

Representative Trevor Lee proposes the following substitute bill:

UNEMPLOYMENT INSURANCE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Trevor Lee

Senate Sponsor: Daniel McCay

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;
- ▶ requires the Unemployment Insurance Division to make rules governing ineligibility for unemployment benefits as a result of a failure to accept suitable work;
- ▶ requires the Department of Workforce Services to maintain a website for employers to access information and report possible fraud in relation to unemployment insurance; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **35A-4-405**, as last amended by Laws of Utah 2013, Chapter 315

27 ENACTS:

28 **35A-4-509**, Utah Code Annotated 1953

29

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

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

32 **35A-4-405. Ineligibility for benefits.**

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

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

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

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

47 (d) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to
48 accompany or follow the claimant's spouse to a new locality does so without good cause for
49 purposes of this Subsection (1).

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

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

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

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

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

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

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

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

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

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

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

80 (ii) For purposes of Subsection (3)(a)(i), the division shall consider a claimant's failure
81 to accept an employer's offer of suitable work within two days after the day on which the offer
82 is sent as a failure to accept suitable work.

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

86 (b) (i) A claimant may not be denied eligibility for benefits for failure to apply, accept
87 referral, or accept available suitable work under circumstances where it would be contrary to

88 equity and good conscience to impose a disqualification.

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

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

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

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

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

98 (iv) individual's length of unemployment;

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

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

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

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

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

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

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

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

115 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
116 division shall make rules governing ineligibility for benefits under this Subsection (3).

117 (4) For any week in which the division finds that the claimant's unemployment is due
118 to a stoppage of work that exists because of a strike involving the claimant's grade, class, or

119 group of workers at the factory or establishment at which the claimant is or was last employed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

170 (ii) accrued vacation or terminal leave payment.

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

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

181 of the academic years or terms.

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

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

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

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

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

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

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

211 (ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to

212 which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.

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

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

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

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

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

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

235 **35A-4-509. Department to maintain website for employers.**

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

238 (a) access the following information:

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

240 (ii) a description of conduct that disqualifies a claimant from receiving benefits under
241 Section 35A-4-405;

242 (iii) instructions for detecting and reporting possible violations of Section 35A-4-405;

243 (iv) information about the process for determining whether a claimant has violated
244 Section 35A-4-405, including the factors considered by the division in making the
245 determination;

246 (v) any other resources available to employers to assist in understanding the
247 requirements of this chapter; and

248 (vi) the division contact information;

249 (b) report possible violations of Section 35A-4-405 to the division; and

250 (c) communicate directly with the division.

251 (2) The department shall ensure that the website described in Subsection (1):

252 (a) is developed in a user-friendly manner with simple, easy-to-understand language;

253 and

254 (b) is directly accessible via a link from the main page of the division's website.