than an amount approved by the division or administrative law judge in accordance with rules made by the department.

(c) Any person who violates any provision of Subsection (3) is guilty of a class B misdemeanor for each offense.

(d) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under Subsection (3) shall be not less than \$50 nor more than \$500, and a penalty for imprisonment shall be not more than six months.

(4) Except as provided for in Subsection (5):

(a) any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void;

(b) rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt;

(c) benefits received by any individual, so 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 or [his] the individual's spouse or dependents during the time when the individual was unemployed; and

(d) any waiver of any exemption provided for in Subsection (4) is void.

(5) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not [he] the individual owes:

(i) child support obligations[-]; or

(ii) an uncollected overissuance of food stamp benefits.

(b) If the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support agency charged with enforcing that obligation that the individual is eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(i) any amount required to be deducted and withheld from unemployment compensation under legal process, as defined in Subsection 462(e) of the Social Security Act, 42 U.S.C. 662(e), properly served upon the department;

(ii) the amount determined under an agreement submitted to the division under Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. 654, by the state or local child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or

(iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i) nor (ii) is applicable.

(d) The division shall notify the state food stamp agency that an individual is eligible for unemployment compensation if the individual:

(i) owes an uncollected overissuance of food stamp benefits; and

(ii) is determined to be eligible for unemployment compensation.

(e) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance of food stamp benefits:

(i) the amount specified by the individual to the division to be deducted and withheld under this Subsection (5)(e);

(ii) the amount, if any, determined pursuant to an agreement submitted to the state food stamp agency under Section 13(c)(3)(B) of the Food Stamp Act of 1977; or

(iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to Section 13(c)(3)(B) of the Food Stamp Act of 1977.

~~[(d)] (f) Any amount deducted and withheld under Subsection (5)(c) or (e) shall [be paid by the department to the appropriate state or local child support enforcement agency.]:~~

~~[(e) Any amount deducted and withheld under Subsection (5)(c) shall,]~~

(i) be paid by the department to the appropriate:

(A) state or local child support enforcement agency; or

(B) state food stamp agency; and

(ii) for all purposes, be treated as if it was paid to the individual as unemployment compensation and then paid by [him to the state or local child support enforcement agency in satisfaction of his child support obligation.] the individual to the appropriate:

(A) state or local child support enforcement agency in satisfaction of the individual's child support obligation; or

(B) state food stamp agency in satisfaction of the individual's uncollected overissuance.

~~[(f)] (g) For purposes of Subsection (5):~~

(i) "Child support obligation" means obligations that are enforced under a plan described in Section 454 of the Social Security Act, 42 U.S.C. 654, that has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act, 42 U.S.C. 651 et seq.

(ii) "State food stamp agency" means the Department of Workforce Services or its designee responsible for the collection of uncollected overissuances.

~~[(ii)] (iii) "State or local child support enforcement agency" means any agency or political subdivision of the state operating under a plan described in Subsection (5).~~

(iv) "Uncollected overissuance" is as defined in Section 13(c)(1) of the Food Stamp Act of

1977.

[(iii)] (v) "Unemployment compensation" means any compensation payable under this chapter, including amounts payable under an agreement directed by federal law that provides compensation assistance or allowances for unemployment.

[(g)] (h) Subsection (5) is applicable only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency or state food stamp agency for the administrative costs of the department under Subsection (5) that are directly related to the enforcement of child support obligations or the repayment of uncollected overissuance of food stamp benefits.

Section 5. Section **35A-4-502** is amended to read:

35A-4-502. Administration of Employment Security Act.

(1) (a) The department shall administer this chapter through the division.

(b) The department may make, amend, or rescind any rules and special orders necessary for the administration of this chapter.

(c) The division may:

(i) employ persons;

(ii) make expenditures;

(iii) require reports;

(iv) make investigations;

(v) make audits of any or all funds provided for under this chapter when necessary; and

(vi) take any other action it considers necessary or suitable to that end.

(d) No later than the first day of October of each year, the department shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make any recommendations for amendments to this chapter as the department considers proper.

(e) (i) The report required under Subsection (1)(d) shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the

division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

(ii) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the Legislature and make appropriate recommendations.

(2) (a) The department may make, amend, or rescind rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) The director of the division or the director's designee may adopt, amend, or rescind special orders after appropriate notice and opportunity to be heard. Special orders become effective ten days after notification or mailing to the last-known address of the individuals or concerns affected thereby.

(3) The director of the division or the director's designee shall cause to be printed for distribution to the public:

- (a) the text of this chapter;
- (b) the department's rules pertaining to this chapter;
- (c) the department's annual reports to the governor required by Subsection (1)(e); and
- (d) any other material the director of the division or the director's designee considers relevant and suitable and shall furnish them to any person upon application.

(4) (a) The division may delegate to any person so appointed the power and authority it considers reasonable and proper for the effective administration of this chapter and may bond any person handling moneys or signing checks under this authority.

(b) The department may, when permissible under federal and state law, make arrangements to voluntarily elect coverage under the United States Civil Service Retirement System or a comparable private retirement plan with respect to past as well as future services of individuals employed under this chapter who:

- (i) were hired prior to October 1, 1980; and
- (ii) have been retained by the department without significant interruption in the employees' services for the department.

(c) An employee of the department who no longer may participate in a federal or other retirement system as a result of a change in status or appropriation under this chapter may purchase credit in a retirement system created under Title 49, Chapter 3, Public Employees' Noncontributory Retirement Act, with the employee's assets from the federal or other retirement system in which the employee may no longer participate.

(5) There is created an Employment [Security] Advisory Council composed of the members listed in Subsections (5)(a) and (b).

(a) The executive director shall appoint:

(i) not less than five employer representatives chosen from individuals recommended by employers, employer associations, or employer groups;

(ii) not less than five employee representatives chosen from individuals recommended by employees, employee associations, or employee groups; and

(iii) five public representatives chosen at large.

(b) The executive director or the executive director's designee shall serve as a nonvoting member of the council.

(c) The employee representatives shall include both union and nonunion employees who fairly represent the percentage in the labor force of the state.

(d) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(e) (i) Except as required by Subsection (5)(e)(ii), as terms of current council members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be

appointed for the unexpired term.

(g) The executive director shall terminate the term of any council member who ceases to be representative as designated by the council member's original appointment.

(h) The council shall advise the department~~[- the division,]~~ and the Legislature in formulating policies and discussing problems related to the administration of this chapter ~~[and in assuring]~~ including:

(i) reducing and preventing unemployment;

(ii) encouraging the adoption of practical methods of vocational training, retraining, and vocational guidance;

(iii) monitoring the implementation of the Wagner-Peyser Act;

(iv) promoting the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every possible way; and

(v) appraising the industrial potential of the state.

(i) The council shall assure impartiality and freedom from political influence in the solution of [those] the problems listed in Subsection (5)(h).

~~[(i)]~~ (j) The executive director or the executive director's designee shall serve as chair of the council and call the necessary meetings.

~~[(j)]~~ (k) (i) A member shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member may decline to receive per diem and expenses for the member's service.

~~[(k)]~~ (l) The department shall provide staff support to the council.

~~[(6) (a) The division, with the advice and aid of its advisory council shall take all appropriate steps to:]~~

~~[(i) reduce and prevent unemployment;]~~

~~[(ii) encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance;]~~

~~[(iii) investigate, recommend, advise, and assist in the establishment and operation by the~~

~~state of reserves for public works to be used in times of business depression and unemployment;]~~

~~[(iv) promote the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every way that may be feasible;]~~

~~[(v) plan, coordinate, organize, or direct economic development programs as are necessary to maintain or create job opportunities;]~~

~~[(vi) cooperate with local communities, industries, and organizations in encouraging and promoting the full development of the state's mineral, water, and other natural resources;]~~

~~[(vii) appraise the agricultural and industrial potential of the state; and]~~

~~[(viii) carry on activities and organize, coordinate, and publish the results of investigations and research studies.]~~

~~[(b) To accomplish these purposes, the division may enter into agreements with governmental or other agencies.]~~

~~[(7)]~~ (6) In the discharge of the duties imposed by this chapter, the division director or the director's designee as designated by department rule, may in connection with a disputed matter or the administration of this chapter:

- (a) administer oaths and affirmations;
- (b) take depositions;
- (c) certify to official acts; and
- (d) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records necessary as evidence.

~~[(8)]~~ (7) (a) 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 director of the division or the director's designee shall have jurisdiction to issue to that person an order requiring the person to appear before the director or the director's designee to produce evidence, if so ordered, or give testimony regarding the matter under investigation or in question. Any failure to obey that order of the court may be punished by the court as contempt.

(b) Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in that person's power to do so, in obedience to a subpoena of the director or the director's designee shall be punished as provided in Subsection [~~35A-1-304(1)~~] 35A-1-301(1)(b). Each day the violation continues is a separate offense.

(c) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

~~[(9)]~~ (8) (a) In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take action, through the adoption of appropriate rules by the department and administrative methods and standards, as necessary to secure to this state and its citizens all advantages available under the provisions of:

(i) the Social Security Act that relate to unemployment compensation;

(ii) the Federal Unemployment Tax Act; and

~~[(iii) the Wagner-Peyser Act; and]~~

~~[(iv)]~~ (iii) the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of Section 35A-4-402, which is enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304, the division shall take any action necessary to ensure that the section is interpreted and applied to meet the requirements of the federal act, as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the federal act.