

1 **UNEMPLOYMENT INSURANCE EXEMPTION**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jeremy A. Peterson**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Employment Security Act to make certain individuals ineligible
10 for certain unemployment benefits, if services were provided by the individual to an
11 educational institution.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that the denial of certain unemployment benefits, which under statute
15 currently apply to an individual who was employed by an education service agency,
16 also apply to an individual:

- 17 • whose employment provided services to an educational institution; and
- 18 • who worked for certain governmental entities or nonprofit organizations; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **35A-4-405**, as last amended by Laws of Utah 2007, Chapter 225

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

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

30 **35A-4-405. Ineligibility for benefits.**

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

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

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

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

45 (d) Notwithstanding any other subsection of this section, a claimant who has left work
46 voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so
47 without good cause for purposes of Subsection (1).

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

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

57 (c) Wage credits shall be deleted from the claimant's base period, and are not available

58 for this or any subsequent claim for benefits.

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

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

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

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

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

- 75 (i) degree of risk involved to his health, safety, and morals;
- 76 (ii) individual's physical fitness and prior training;
- 77 (iii) individual's prior earnings and experience;
- 78 (iv) individual's length of unemployment;
- 79 (v) prospects for securing local work in his customary occupation;
- 80 (vi) wages for similar work in the locality; and
- 81 (vii) distance of the available work from his residence.

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

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

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

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

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

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

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

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

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

113 (5) (a) For each week with respect to which the claimant willfully made a false

114 statement or representation or knowingly failed to report a material fact to obtain any benefit
115 under the provisions of this chapter, and an additional 13 weeks for the first week the statement
116 or representation was made or fact withheld and six weeks for each week thereafter; the
117 additional weeks not to exceed 49 weeks.

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

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

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

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

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

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

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

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

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

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

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

145 (ii) accrued vacation or terminal leave payment.

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

149 (8) (a) For any week in which the individual's benefits are based on service for an
150 educational institution in an instructional, research, or principal administrative capacity and
151 that begins during the period between two successive academic years, or during a similar
152 period between two regular terms, whether or not successive, or during a period of paid
153 sabbatical leave provided for in the individual's contract if the individual performs services in
154 the first of those academic years or terms and if there is a contract or reasonable assurance that
155 the individual will perform services in that capacity for an educational institution in the second
156 of the academic years or terms.

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

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

167 (c) With respect to any services described in Subsection (8)(a) or (b), compensation
168 payable on the basis of those services shall be denied to an individual for any week that
169 commences during an established and customary vacation period or holiday recess if the

170 individual performs the services in the period immediately before the vacation period or
171 holiday recess, and there is a reasonable assurance that the individual will perform the services
172 in the period immediately following the vacation period or holiday recess.

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

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

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

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

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

188 [~~(e)~~] (f) Benefits based on service in employment, defined in Subsections
189 35A-4-204(2)(d) and (e) are payable in the same amount, on the same terms and subject to the
190 same conditions as compensation payable on the basis of other service subject to this chapter.

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

196 (10) (a) For any week in which the benefits are based upon services performed by an
197 alien, unless the alien is an individual who has been lawfully admitted for permanent residence

198 at the time the services were performed, was lawfully present for purposes of performing the
199 services or, was permanently residing in the United States under color of law at the time the
200 services were performed, including an alien who is lawfully present in the United States as a
201 result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8
202 U.S.C. 1182(d)(5)(A).

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

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