

Enrolled
Senate Bill 725

Sponsored by Senators ROSENBAUM, WINTERS; Representative COWAN

CHAPTER

AN ACT

Relating to unemployment insurance benefits; amending ORS 657.270, 657.317 and 657.320; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 657.317 is amended to read:

657.317. (1) The Director of the Employment Department shall waive recovery of benefits under ORS 657.315 if the director finds that the benefits are recoverable due to a change in federal or state law, the application of which has caused the disqualification of benefits previously paid.

(2) The director may waive recovery of benefits under ORS 657.315 if the director finds that recovery of benefits would be against equity and good conscience.

[2)] **(3)** If the United States Secretary of Labor serves notice that the provisions of subsection (1) **or (2)** of this section fail to meet the requirements of the Social Security Act or the Federal Unemployment Tax Act [*then subsection (1) of this section shall no longer be*], **the nonconforming subsection is no longer** of any force or effect.

[3)] **(4)** The director may waive establishment and recovery of overpaid benefits when no decision has been issued under ORS 657.310 or 657.315 and the amount of the overpayment is less than one-half of the maximum weekly benefit amount in effect at the time the overpayment is discovered.

SECTION 2. ORS 657.320 is amended to read:

657.320. (1)**(a)** If any amount paid to an individual as benefits, for which the individual has been found liable under the provisions of ORS 657.310 to repay or to have deducted from benefits payable, has neither been repaid nor [*so*] deducted within a period of three years following the date the decision establishing the overpayment became final, and is equal to or is less than the state maximum weekly benefit amount or determined by the Director of the Employment Department to be uncollectible, the overpayment together with the record of the overpayment and the resulting shortage, shall be canceled, and the overpayment, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund.

(b) [*However*] **Notwithstanding paragraph (a) of this subsection**, the overpayment may not be canceled if the debt is being recovered by payments or deductions that were received within the last three months [*nor*] **or** if repayment of the overpayment is required under ORS 657.213.

(2) If an amount paid to an individual as benefits, for which the individual has been found liable under the provisions of ORS 657.315 (1) to have deducted from benefits payable, has [*neither been repaid nor so*] **not been waived under ORS 657.317, paid or** deducted from benefits otherwise payable to the individual for any week or weeks within 52 weeks following the week in which the decision establishing the overpayment became final, the overpayment together with the record of the

overpayment and the resulting shortage, shall be canceled and the overpayment, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund.

(3) When in the judgment of the director the best interests of the Employment Department are served in an effort to settle accounts, the director may waive, reduce or compromise any part or all of the interest or penalty charged pursuant to ORS 657.310. The director may determine that the amount of interest or penalty due and unpaid is uncollectible, and write the amount off. In making the determination that interest or a penalty is uncollectible, the director shall consider, among other factors:

- (a) The administrative costs of continued collection efforts in relation to the amount due;
- (b) The accessibility of the debtor for effective collection actions; and
- (c) The debtor's financial condition and ability to pay the amount due, both current and projected.

SECTION 3. ORS 657.270 is amended to read:

657.270. (1) When a request for hearing upon the claim has been filed, as provided in ORS 657.266 to 657.269, an administrative law judge from the Office of Administrative Hearings established under ORS 183.605 shall be assigned to conduct such hearing. The Director of the Employment Department shall notify the parties, in plain language, of their right, upon their request, to receive copies of all documents and records in the possession of the Employment Department relevant to the decision of the authorized representative, including any statements of the claimant, employer or employer's agents.

(2) When the hearing is conducted by telephone, the director shall provide to all parties copies of all documents and records in the possession of the director that will be introduced at the hearing as exhibits, including any statements of the claimant, employer or employer's agents, and all jurisdictional documents, at least seven days prior to the hearing. A party may request that the hearing be continued in order to receive copies of and respond to documentary evidence introduced at the hearing and not provided to the party prior to the hearing.

(3)(a) When the claimant or the employer is unrepresented at the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented claimant or the employer must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the case.

(b) As used in this subsection, "unrepresented" means the claimant or the employer is not represented by an attorney, paralegal worker, legal assistant, union representative or person otherwise qualified by experience or training.

(4) After the administrative law judge has given all parties reasonable opportunity for a fair hearing, the administrative law judge shall promptly affirm, modify or set aside the decision of the authorized representative with respect to the claim. The administrative law judge promptly shall notify all parties entitled to notice of the decision of the authorized representative, as set forth in ORS 657.266 to 657.269, of the administrative law judge's decision, including a dismissal of the request for hearing as provided in subsection (7) of this section, and reasons therefor. The administrative law judge may address issues raised by evidence in the record, including but not limited to the nature of the separation and continued claims filed subsequent to issuance of a decision under ORS 657.267, notwithstanding the scope of the issues raised by the parties or the arguments in a party's request for hearing.

(5) Following issuance of a written decision by an administrative law judge, any party may file a request to reopen the hearing. The administrative law judge's decision whether to grant the request to reopen the hearing shall be in writing and shall be mailed to the parties. The administrative law judge may reopen the hearing if:

- (a) Any party that is requesting the reopening failed to appear at the hearing;
- (b) The party files the request within 20 days after the issuance of the written decision by the administrative law judge; and

(c) [The cause of the failure to appear was beyond the control of the requesting party] **The party shows good cause for failing to appear.**

(6) Except as provided in subsection (7) of this section, unless the director or any other party to the hearing, within 20 days after the delivery of the notice under subsection (4) of this section, or if mailed, within 20 days after the notice was mailed to the party's last-known address, files with the Employment Appeals Board an application for review, the decision of the administrative law judge shall be final.

(7)(a) The administrative law judge may dismiss a request for hearing under subsection (1) of this section when:

(A) The request for hearing is withdrawn by the requesting party;

(B) In response to a request by the administrative law judge or the administrative law judge's designee, the requesting party fails to provide, in a timely manner, the information necessary to allow the matter to be scheduled for hearing;

(C) The requesting party fails to appear at the time of the hearing;

(D) The issues are resolved by cancellation or amendment of the decision that is the subject of the hearing request;

(E) The requesting party fails to file the request for hearing within the time allowed by statute or rule and fails to show good cause for the delay;

(F) The request for hearing is filed prior to the date of the written decision or written determination that is the subject of the request; or

(G) The request for hearing is made by a person who is not entitled to a hearing or is not the authorized representative of a party who is entitled to a hearing.

(b) A dismissal by the administrative law judge under this subsection is final unless the party whose request for hearing has been dismissed files, within 20 days after the dismissal notice was mailed to the party's last-known address, an application for review as provided under this chapter.

SECTION 4. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 11, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 14, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State