

**Representative Trevor Lee** proposes the following substitute bill:

**UNEMPLOYMENT INSURANCE AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Trevor Lee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Employment Security Act.

**Highlighted Provisions:**

This bill:

- ▶ identifies certain conduct that may disqualify an individual from receiving unemployment benefits; and
- ▶ requires the Department of Workforce Services to maintain a website for employers to access information and report possible fraud in relation to unemployment insurance.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**35A-4-405**, as last amended by Laws of Utah 2013, Chapter 315

ENACTS:

**35A-4-509**, Utah Code Annotated 1953



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

Section 1. Section **35A-4-405** is amended to read:

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

Except as otherwise provided in Subsection (5), 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 may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.

(c) Using available information from employers and the claimant, the division shall 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) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so without good cause for purposes of this Subsection (1).

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

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

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

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

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

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

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

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

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

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

73 (3) (a) (i) If the division finds that the claimant has failed without good cause to  
74 properly apply for available suitable work, to attend a scheduled interview for suitable work, to  
75 accept a referral to suitable work offered by the employment office, or to accept suitable work  
76 offered by an employer or the employment office.

77 (ii) The division shall consider a claimant's failure to accept an employer's offer of  
78 suitable work within a reasonable time period after receiving the offer, as defined by rules  
79 made by the division in consultation with the Employment Advisory Council created in Section  
80 35A-4-502(5), and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
81 Act, as a failure to accept suitable work.

82 [~~(ii)~~] (iii) The ineligibility continues until the claimant has performed services in bona  
83 fide covered employment and earned wages for the services in an amount equal to at least six  
84 times the claimant's weekly benefit amount.

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

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

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

94 (i) degree of risk involved to the individual's health, safety, and morals;

95 (ii) individual's physical fitness and prior training;

96 (iii) individual's prior earnings and experience;

97 (iv) individual's length of unemployment;

98 (v) prospects for securing local work in the individual's customary occupation;

99 (vi) wages for similar work in the locality; and

100 (vii) distance of the available work from the individual's residence.

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

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

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

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

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

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

117 (a) If the division finds that a strike has been fomented by a worker of any employer,  
118 none of the workers of the grade, class, or group of workers of the individual who is found to

119 be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However,  
120 if the division finds that the strike is caused by the failure or refusal of any employer to  
121 conform to any law of the state or of the United States pertaining to hours, wages, or other  
122 conditions of work, the strike may not render the workers ineligible for benefits.

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

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

132 (5) (a) For each week a claimant obtains a benefit under this chapter by willfully  
133 making a false statement or representation or by knowingly failing to report a material fact, and  
134 a penalty of no more than 49 additional weeks as follows:

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

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

139 (b) The additional penalty weeks shall begin on the Sunday of the week the  
140 determination finding the claimant in violation of this Subsection (5) is issued.

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

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

145 (iii) Subject to the requirements of Subsection 35A-4-506(7), the civil penalty for fraud  
146 amount shall be treated as any other penalty under this chapter.

147 (iv) The repayment of an overpayment and a civil penalty for fraud shall be collectible  
148 by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

149 (d) A claimant is ineligible for future benefits or waiting week credit, and any wage

150 credits earned by the claimant shall be unavailable for purposes of paying benefits, if any  
151 amount owed under this Subsection (5) remains unpaid.

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

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

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

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

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

168 (b) If the remuneration is less than the benefits that would otherwise be due, the  
169 claimant is entitled to receive for that week, if otherwise eligible, benefits reduced as provided  
170 in Subsection [35A-4-401\(3\)](#).

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

179 (b) (i) For any week in which the individual's benefits are based on service in any other  
180 capacity for an educational institution, and that week begins during a period between two

181 successive academic years or terms if the individual performs those services in the first of the  
182 academic years or terms and there is a reasonable assurance that the individual will perform the  
183 services in the second of the academic years or terms.

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

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

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

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

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

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

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

210 (f) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d)  
211 and (e) are payable in the same amount, on the same terms and subject to the same conditions

212 as compensation payable on the basis of other services subject to this chapter.

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

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

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

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

231 Section 2. Section **35A-4-509** is enacted to read:

232 **35A-4-509. Department to maintain website for employers.**

233 (1) The department shall develop and maintain a website through which employers  
234 may:

235 (a) access the following information:

236 (i) the division's rules and processes for the administration of this chapter;

237 (ii) a description of conduct that disqualifies a claimant from receiving benefits under  
238 Section [35A-4-405](#);

239 (iii) instructions for detecting and reporting possible violations of Section [35A-4-405](#);

240 (iv) information about the process for determining whether a claimant has violated  
241 Section [35A-4-405](#), including the factors considered by the division in making the  
242 determination;



243           (v) any other resources available to employers to assist in understanding the  
244 requirements of this chapter; and  
245           (vi) the division contact information;  
246           (b) report possible violations of Section [35A-4-405](#) to the division; and  
247           (c) communicate directly with the division.  
248           (2) The department shall ensure that the website described in Subsection (1):  
249           (a) is developed in a user-friendly manner with simple, easy-to-understand language;  
250 and  
251           (b) is directly accessible via a link from the main page of the division's website.