

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 500

Introduced by White, 8

Read first time January 17, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Employment Security Law; to amend
2 section 48-628, Revised Statutes Cumulative Supplement,
3 2006; to exclude apprenticeship training programs as a
4 condition disqualifying an applicant for benefits; and to
5 repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-628, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 48-628 An individual shall be disqualified for benefits:

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

15 (b) For the week in which he or she has left work
16 voluntarily for the sole purpose of accepting previously secured,
17 permanent, full-time, insured work, which he or she does accept,
18 which offers a reasonable expectation of betterment of wages or
19 working conditions, or both, and for which he or she earns wages
20 payable to him or her, if so found by the commissioner, and for not
21 more than one week which immediately follows such week;

22 (2) For the week in which he or she has been discharged
23 for misconduct connected with his or her work, if so found by
24 the commissioner, and for the twelve weeks which immediately
25 follow such week. If the commissioner finds that such individual's

1 misconduct was gross, flagrant, and willful, or was unlawful,
2 the commissioner shall totally disqualify such individual from
3 receiving benefits with respect to wage credits earned prior to
4 discharge for such misconduct. In addition to the twelve-week
5 benefit disqualification assessed under this subdivision, the
6 commissioner shall cancel all wage credits earned as a result
7 of employment with the discharging employer if the commissioner
8 finds that the individual was discharged for misconduct in
9 connection with the work which was not gross, flagrant, and
10 willful or unlawful but which included being under the influence
11 of any intoxicating beverage or being under the influence of any
12 controlled substance listed in section 28-405 not prescribed by
13 a physician licensed to practice medicine or surgery when the
14 individual is so under the influence on the worksite or while
15 engaged in work for the employer;

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

25 (b) In determining whether or not any work is suitable

1 for an individual, the commissioner shall consider the degree of
2 risk involved to the individual's health, safety, and morals, his
3 or her physical fitness and prior training, his or her experience
4 and prior earnings, his or her length of unemployment and prospects
5 for securing local work in his or her customary occupation, and the
6 distance of the available work from his or her residence.

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

19 (d) Notwithstanding any other provisions in subdivision
20 (3) of this section, no otherwise eligible individual shall be
21 denied benefits with respect to any week in which he or she is in
22 training with the approval of the commissioner, by reason of the
23 application of the provisions in subdivision (3) of this section
24 relating to failure to apply for or a refusal to accept suitable
25 work. However, an employer's account shall not be charged with

1 benefits so paid. Such approved training includes, but is not
2 limited to, apprenticeship programs established pursuant to section
3 302(c)(5) of the federal Labor-Management Relations Act, 29 U.S.C.
4 2842, as such section existed on January 1, 2007;

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

22 (5) For any week with respect to which he or she
23 is receiving or has received remuneration in the form of (a)
24 wages in lieu of notice, or a dismissal or separation allowance,
25 (b) compensation for temporary disability under the workers'

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

1 be made for any benefit received under a supplemental unemployment
2 benefit plan described in subdivision (29)(g) of section 48-602;

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

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

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

20 (a) In an instructional, research, or principal
21 administrative capacity for an educational institution, if such
22 week commences during the period between two successive academic
23 years or terms, or when an agreement provides instead for a similar
24 period between two regular, but not successive, terms during such
25 period, if such individual performs such services in the first

1 of such academic years or terms and if there is a contract or
2 reasonable assurance that such individual will perform services in
3 any such capacity for any educational institution in the second of
4 such academic years or terms;

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

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

1 recess;

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

10 (e) In any capacity described in subdivision (8)(a) or
11 (b) of this section in an educational institution if such services
12 are provided to or on behalf of the educational institution while
13 in the employ of an organization or entity described in section
14 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26
15 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified
16 as specified in subdivisions (8)(a), (b), and (c) of this section;

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

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

18 (11) Notwithstanding any other provisions of the
19 Employment Security Law, no otherwise eligible individual shall
20 be denied benefits for any week because he or she is in training
21 approved under section 236(a)(1) of the federal Trade Act of 1974,
22 19 U.S.C. 2296(a)(1), nor shall such individual be denied benefits
23 by reason of leaving work to enter such training, if the work left
24 is not suitable employment, or because of the application to any
25 such week in training of provisions of the Employment Security Law,

1 or any applicable federal unemployment compensation law, relating
2 to availability for work, active search for work, or refusal to
3 accept work. For purposes of this subdivision, suitable employment
4 shall mean, with respect to an individual, work of a substantially
5 equal or higher skill level than the individual's past adversely
6 affected employment, as defined for purposes of the federal Trade
7 Act of 1974, and wages for such work at not less than eighty
8 percent of the individual's average weekly wage as determined for
9 purposes of such act;

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

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

20 Sec. 2. Original section 48-628, Revised Statutes
21 Cumulative Supplement, 2006, is repealed.