

UNEMPLOYMENT BENEFITS FOR MILITARY SPOUSE

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lynn N. Hemingway

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill modifies the Employment Security Act by expanding unemployment benefits eligibility for military spouses under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ provides that the Unemployment Division will not charge benefit costs to an employer for an employee who receives unemployment benefits after voluntarily leaving employment to follow a spouse because of a spouse's military assignment;
- ▶ authorizes unemployment benefits for a claimant who voluntarily leaves employment to follow a spouse to a new location if:
 - the claimant's spouse is a member of the United States armed forces and the claimant's spouse has been relocated by a military assignment on active duty;
 - it is impractical for the claimant to commute to the previous work from the new locality; and
 - the claimant otherwise meets and follows the eligibility and reporting requirements of the Unemployment Division; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **35A-4-307**, as last amended by Laws of Utah 1999, Chapter 80

32 **35A-4-405**, as last amended by Laws of Utah 2007, Chapter 225



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

35 Section 1. Section **35A-4-307** is amended to read:

36 **35A-4-307. Social costs -- Relief of charges.**

37 (1) Social costs shall consist of those benefit costs defined as follows:

38 (a) Benefit costs of an individual will not be charged to a base-period employer, but
39 will be considered social costs if the individual's separation from that employer occurred under
40 any of the following circumstances:

41 (i) the individual was discharged by the employer or voluntarily quit employment with
42 the employer for disqualifying reasons, but subsequently requalified for benefits and actually
43 received benefits;

44 (ii) the individual received benefits following a quit which was not attributable to the
45 employer;

46 (iii) the individual received benefits following a discharge for nonperformance due to
47 medical reasons; ~~or~~

48 (iv) the individual received benefits while attending the first week of mandatory
49 apprenticeship training~~[-]; or~~

50 (v) the individual received benefits after quitting voluntarily to accompany or follow a
51 spouse who is a member of the United States armed forces as described in Subsection
52 35A-4-405(1)(e).

53 (b) Social costs are benefit costs which are or have been charged to employers who
54 have terminated coverage and are no longer liable for contributions, less the amount of
55 contributions paid by such employers during the same time period.

56 (c) The difference between the benefit charges of all employers whose benefit ratio
57 exceeds the maximum overall contribution rate and the amount determined by multiplying the
58 taxable payroll of the same employers by the maximum overall contribution rate is a social

59 cost.

60 (d) Benefit costs attributable to a concurrent base-period employer will not be charged
61 to that employer if the individual's customary hours of work for that employer have not been
62 reduced.

63 (e) Benefit costs incurred during the course of division-approved training which occurs
64 after December 31, 1985, will not be charged to base-period employers.

65 (f) Benefit costs will not be charged to employers if such costs are attributable to:

66 (i) the state's share of extended benefits;

67 (ii) uncollectible benefit overpayments;

68 (iii) the proportion of benefit costs of combined wage claims that are chargeable to
69 Utah employers and are insufficient when separately considered for a monetary eligible claim
70 under Utah law and which have been transferred to a paying state; and

71 (iv) benefit costs attributable to wages used in a previous benefit year that are available
72 for a second benefit year under Subsection 35A-4-401(2) because of a change in method of
73 computing base-periods, overlapping base-periods, or for other reasons required by law.

74 (g) Any benefit costs that are not charged to an employer and not defined in this
75 subsection are also social costs.

76 (2) Subsection (1) applies only to contributing employers and not to employers that
77 have elected to finance the payment of benefits in accordance with Section 35A-4-309 or
78 35A-4-311.

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

80 **35A-4-405. Ineligibility for benefits.**

81 Except as otherwise provided in Subsection (5), an individual is ineligible for benefits
82 or for purposes of establishing a waiting period:

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

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

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

95 (d) ~~[Notwithstanding any other subsection of this section]~~ Except as provided in
96 Subsection (1)(e), a claimant who has left work voluntarily to accompany~~[-]~~ or follow~~[-or join]~~
97 the claimant's spouse to ~~[or in]~~ a new locality does so without good cause for purposes of this
98 Subsection (1).

99 (e) A claimant who has left work voluntarily to accompany or follow the claimant's
100 spouse to a new locality does so with good cause for purposes of this Subsection (1) and is
101 eligible to receive benefits if:

102 (i) the claimant's spouse is a member of the United States armed forces and the
103 claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180
104 days while on:

105 (A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or

106 (B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);

107 (ii) it is impractical as determined by the division for the claimant to commute to the
108 previous work from the new locality;

109 (iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start
110 date of the spouse's active-duty assignment; and

111 (iv) the claimant otherwise meets and follows the eligibility and reporting requirements
112 of this chapter, including registering for work with the division or, if the claimant has relocated
113 to another state, the equivalent agency of that state.

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

119 (b) For the week in which the claimant was discharged for dishonesty constituting a
120 crime or any felony or class A misdemeanor in connection with the claimant's work as shown

121 by the facts, together with the claimant's admission, or as shown by the claimant's conviction of
122 that crime in a court of competent jurisdiction and for the 51 next following weeks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (5) (a) For each week with respect to which the claimant willfully made a false
180 statement or representation or knowingly failed to report a material fact to obtain any benefit
181 under the provisions of this chapter, and an additional 13 weeks for the first week the statement
182 or representation was made or fact withheld and six weeks for each week thereafter; the

183 additional weeks not to exceed 49 weeks.

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

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

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

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

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

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

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

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

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

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

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

211 (ii) accrued vacation or terminal leave payment.

212 (b) If the remuneration is less than the benefits that would otherwise be due, the
213 claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided

214 in Subsection 35A-4-401(3).

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

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

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

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

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

243 (ii) For purposes of this Subsection (8)(d), "educational service agency" means a
244 governmental agency or entity established and operated exclusively for the purpose of

245 providing the services described in Subsection (8)(a) or (b) to an educational institution.

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

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

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel