

**WORKFORCE SERVICES AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Scott K. Jenkins**

**This act modifies provisions related to the Employment Security Act by removing the part-time employee limitation on the chair of the Workforce Appeals Board. The act modifies the definition of employer to be consistent with state and federal withholding requirements and also makes certain technical changes.**

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

AMENDS:

**35A-1-205**, as last amended by Chapter 116, Laws of Utah 1998

**35A-4-203**, 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-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[;]; and in making this appointment, the governor shall consider nominations from employer organizations; and

(iii) one member appointed to represent employees[;]; and 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) (i) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except [~~that the~~] as otherwise provided in Subsection (3)(a)(ii).

(ii) 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) Except as provided in Subsection (4)(c), a member of 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, Utah State Personnel Management Act.

(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 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 2. Section **35A-4-203** is amended to read:

**35A-4-203. Definition of employer.**

As used in this chapter "employer" means:

(1) an individual or employing unit [~~that paid wages during a calendar quarter in either the current or preceding calendar year for employment amounting to \$140 or more and an employing unit subject to the Federal Unemployment Tax Act~~] which employs one or more individuals for some portion of a day during a calendar year, or that, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, under the act, to be an employer;

(2) an employing unit that, having become an employer under Subsection (1), has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this chapter; or

(3) for the effective period of its election under Subsection 35A-4-310(3), an employing unit that has elected to become fully subject to this chapter.