

LEGISLATIVE BILL 128

Approved by the Governor April 24, 1973

Introduced by Mills, 44

AN ACT to amend section 48-628, Revised Statutes Supplement, 1977, relating to labor; to provide additional provisions relating to disqualification of benefits; to provide severability; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-628, Revised Statutes Supplement, 1977, be amended to read as follows:

48-628. An individual shall be disqualified for benefits:

(a) For the week in which he has left work voluntarily without good cause, if so found by the Commissioner of Labor, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner according to the circumstances in each case;

(b) For the week in which he has been discharged for misconduct connected with his work, if so found by the commissioner, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner in each case according to the seriousness of the misconduct; Provided, that if the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to such misconduct;

(c) For any week of unemployment in which he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment, if any, and the commissioner so finds, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner, and his total benefit amount to which he is then entitled shall be reduced by an amount equal to the number of weeks for which he has been disqualified by the commissioner. (1) In

determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of sections 48-601 to 48-669, no work shall be deemed suitable and benefits shall not be denied under said sections to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(3) Notwithstanding any other provisions in this subdivision, no otherwise eligible individual shall be denied benefits with respect to any week in which he is in training with the approval of the commissioner, by reason of the application of the provisions in this subdivision relating to failure to apply for or a refusal to accept suitable work;

(d) For any week with respect to which the commissioner finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed; Provided, that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (1) he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work, and (2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute; and provided further, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

(e) For any week with respect to which he is receiving or has received remuneration in the form of (1) wages in lieu of notice, or a dismissal or separation



allowance, (2) compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States, (3) primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any Act of Congress, or for which he has applied to receive such benefits or payments, or (4) retirement pension or other gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workmen's compensation law. If such remuneration is less than the benefits which would otherwise be due he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. In the case of lump sum payments as to items (1) and (4) of this subdivision, such payments shall be prorated by weeks on the basis of the most recent weekly wage of the individual; Provided, no payment by the United States to veterans (i) for service or nonservice connected disabilities, or (ii) for retirement in lieu of service connected disability compensation, or (iii) for retirement or retainer benefits, shall be deemed to be disqualifying or deductible from the benefit amount; and provided further, no deduction shall be made for the part of any retirement pension which represents return of payments made by the individual;

(f) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; Provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply;

(g) For any week of unemployment if such individual is a student. For the purpose of this subdivision, the term student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university or who has so attended during the most recent school term, unless the major portion of his wages for insured work during his base period was for services performed while attending school; Provided, attendance for training purposes under a plan approved by the commissioner for such individual before attendance shall not be disqualifying;

(h) For any week of unemployment if benefits claimed are based on services performed (1) prior to December 31, 1977 in an instructional, research, or

principal administrative capacity in an institution of higher education if such week of unemployment begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution of higher education for both such academic years or both such terms; (2) after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution if such week of unemployment begins during the period between two successive years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms; or after December 31, 1977, in any other capacity for an educational institution, other than an institution of higher education, if such week of unemployment begins during a period between two successive academic years or terms, or which consists of authorized school vacation if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such authorized school vacation; and

(i) For any week of unemployment benefits if the services upon which such benefits are based consist substantially of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment begins during the period between two successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods; and

(j) If the individual has been discharged from military service or released from active duty after twenty years or more of service and has not been employed since such discharge or release.

Sec. 2. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the



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validity or constitutionality of the remaining portions thereof.

Sec. 3. That original section 48-628, Revised Statutes Supplement, 1977, is repealed.