

WORKFORCE SERVICES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Stuart C. Reid

LONG TITLE

General Description:

This bill modifies the Employment Security Act.

Highlighted Provisions:

This bill:

- ▶ establishes that an individual located in a foreign country is only eligible for unemployment benefits under certain limited circumstances;

- ▶ requires that when the Unemployment Insurance Division issues a determination that a claimant has willfully made a false statement or representation or knowingly failed to report a material fact to obtain unemployment insurance benefits, the penalty weeks begin on the Sunday before the day on which the determination is issued;

- ▶ requires that beginning on October 1, 2013, the Unemployment Insurance Division deposit 15% of a civil penalty collected from a claimant for false statements or knowingly failing to report a material fact in obtaining unemployment insurance benefits into the Unemployment Compensation Fund in compliance with the federal Social Security Act; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

30 AMENDS:

31 35A-4-403, as last amended by Laws of Utah 2012, Chapter 246

32 35A-4-405, as last amended by Laws of Utah 2012, Chapters 54 and 314

33 35A-4-506, as last amended by Laws of Utah 2012, Chapter 146



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

36 Section 1. Section 35A-4-403 is amended to read:

37 **35A-4-403. Eligibility of individual -- Conditions -- Furnishing reports -- Weeks**
38 **of employment -- Successive benefit years.**

39 (1) Except as provided in [~~Subsection~~] Subsections (2) and (3), an unemployed
40 individual is eligible to receive benefits for any week if the division finds:

41 (a) the individual has made a claim for benefits for that week in accordance with rules
42 the department may prescribe, except as provided in Subsection [~~(3)~~] (4);

43 (b) the individual has registered for work with the department and acted in a good faith
44 effort to secure employment during each and every week for which the individual made a claim
45 for benefits under this chapter in accordance with rules the department may prescribe, except as
46 provided in Subsection [~~(3)~~] (4);

47 (c) the individual is able to work and is available for work during each and every week
48 for which the individual made a claim for benefits under this chapter;

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

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

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

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

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

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

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

68 (ii) for any claimant whose benefit year is effective on or before January 1, 2011, the
69 individual shows to the satisfaction of the division that the individual worked at least 20 weeks
70 in insured work during the individual's base-period and earned wages of at least 5% of the
71 monetary base-period wage requirement each week, rounded to the nearest whole dollar,
72 provided that the individual's total base-period wages were not less than the monetary
73 base-period wage requirement as defined in Section 35A-4-201; and

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

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

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

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

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

84 (b) (i) An individual in training with the approval of the division is not ineligible to
85 receive benefits by reason of nonavailability for work, failure to search for work, refusal of

86 suitable work, failure to apply for or to accept suitable work, or not having been unemployed
87 for a waiting period of one week for any week the individual is in the approved training.

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

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

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

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

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

99 (3) An individual located in a foreign country for three or more days of a week and
100 who is otherwise eligible for benefits is only eligible to receive benefits for that week if:

101 (a) the individual is legally authorized to work in the foreign country; and

102 (b) the state and the foreign country have entered into a reciprocal agreement
103 concerning the payment of unemployment benefits.

104 [~~3~~] (4) The department may, by rule, waive or alter either or both of the requirements
105 of Subsections (1)(a) and (b) as to:

106 (a) individuals attached to regular jobs;

107 (b) a disaster in Utah as declared by the president of the United States or by the state's
108 governor after giving due consideration to factors directly associated with the disaster,
109 including:

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

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

114 (iii) the magnitude of the disaster and the anticipated time for recovery; and
115 (c) cases or situations when it finds that compliance with the requirements would be
116 oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does
117 not conflict with Subsection 35A-4-401(1).

118 [~~4~~] (5) The director of the division or the director's designee shall submit an annual
119 written report to the Workforce Employment Advisory Council and to the Economic
120 Development and Workforce Services Interim Committee before November 1 concerning the
121 impact on individuals applying for unemployment compensation and the unemployment trust
122 insurance fund as a result of amendments made to Subsections (1)(f) and 35A-4-201(1) during
123 the Legislature's 2010 General Session.

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

125 **35A-4-405. Ineligibility for benefits.**

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

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

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

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

140 (d) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to
141 accompany or follow the claimant's spouse to a new locality does so without good cause for

142 purposes of this Subsection (1).

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

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

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

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

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

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

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

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

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

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

169 (3) (a) (i) If the division finds that the claimant has failed without good cause to

170 properly apply for available suitable work, to accept a referral to suitable work offered by the
171 employment office, or to accept suitable work offered by an employer or the employment
172 office.

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

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

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

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

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

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

196 (e) Notwithstanding any other provision of this chapter, no work is suitable, and
197 benefits may not be denied under this chapter to any otherwise eligible individual for refusing

198 to accept new work under any of the following conditions:

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

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

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

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

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

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

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

223 (5) (a) For each week ~~[with respect to which the claimant willfully made a false~~
224 ~~statement or representation or knowingly failed to report a material fact to obtain any benefit~~
225 ~~under the provisions of this chapter, and an additional 13 weeks for the first week the~~

226 ~~statement or representation was made or fact withheld and six weeks for each week thereafter;~~
227 ~~the additional weeks not to exceed 49 weeks.]~~ a claimant obtains a benefit under this chapter by
228 willfully making a false statement or representation or by knowingly failing to report a material
229 fact, and a penalty of no more than 49 additional weeks as follows:

230 (i) 13 weeks for the first week the false statement or representation was made or fact
231 withheld to receive a benefit; and

232 (ii) six weeks for each additional week the false statement or representation was made
233 or fact withheld to receive a benefit.

234 (b) The additional [~~period~~] penalty weeks shall [~~commence~~] begin on the Sunday
235 [~~following the issuance of a~~] of the week the determination finding the claimant in violation of
236 this Subsection (5) is issued.

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

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

241 (iii) [~~The~~] Subject to the requirements of Subsection 35A-4-506(7), the civil penalty
242 for fraud amount shall be [~~regarded~~] treated as any other penalty under this chapter.

243 (iv) [~~These amounts~~] The repayment of an overpayment and a civil penalty for fraud
244 shall be collectible by civil action or warrant in the manner provided in Subsections
245 35A-4-305(3) and (5).

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

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

251 (f) If the fraud determination is based solely on unreported or underreported work or
252 earnings, or both, and the claimant would have been eligible for benefits if the work or
253 earnings, or both, had been correctly reported, the individual does not lose eligibility for that

254 week because of the misreporting but is liable for the overpayment and subject to the penalties
255 in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

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

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

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

264 (ii) accrued vacation or terminal leave payment.

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

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

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

281 (ii) If compensation is denied to any individual under this Subsection (8) and the

282 individual was not offered an opportunity to perform the services for the educational institution
283 for the second of the academic years or terms, the individual shall be entitled to a retroactive
284 payment of compensation for each week for which the individual filed a timely claim for
285 compensation and for which compensation was denied solely by reason of this Subsection (8).

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

292 (d) (i) With respect to services described in Subsection (8)(a) or (b), compensation
293 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be
294 denied to an individual who performed those services in an educational institution while in the
295 employ of an educational service agency in accordance with the Federal Unemployment Tax
296 Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).

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

300 (e) With respect to services described in Subsection (8)(a) or (b), compensation
301 payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be
302 denied to an individual who performed those services:

303 (i) to or on behalf of an educational institution in accordance with the Federal
304 Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and

305 (ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to
306 which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.

307 (f) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d)
308 and (e) are payable in the same amount, on the same terms and subject to the same conditions
309 as compensation payable on the basis of other ~~[service]~~ services subject to this chapter.

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

315 (10) (a) For any week in which the benefits are based upon services performed by an
316 alien, unless the alien is an individual who has been lawfully admitted for permanent residence
317 at the time the services were performed, was lawfully present for purposes of performing the
318 services or[;] was permanently residing in the United States under color of law at the time the
319 services were performed, including an alien who is lawfully present in the United States as a
320 result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8
321 U.S.C. 1182(d)(5)(A).

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

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

328 Section 3. Section **35A-4-506** is amended to read:

329 **35A-4-506. Special Administrative Expense Account.**

330 (1) There is created a restricted account within the General Fund known as the "Special
331 Administrative Expense Account."

332 (2) (a) [~~Interest~~] Subject to Subsection (7), interest and penalties collected under this
333 chapter, less refunds made under Subsection 35A-4-306(5), shall be paid into the restricted
334 account from the clearing account of the restricted account at the end of each calendar month.

335 (b) A contribution to the restricted account and any other money received for that
336 purpose shall be paid into the restricted account.

337 (c) The money in the restricted account may not be expended in any manner that would

338 permit its substitution for, or a corresponding reduction in, federal funds that would in the
339 absence of the money be available to finance expenditures for the administration of this
340 chapter.

341 (3) Nothing in this section shall prevent the money from being used as a revolving fund
342 to cover expenditures, necessary and proper under this chapter, for which federal funds have
343 been duly requested but not yet received subject to the charging of those expenditures against
344 the funds when received.

345 (4) Subject to ~~Subsection (6)~~ Subsections (6) and (7), money in the restricted account
346 shall be deposited, administered, and dispersed in accordance with the directions of the
347 Legislature.

348 (5) Subject to Subsection (6), money in the restricted account is made available to
349 replace, within a reasonable time, any money received by this state under Section 302 of the
350 Social Security Act, 42 U.S.C. Sec. 502, as amended, that because of any action of contingency
351 has been lost or has been expended for purposes other than or in amounts in excess of those
352 necessary for the proper administration of this chapter.

353 (6) If money in the restricted account is used for a purpose unrelated to the
354 administration of the unemployment compensation program as described in Subsection
355 303(a)(8) of the Social Security Act, 42 U.S.C. Sec. 503(a)(8), as amended, the division shall
356 develop and follow a cost allocation plan in compliance with United States Department of
357 Labor regulations, including the cost principles described in 29 C.F.R. 97.22(b) and 2 C.F.R.
358 Part 225.

359 (7) Beginning October 1, 2013, 15% of a civil penalty for fraud collected under
360 Subsection 35A-4-405(5)(c)(i) shall be deposited into the Unemployment Compensation Fund,
361 described in Section 35A-4-501, in compliance with Subsection 303(a)(11) of the Social
362 Security Act, 42 U.S.C. Sec. 503(a)(8), as amended.

363 ~~(7)~~ (8) Money in the restricted account shall be available to the division for
364 expenditure in accordance with this section.

365 ~~(8)~~ (9) The state treasurer shall pay all warrants drawn upon it by the division or its

366 duly authorized agent in accordance with rules made by the department.

367 ~~[(9)]~~ (10) (a) The state treasurer is liable on the state treasurer's official bond for the
368 faithful performance of the treasurer's duties in connection with the Special Administrative
369 Expense Account described in this chapter.

370 (b) Liability on the official bond exists in addition to any liability upon any separate
371 bond that exists on the effective date of this provision or that may be given in the future.

372 (c) Any money recovered on any surety bond losses sustained by the Special
373 Administrative Expense Account shall be deposited in the restricted account or in the General
374 Fund if directed by the Legislature.