

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 841

Introduced by Bloomfield, 17.

Read first time January 08, 2016

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Employment Security Law; to amend
- 2 sections 48-626 and 48-628, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to maximum annual unemployment benefit
- 4 amounts and disqualification for unemployment benefits; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-626, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-626 (1) For any benefit year beginning before October 1, 2017,
4 any Any otherwise eligible individual shall be entitled during any
5 benefit year to a total amount of benefits equal to whichever is the
6 lesser of (a 1) twenty-six times his or her benefit amount or (b 2) one-
7 third of his or her wages in the employment of each employer per calendar
8 quarter of his or her base period; except that when any individual has
9 been separated from his or her employment with a base period employer
10 under the circumstances under which he or she was or could have been
11 determined disqualified under subdivision (1)(a) or (2) of section
12 48-628, the total benefit amount based on the employment from which he or
13 she was so separated shall be reduced by an amount equal to the number of
14 weeks for which he or she is or would have been disqualified had he or
15 she filed a claim immediately after the separation, multiplied by his or
16 her weekly benefit amount, but not more than one reduction may be made
17 for each separation. In no event shall the benefit amount based on
18 employment for any employer be reduced to less than one benefit week when
19 the individual was or could have been determined disqualified under
20 subdivision (1)(a) of section 48-628 if so found by the commissioner to
21 have left work voluntarily without good cause.

22 (2) For any benefit year beginning on or after October 1, 2017, any
23 otherwise eligible individual shall be entitled during any benefit year
24 to a total amount of benefits equal to whichever is the lesser of (a)
25 twenty-six times his or weekly benefit amount or (b) one-third of his or
26 her wages in the employment of each employer per calendar quarter of his
27 or her base period; except that when any individual has been separated
28 from his or her employment with a base period employer under
29 circumstances under which he or she was or could have been determined
30 disqualified under subdivision (1)(b) or (2) of section 48-628, the total
31 benefit amount based on the employment from which he or she was so

1 separated shall be reduced by an amount determined pursuant to
2 subdivisions (2)(a) and (b) of this section, but not more than one
3 reduction may be made for each separation. In no event shall the benefit
4 amount based on employment for any employer be reduced to less than one
5 benefit week when the individual was or could have been determined
6 disqualified under subdivision (1)(b) of section 48-628 if so found by
7 the commissioner to have left work voluntarily without good cause. For
8 purposes of determining the reduction of benefits described in this
9 subsection:

10 (a) If the claimant has been separated from his or her employment
11 under circumstances under which he or she was or could have been
12 determined disqualified under subdivision (1)(b) of section 48-628, his
13 or her total benefit amount shall be reduced by:

14 (i) Two times his or her weekly benefit amount if he or she left
15 work voluntarily for the sole purpose of accepting previously secured,
16 permanent, full-time, insured work, which he or she does accept, which
17 offers a reasonable expectation of betterment of wages or working
18 conditions, or both, and for which he or she earns wages payable to him
19 or her; or

20 (ii) Thirteen times his or her weekly benefit amount if he or she
21 left work voluntarily without good cause for any reason other than that
22 described in subdivision (2)(a)(i) of this section.

23 (b) If the claimant has been separated from his or her employment
24 under circumstances under which he or she was or could have been
25 determined disqualified under subdivision (2) of section 48-628, his or
26 her total benefit amount shall be reduced by fourteen times his or her
27 weekly benefit amount.

28 (3) For purposes of sections 48-623 to 48-626, wages shall be
29 counted as wages for insured work for benefit purposes with respect to
30 any benefit year only if such benefit year begins subsequent to the date
31 on which the employer by whom such wages were paid has satisfied the

1 conditions of section 48-603 or subsection (3) of section 48-661 with
2 respect to becoming an employer.

3 (4) In order to determine the benefits due under this section and
4 sections 48-624 and 48-625, each employer shall make reports, in
5 conformity with reasonable rules and regulations adopted by the
6 commissioner, of the wages of any claimant. If any such employer fails
7 ~~shall fail~~ to make such report within the time prescribed, the
8 commissioner may accept the statement of such claimant as to his or her
9 wages, and any benefit payments based on such statement of earnings, in
10 the absence of fraud or collusion, will be final as to amount.

11 Sec. 2. Section 48-628, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 48-628 An individual shall be disqualified for benefits:

14 (1)(a) For any benefit year beginning before October 1, 2017:

15 (i) For the week in which he or she has left work voluntarily
16 without good cause, if so found by the commissioner, and for the thirteen
17 weeks which immediately follow such week. A temporary employee of a
18 temporary help firm has left work voluntarily without good cause if the
19 temporary employee does not contact the temporary help firm for
20 reassignment upon completion of an assignment and the temporary employee
21 has been advised by the temporary help firm of his or her obligation to
22 contact the temporary help firm upon completion of assignments and has
23 been advised by the temporary help firm that the temporary employee may
24 be denied benefits for failure to do so; or

25 (ii) For the week in which he or she has left work voluntarily for
26 the sole purpose of accepting previously secured, permanent, full-time,
27 insured work, which he or she does accept, which offers a reasonable
28 expectation of betterment of wages or working conditions, or both, and
29 for which he or she earns wages payable to him or her, if so found by the
30 commissioner, and for the two weeks which immediately follow such week;
31 or

1 (b) For any benefit year beginning on or after October 1, 2017, for
2 the week in which he or she has left his or her most recent work
3 voluntarily without good cause, if so found by the commissioner, and for
4 all subsequent weeks until the individual has earned wages in insured
5 work in an amount at least six times his or her weekly benefit amount and
6 has separated from the most recent subsequent employment under
7 nondisqualifying conditions. A temporary employee of a temporary help
8 firm has left work voluntarily without good cause if the temporary
9 employee does not contact the temporary help firm for reassignment upon
10 completion of an assignment and the temporary employee has been advised
11 by the temporary help firm of his or her obligation to contact the
12 temporary help firm upon completion of assignments and has been advised
13 by the temporary help firm that the temporary employee may be denied
14 benefits for failure to do so;

15 (2) For the week in which he or she has been discharged for
16 misconduct connected with his or her work, if so found by the
17 commissioner, and for the fourteen weeks which immediately follow such
18 week. If the commissioner finds that such individual's misconduct was
19 gross, flagrant, and willful, or was unlawful, the commissioner shall
20 totally disqualify such individual from receiving benefits with respect
21 to wage credits earned prior to discharge for such misconduct. In
22 addition to the fourteen-week benefit disqualification assessed under
23 this subdivision, the commissioner shall cancel all wage credits earned
24 as a result of employment with the discharging employer if the
25 commissioner finds that the individual was discharged for misconduct in
26 connection with the work which was not gross, flagrant, and willful or
27 unlawful but which included being under the influence of any intoxicating
28 beverage or being under the influence of any controlled substance listed
29 in section 28-405 not prescribed by a physician licensed to practice
30 medicine or surgery when the individual is so under the influence on the
31 worksite or while engaged in work for the employer;

1 (3)(a) For any week of unemployment in which he or she has failed,
2 without good cause, to apply for available, suitable work when so
3 directed by the employment office or the commissioner, to accept suitable
4 work offered him or her, or to return to his or her customary self-
5 employment, if any, and the commissioner so finds, and for the twelve
6 weeks which immediately follow such week, and his or her total benefit
7 amount to which he or she is then entitled shall be reduced by an amount
8 equal to the number of weeks for which he or she has been disqualified by
9 the commissioner.

10 (b) In determining whether or not any work is suitable for an
11 individual, the commissioner shall consider the degree of risk involved
12 to the individual's health, safety, and morals, his or her physical
13 fitness and prior training, his or her experience and prior earnings, his
14 or her length of unemployment and prospects for securing local work in
15 his or her customary occupation, and the distance of the available work
16 from his or her residence.

17 (c) Notwithstanding any other provisions of the Employment Security
18 Law, no work shall be deemed suitable and benefits shall not be denied
19 under such law to any otherwise eligible individual for refusing to
20 accept new work under any of the following conditions: (i) If the
21 position offered is vacant due directly to a strike, lockout, or other
22 labor dispute; (ii) if the wages, hours, or other conditions of the work
23 offered are substantially less favorable to the individual than those
24 prevailing for similar work in the locality; or (iii) if, as a condition
25 of being employed, the individual would be required to join a company
26 union or to resign from or refrain from joining any bona fide labor
27 organization.

28 (d) Notwithstanding any other provisions in subdivision (3) of this
29 section, no otherwise eligible individual shall be denied benefits with
30 respect to any week in which he or she is in training with the approval
31 of the commissioner, by reason of the application of the provisions in

1 subdivision (3) of this section relating to failure to apply for or a
2 refusal to accept suitable work.

3 (e) No individual shall be disqualified for refusing to apply for
4 available, full-time work or accept full-time work under subdivision (3)
5 (a) of this section solely because such individual is seeking part-time
6 work if the majority of the weeks of work in an individual's base period
7 include part-time work. For purposes of this subdivision, seeking only
8 part-time work shall mean seeking less than full-time work having
9 comparable hours to the individual's part-time work in the base period,
10 except that the individual must be available for work at least twenty
11 hours per week;

12 (4) For any week with respect to which the commissioner finds that
13 his or her total unemployment is due to a stoppage of work which exists
14 because of a labor dispute at the factory, establishment, or other
15 premises at which he or she is or was last employed, except that this
16 subdivision shall not apply if it is shown to the satisfaction of the
17 commissioner that (a) the individual is not participating in, financing,
18 or directly interested in the labor dispute which caused the stoppage of
19 work and (b) he or she does not belong to a grade or class of workers of
20 which, immediately before the commencement of the stoppage, there were
21 members employed at the premises at which the stoppage occurs, any of
22 whom are participating, financing, or directly interested in the dispute.
23 If in any case, separate branches of work, which are commonly conducted
24 as separate businesses in separate premises, are conducted in separate
25 departments of the same premises, each such department shall, for the
26 purposes of this subdivision, be deemed to be a separate factory,
27 establishment, or other premises;

28 (5) For any week with respect to which he or she is receiving or has
29 received remuneration in the form of (a) wages in lieu of notice, or a
30 dismissal or separation allowance, (b) compensation for temporary
31 disability under the workers' compensation law of any state or under a

1 similar law of the United States, (c) retirement or retired pay, pension,
2 annuity, or other similar periodic payment under a plan maintained or
3 contributed to by a base period or chargeable employer, or (d) a gratuity
4 or bonus from an employer, paid after termination of employment, on
5 account of prior length of service, or disability not compensated under
6 the workers' compensation law. Such payments made in lump sums shall be
7 prorated in an amount which is reasonably attributable to such week. If
8 the prorated remuneration is less than the benefits which would otherwise
9 be due, he or she shall be entitled to receive for such week, if
10 otherwise eligible, benefits reduced by the amount of such remuneration.
11 The prorated remuneration shall be considered wages for the quarter to
12 which it is attributable. Military service-connected disability
13 compensation payable under 38 U.S.C. chapter 11 and primary insurance
14 benefits payable under Title II of the Social Security Act, as amended,
15 or similar payments under any act of Congress shall not be deemed to be
16 disqualifying or deductible from the benefit amount. No deduction shall
17 be made for the part of any retirement pension which represents return of
18 payments made by the individual. In the case of a transfer by an
19 individual or his or her employer of an amount from one retirement plan
20 to a second qualified retirement plan under the Internal Revenue Code,
21 the amount transferred shall not be deemed to be received by the claimant
22 until actually paid from the second retirement plan to the claimant. No
23 deduction shall be made for any benefit received under a supplemental
24 unemployment benefit plan described in subdivision (29)(g) of section
25 48-602;

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

1 (7) For any week of unemployment if such individual is a student.
2 For the purpose of this subdivision, student shall mean an individual
3 registered for full attendance at and regularly attending an established
4 school, college, or university, unless the major portion of his or her
5 wages for insured work during his or her base period was for services
6 performed while attending school, except that attendance for training
7 purposes under a plan approved by the commissioner for such individual
8 shall not be disqualifying;

9 (8) For any week of unemployment if benefits claimed are based on
10 services performed:

11 (a) In an instructional, research, or principal administrative
12 capacity for an educational institution, if such week commences during
13 the period between two successive academic years or terms, or when an
14 agreement provides instead for a similar period between two regular, but
15 not successive, terms during such period, if such individual performs
16 such services in the first of such academic years or terms and if there
17 is a contract or reasonable assurance that such individual will perform
18 services in any such capacity for any educational institution in the
19 second of such academic years or terms;

20 (b) In any other capacity for an educational institution, if such
21 week commences during a period between two successive academic years or
22 terms, if such individual performs such services in the first of such
23 academic years or terms, and if there is a reasonable assurance that such
24 individual will perform such services in the second of such academic
25 years or terms, except that if benefits are denied to any individual for
26 any week under subdivision (8)(b) of this section and such individual was
27 not offered an opportunity to perform such services for the educational
28 institution for the second of such academic years or terms, such
29 individual shall be entitled to a retroactive payment of the benefits for
30 each week for which the individual filed a timely claim for benefits and
31 for which benefits were denied solely by reason of subdivision (8)(b) of

1 this section;

2 (c) In any capacity described in subdivision (8)(a) or (b) of this
3 section if such week commences during an established and customary
4 vacation period or holiday recess if such individual performs such
5 services in the period immediately before such vacation period or holiday
6 recess, and there is a reasonable assurance that such individual will
7 perform such services in the period immediately following such vacation
8 period or holiday recess;

9 (d) In any capacity described in subdivision (8)(a) or (b) of this
10 section in an educational institution while in the employ of an
11 educational service agency, and such individual shall be disqualified as
12 specified in subdivisions (8)(a), (b), and (c) of this section. As used
13 in this subdivision, educational service agency shall mean a governmental
14 agency or governmental entity which is established and operated
15 exclusively for the purpose of providing services to one or more
16 educational institutions; and

17 (e) In any capacity described in subdivision (8)(a) or (b) of this
18 section in an educational institution if such services are provided to or
19 on behalf of the educational institution while in the employ of an
20 organization or entity described in section 3306(c)(7) or ~~(8) 3306(c)(8)~~
21 of the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7) or (8), and
22 such individual shall be disqualified as specified in subdivisions (8)
23 (a), (b), and (c) of this section;

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

1 (10) For any week of unemployment benefits if the services upon
2 which such benefits are based are performed by an alien unless such alien
3 is an individual who was lawfully admitted for permanent residence at the
4 time such services were performed, was lawfully present for purposes of
5 performing such services, or was permanently residing in the United
6 States under color of law at the time such services were performed,
7 including an alien who was lawfully present in the United States as a
8 result of the application of section 212(d)(5) of the Immigration and
9 Nationality Act, 8 U.S.C. 1182(d)(5). Any data or information required of
10 individuals applying for benefits to determine whether benefits are not
11 payable to them because of their alien status shall be uniformly required
12 from all applicants for benefits. In the case of an individual whose
13 application for benefits would otherwise be approved, no determination
14 that benefits to such individual are not payable because of his or her
15 alien status shall be made except upon a preponderance of the evidence;

16 (11) Notwithstanding any other provisions of the Employment Security
17 Law, no otherwise eligible individual shall be denied benefits for any
18 week because he or she is in training approved under section 236(a)(1) of
19 the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1), nor shall such
20 individual be denied benefits by reason of leaving work to enter such
21 training, if the work left is not suitable employment, or because of the
22 application to any such week in training of provisions of the Employment
23 Security Law, or any applicable federal unemployment compensation law,
24 relating to availability for work, active search for work, or refusal to
25 accept work. For purposes of this subdivision, suitable employment shall
26 mean, with respect to an individual, work of a substantially equal or
27 higher skill level than the individual's past adversely affected
28 employment, as defined for purposes of the federal Trade Act of 1974, and
29 wages for such work at not less than eighty percent of the individual's
30 average weekly wage as determined for purposes of such act;

31 (12) For any week during which the individual is on a leave of

1 absence; and

2 (13) For any week of unemployment benefits or for waiting week
3 credit if he or she has been disqualified from the receipt of benefits
4 pursuant to section 48-663.01 two or more times in the five-year period
5 immediately prior to filing his or her most recent claim. This
6 subdivision shall not apply if the individual has repaid in full any
7 overpayments established in conjunction with the disqualifications
8 assessed under section 48-663.01 during that five-year period.

9 Sec. 3. Original sections 48-626 and 48-628, Reissue Revised
10 Statutes of Nebraska, are repealed.