

Enrolled
House Bill 3120

Sponsored by Representatives HERNANDEZ, BYNUM; Representatives ALONSO LEON, KENY-GUYER, Senator MONNES ANDERSON

CHAPTER

AN ACT

Relating to disqualification for unemployment insurance benefits; creating new provisions; amending ORS 657.176; and declaring an emergency.

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

SECTION 1. ORS 657.176 is amended to read:

657.176. (1) An authorized representative designated by the Director of the Employment Department shall promptly examine each claim to determine whether an individual is subject to disqualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension from work or as a result of failure to apply for or accept work and shall promptly enter a director's decision if required by ORS 657.267. The authorized representative may address issues raised by information before the authorized representative, including but not limited to the nature of the separation, notwithstanding the way the parties characterize those issues.

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

- (a) Has been discharged for misconduct connected with work;
- (b) Has been suspended from work for misconduct connected with work;
- (c) Voluntarily left work without good cause;
- (d) Failed without good cause to apply for available suitable work when referred by the employment office or the director;
- (e) Failed without good cause to accept suitable work when offered;
- (f) Has been discharged or suspended for being absent or tardy in reporting to work and the absence or tardiness occurred as a result of the unlawful use of any drug unless the person was participating in a recognized drug rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the Employment Department documentation of program participation. As used in this paragraph, "unlawful use" does not include the use of a drug taken under the supervision of a licensed health care professional and in accordance with the prescribed directions for consumption, or other uses authorized by the laws of this state;
- (g) Has been discharged or suspended for being absent or tardy in reporting to work and the absence or tardiness occurred as the result of the use of alcohol or cannabis on a second or any

subsequent occasion within a period of 12 months unless the person was participating in a recognized alcohol or cannabis rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the department documentation of program participation; or

(h) Has committed a disqualifying act described in subsection (9) or (10) of this section.

(3) If the authorized representative designated by the director finds that an individual was discharged for misconduct because of the individual's commission of a felony or theft in connection with the individual's work, all benefit rights based on wages earned prior to the date of the discharge shall be canceled if the individual's employer notifies the director of the discharge within 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance of the notice provided for in ORS 657.266, and:

(a) The individual has admitted commission of the felony or theft to an authorized representative of the director;

(b) The individual has signed a written admission of the felony or theft and the written admission has been presented to an authorized representative of the director; or

(c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

(4) An individual disqualified under subsection (2) of this section shall have the individual's maximum benefit amount reduced by eight times the individual's weekly benefit amount. However, in no event shall the individual's maximum benefit amount be reduced to less than the individual's weekly benefit amount unless the individual has previously received benefits during the individual's benefit year.

(5) An individual may not be disqualified from receiving benefits under subsection (2)(c) or (e) of this section or under ORS 657.200 if the individual ceases work or fails to accept work when a collective bargaining agreement between the individual's bargaining unit and the individual's employer is in effect and the employer unilaterally modifies the amount of wages payable under the agreement, in breach of the agreement.

(6) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

(a) The separation would be for reasons that constitute good cause;

(b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and

(c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving,

then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

(7) For purposes of applying subsection (2) of this section, when an employer has notified an individual that the individual will be discharged on a specific date and it is determined that:

(a) The discharge would not be for reasons that constitute misconduct connected with the work;

(b) The individual voluntarily left work without good cause prior to the date of the impending discharge; and

(c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge,

then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the voluntary leaving occurred through the week prior to the week in which the individual would have been discharged.

(8) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The voluntary leaving would be for reasons that do not constitute good cause;
- (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and
- (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,

then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

(9)(a) For the purposes of subsection (2) of this section, an individual is considered to have committed a disqualifying act when the individual:

(A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, cannabis or alcohol in the workplace;

(B) Fails or refuses to take a drug, cannabis or alcohol test as required by the employer's reasonable written policy;

(C) Refuses to cooperate with or subverts or attempts to subvert a drug, cannabis or alcohol testing process in any employment-related test required by the employer's reasonable written policy, including but not limited to:

- (i) Refusal or failure to complete proper documentation that authorizes the test;
- (ii) Refusal or failure to sign a chain of custody form;
- (iii) Presentation of false identification;
- (iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is identified by a testing facility; or

(v) Interference with the accuracy of the test results by conduct that includes dilution or adulteration of a test specimen;

(D) Is under the influence of intoxicants while performing services for the employer;

(E) Possesses cannabis or a drug unlawfully or in violation of the employer's reasonable written policy during work;

(F) Tests positive for alcohol, cannabis or an unlawful drug in connection with employment; or

(G) Refuses to enter into or violates the terms of a last chance agreement with the employer.

(b)(A) Except as provided in subparagraph (B) of this paragraph, an individual is not considered to have committed a disqualifying act under this subsection if the individual, on the date of separation or within 10 days after the date of separation, is participating in a recognized drug, cannabis or alcohol rehabilitation program and provides documentation of participation in the program to the department.

(B) This paragraph does not apply to an individual who has refused to enter into or has violated the terms of a last chance agreement with the employer.

(c) It is no defense or excuse under this section that the individual's separation resulted from alcohol use, cannabis use, unlawful drug use, alcoholism or addiction to cannabis or drugs.

(d) The department shall adopt rules to carry out the provisions of this subsection.

(10) For the purposes of subsection (2) of this section, an individual is considered to have committed a disqualifying act when the individual voluntarily leaves work, fails to apply for available suitable work when referred by the employment office or the director or fails to accept suitable work when offered:

(a) Because the employer has or introduces a reasonable written cannabis-free or drug-free workplace policy that is consistent with subsection (9)(a)(A) of this section;

(b) Because the employer requires the employee to consent to present or future drug, cannabis or alcohol tests under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section;

(c) To avoid taking a drug, cannabis or alcohol test under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section; or

(d) To avoid meeting the requirements of a last chance agreement.

(11) An individual may not be disqualified from receiving benefits under subsection (2)(c) of this section and shall be deemed laid off if the individual:

(a) Works under a collective bargaining agreement;

(b) Elects to be laid off when the employer has decided to lay off employees; and

(c) Is placed on the referral list under the collective bargaining agreement.

(12) An individual may not be disqualified from receiving benefits under subsection (2)(c), (d) or (e) of this section or be considered unavailable for purposes of ORS 657.155 if:

(a) The individual or a member of the individual's immediate family is a victim of domestic violence, stalking, [or] sexual assault **or intimidation**, or the individual believes that the individual or a member of the individual's immediate family could become a victim of domestic violence, stalking, [or] sexual assault **or intimidation**; and

(b) The individual leaves work, fails to apply for available suitable work or fails to accept suitable work when offered in order to protect the individual or a member of the individual's immediate family from domestic violence, stalking, [or] sexual assault **or intimidation** that the individual reasonably believes will occur as a result of the individual's continued employment or acceptance of work.

(13) For purposes of this section:

(a) "Adulterant" means a substance that does not occur naturally in urine, or that occurs naturally in urine but not at the concentrations detected. "Adulterant" includes but is not limited to glutaraldehyde, nitrite concentrations above physiological levels, hypochlorite or soap.

(b) "Drug" means a controlled substance as defined in ORS 475.005.

(c) "**Intimidation**" means:

(A) Conduct that, in the determination of the director, more likely than not constitutes the crime of intimidation in the first degree described in ORS 166.165 or the crime of intimidation in the second degree described in ORS 166.155; or

(B) Similar conduct, as defined by the director by rule.

[c] (d) "Last chance agreement" means a reasonable agreement:

(A) Between an employer and an employee who has violated the employer's reasonable written policy, has engaged in drug, cannabis or alcohol use connected with work or has admitted to alcohol abuse, cannabis abuse or unlawful drug use; and

(B) That permits the employee to return to work under conditions that may require the employee to:

(i) Abstain from alcohol use, cannabis use and unlawful drug use; and

(ii) Attend and comply with the requirements of a rehabilitation or education program acceptable to the employer.

[d] (e) [An individual is] "Under the influence of intoxicants" [when] **means** the level of alcohol, cannabis or unlawful drugs present in [the] **an** individual's body exceeds the amount prescribed in a collective bargaining agreement[,], or the amount prescribed in the employer's reasonable written policy if there is no applicable collective bargaining agreement provision.

SECTION 2. The amendments to ORS 657.176 by section 1 of this 2019 Act apply to claims for unemployment insurance benefits filed for any week, as defined in ORS 657.010, that begins on or after the effective date of this 2019 Act.

SECTION 3. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House April 18, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 16, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State