LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 203

Introduced by Kuehn, 38.
Read first time January 10, 2017
Committee: Business and Labor

A BILL FOR AN ACT relating to the Employment Security Law; to amend sections 48-626 and 48-628, Reissue Revised Statutes of Nebraska; to change provisions relating to maximum annual unemployment benefit amounts and disqualification from unemployment benefits; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 48-626, Reissue Revised Statutes of Nebraska, is amended to read:

48-626  (1) For any benefit year beginning before October 1, 2018, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under the circumstances under which he or she was or could have been determined disqualified under subdivision (1)(a) or (2) of section 48-628, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount equal to the number of weeks for which he or she is or would have been disqualified had he or she filed a claim immediately after the separation, multiplied by his or her weekly benefit amount, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under subdivision (1)(a) of section 48-628.

(2) For any benefit year beginning on or after October 1, 2018, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her weekly benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under circumstances under which he or she was or could have been determined disqualified under subdivision (1)(b) or (2) of section 48-628, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount determined pursuant to subsection
(3) of this section, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under subdivision (1)(b) of section 48-628.

(3) For purposes of determining the reduction of benefits described in subsection (2) of this section:

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

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

(ii) Thirteen times his or her weekly benefit amount if he or she left work voluntarily without good cause for any reason other than that described in subdivision (3)(a)(i) of this section.

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

(4) For purposes of sections 48-623 to 48-626, wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 48-603 or subsection (3) of section 48-661 with respect to becoming an employer.
(5) In order to determine the benefits due under this section and
sections 48-624 and 48-625, each employer shall make reports, in
conformity with reasonable rules and regulations adopted by the
commissioner, of the wages of any claimant. If any such employer fails
shall fail to make such report within the time prescribed, the
commissioner may accept the statement of such claimant as to his or her
wages, and any benefit payments based on such statement of earnings, in
the absence of fraud or collusion, will be final as to amount.

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

48-628 An individual shall be disqualified for benefits:

(1)(a) For any benefit year beginning before October 1, 2018:

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

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

(b) For any benefit year beginning on or after October 1, 2018, for
the week in which he or she has left work voluntarily without good cause.
if so found by the commissioner, and for all subsequent weeks until the
individual has earned wages in insured work in an amount of at least four
times his or her weekly benefit amount and has separated from the most
recent subsequent employment under nondisqualifying conditions. A
temporary employee of a temporary help firm has left work voluntarily
without good cause if the temporary employee does not contact the
temporary help firm for reassignment upon completion of an assignment and
the temporary employee has been advised by the temporary help firm of his
or her obligation to contact the temporary help firm upon completion of
assignments and has been advised by the temporary help firm that the
temporary employee may be denied benefits for failure to do so;

(2) For the week in which he or she has been discharged for
misconduct connected with his or her work, if so found by the
commissioner, and for the fourteen weeks which immediately follow such
week. 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 discharge for such misconduct. In
addition to the fourteen-week benefit disqualification assessed under
this subdivision, the commissioner shall cancel all wage credits earned
as a result of employment with the discharging employer if the
commissioner finds that the individual was discharged for misconduct in
connection with the work which was not gross, flagrant, and willful or
unlawful but which included being under the influence of any intoxicating
beverage or being under the influence of any controlled substance listed
in section 28-405 not prescribed by a physician licensed to practice
medicine or surgery when the individual is so under the influence on the
worksite or while engaged in work for the employer;

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

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

(c) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such law 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.

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

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

(4) For any week with respect to which the commissioner finds that 
his or her 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 or she is or was last employed, except that this 
subdivision shall not apply if it is shown to the satisfaction of the 
commissioner that (a) the individual is not participating in, financing, 
or directly interested in the labor dispute which caused the stoppage of 
work and (b) he or she 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. 
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;

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

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

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

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

(a) In an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms and if there is a contract or 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;

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

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

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

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

(9) For any week of unemployment benefits if substantially all the
services upon which such benefits are based consist 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 if there is
a reasonable assurance that such individual will perform such services in
the later of such seasons or similar periods;

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

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

(12) For any week during which the individual is on a leave of
absence; and

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

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