

House Bill 3395

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project)

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**.

Prohibits denial of unemployment insurance benefits to otherwise eligible individual who has qualified for benefits on basis of part-time work or who seeks suitable and comparable part-time work.

Prohibits denial of unemployment insurance benefits to otherwise eligible individual who has completed temporary work and whose last employer has not guaranteed future work.

Requires Director of Employment Department, in determining whether job that is available to claimant is suitable, to consider duration of available job, likelihood that temporary work might lead to permanent work and likelihood that claimant will find permanent work by continuing claimant's job search rather than seeking or accepting temporary work.

A BILL FOR AN ACT

1
2 Relating to eligibility for unemployment insurance based on part-time or temporary work; creating
3 new provisions; and amending ORS 657.155, 657.176 and 657.190.

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

5 **SECTION 1.** ORS 657.155 is amended to read:

6 657.155. (1) An unemployed individual shall be eligible to receive benefits with respect to any
7 week only if the Director of the Employment Department finds that:

8 (a) The individual has registered for work at and thereafter has continued to report at an em-
9 ployment office in accordance with such rules as the director may prescribe. However, the director
10 may, by rule, waive or alter either or both of the requirements of this subsection as to individuals
11 attached to regular jobs and as to such other types of cases or situations with respect to which the
12 director finds that compliance with such requirements would be oppressive[,] or would be incon-
13 sistent with the purposes of this chapter[;], provided[,] that no such rule conflicts with ORS 657.255.

14 (b) The individual has made a claim for benefits with respect to such week in accordance with
15 ORS 657.260.

16 (c) The individual is able to work, is available for work[,] and is actively seeking and unable to
17 obtain suitable work. [*No*] **An** individual participating in a community work and training program,
18 as defined in ORS 411.855, [*shall*] **is not**, solely by reason thereof, [*be*] unavailable for work within
19 the meaning of this section. **Benefits may not be denied to an otherwise eligible individual who**
20 **has qualified for benefits on the basis of part-time work or who seeks suitable and compa-**
21 **table part-time work under rules adopted by the director.**

22 (d) The individual has been unemployed for a waiting period of one week.

23 (e) The individual is not disqualified from benefits or ineligible for benefits under any other
24 section of this chapter.

25 (f) The individual is qualified for benefits under ORS 657.150.

26 (2) An individual who leaves the normal labor market area of the individual for the major por-
27 tion of any week is presumed to be unavailable for work within the meaning of this section. This

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 presumption may be overcome if the individual establishes to the satisfaction of the director that
2 the individual has conducted a bona fide search for work and has been reasonably accessible to
3 suitable work in the labor market area in which the individual spent the major portion of the week
4 to which the presumption applies.

5 (3) The director shall either promptly allow credit or pay benefits for any week for which ben-
6 efits are claimed or promptly give notice of denial thereof in the manner provided in ORS 657.267
7 and 657.268.

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

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

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

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

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

24 (c) Voluntarily left work without good cause;

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

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

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

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

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

43 (3) If the authorized representative designated by the director finds an individual was discharged
44 for misconduct because of the individual's commission of a felony or theft in connection with the
45 individual's work, all benefit rights based on wages earned prior to the date of the discharge shall

1 be canceled if the individual's employer notifies the director of the discharge within 10 days fol-
 2 lowing issuance of the notice provided for in ORS 657.265 or 30 days following issuance of the notice
 3 provided for in ORS 657.266, and:

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

6 (b) The individual has signed a written admission of such act and such written admission has
 7 been presented to an authorized representative of the director; or

8 (c) Such act has resulted in a conviction by a court of competent jurisdiction.

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

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

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

21 (a) That such separation would be for reasons that constitute good cause;

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

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

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

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

33 (a) That such discharge would not be for reasons that constitute misconduct connected with the
 34 work;

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

37 (c) The voluntary leaving of work occurs no more than 15 days prior to the date of the im-
 38 pending discharge,

39
 40 then such separation from work shall be adjudicated as if the voluntary leaving had not occurred
 41 and the discharge had occurred. However, the individual shall be ineligible for benefits for the pe-
 42 riod including the week in which the voluntary leaving occurred through the week prior to the week
 43 in which the individual would have been discharged.

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

1 (a) That such voluntary leaving would be for reasons that do not constitute good cause;

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

4 (c) The actual discharge occurs no more than 15 days prior to the planned voluntary leaving,

5
6 then such separation from work shall be adjudicated as if the discharge had not occurred and the
7 planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the
8 period including the week in which the actual discharge occurred through the week prior to the
9 week of the planned voluntary leaving date.

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

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

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

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

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

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

23 (iii) Presentation of false identification;

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

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

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

29 (E) Possesses a drug unlawfully or in violation of the employer's reasonable written policy dur-
30 ing work;

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

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

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

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

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

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

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

1 work when offered:

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

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

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

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

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

11 (a) Works under a collective bargaining agreement;

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

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

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

16 (a) The individual is a victim, or is the parent or guardian of a minor child who is a victim, of
17 domestic violence, stalking or sexual assault;

18 (b) The individual leaves work, fails to apply for available suitable work or fails to accept suit-
19 able work when offered to protect the individual or the minor child from further domestic violence,
20 stalking or sexual assault that the individual reasonably believes will occur at the workplace or
21 elsewhere; and

22 (c) The individual pursues reasonable available alternatives to leaving work, failing to apply for
23 available suitable work or failing to accept suitable work when offered.

24 **(13) An otherwise eligible individual may not be disqualified from receiving benefits under**
25 **subsection (2) of this section and benefits may not be denied to the individual who has com-**
26 **pleted temporary work and whose last employer has not guaranteed future work.**

27 [(13)] (14) For purposes of this section:

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

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

32 (c) "Last chance agreement" means a reasonable agreement:

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

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

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

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

41 (d) An individual is "under the influence of intoxicants" when the level of alcohol, marijuana
42 or unlawful drugs present in the individual's body exceeds the amount prescribed in a collective
43 bargaining agreement, or the amount prescribed in the employer's reasonable written policy if there
44 is no applicable collective bargaining agreement provision.

45 **SECTION 3. The amendments to ORS 657.155 and 657.176 by sections 1 and 2 of this 2007**

1 **Act apply only to claims for benefits filed on or after the effective date of this 2007 Act.**

2 **SECTION 4.** ORS 657.190 is amended to read:

3 657.190. (1) In determining whether any work is suitable for an individual, the Director of the
4 Employment Department shall consider, among other factors, the degree of risk involved to the
5 health, safety and morals of the individual, the physical fitness and prior training, experience and
6 prior earnings of the individual, the length of unemployment and prospects for securing local work
7 in the customary occupation of the individual and the distance of the available work from the resi-
8 dence of the individual.

9 (2) Notwithstanding subsection (1) of this section, the director may refer claimants to JOBS Plus
10 Program jobs for which the claimant does not have adequate skills or experience when the JOBS
11 Plus Program job is likely to result in an upgrade in the claimant's skills and experience.

12 **(3) It is the policy of this state to favor permanent work over temporary work. Pursuant**
13 **to this policy, in determining whether work is suitable, the director shall consider the dura-**
14 **tion of the available job, the likelihood that temporary work might lead to permanent work**
15 **and the likelihood that the individual will find permanent work by continuing the individual's**
16 **job search rather than seeking or accepting temporary work.**

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