

UNEMPLOYMENT INSURANCE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steven R. Mascaro

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Employment Security Act related to unemployment insurance benefits.

Highlighted Provisions:

This bill:

- ▶ makes modifications to the definition of base period for purposes related to unemployment insurance benefits;
- ▶ provides that unemployment benefits may not be denied to an individual solely on the fact that the individual is seeking only part-time work, so long as a majority of the weeks in the individual's base period consists of part-time work;
- ▶ provides that a claimant for benefits is not disqualified from receiving benefits on the basis of separating from employment, if the separation is for a compelling family reason; and
- ▶ requires an annual report by the division on the impact of these modifications.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **35A-4-201**, as last amended by Laws of Utah 2005, Chapter 81
- 29 **35A-4-403**, as last amended by Laws of Utah 2008, Chapter 43
- 30 **35A-4-405**, as last amended by Laws of Utah 2007, Chapter 225



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

33 Section 1. Section **35A-4-201** is amended to read:

34 **35A-4-201. General definitions.**

35 As used in this chapter:

36 (1) (a) "Base-period" means the first four of the last five completed calendar quarters
37 next preceding the first day of the individual's benefit year with respect to any individual whose
38 benefit year commences on or after January 5, 1986.

39 (b) (i) For a claimant whose benefit year is effective on or after January 3, 2010, and
40 who does not have sufficient wages in the first four of the last five completed calendar quarters
41 to otherwise qualify for benefits, the base period is the last four completed calendar quarters.

42 (ii) Wages used to establish eligibility regardless of how the base period is calculated
43 are not available for qualifying benefits in any subsequent benefit year.

44 (2) "Benefit year" means the 52 consecutive week period beginning with the first week
45 with respect to which an individual files for benefits and is found to have an insured status.

46 (3) "Benefits" means the money payments payable to an individual as provided in this
47 chapter with respect to the individual's unemployment.

48 (4) "Calendar quarter" means the period of three consecutive months ending on March
49 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule
50 prescribe.

51 (5) "Contribution" means the money payments required by this chapter to be made into
52 the Unemployment Compensation Fund by any employing unit on account of having
53 individuals in its employ.

54 (6) "Division" means the Unemployment Insurance Division.

55 (7) "Employment office" means a free public employment office or branch operated by
56 this or any other state as a part of a state-controlled system of public employment offices or by
57 a federal agency charged with the administration of an unemployment compensation program
58 or free public employment offices.

59 (8) "Employment Security Administration Fund" means the fund established by
60 Section 35A-4-505, and from which administrative expenses under this chapter shall be paid.

61 (9) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).

62 (10) "Fund" means the Unemployment Compensation Fund established by this chapter.

63 (11) "Insured average annual wage" means on or before the 15th day of May of each
64 year, the total wages of insured workers for the preceding calendar year, divided by the average
65 monthly number of insured workers, determined by dividing by 12 the total insured workers for
66 the preceding calendar year as determined under the rules of the department calculated to two
67 decimal places, disregarding any fraction of one cent.

68 (12) "Insured average fiscal year wage" means on or before the 15th day of November
69 of each year, the total wages of insured workers for the preceding fiscal year, divided by the
70 average monthly number of insured workers, determined by dividing by 12 the total insured
71 workers for the preceding fiscal year as determined under the rules of the department calculated
72 to two decimal places, disregarding any fraction of one cent.

73 (13) "Insured average fiscal year weekly wage" means the insured average fiscal year
74 wage determined in Subsection (12), divided by 52, calculated to two decimal places,
75 disregarding any fraction of one cent.

76 (14) "Insured average weekly wage" means the insured average annual wage
77 determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding
78 any fraction of one cent.

79 (15) "Insured status" means that an individual has, during the individual's base-period,
80 performed services and earned wages in employment sufficient to qualify for benefits under
81 Section 35A-4-403.

82 (16) "Insured work" means employment for an employer, as defined in Section
83 35A-4-203.

84 (17) "Monetary base period wage requirement" means 8% of the insured average fiscal
85 year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals
86 establishing benefit years in 1991, rounded up to the next higher multiple of \$100.

87 (18) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the
88 District of Columbia.

89 (19) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly owned

90 by an American Indian tribe.

91 (20) "Week" means the period or periods of seven consecutive calendar days as the
92 department may prescribe by rule.

93 Section 2. Section **35A-4-403** is amended to read:

94 **35A-4-403. Eligibility of individual -- Conditions -- Furnishing reports -- Weeks**
95 **of employment -- Successive benefit years.**

96 (1) Except as provided in Subsection (2), an unemployed individual is eligible to
97 receive benefits for any week if the division finds:

98 (a) the individual has made a claim for benefits for that week in accordance with rules
99 the department may prescribe, except as provided in Subsection (3);

100 (b) the individual has registered for work with the department and acted in a good faith
101 effort to secure employment during each and every week for which the individual made a claim
102 for benefits under this chapter in accordance with rules the department may prescribe, except as
103 provided in Subsection (3);

104 (c) the individual is able to work and is available for full-time work during each and
105 every week for which the individual made a claim for benefits under this chapter, except the
106 division may not deny benefits to an individual solely on the fact that the individual is seeking
107 only part-time work, so long as a majority of the weeks in the individual's base period consists
108 of part-time work;

109 (d) the individual has been unemployed for a waiting period of one week for each
110 benefit year, but a week may not be counted as a week of unemployment for the purpose of this
111 Subsection (1)(d):

112 (i) unless it occurs within the benefit year that includes the week for which the
113 individual claims benefits;

114 (ii) if benefits have been paid for the claim; or

115 (iii) unless the individual was eligible for benefits for the week as provided in this
116 section and Sections 35A-4-401 and 35A-4-405, except for the requirement of this Subsection
117 (1)(d);

118 (e) (i) the individual has furnished the division separation and other information the
119 department may prescribe by rule, or proves to the satisfaction of the division that the
120 individual had good cause for failing to furnish the information;

121 (ii) if an employer fails to furnish reports concerning separation and employment as
122 required by this chapter and rules adopted under the chapter, the division shall, on the basis of
123 information it obtains, determine the eligibility and insured status of an individual affected by
124 that failure and the employer is not considered to be an interested party to the determination;

125 (f) (i) the individual's base period wages were at least 1-1/2 times the individual's
126 wages for insured work paid during that quarter of the individual's base period in which the
127 individual's wages were highest; or

128 (ii) for any claimant whose benefit year is effective on or before January 2, 2010, the
129 individual shows to the satisfaction of the division that the individual worked at least 20 weeks
130 in insured work during the individual's base period and earned wages of at least 5% of the
131 monetary base period wage requirement each week, rounded to the nearest whole dollar,
132 provided that the individual's total base-period wages were not less than the monetary base
133 period wage requirement as defined in Section 35A-4-201;

134 (g) (i) the individual applying for benefits in a successive benefit year has had
135 subsequent employment since the effective date of the preceding benefit year equal to at least
136 six times the individual's weekly benefit amount, in insured work; and

137 (ii) the individual's total wages and employment experience in the individual's base
138 period meet the requirements specified in Subsection (1)(f).

139 (2) (a) For purposes of this Subsection (2), "suitable employment" means:

140 (i) work of a substantially equal or higher skill level than the individual's past adversely
141 affected employment as defined for purposes of the Trade Act of 1974; and

142 (ii) wages for that work at not less than 80% of the individual's average weekly wage
143 as determined for purposes of the Trade Act of 1974.

144 (b) (i) An individual in training with the approval of the division is not ineligible to
145 receive benefits by reason of nonavailability for work, failure to search for work, refusal of
146 suitable work, failure to apply for or to accept suitable work, or not having been unemployed
147 for a waiting period of one week for any week the individual is in the approved training.

148 (ii) For purposes of Subsection (2)(b)(i), the division shall approve any mandatory
149 apprenticeship-related training.

150 (c) Notwithstanding any other provision of this chapter, the division may not deny an
151 otherwise eligible individual benefits for any week:

152 (i) because the individual is in training approved under Section 236 (a)(1) of the Trade
153 Act of 1974, 19 U.S.C. 2296(a);

154 (ii) for leaving work to enter training described in Subsection (2)(c)(i) if the work left
155 is not suitable employment; or

156 (iii) because of the application to any such week in training of provisions in this law or
157 any applicable federal unemployment compensation law relating to availability for work, active
158 search for work, or refusal to accept work.

159 (3) The department may, by rule, waive or alter either or both of the requirements of
160 Subsections (1)(a) and (b) as to:

161 (a) individuals attached to regular jobs;

162 (b) a disaster in Utah as declared by the President of the United States or by the state's
163 governor after giving due consideration to factors directly associated with the disaster,
164 including:

165 (i) the disaster's impact on employers and their ability to employ workers in the
166 affected area in Utah;

167 (ii) the disaster's impact on claimants and their ability to comply with filing
168 requirements in the affected area in Utah; and

169 (iii) the magnitude of the disaster and the anticipated time for recovery; and

170 (c) cases or situations when it finds that compliance with the requirements would be
171 oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does
172 not conflict with Subsection 35A-4-401(1).

173 (4) The director of the division or the director's designee shall make an annual report to
174 the Workforce Employment Advisory Council and to the Legislature's Workforce Services and
175 Community and Economic Development Interim Committee no later than November 30 of
176 2010, 2011, and 2012, concerning the impact on individuals applying for unemployment
177 compensation and the unemployment trust insurance fund as a result of amendments made to
178 Subsections 35A-4-201(1), 35A-4-403(1)(c), and 35A-4-405(1)(d) during the Legislature's
179 2009 General Session.

180 Section 3. Section **35A-4-405** is amended to read:

181 **35A-4-405. Ineligibility for benefits.**

182 Except as otherwise provided in Subsection (5), an individual is ineligible for benefits

183 or for purposes of establishing a waiting period:

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

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

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

196 (d) (i) Notwithstanding any other subsection of this section, for a claimant [who has
197 left work voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality
198 does so without good cause for purposes of Subsection (1).] whose benefit year is effective on
199 or after January 3, 2010, the claimant is not disqualified from benefits for separating from
200 employment if the separation is for any compelling family reason.

201 (ii) For purposes of Subsection (1)(d)(i), "any compelling family reason" means:

202 (A) domestic violence that causes the individual to reasonably believe that continued
203 employment would jeopardize the safety of the individual or any member of the individual's
204 immediate family;

205 (B) the illness or disability of a member of the individual's immediate family; or

206 (C) the need for the individual to accompany the individual's spouse:

207 (I) due to a change in location of the spouse's employment; and

208 (II) to a place from which it is impractical for the individual to commute.

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

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

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

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

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

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

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

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

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

243 (d) Prior earnings shall be considered on the basis of all four quarters used in
244 establishing eligibility and not just the earnings from the most recent employer. The division

245 shall be more prone to find work as suitable the longer the claimant has been unemployed and
246 the less likely the prospects are to secure local work in his customary occupation.

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

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

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

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

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

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

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

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

274 (5) (a) For each week with respect to which the claimant willfully made a false
275 statement or representation or knowingly failed to report a material fact to obtain any benefit

276 under the provisions of this chapter, and an additional 13 weeks for the first week the statement
277 or representation was made or fact withheld and six weeks for each week thereafter; the
278 additional weeks not to exceed 49 weeks.

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

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

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

285 (iii) The penalty amount shall be regarded as any other penalty under this chapter.

286 (iv) These amounts shall be collectible by civil action or warrant in the manner
287 provided in Subsections 35A-4-305(3) and (5).

288 (d) A claimant is ineligible for future benefits or waiting week credit, and any wage
289 credits earned by the claimant shall be unavailable for purposes of paying benefits, if any
290 amount owed under this Subsection (5) remains unpaid.

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

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

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

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

305 (i) wages in lieu of notice, or a dismissal or separation payment; or

306 (ii) accrued vacation or terminal leave payment.

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

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

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

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

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

334 (d) (i) With respect to services described in Subsection (8)(a) or (b), compensation
335 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be
336 denied to an individual who performed those services in an educational institution while in the
337 employ of an educational service agency.

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

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

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

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

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

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

Legislative Review Note
as of 2-19-09 8:17 AM

Office of Legislative Research and General Counsel

H.B. 428 - Unemployment Insurance Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill would require an additional appropriation from the Unemployment Insurance Trust Fund of \$229,000 in FY 2009 and \$7,058,000 in FY 2010. This bill would increase the Unemployment Insurance Trust Fund balance in FY 2009 by \$60,997,200 and \$296,800 in FY 2010. Increase costs may also be incurred to the state depending on the required reimbursement costs associated with changes in the overall state workforce.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Restricted Funds	\$229,000	\$7,058,000	\$11,358,000	\$60,997,200	\$296,800	\$2,100,000
Total	\$229,000	\$7,058,000	\$11,358,000	\$60,997,200	\$296,800	\$2,100,000

Individual, Business and/or Local Impact

Local governments may be impacted due to potential increase in the reimbursement of unemployment benefit costs that would need to be repaid dollar for dollar. Business may be impacted due to increased Unemployment Insurance tax rates. Individuals may benefit from changes in the proposed statute.