

AMENDMENTS TO UNEMPLOYMENT

INSURANCE

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert M. Muhlestein

AN ACT RELATING TO WORKFORCE SERVICES; CHANGING THE DEFINITION OF WAGES, AS USED IN TITLE 35A, CHAPTER 4, UTAH CODE ANNOTATED, TO THE DEFINITION IN SECTION 3306(b), INTERNAL REVENUE CODE OF 1986; ELIMINATING THE REQUIREMENT FOR A RECORDED HEARING IN CASES OF FRAUD; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

**35A-4-208**, as last amended by Chapter 148, Laws of Utah 1997

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

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

Section 1. Section **35A-4-208** is amended to read:

**35A-4-208. Wages defined.**

(1) ~~[(a)]~~ As used in this chapter, "wages" means ~~[all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash.]~~ wages as currently defined by Section 3306(b), Internal Revenue Code of 1986, with modifications, subtractions, and adjustments provided in Subsections (2), (3), and (4).

~~[(b) Gratuities customarily received by an individual in the course of the individual's employment from persons other than the individual's employing unit are treated as wages received from the individual's employing unit.]~~

~~[(c) The reasonable cash value of remuneration in any medium other than cash and the reasonable amount of gratuities shall be estimated and determined in accordance with rules prescribed by the department.]~~

(2) For purposes of Section 35A-4-303, "wages" does not include that amount paid to an individual by an employer with respect to employment subject to this chapter that is ~~[(a) in excess~~

~~of \$3,000 paid to an individual by an employer with respect to employment subject to this chapter during any calendar year prior to calendar year 1964; (b) in excess of \$4,200 paid to an individual by an employer with respect to employment subject to this chapter during calendar year 1964 or during any other single calendar year after 1964 but prior to calendar year 1976; (c) in excess of \$6,000 paid to an individual by an employer with respect to employment subject to this chapter during calendar year 1976; (d) in excess of 75% of the insured average annual wage, rounded to the next higher multiple of \$100, during the calendar year two years prior to the calendar year of the payment to the individual by the individual's employer during calendar year 1985 and during any single calendar year after 1985 but prior to January 1, 1988; or (e)] in excess of 75% of the insured average fiscal year wage, rounded to the next higher multiple of \$100, during the fiscal year prior to the calendar year of the payment to the individual by the individual's employer on or after January 1, 1988.~~

~~[(3) For purposes of this section, all remuneration in excess of the amounts provided in Subsection (2) for any calendar year are considered to be wages subject to contribution to the same extent that the remuneration is defined as wages by the Federal Unemployment Tax Act, as amended.]~~

~~[(4)] (3) For the purpose of determining whether the successor employer during the calendar year has paid remuneration to an individual with respect to employment equal to the applicable taxable wages as defined by this subsection, any remuneration with respect to employment paid to the individual by a predecessor employer during the calendar year and prior to an acquisition is considered to have been paid by a successor employer if:~~

~~(a) the successor employer during any calendar year acquires substantially all the property used in a trade or business of a predecessor employer; and~~

~~(b) immediately after the acquisition employs in the successor employer's trade or business an individual who immediately prior to the acquisition was employed in the trade or business of the predecessor.~~

~~[(5)] (4) The remuneration paid to an individual by an employer with respect to employment in another state, upon which contributions were required of the employer under the unemployment~~

compensation law of that state, shall be included as a part of the taxable wage base defined in this section.

~~[(6)]~~ (5) As used in this chapter, "wages" does not include:

(a) the amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for a payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer that makes provision for:

- (i) (A) the employer's employees generally;
- (B) the employer's employees generally and their dependents;
- (C) a class or classes of the employer's employees; or
- (D) a class or classes of the employer's employees and their dependents; and

(ii) on account of:

(A) sickness or accident disability, but, in the case of payments made to an employee or any of the employee's dependents Subsection (6)(a)(i) excludes from wages only payments that are received under a workers' compensation law;

(B) medical or hospitalization expenses in connection with sickness or accident disability;

or

(C) death;

(b) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer;

(c) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under Section 3101, Internal Revenue Code, with respect to domestic services performed in a private home of the employer or for agricultural labor;

(d) any payment made to, or on behalf of, an employee or the employee's beneficiary:

(i) from or to a trust described in Section 401(a), Internal Revenue Code, that is exempt from

tax under Section 501(a), Internal Revenue Code, at the time of the payment, except for a payment made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;

(ii) under or to an annuity plan that at the time of the payment is a plan described in Section 403(a), Internal Revenue Code;

(iii) under a simplified employee pension, as defined in Section 408(k)(1), Internal Revenue Code, other than any contributions described in Section 408(k)(6), Internal Revenue Code;

(iv) under or to an annuity contract described in Section 403(b), Internal Revenue Code, except for a payment for the purchase of the contract that is made by reason of a salary reduction agreement whether or not the agreement is evidenced by a written instrument;

(v) under or to an exempt governmental deferred compensation plan as defined in Section 3121(v)(3), Internal Revenue Code; or

(vi) to supplement pension benefits under a plan or trust described in Subsections (6)(d)(i) through (v) to take into account a portion or all of the increase in the cost of living, as determined by the Secretary of Labor, since retirement, but only if the supplemental payments are under a plan that is treated as a welfare plan under Section 3(2)(B)(ii) of the Employee Income Security Act of 1974; or

(e) any payment made to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan within the meaning of Section 125, Internal Revenue Code, if the payment would not be treated as wages under a cafeteria plan.

Section 2. Section **35A-4-405** is amended to read:

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

An individual is ineligible for benefits or for purposes of establishing a waiting period:

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

(b) A claimant shall not be denied eligibility for benefits if the claimant leaves work under

circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

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

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

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

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

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

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

(ii) The division shall consider the purposes of this chapter, the reasonableness of the

claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

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

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

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

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

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

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

- (a) If the division finds that a strike has been fomented by a worker of any employer, none

of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike shall not render the workers ineligible for benefits.

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

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

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

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

(c) Each individual found in violation of Subsection (5) shall repay to the division the amount of benefits the claimant actually received and, as a civil penalty, an amount equal to the benefits the claimant received by direct reason of his fraud. The penalty amount shall be regarded as any other penalty under this chapter. These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

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

under Subsection (5) remains unpaid.

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

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

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

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

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

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

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



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

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

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

(e) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d) and (e) are payable 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 this chapter.

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

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

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

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

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