

LEGISLATIVE BILL 341

Approved by the Governor April 15, 1985

Introduced by Business & Labor Committee, Barrett, 39,
Chairperson; Chronister, 18; Eret, 32;
Hall, 7; Labeledz, 5; Vickers, 38;
Wesely, 26

AN ACT relating to labor; to amend section 48-628, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to the disqualification for employment benefits; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-628, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-628. An individual shall be disqualified for benefits:

(a)(1) For the week in which he or she has left work voluntarily without good cause, if so found by the Commissioner of Labor, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner according to the circumstances in each case, or (2) for the week in which he or she has left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and he or she earns wages payable to him or her for such work, if so found by the commissioner, and for not more than one week which immediately follows such week;

(b) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner in each case according to the seriousness of the misconduct, ~~except~~ ~~PROVIDED~~, that if the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to such misconduct;

(c) For any week of unemployment in which he or she has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him or her, or to return to his or her customary self-employment, if any, and the

commissioner so finds, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner. (1) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his or her health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence. (2) Notwithstanding any other provisions of sections 48-601 to 48-669, no work shall be deemed suitable and benefits shall not be denied under such sections to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. (3) Notwithstanding any other provisions in this subdivision, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in this subdivision relating to failure to apply for or a refusal to accept suitable work;

(d) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed, except ~~PROVIDED~~, that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (1) he or she is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and (2) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute. If ~~AND PROVIDED FURTHER, that if~~ in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other

premises;

(e) For any week with respect to which he or she is receiving or has received remuneration in the form of (1) wages in lieu of notice, or a dismissal or separation allowance, (2) compensation for temporary partial disability under the ~~workmen's~~ worker's compensation law of any state or under a similar law of the United States, (3) primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any act of Congress, (4) retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer, or (5) a gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the ~~workmen's~~ worker's compensation law. Such payments made in lump sums shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. No payment by the United States to veterans for service-connected disabilities shall be deemed to be disqualifying or deductible from the benefit amount and no deduction shall be made for the part of any retirement pension which represents return of payments made by the individual;

(f) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, ~~except~~ , PROVIDED, that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;

(g) For any week of unemployment if such individual is a student. For the purpose of this subdivision, the term student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university or who has so attended during the most recent school term, unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school, ~~except~~ , PROVIDED, that attendance for training purposes under a plan approved by the commissioner for such individual before attendance shall not be disqualifying;

(h) For any week of unemployment if benefits claimed are based on services performed (1) in an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides

instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, (2) in any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual for any week under subdivision (h)(2) of this section and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of subdivision (h)(2) of this section, (3) in any capacity described in subdivision (h)(1) or (h)(2) of this section if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and (4) in any capacity described in subdivision (h)(1) or (h)(2) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (h)(1), (h)(2), and (h)(3) of this section. prior to December 31, 1977, in an instructional, research, or principal administrative capacity in an institution of higher education if such week of unemployment begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution of higher education for both such academic years or both such terms; (2) after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution or in an educational institution when employed by an educational service agency if such week of unemployment begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's

contract, or during an established and customary vacation period or holiday recess, if such individual performs such services in the first of such academic years or terms or prior to such paid sabbatical leave or established and customary vacation period or holiday recess, and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution or in an educational institution when employed by an educational service agency in the second of such academic years or terms or after such paid sabbatical leave or established and customary vacation period or holiday recess, or (3) in any other capacity for an educational institution or in an educational institution when employed by an educational service agency, other than an institution of higher education prior to September 3, 1982, if such week of unemployment begins during a period between two successive academic years or terms or during an established and customary vacation period or holiday recess, if such individual performs such services in the first of such academic years or terms or prior to such established and customary vacation period or holiday recess, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such established and customary vacation period or holiday recess, except that after September 3, 1982, if compensation is denied to any individual under subdivision (h)(3) of this section for any week other than a week which begins during an established and customary vacation period or holiday recess, and such individual was not offered an opportunity to perform such services for the educational institution or in the educational institution when employed by the educational service agency for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subdivision (h)(3) of this section. As used in subdivision (h)(3) of this section, educational service agency shall mean a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions;

(i) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment begins during the period between two successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods, and if there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods;

(j) For any week of unemployment benefits if the services upon which such benefits are based are performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203 (a)(7) or section 212 (d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence; and

(k) Notwithstanding any other provisions of this article, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236 (a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application to any such week in training of provisions in this law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision the term suitable employment shall mean, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty per cent of the individual's average weekly wage as determined for purposes of the Trade Act of 1974.

Sec. 2. That original section 48-628, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 3. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.