

House Bill 4007

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Oregon AFL-CIO)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that individual otherwise eligible for unemployment insurance benefits is not disqualified for any week that individual's unemployment is due to labor dispute in active progress at individual's place of employment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to unemployment insurance benefits for employees unemployed due to labor dispute; creating new provisions; amending ORS 657.176 and 657.200; and declaring an emergency.

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

SECTION 1. ORS 657.200 is amended to read:

657.200. [(1)] An individual [*is disqualified*] **who is otherwise eligible** for benefits **is not disqualified** for any week with respect to which the Director of the Employment Department finds that the unemployment of the individual is due to a labor dispute that is in active progress at the factory, establishment or other premises at which the individual is or was last employed or at which the individual claims employment rights by union agreement or otherwise.

[(2) *When an employer operates two or more premises in the conduct of business they shall be considered one premises for the purposes of this chapter if the labor dispute at one makes it impossible or impractical to conduct work at the others or in a normal manner.*]

[(3) *This section does not apply if it is shown to the satisfaction of the director that the individual:*]

[(a) *Is unemployed due to a lockout, as defined in ORS 662.205, at the factory, establishment or other premises at which the individual was last employed; or*]

[(b)(A) *Is not participating in or financing or directly interested in the labor dispute that caused the unemployment of the individual; and*]

[(B) *Does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute.*]

[(4) *An individual who meets all other applicable benefit eligibility requirements of this chapter is not disqualified from receipt of benefits by this section if:*]

[(a) *The individual was laid off from the employer prior to commencement of the labor dispute, did not work for the employer more than seven days during the 21 calendar days immediately prior to the commencement of the labor dispute and meets the requirements of subsection (3)(b)(A) of this section; or*]

[(b) *During the labor dispute, the individual's job or position is filled by the employer hiring a permanent replacement and the following conditions are met:*]

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *[(A) The individual subsequently unilaterally abandons the labor dispute and affirmatively seeks*
 2 *reemployment with the employer; and]*

3 *[(B) The individual meets the requirements of subsection (3)(b)(A) of this section.]*

4 *[(5) An individual who maintains membership in a labor union or who continues to pay labor un-*
 5 *ion dues does not violate the provisions of subsection (3)(b)(A) of this section, for the purpose of sub-*
 6 *section (4) of this section.]*

7 **SECTION 2.** ORS 657.176 is amended to read:

8 657.176. (1) An authorized representative designated by the Director of the Employment De-
 9 partment shall promptly examine each claim to determine whether an individual is subject to dis-
 10 qualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension
 11 from work or as a result of failure to apply for or accept work and shall promptly enter a director's
 12 decision if required by ORS 657.267. The authorized representative may address issues raised by
 13 information before the authorized representative, including but not limited to the nature of the
 14 separation, notwithstanding the way the parties characterize those issues.

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

21 (a) Has been discharged for misconduct connected with work;

22 (b) Has been suspended from work for misconduct connected with work;

23 (c) Voluntarily left work without good cause;

24 (d) Failed without good cause to apply for available suitable work when referred by the em-
 25 ployment office or the director;

26 (e) Failed without good cause to accept suitable work when offered;

27 (f) Has been discharged or suspended for being absent or tardy in reporting to work and the
 28 absence or tardiness occurred as a result of the unlawful use of any drug unless the person was
 29 participating in a recognized drug rehabilitation program at the time of the absence or tardiness,
 30 or is so participating within 10 days after the date of the discharge or suspension, and the person
 31 provides to the Employment Department documentation of program participation. As used in this
 32 paragraph, "unlawful use" does not include the use of a drug taken under the supervision of a li-
 33 censed health care professional and in accordance with the prescribed directions for consumption,
 34 or other uses authorized by the laws of this state;

35 (g) Has been discharged or suspended for being absent or tardy in reporting to work and the
 36 absence or tardiness occurred as the result of the use of alcohol or cannabis on a second or any
 37 subsequent occasion within a period of 12 months unless the person was participating in a recog-
 38 nized alcohol or cannabis rehabilitation program at the time of the absence or tardiness, or is so
 39 participating within 10 days after the date of the discharge or suspension, and the person provides
 40 to the department documentation of program participation; or

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

42 (3) If the authorized representative designated by the director finds that an individual was dis-
 43 charged for misconduct because of the individual's commission of a felony or theft in connection
 44 with the individual's work, all benefit rights based on wages earned prior to the date of the dis-
 45 charge shall be canceled if the individual's employer notifies the director of the discharge within

1 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance
 2 of the notice provided for in ORS 657.266, and:

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

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

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

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

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

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

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

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

23 (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned
 24 date of voluntary leaving, then the separation from work shall be adjudicated as if the actual vol-
 25 untary leaving had not occurred and the planned voluntary leaving had occurred. However, the in-
 26 dividual shall be ineligible for benefits for the period including the week in which the actual
 27 voluntary leaving occurred through the week prior to the week of the planned good cause voluntary
 28 leaving date.

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

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

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

34 (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the im-
 35 pending discharge, then the separation from work shall be adjudicated as if the voluntary leaving
 36 had not occurred and the discharge had occurred. However, the individual shall be ineligible for
 37 benefits for the period including the week in which the voluntary leaving occurred through the week
 38 prior to the week in which the individual would have been discharged.

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

41 (a) The voluntary leaving would be for reasons that do not constitute good cause;

42 (b) The employer discharged the individual, but not for misconduct connected with work, prior
 43 to the date of the planned voluntary leaving; and

44 (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,
 45 then the separation from work shall be adjudicated as if the discharge had not occurred and the

1 planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the
2 period including the week in which the actual discharge occurred through the week prior to the
3 week of the planned voluntary leaving date.

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

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

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

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

15 (i) Refusal or failure to complete proper documentation that authorizes the test;

16 (ii) Refusal or failure to sign a chain of custody form;

17 (iii) Presentation of false identification;

18 (iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is
19 identified by a testing facility; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (a) Works under a collective bargaining agreement;

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

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

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

11 (a) The individual or a member of the individual's immediate family is a victim of domestic vi-
 12 olence, stalking, sexual assault or intimidation, or the individual believes that the individual or a
 13 member of the individual's immediate family could become a victim of domestic violence, stalking,
 14 sexual assault or intimidation; and

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

19 (13) For purposes of this section:

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

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

24 (c) "Intimidation" means:

25 (A) Conduct that, in the determination of the director, more likely than not constitutes the crime
 26 of intimidation in the first degree described in ORS 166.165 (2017 Edition) or the crime of intim-
 27 idation in the second degree described in ORS 166.155 (2017 Edition); or

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

29 (d) "Last chance agreement" means a reasonable agreement:

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

33 (B) That permits the employee to return to work under conditions that may require the em-
 34 ployee to:

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

36 (ii) Attend and comply with the requirements of a rehabilitation or education program accepta-
 37 ble to the employer.

38 (e) "Under the influence of intoxicants" means the level of alcohol, cannabis or unlawful drugs
 39 present in an individual's body exceeds the amount prescribed in a collective bargaining agreement
 40 or the amount prescribed in the employer's reasonable written policy if there is no applicable col-
 41 lective bargaining agreement provision.

42 **SECTION 3. The amendments to ORS 657.176 and 657.200 by sections 1 and 2 of this 2020**
 43 **Act apply to weeks as defined in ORS 657.010 that begin on or after the effective date of this**
 44 **2020 Act.**

45 **SECTION 4. (1) If the United States Secretary of Labor serves notice that the amend-**

1 **ments to ORS 657.200 by section 1 of this 2020 Act fail to meet the requirements of the Social**
2 **Security Act or the Federal Unemployment Tax Act, the amendments to ORS 657.176 and**
3 **657.200 by sections 1 and 2 of this 2020 Act shall no longer be of any force or effect.**

4 **(2) The Director of the Employment Department shall notify the Legislative Counsel as**
5 **soon as practicable after receipt of the notice described in subsection (1) of this section.**

6 **SECTION 5. This 2020 Act being necessary for the immediate preservation of the public**
7 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
8 **on its passage.**

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