

Enrolled Senate Bill 916

Sponsored by Senator TAYLOR, Representatives GRAYBER, BOWMAN, Senators CAMPOS, MANNING JR; Senators GORSEK, JAMA, MEEK, PATTERSON, Representatives CHAICHI, FRAGALA, GAMBA, HUDSON, MUNOZ, NELSON, NGUYEN H, NOSSE, SOSA (at the request of AFL-CIO)

CHAPTER

AN ACT

Relating to unemployment insurance benefits for employees unemployed due to a labor dispute; creating new provisions; and amending ORS 657.010, 657.153, 657.176, 657.200, 657.202, 657.310, 657.317 and 657.400.

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 for benefits]* **Notwithstanding the provisions of this chapter relating to availability for work, actively seeking work or refusal to accept suitable work, an individual who is otherwise eligible for benefits is not disqualified for benefits or waiting week credit** 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]* **lockout** 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)(a) An individual is disqualified for benefits for the first week with respect to which the Director of the Employment Department finds that the unemployment of the individual is due to a strike 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.

(b) Notwithstanding the provisions of this chapter relating to availability for work, actively seeking work or refusal to accept suitable work, after the first week, an individual described in paragraph (a) of this subsection who is otherwise eligible for benefits is not disqualified for benefits or waiting week credit for:

(A) If the tax schedule in effect on the date on which the strike begins is Fund Adequacy Percentage Ratio I, II, III or IV, any of the subsequent 10 weeks of unemployment due to the strike.

(B) If the tax schedule in effect on the date on which the strike begins is Fund Adequacy Percentage Ratio V, VI, VII or VIII, any of the subsequent eight weeks of unemployment due to the strike.

[(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:]

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

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

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

SECTION 2. ORS 657.010, as amended by section 28, chapter 75, Oregon Laws 2024, is amended to read:

657.010. As used in this chapter, unless the context requires otherwise:

(1) "Base year" means the first four of the last five completed calendar quarters preceding the benefit year.

(2) "Benefits" means the money allowances payable to unemployed persons under this chapter.

(3) "Benefit year" means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual's last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director of the Employment Department may, by rule, prescribe.

(5) "Contribution" or "contributions" means *[the] taxes [that are the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund].*

(6) "Educational institution," including an institution of higher education, means an institution:

(a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;

(b) That is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or that offers courses for credit that are transferable to an approved, registered or accredited school;

(c) In which the course or courses of study or training that it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

(d) In which the course or courses of study or training are offered on a regular and continuing basis.

(7) “Employment office” means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(8) “Hospital” has the meaning given that term in ORS 442.015.

(9) “Institution of higher education” means an educational institution that:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor’s or higher degree, or provides a program that is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(10) “Instructional capacity” does not include services performed as an instructional assistant as defined in ORS 342.120.

(11) “Internal Revenue Code” means the federal Internal Revenue Code, as amended and in effect on December 31, 2023.

(12) “Labor dispute” means any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms of employment of the individuals are involved.

(13) “Lockout” means any refusal by an employer to permit employees to work as a result of a dispute with the employees affecting wages, hours or other terms or conditions of their employment.

[(12)] (14) “Nonprofit employing unit” means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

[(13)] (15) “State” includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands’ law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.

(16) “Strike” means any concerted act of employees in a lawful refusal under applicable state or federal law to perform work or services for an employer.

[(14)] (17) “Taxes” means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.

[(15)] (18) “Valid claim” means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.

[(16)] (19) “Week” means any period of seven consecutive calendar days ending at midnight, as the director may prescribe by rule.

SECTION 2a. If House Bill 2236 becomes law, section 2 of this 2025 Act (amending ORS 657.010) is repealed and ORS 657.010, as amended by section 28, chapter 75, Oregon Laws 2024, and section 1, chapter __, Oregon Laws 2025 (Enrolled House Bill 2236), is amended to read:

657.010. As used in this chapter, unless the context requires otherwise:

(1) “Base year” means the first four of the last five completed calendar quarters preceding the benefit year.

(2) “Benefits” means the money allowances payable to unemployed persons under this chapter.

(3) “Benefit year” means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual’s last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

(4) “Calendar quarter” means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director of the Employment Department may, by rule, prescribe.

(5) “Client employer” means an employer that enters into a PEO relationship.

(6) “Client worker” means an individual who performs services for compensation for the client of a professional employer organization.

(7) “Contribution” or “contributions” means the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund.

(8) “Covered employee” means a client worker for whom a PEO has assumed employer responsibilities under a PEO relationship.

(9) “Educational institution,” including an institution of higher education, means an institution:

(a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;

(b) That is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or that offers courses for credit that are transferable to an approved, registered or accredited school;

(c) In which the course or courses of study or training that it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

(d) In which the course or courses of study or training are offered on a regular and continuing basis.

(10) “Employment office” means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(11) “Hospital” has the meaning given that term in ORS 442.015.

(12) “Institution of higher education” means an educational institution that:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor’s or higher degree, or provides a program that is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(13) “Instructional capacity” does not include services performed as an instructional assistant as defined in ORS 342.120.

(14) “Internal Revenue Code” means the federal Internal Revenue Code, as amended and in effect on December 31, 2023.

(15) “Labor dispute” means any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms of employment of the individuals are involved.

(16) “Lockout” means any refusal by an employer to permit employees to work as a result of a dispute with the employees affecting wages, hours or other terms or conditions of their employment.

[(15)] (17) “Nonprofit employing unit” means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

[(16)] (18) “PEO relationship” means an agreement between a PEO and a client employer under which certain employer responsibilities for some or all of the client employer’s workers are allocated.

[(17)(a)] (19)(a) “Professional employer organization” or “PEO” means a person required to be licensed under ORS 656.855 that enters into a PEO relationship with a client employer.

(b) “Professional employer organization” or “PEO” does not mean a person that solely provides workers to a client on a temporary basis or a person that provides payroll processing or similar administrative services without assuming employer responsibilities for client workers.

[(18)] **(20)** “State” includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands’ law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.

(21) “Strike” means any concerted act of employees in a lawful refusal under applicable state or federal law to perform work or services for an employer.

[(19)] **(22)** “Taxes” means contributions.

[(20)] **(23)** “Temporary basis” means providing workers to a client:

(a) For special situations, including but not limited to employee absences, employee leaves, professional skill shortages, seasonal workloads and special assignments and projects with the expectation that the position will be terminated when the special situation ends.

(b) As probationary new hires with a reasonable expectation of transitioning to permanent employment with the client, if the client uses a preestablished probationary period in its overall employment selection program.

[(21)] **(24)** “Valid claim” means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.

[(22)] **(25)** “Week” means any period of seven consecutive calendar days ending at midnight, as the director may prescribe by rule.

SECTION 3. ORS 657.153 is amended to read:

657.153. **(1) Except as provided in subsection (2) of this section,** the amount of back pay paid by an employer, or awarded by a judge or arbitrator, to an individual may not be reduced to reflect the amount of benefits that the individual received *[during]* **for** the period for which the back pay was paid or awarded.

(2) Subsection (1) of this section does not apply to back pay paid to resolve a strike by an employer to an employee who received benefits for the period during which the strike was in active progress.

SECTION 4. ORS 657.310 is amended to read:

657.310. (1)[(a)] *[If]* **This section applies to an individual who, according to a decision of the Director of the Employment Department, *[decides that an individual]* received any benefits *[under this chapter]* to which the individual is not entitled because the individual[,];**

(a) Regardless of the individual’s knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact[,]; **or**

(b) Notwithstanding ORS 657.315, received back pay from an employer to resolve a strike.

(2)(a) *[the]* An individual described in subsection (1) of this section is liable:

(A) To repay the amount of the benefits to the director for the Unemployment Compensation Trust Fund; or

(B) To have the amount of the benefits deducted from any future benefits otherwise payable to the individual under this chapter.

(b) For purposes of paragraph (a)(B) of this subsection, the director may deduct all or any part of the individual’s future weekly benefits.

(c) Except as provided in subsection [(2)(b)] **(3)(b)** of this section, **an overpayment of** benefits described in *[paragraph (a) of this]* subsection **(1) of this section** may be collected for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

(d) Notice provided to an individual of the individual’s liability for recovery of benefits under this section must include a description of:

(A) The basis for the director’s decision that benefits have been overpaid; and

(B) The consequences of the overpayment, including the methods of recovery of the overpaid amount, with interest and penalties, and the possibility of waiver under ORS 657.317.

[(2)(a)] **(3)(a)** In addition to the liability described in subsection [(1)] **(2)** of this section, an individual who has been disqualified for benefits under ORS 657.215 is liable for a penalty imposed at a rate prescribed by the director of at least 15, but not greater than 30, percent of the amount of benefits the individual received to which the individual was not entitled.

(b) Notwithstanding subsection [(1)(c)] **(2)(c)** of this section, overpaid benefits that are subject to the penalty imposed under this subsection may be collected at any time.

[(3)] **(4)** A decision of the director under this section does not authorize the recovery of the amount of any benefits paid to an individual until the decision is final and the decision specifies **the week or weeks for which the benefits were paid and:**

(a)**(A)** That the individual, by reason of the false statement, misrepresentation or nondisclosure, is liable to repay the amount to the Unemployment Compensation Trust Fund; **and**

[(b)] **(B)** The nature of the false statement, misrepresentation or nondisclosure; *[and]* **or**

(b) That the individual, by reason of the receipt of back pay as described in subsection (1)(b) of this section, is liable to repay the amount to the Unemployment Compensation Trust Fund.

[(c) *The week or weeks for which the benefits were paid.*]

[(4)(a)] **(5)(a)** The director may bring a civil action against an individual to collect any amount subject to recovery and any penalty due under this section.

(b) Judgment rendered shall bear interest at the rate provided in subsection [(5)] **(6)** of this section.

[(5)] **(6)** Interest on any amount liable to be repaid under this section shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one percent per month or fraction of a month, beginning on the first day of the month following 60 days after the finality of the administrative decision establishing the overpayment.

[(6)(a)] **(7)(a)** Deductions from unemployment insurance benefits pursuant to subsection [(1)(a)(B)] **(2)(a)(B)** of this section shall be applied solely to the amount of the benefits liable to be repaid under this section.

(b) All other payments shall be applied first to court costs, then to penalties, then to interest, then to the amount liable to be repaid.

[(7)(a)] **(8)(a)** The following amounts collected under this section shall be paid into the Unemployment Compensation Trust Fund:

(A) Amounts in repayment of benefits; and

(B) The portion of penalties imposed under subsection [(2)] **(3)** of this section that is 15 percent of the amount of benefits received.

(b) The following amounts collected under this section shall be paid into the Employment Department Special Fraud Control Fund in accordance with the provisions of ORS 657.400:

(A) Interest other than interest described in paragraph (c) of this subsection; and

(B) The portion of penalties imposed under subsection [(2)] **(3)** of this section that remains after subtraction of the portion of penalties described in paragraph (a)(B) of this subsection.

(c) Interest payable on any portion of benefits that were funded by the federal government shall be paid to the United States Department of Labor.

[(8)] **(9)** The director shall adopt rules establishing standards and procedures for the repayment of benefits and payment of penalties and interest under this section.

SECTION 5. ORS 657.317 is amended to read:

657.317. (1) The Director of the Employment Department shall waive recovery of overpaid 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)(a) Except as provided in paragraph (b) of this subsection, the director may waive recovery of all or any part of overpaid benefits subject to repayment or deduction under ORS 657.310 [(1)]

(2) or 657.315 (1) if the director finds that recovery of the benefits would be against equity and good conscience.

(b) The director may not waive recovery under this subsection of overpaid benefits that are:

(A) Described in ORS 657.310 (1)(b); or

(B) Subject to the penalty imposed under ORS 657.310 [(2)] (3).

(3) 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.

(4) Any waiver granted under this section extinguishes all liability of the debtor for the waived amounts.

SECTION 6. Section 7 of this 2025 Act is added to and made a part of ORS chapter 657.

SECTION 7. (1) Benefits charged to a school district or an education service district for weeks during a labor dispute shall count toward the total compensation in the applicable collective bargaining agreement of the employee who received the benefits.

(2) The district shall deduct from the employee's future wages the amount of the benefits so charged.

SECTION 8. 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, sexual assault or a bias crime, or the individual believes that the individual or a member of the individual's immediate family could become a victim of domestic violence, stalking, sexual assault or a bias crime; 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, sexual assault or a bias crime 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) "Bias crime" means:

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

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

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

(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.

(e) "Under the influence of intoxicants" means the level of alcohol, cannabis or unlawful drugs present in 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 9. ORS 657.202 is amended to read:

657.202. (1) As used in this section, "temporary lockout benefits" means benefits payable as provided in this section to individuals who are unemployed due to a lockout [*as defined in ORS 662.205*].

(2) An individual is eligible to receive temporary lockout benefits for a week in an amount equal to the weekly benefit amount of the individual's most recent unemployment benefit claim if:

(a) Prior to the week, the individual has received all of the regular benefits that were available to the individual under this chapter;

(b) The individual is not eligible for any other benefits, including benefits provided under any federal law extending benefits beyond those provided for as regular benefits; and

(c) At the time of filing an initial or additional claim, the individual is unemployed due to a lockout at the individual's place of employment.

(3) The maximum temporary lockout benefit amount an individual may receive under this section is 26 times the weekly benefit amount of the individual's most recent unemployment benefit claim.

(4) Notwithstanding subsections (2) and (3) of this section, temporary lockout benefits otherwise payable to an individual under this section may not be paid for weeks that begin after the week in which the lockout ends.

(5) An employer shall be charged for temporary lockout benefits in the manner provided in this chapter for charging employers for regular benefits.

SECTION 10. ORS 657.400 is amended to read:

657.400. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Employment Department Special Fraud Control Fund. The Employment Department Special Fraud Control Fund shall consist of moneys collected or received by the Employment Department as follows:

(a) Interest and penalties described under ORS 657.310 [(7)(b)] **(8)(b)**.

(b) All gifts to, interest on or profits earned by the Employment Department Special Fraud Control Fund.

(2) The moneys in the Employment Department Special Fraud Control Fund are continuously appropriated to the Employment Department and may not be appropriated, transferred or otherwise made available to any other state agency.

(3) All amounts in the Employment Department Special Fraud Control Fund shall be used for the following purposes, as included in the biennial budget of the Employment Department and approved by the Legislative Assembly:

(a) Administrative costs associated with the prevention, discovery and collection of unemployment benefit overpayments;

(b) Costs associated with the Lost Wages Assistance program administered by the department pursuant to a grant agreement with the Federal Emergency Management Agency under authority established by the presidential memorandum issued on August 8, 2020, on the subject of Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019; and

(c) Administrative costs associated with other benefit programs administered by the department.

(4) If, under subsection (3)(b) of this section, the Employment Department uses any amounts for the purpose of reimbursing the Federal Emergency Management Agency for overpayments of benefits under the Lost Wages Assistance program:

(a) Any amounts of overpayments collected from the debtor by the department shall be deposited in the Employment Department Special Fraud Control Fund.

(b)(A) The department may collect such overpayments under the provisions of this chapter as if the amounts were overpayments of regular benefits; or

(B) The Director of the Employment Department may waive collection of such overpayments if the director determines that it is administratively impracticable to pursue collection.

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Obadiah Rutledge, Secretary of Senate

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Rob Wagner, President of Senate

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Julie Fahey, Speaker of House

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