

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2163

(By Delegate Campbell)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2163

(BY DELEGATE CAMPBELL)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation generally; and eliminating reductions in unemployment compensation for persons receiving benefits under Title II of the Social Security Act or similar payments under any act of Congress.

Be it enacted by the Legislature of West Virginia:

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. UNEMPLOYMENT COMPENSATION.

§21A-6-3. Disqualification for benefits.

- 1 Upon the determination of the facts by the commissioner,
- 2 an individual shall be disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving fault on
5 the part of the employer and until the individual returns to
6 covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision (1), an individual shall
9 not be deemed to have left his or her most recent work volun-
10 tarily without good cause involving fault on the part of the
11 employer, if such individual leaves his or her most recent work
12 with an employer and if he or she in fact, within a fourteen-day
13 calendar period, does return to employment with the last
14 preceding employer with whom he or she was previously
15 employed within the past year prior to his or her return to
16 workday, and which last preceding employer, after having
17 previously employed such individual for thirty working days or
18 more, laid off such individual because of lack of work, which
19 layoff occasioned the payment of benefits under this chapter or
20 could have occasioned the payment of benefits under this
21 chapter had such individual applied for such benefits. It is the
22 intent of this paragraph to cause no disqualification for benefits
23 for such an individual who complies with the foregoing set of
24 requirements and conditions. Further, for the purpose of this
25 subdivision, an individual shall not be deemed to have left his
26 or her most recent work voluntarily without good cause
27 involving fault on the part of the employer, if such individual
28 was compelled to leave his or her work for his or her own
29 health-related reasons and presents certification from a licensed
30 physician that his or her work aggravated, worsened, or will
31 worsen the individual's health problem.

32 (2) For the week in which he or she was discharged from
33 his or her most recent work for misconduct and the six weeks
34 immediately following such week; or for the week in which he
35 or she was discharged from his or her last thirty-day employing
36 unit for misconduct and the six weeks immediately following

37 such week. Such disqualification shall carry a reduction in the
38 maximum benefit amount equal to six times the individual's
39 weekly benefit. However, if the claimant returns to work in
40 covered employment for thirty days during his or her benefit
41 year, whether or not such days are consecutive, the maximum
42 benefit amount shall be increased by the amount of the decrease
43 imposed under the disqualification; except that:

44 If he or she were discharged from his or her most recent
45 work for one of the following reasons, or if he or she were
46 discharged from his or her last thirty days employing unit for
47 one of the following reasons: Misconduct consisting of willful
48 destruction of his or her employer's property; assault upon the
49 person of his or her employer or any employee of his or her
50 employer; if such assault is committed at such individual's
51 place of employment or in the course of employment; reporting
52 to work in an intoxicated condition, or being intoxicated while
53 at work; reporting to work under the influence of any controlled
54 substance, or being under the influence of any controlled
55 substance while at work; arson, theft, larceny, fraud or embez-
56 zlement in connection with his or her work; or any other gross
57 misconduct; he or she shall be and remain disqualified for
58 benefits until he or she has thereafter worked for at least thirty
59 days in covered employment: *Provided*, That for the purpose of
60 this subdivision the words "any other gross misconduct" shall
61 include, but not be limited to, any act or acts of misconduct
62 where the individual has received prior written warning that
63 termination of employment may result from such act or acts.

64 (3) For the week in which he or she failed without good
65 cause to apply for available, suitable work, accept suitable work
66 when offered, or return to his or her customary
67 self-employment when directed to do so by the commissioner,
68 and for the four weeks which immediately follow for such
69 additional period as any offer of suitable work shall continue
70 open for his or her acceptance. Such disqualification shall carry

71 a reduction in the maximum benefit amount equal to four times
72 the individual's weekly benefit amount.

73 (4) For a week in which his or her total or partial unem-
74 ployment is due to a stoppage of work which exists because of
75 a labor dispute at the factory, establishment or other premises
76 at which he or she was last employed, unless the commissioner
77 is satisfied that he or she: (1) Was not participating, financing,
78 or directly interested in such dispute, and (2) did not belong to
79 a grade or class of workers who were participating, financing or
80 directly interested in the labor dispute which resulted in the
81 stoppage of work. No disqualification under this subdivision
82 shall be imposed if the employees are required to accept wages,
83 hours or conditions of employment substantially less favorable
84 than those prevailing for similar work in the locality, or if
85 employees are denied the right of collective bargaining under
86 generally prevailing conditions, or if an employer shuts down
87 his or her plant or operation or dismisses his or her employees
88 in order to force wage reduction, changes in hours or working
89 conditions.

90 For the purpose of this subdivision, if any stoppage of work
91 continues longer than four weeks after the termination of the
92 labor dispute which caused stoppage of work, there shall be a
93 rebuttable presumption that part of the stoppage of work which
94 exists after said period of four weeks after the termination of
95 said labor dispute did not exist because of said labor dispute;
96 and in such event the burden shall be upon the employer or
97 other interested party to show otherwise.

98 (5) For a week with respect to which he or she is receiving
99 or has received:

100 (a) Wages in lieu of notice;

101 (b) Compensation for temporary total disability under the
102 workers' compensation law of any state or under a similar law
103 of the United States; or

104 (c) Unemployment compensation benefits under the laws of
105 the United States or any other state.

106 (6) For the week in which an individual has voluntarily quit
107 employment to marry or to perform any marital, parental or
108 family duty, or to attend to his or her personal business or
109 affairs and until the individual returns to covered employment
110 and has been employed in covered employment at least thirty
111 working days.

112 (7) Benefits shall not be paid to any individual on the basis
113 of any services, substantially all of which consist of participat-
114 ing in sports or athletic events or training or preparing to so
115 participate, for any week which commences during the period
116 between two successive sport seasons (or similar periods) if
117 such individual performed such services in the first of such
118 seasons (or similar periods) and there is a reasonable assurance
119 that such individual will perform such services in the later of
120 such seasons (or similar periods).

121 (8) (a) Benefits shall not be paid on the basis of services
122 performed by an alien unless such alien is an individual who
123 was lawfully admitted for permanent residence at the time such
124 services were performed, was lawfully present for purposes of
125 performing such services, or was permanently residing in the
126 United States under color of law at the time such services were
127 performed (including an alien who is lawfully present in the
128 United States as a result of the application of the provisions of
129 Section 203(a)(7) or Section 212(d)(5) of the Immigration and
130 Nationality Act): *Provided*, That any modifications to the
131 provisions of Section 3304(a)(14) of the Federal Unemploy-
132 ment Tax Act as provided by Public Law 94-566 which specify

133 other conditions or other effective date than stated herein for
134 the denial of benefits based on services performed by aliens and
135 which modifications are required to be implemented under state
136 law as a condition for full tax credit against the tax imposed by
137 the Federal Unemployment Tax Act shall be deemed applicable
138 under the provisions of this section;

139 (b) Any data or information required of individuals
140 applying for benefits to determine whether benefits are not
141 payable to them because of their alien status shall be uniformly
142 required from all applicants for benefits;

143 (c) In the case of an individual whose application for
144 benefits would otherwise be approved, no determination that
145 benefits to such individual are not payable because of his or her
146 alien status shall be made except upon a preponderance of the
147 evidence.

148 (9) For each week in which an individual is unemployed
149 because, having voluntarily left employment to attend a school,
150 college, university or other educational institution, he or she is
151 attending such school, college, university or other educational
152 institution, or is awaiting entrance thereto or is awaiting the
153 starting of a new term or session thereof, and until the individ-
154 ual returns to covered employment.

155 (10) For each week in which he or she is unemployed
156 because of his or her request, or that of his or her duly autho-
157 rized agent, for a vacation period at a specified time that would
158 leave the employer no other alternative but to suspend opera-
159 tions.

160 (11) For each week with respect to which he or she is
161 receiving or has received benefits under Title II of the Social
162 Security Act or similar payments under any act of Congress,
163 and/or remuneration in the form of an annuity, pension or other
164 retirement pay from a base period and/or chargeable employer

165 or from any trust or fund contributed to by a base period and/or
166 chargeable employer, the weekly benefit amount payable to
167 such individual for such week shall be reduced (but not below
168 zero) by the prorated weekly amount of said benefits, payments
169 and/or remuneration: *Provided*, That if such amount of benefits
170 is not a multiple of one dollar, it shall be computed to the next
171 lowest multiple of one dollar: *Provided, however*, That there
172 shall be no disqualification if in the individual's base period
173 there are no wages which were paid by the base period and/or
174 chargeable employer paying such remuneration, or by a fund
175 into which the employer has paid during said base period:
176 *Provided further*, That notwithstanding any other provision of
177 this subdivision to the contrary, the weekly benefit amount
178 payable to such individual for such week shall not be reduced
179 by any retirement benefits he or she is receiving or has received
180 under Title II of the Social Security Act or similar payments
181 under any act of Congress. Claimant ~~may be~~ required to certify
182 as to whether or not he or she is receiving or has been receiving
183 remuneration in the form of an annuity, pension or other
184 retirement pay from a base period and/or chargeable employer
185 or from a trust fund contributed to by a base period and/or
186 chargeable employer.

187 (12) For each week in which and for fifty-two weeks
188 thereafter, beginning with the date of the decision, if the
189 commissioner finds such individual who within twenty-four
190 calendar months immediately preceding such decision, has
191 made a false statement or representation knowing it to be false
192 or knowingly fails to disclose a material fact, to obtain or
193 increase any benefit or payment under this article: *Provided*,
194 That disqualification under this subdivision shall not preclude
195 prosecution under section seven, article ten of this chapter.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clayton White
Chairman, Senate Committee

W. Peter Bury
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Phillips
Clerk of the Senate

Gregory D. Boy
Clerk of the House of Delegates

Carl Roy Tomblin
President of the Senate

Robert S. Hart
Speaker of the House of Delegates

The within *is approved* this the *4th*
day of *May*, 2005.

Paul J. Fontana
Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 4:30 pm