

Enrolled Senate Bill 172

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CHAPTER

AN ACT

Relating to unemployment insurance benefits; creating new provisions; amending ORS 657.150, 657.176, 657.310, 657.315, 657.317 and 657B.010; and declaring an emergency.

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

SECTION 1. ORS 657.310 is amended to read:

657.310. (1)(a) If 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, 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, the individual is liable:

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

 [(b)] (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) of this section, benefits described in paragraph (a) of this subsection 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) In addition to the liability described in subsection (1) 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) of this section, overpaid benefits that are subject to the penalty imposed under this subsection may be collected at any time.

 (3) 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:

(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;

(b) The nature of the false statement, misrepresentation or nondisclosure; and

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

(4)(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 [*may be collected by the director in a civil action against the individual brought in the name of the director*].

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

(5) 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) Deductions from unemployment insurance benefits pursuant to subsection [(1)(b)] **(1)(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) 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) 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) 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) The director shall adopt rules establishing standards and procedures for the repayment of benefits and payment of penalties and interest under this section.

SECTION 2. ORS 657.315 is amended to read:

657.315. (1)(a) If the Director of the Employment Department decides that an individual has been paid benefits to which the individual is not entitled because of an error not due to the individual providing a false statement or misrepresentation of a material fact or not disclosing a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, the individual is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter or the equivalent law of another state for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

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

(c) Any 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 recovery of the overpaid amount and the possibility of waiver under ORS 657.317.

(2) **Subject to ORS 657.269 and 657.270**, 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 that the individual is liable to have the amount deducted from any future benefits otherwise payable under this chapter or the equivalent law of another state for any week or*

weeks within five years following the week in which the decision establishing the erroneous payment became final].

(3) **The director may bring a civil action against an individual to recover** amounts paid to [an] **the** individual in excess of the maximum benefits allowable pursuant to this chapter [*may be recovered in a civil action brought in the name of the director for such purpose*].

SECTION 3. 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 [657.315] **657.310 (1) 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 subject to the penalty imposed under ORS 657.310 (2).

[*(3) If the United States Secretary of Labor serves notice that the provisions of subsection (1) or (2) of this section fail to meet the requirements of the Social Security Act or the Federal Unemployment Tax Act, the nonconforming subsection is no longer of any force or effect.*]

[*(4)*] (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 4. The amendments to ORS 657.310, 657.315 and 657.317 by sections 1 to 3 of this 2021 Act apply to benefits determined to have been overpaid before, on or after the effective date of this 2021 Act.

SECTION 5. ORS 657.150, as amended by section 1, chapter 1, Oregon Laws 2020 (second special session), is amended to read:

657.150. (1) An individual shall be paid benefits for weeks during the benefit year in an amount [*which*] **that** is to be determined by taking into account the individual's work in subject employment in the base year as provided in this section.

(2)(a) To qualify for benefits an individual must have:

(A) Worked in subject employment in the base year with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year; and

(B) Have earned wages in subject employment equal to six times the individual's weekly benefit amount in employment for service performed subsequent to the beginning of a preceding benefit year if benefits were paid to the individual for any week in the preceding benefit year.

(b) If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to this chapter during the base year.

(3) If the wages paid to an individual are not based upon a fixed period of time or if wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, for the purposes of subsections (2) to (5) of this section, the individual's wages shall be allocated in accordance with rules prescribed by the Director of the Employment Department. Such rules shall, insofar as possible, produce results the same as those [*which*] **that** would exist if the individual had been paid wages at regular intervals. The director may adopt rules to attribute hours of work to an individual if the individual is not paid on an hourly basis or if the employer does not report the number of hours worked.

(4)(a) An eligible individual's weekly benefit amount shall be 1.25 percent of the total wages paid in the individual's base year. However, such amount shall not be less than the minimum, nor more than the maximum weekly benefit amount.

[(a)] (b) The minimum weekly benefit amount shall be 15 percent (0.1500) of the state average weekly covered wage for the preceding calendar year, effective for any benefit year commencing on and after the week [which] **that** includes July 4, 1975, and the week that includes each July 4 thereafter.

[(b)] (c) The maximum weekly benefit amount shall be:

(A) Fifty-five percent (0.5500) of the state average weekly covered wage for calendar year 1979, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1980, and through any benefit year commencing with the week [which] **that** includes June 27, 1981.

(B) Fifty-five percent (0.5500) of the state average weekly covered wage for calendar year 1980, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1981, through any benefit year commencing with the week [which] **that** includes September 27, 1981.

(C) Fifty-eight percent (0.5800) of the state average weekly covered wage for calendar year 1980, effective for any benefit year commencing with and after the week [which] **that** includes October 4, 1981, through any benefit year commencing with the week [which] **that** includes June 27, 1982.

(D) Sixty percent (0.6000) of the state average weekly covered wage for calendar year 1981, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1982, through any benefit year commencing with the week [which] **that** includes June 27, 1983.

(E) Sixty-four percent (0.6400) of the state average covered weekly wage for the preceding calendar year, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1983, and the week [which] **that** includes each July 4 thereafter.

[(c)] (d) All weekly benefit amounts, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

[(d)] (e) For the purposes of this subsection, the state average weekly covered wage means an amount determined by the Employment Department by dividing the total wages paid by subject employers during the year by 52 times the average monthly employment reported by subject employers for the year.

(5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the individual's weekly benefit amount, or one-third of the base year's wages paid, whichever is the lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

(6) An eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced, but not below zero, by the amount of earnings paid or payable that exceeds the greater of:

(a) \$300; or

(b) One-third of the individual's weekly benefit amount.

(7) Payment [which] **that** has been, is or will be paid to an individual for a holiday or vacation shall be considered as earnings in the determination of the amount of benefits payable with respect to the week in which the holiday or vacation falls in the same manner as provided in subsection (6) of this section. However, if payment for the holiday or vacation is paid more than 45 days prior to the holiday or vacation or is delayed more than 45 days following the end of the week in which the holiday or vacation falls, the provisions of this section do not apply and previously reduced benefits shall be adjusted accordingly.

(8) Payment that has been or is paid to an individual as back pay shall be considered as earnings in the determination of the amount of benefits payable with respect to the period for which the back pay has been or is paid.

[(8)] (9) Payment that has been, or will be, made to an individual as a member of a reserve component of the Armed Forces of the United States, including the organized militia of the State of Oregon, for the performance of inactive duty training shall not be considered as earnings in the determination of the amount of benefits payable.

SECTION 6. ORS 657.150, as amended by sections 1 and 3, chapter 1, Oregon Laws 2020 (second special session), is amended to read:

657.150. (1) An individual shall be paid benefits for weeks during the benefit year in an amount [which] **that** is to be determined by taking into account the individual's work in subject employment in the base year as provided in this section.

(2)(a) To qualify for benefits an individual must have:

(A) Worked in subject employment in the base year with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year; and

(B) Have earned wages in subject employment equal to six times the individual's weekly benefit amount in employment for service performed subsequent to the beginning of a preceding benefit year if benefits were paid to the individual for any week in the preceding benefit year.

(b) If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to this chapter during the base year.

(3) If the wages paid to an individual are not based upon a fixed period of time or if wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, for the purposes of subsections (2) to (5) of this section, the individual's wages shall be allocated in accordance with rules prescribed by the Director of the Employment Department. Such rules shall, insofar as possible, produce results the same as those [which] **that** would exist if the individual had been paid wages at regular intervals. The director may adopt rules to attribute hours of work to an individual if the individual is not paid on an hourly basis or if the employer does not report the number of hours worked.

(4)(a) An eligible individual's weekly benefit amount shall be 1.25 percent of the total wages paid in the individual's base year. However, such amount shall not be less than the minimum, nor more than the maximum weekly benefit amount.

[(a)] (b) The minimum weekly benefit amount shall be 15 percent (0.1500) of the state average weekly covered wage for the preceding calendar year, effective for any benefit year commencing on and after the week [which] **that** includes July 4, 1975, and the week that includes each July 4 thereafter.

[(b)] (c) The maximum weekly benefit amount shall be:

(A) Fifty-five percent (0.5500) of the state average weekly covered wage for calendar year 1979, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1980, and through any benefit year commencing with the week [which] **that** includes June 27, 1981.

(B) Fifty-five percent (0.5500) of the state average weekly covered wage for calendar year 1980, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1981, through any benefit year commencing with the week [which] **that** includes September 27, 1981.

(C) Fifty-eight percent (0.5800) of the state average weekly covered wage for calendar year 1980, effective for any benefit year commencing with and after the week [which] **that** includes October 4, 1981, through any benefit year commencing with the week [which] **that** includes June 27, 1982.

(D) Sixty percent (0.6000) of the state average weekly covered wage for calendar year 1981, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1982, through any benefit year commencing with the week [which] **that** includes June 27, 1983.

(E) Sixty-four percent (0.6400) of the state average covered weekly wage for the preceding calendar year, effective for any benefit year commencing with and after the week [which] **that** includes July 4, 1983, and the week [which] **that** includes each July 4 thereafter.

[(c)] (d) All weekly benefit amounts, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

[(d)] (e) For the purposes of this subsection, the state average weekly covered wage means an amount determined by the Employment Department by dividing the total wages paid by subject employers during the year by 52 times the average monthly employment reported by subject employers for the year.

(5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the individual's weekly benefit amount, or one-third of the base year's wages paid, whichever is the lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

(6) An eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced, but not below zero, by the amount of earnings paid or payable that exceeds the greater of:

(a) Ten times the minimum hourly wage established by the laws of this state; or

(b) One-third of the individual's weekly benefit amount.

(7) Payment [*which*] **that** has been, is or will be paid to an individual for a holiday or vacation shall be considered as earnings in the determination of the amount of benefits payable with respect to the week in which the holiday or vacation falls in the same manner as provided in subsection (6) of this section. However, if payment for the holiday or vacation is paid more than 45 days prior to the holiday or vacation or is delayed more than 45 days following the end of the week in which the holiday or vacation falls, the provisions of this section do not apply and previously reduced benefits shall be adjusted accordingly.

(8) Payment that has been or is paid to an individual as back pay shall be considered as earnings in the determination of the amount of benefits payable with respect to the period for which the back pay has been or is paid.

[8] (9) Payment that has been, or will be, made to an individual as a member of a reserve component of the Armed Forces of the United States, including the organized militia of the State of Oregon, for the performance of inactive duty training shall not be considered as earnings in the determination of the amount of benefits payable.

SECTION 7. Section 8 of this 2021 Act is added to and made a part of ORS chapter 657.

SECTION 8. 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 the period for which the back pay was paid or awarded.

SECTION 9. Section 8 of this 2021 Act and the amendments to ORS 657.150 by sections 5 and 6 of this 2021 Act apply to back pay paid or awarded on or after the effective date of this 2021 Act.

SECTION 10. ORS 657B.010 is amended to read:

657B.010. As used in this chapter:

(1) "Alternate base year" means the last four completed calendar quarters preceding the benefit year.

(2) "Average weekly wage" means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 [~~(4)(d)~~] (4)(e) as determined not more than once per year.

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

(4) "Benefits" means family and medical leave insurance benefits.

(5) "Benefit year" means the 12-month period as determined by the Director of the Employment Department by rule under ORS 657B.340.

(6) "Child" means:

(a) A biological child, adopted child, stepchild or foster child of a covered individual or of the covered individual's spouse or domestic partner;

(b) A person who is or was a legal ward of a covered individual or of the covered individual's spouse or domestic partner; or

(c) A person who is or was in a relationship of in loco parentis with a covered individual or with the covered individual's spouse or domestic partner.

(7) "Contribution" or "contributions" means the money payments made by any of the following under ORS 657B.150:

(a) An employer;

(b) An eligible employee;

- (c) A self-employed individual;
 - (d) A tribal government; or
 - (e) An employee of a tribal government.
- (8) "Covered individual" means any one of the following who qualifies to receive family and medical leave insurance benefits:
- (a) An eligible employee;
 - (b) A self-employed individual; or
 - (c) An employee of a tribal government.
- (9) "Domestic partner" means an individual joined in a domestic partnership.
- (10) "Domestic partnership" has the meaning given that term in ORS 106.310.
- (11) "Eligible employee" means:
- (a)(A) An employee who has earned at least \$1,000 in wages during the base year; or
 - (B) If an employee has not earned at least \$1,000 in wages during the base year, an employee who has earned at least \$1,000 in wages during the alternate base year; and
 - (b) Who may apply for paid family and medical leave insurance benefits under ORS 657B.015.
- (12) "Eligible employee's average weekly wage" means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee during the base year by the number of weeks in the base year.
- (13)(a) "Employee" means:
- (A) An individual performing services for an employer for remuneration or under any contract of hire, written or oral, express or implied.
 - (B) A home care worker as defined in ORS 410.600.
- (b) "Employee" does not include:
- (A) An independent contractor as defined in ORS 670.600.
 - (B) A participant in a work training program administered under a state or federal assistance program.
 - (C) A participant in a work-study program that provides students in secondary or postsecondary educational institutions with employment opportunities for financial assistance or vocational training.
 - (D) A railroad worker exempted under the federal Railroad Unemployment Insurance Act.
 - (E) A volunteer.
- (14)(a) "Employer" means any person that employs one or more employees working anywhere in this state or any agent or employee of such person to whom the duties of the person under this chapter have been delegated.
- (b) "Employer" includes:
- (A) A political subdivision of this state or any county, city, district, authority or public corporation, or any instrumentality of a county, city, district, authority or public corporation, organized and existing under law or charter;
 - (B) An individual;
 - (C) Any type of organization, corporation, partnership, limited liability company, association, trust, estate, joint stock company or insurance company;
 - (D) Any successor in interest to an entity described in subparagraph (C) of this paragraph;
 - (E) A trustee, trustee in bankruptcy or receiver; or
 - (F) A trustee or legal representative of a deceased person.
- (c) "Employer" does not include the federal government or a tribal government.
- (15) "Employment agency" has the meaning given that term in ORS 658.005.
- (16) "Family and medical leave insurance benefits" means the wage replacement benefits that are available to a covered individual under ORS 657B.050 or under the terms of an employer plan approved under ORS 657B.210, for family leave, medical leave or safe leave.
- (17)(a) "Family leave" means leave from work taken by a covered individual:
- (A) To care for and bond with a child during the first year after the child's birth or during the first year after the placement of the child through foster care or adoption; or

- (B) To care for a family member with a serious health condition.
- (b) "Family leave" does not mean:
 - (A) Leave described in ORS 659A.159 (1)(d);
 - (B) Leave described in ORS 659A.159 (1)(e); or
 - (C) Leave authorized under ORS 659A.093.
- (18) "Family member" means:
 - (a) The spouse of a covered individual;
 - (b) A child of a covered individual or the child's spouse or domestic partner;
 - (c) A parent of a covered individual or the parent's spouse or domestic partner;
 - (d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;
 - (e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;
 - (f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;
 - (g) The domestic partner of a covered individual; or
 - (h) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.
- (19) "Medical leave" means leave from work taken by a covered individual that is made necessary by the individual's own serious health condition.
- (20) "Parent" means:
 - (a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;
 - (b) A person who was a foster parent of a covered individual when the covered individual was a minor;
 - (c) A person designated as the legal guardian of a covered individual at the time the covered individual was a minor or required a legal guardian;
 - (d) A person with whom a covered individual was or is in a relationship of in loco parentis; or
 - (e) A parent of a covered individual's spouse or domestic partner who meets a description under paragraphs (a) to (d) of this subsection.
- (21) "Safe leave" means leave taken for any purpose described in ORS 659A.272.
- (22) "Self-employed individual" means:
 - (a) An individual who has self-employment income as defined in section 1402(b) of the Internal Revenue Code as amended and in effect on December 31, 2018; or
 - (b) An independent contractor as defined in ORS 670.600.
- (23) "Serious health condition" has the meaning given that term in ORS 659A.150.
- (24) "Third party administrator" means a third party that enters into an agreement with the Director of the Employment Department to implement and administer the paid family and medical leave program established under this chapter.
- (25) "Tribal government" has the meaning given that term in ORS 181A.680.
- (26) "Wages" has the meaning given that term in ORS 657.105.

SECTION 11. 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 *[intimidation]* **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 *[intimidation]* **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 *[intimidation]* **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.

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

[(c)] "Intimidation" means:]

[(A)] Conduct that, in the determination of the director, more likely than not constitutes the crime of intimidation in the first degree described in ORS 166.165 (2017 Edition) or the crime of intimidation in the second degree described in ORS 166.155 (2017 Edition); or]

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

(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 12. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 22, 2021

Received by Governor:

Repassed by Senate June 8, 2021

.....M.,....., 2021

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2021

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 3, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Shemia Fagan, Secretary of State