

A-Engrossed
House Bill 2203

Ordered by the House March 3
Including House Amendments dated March 3

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Employment Department)

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.

Provides that in case of conflict between provision of Employment Department Law and other provision of state law, Employment Department Law controls. Limits employment that will end individual's disqualification from receipt of unemployment benefits to employment subject to Employment Department Law or equivalent law in another state or Canada, employment required to be covered under Federal Unemployment Tax Act and employment by federal government.

A BILL FOR AN ACT

1
2 Relating to unemployment insurance; creating new provisions; and amending ORS 657.176 and
3 657.265.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 657.**

6 **SECTION 2. For purposes of this chapter, if any provision of state law conflicts with any**
7 **provision of this chapter, this chapter shall control.**

8 **SECTION 3. 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[, *as defined in ORS 657.030 (2), in this state or in employment, as de-*
18 *defined by a law equivalent to ORS 657.030 (2), in any other state or Canada*] **subject to this chapter**
19 **or the equivalent law of another state or Canada or as defined in ORS 657.030 (2)** or as an
20 employee of the federal government, for which remuneration is received that equals or exceeds four
21 times the individual's weekly benefit amount subsequent to the week in which the act causing the
22 disqualification occurred, if the authorized representative designated by the director finds that the
23 individual:

- 24 (a) Has been discharged for misconduct connected with work;
25 (b) Has been suspended from work for misconduct connected with work;
26 (c) Voluntarily left work without good cause;

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

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

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

12 (g) Has been discharged or suspended for being absent or tardy in reporting to work and the
13 absence or tardiness occurred as the result of the use of alcohol on a second or any subsequent
14 occasion within a period of 12 months unless the person was participating in a recognized alcohol
15 rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days
16 after the date of the discharge or suspension, and the person provides to the department documen-
17 tation of program participation; or

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

19 (3) If the authorized representative designated by the director finds that an individual was dis-
20 charged for misconduct because of the individual's commission of a felony or theft in connection
21 with the individual's work, all benefit rights based on wages earned prior to the date of the dis-
22 charge shall be canceled if the individual's employer notifies the director of the discharge within
23 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance
24 of the notice provided for in ORS 657.266, and:

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

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

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

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

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

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

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

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

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

1 date of voluntary leaving,

2
3 then the separation from work shall be adjudicated as if the actual voluntary leaving had not oc-
4 curred and the planned voluntary leaving had occurred. However, the individual shall be ineligible
5 for benefits for the period including the week in which the actual voluntary leaving occurred
6 through the week prior to the week of the planned good cause voluntary leaving date.

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

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

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

12 (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the im-
13 pending discharge,

14
15 then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and
16 the discharge had occurred. However, the individual shall be ineligible for benefits for the period
17 including the week in which the voluntary leaving occurred through the week prior to the week in
18 which the individual would have been discharged.

19 (8) 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 that:

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

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

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

25
26 then the separation from work shall be adjudicated as if the discharge had not occurred and the
27 planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the
28 period including the week in which the actual discharge occurred through the week prior to the
29 week of the planned voluntary leaving date.

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

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

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

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

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

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

43 (iii) Presentation of false identification;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (a) Works under a collective bargaining agreement;

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

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

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

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

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

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

44 (13) For purposes of this section:

45 (a) "Adulterant" means a substance that does not occur naturally in urine, or that occurs na-

1 turally in urine but not at the concentrations detected. “Adulterant” includes but is not limited to
2 glutaraldehyde, nitrite concentrations above physiological levels, hypochlorite or soap.

3 (b) “Drug” means a controlled substance as defined in ORS 475.005.

4 (c) “Last chance agreement” means a reasonable agreement:

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

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

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

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

13 (d) An individual is “under the influence of intoxicants” when the level of alcohol, marijuana
14 or unlawful drugs present in the individual’s body exceeds the amount prescribed in a collective
15 bargaining agreement, or the amount prescribed in the employer’s reasonable written policy if there
16 is no applicable collective bargaining agreement provision.

17 **SECTION 4.** ORS 657.265 is amended to read:

18 657.265. When a claimant files an initial claim or an additional claim, the Employment Depart-
19 ment promptly shall give written notice of the claim filing to the claimant’s most recent employing
20 unit. If the claimant did not receive or will not receive remuneration **from qualifying employment,**
21 **as described in ORS 657.176,** in an amount greater than or equal to four times the claimant’s
22 weekly benefit amount from the claimant’s most recent employing unit, the Employment Department
23 shall notify the claimant’s next previous employing unit or units until the Employment Department
24 has notified [*those*] **all** of the claimant’s former employing units [*which*] **that,** in the aggregate, have
25 paid or will pay the claimant remuneration **from qualifying employment, as described in ORS**
26 **657.176,** in an amount [*which*] **that** is equal to or exceeds four times the claimant’s weekly benefit
27 amount.

28 **SECTION 5. The amendments to ORS 657.176 and 657.265 by sections 3 and 4 of this 2009**
29 **Act apply only to claims for benefits filed on or after the effective date of this 2009 Act.**

30