

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

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 from unemployment benefits; to
5 harmonize provisions; and to 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, 2018,
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)
7 one-third of his or her wages in the employment of each employer per
8 calendar quarter of his or her base period; except that when any
9 individual has been separated from his or her employment with a base
10 period employer under the circumstances under which he or she was or
11 could have been determined disqualified under subdivision (1)(a) (1) or
12 (2) of section 48-628, the total benefit amount based on the employment
13 from which he or she was so separated shall be reduced by an amount equal
14 to the number of weeks for which he or she is or would have been
15 disqualified had he or she filed a claim immediately after the
16 separation, multiplied by his or her weekly benefit amount, but not more
17 than one reduction may be made for each separation. In no event shall the
18 benefit amount based on employment for any employer be reduced to less
19 than one benefit week when the individual was or could have been
20 determined disqualified under subdivision (1)(a) (1) of section 48-628.

21 (2) For any benefit year beginning on or after October 1, 2018, any
22 otherwise eligible individual shall be entitled during any benefit year
23 to a total amount of benefits equal to whichever is the lesser of (a)
24 twenty-six times his or her weekly benefit amount or (b) one-third of his
25 or her wages in the employment of each employer per calendar quarter of
26 his or her base period; except that when any individual has been
27 separated from his or her employment with a base period employer under
28 circumstances under which he or she was or could have been determined
29 disqualified under subdivision (1)(b) or (2) of section 48-628, the total
30 benefit amount based on the employment from which he or she was so
31 separated shall be reduced by an amount determined pursuant to subsection

1 (3) of this section, but not more than one reduction may be made for each
2 separation. In no event shall the benefit amount based on employment for
3 any employer be reduced to less than one benefit week when the individual
4 was or could have been determined disqualified under subdivision (1)(b)
5 of section 48-628.

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

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

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

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

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

26 (4) For purposes of sections 48-623 to 48-626, wages shall be
27 counted as wages for insured work for benefit purposes with respect to
28 any benefit year only if such benefit year begins subsequent to the date
29 on which the employer by whom such wages were paid has satisfied the
30 conditions of section 48-603 or subsection (3) of section 48-661 with
31 respect to becoming an employer.

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

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

11 48-628 An individual shall be disqualified for benefits:

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

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

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

30 (b) For any benefit year beginning on or after October 1, 2018, for
31 the week in which he or she has left work voluntarily without good cause,

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

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

29 (3)(a) For any week of unemployment in which he or she has failed,
30 without good cause, to apply for available, suitable work when so
31 directed by the employment office or the commissioner, to accept suitable

1 work offered him or her, or to return to his or her customary self-
2 employment, if any, and the commissioner so finds, and for the twelve
3 weeks which immediately follow such week, and his or her total benefit
4 amount to which he or she is then entitled shall be reduced by an amount
5 equal to the number of weeks for which he or she has been disqualified by
6 the commissioner.

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

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

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

31 (e) No individual shall be disqualified for refusing to apply for

1 available, full-time work or accept full-time work under subdivision (3)
2 (a) of this section solely because such individual is seeking part-time
3 work if the majority of the weeks of work in an individual's base period
4 include part-time work. For purposes of this subdivision, seeking only
5 part-time work shall mean seeking less than full-time work having
6 comparable hours to the individual's part-time work in the base period,
7 except that the individual must be available for work at least twenty
8 hours per week;

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

25 (5) For any week with respect to which he or she is receiving or has
26 received remuneration in the form of (a) wages in lieu of notice, or a
27 dismissal or separation allowance, (b) compensation for temporary
28 disability under the workers' compensation law of any state or under a
29 similar law of the United States, (c) retirement or retired pay, pension,
30 annuity, or other similar periodic payment under a plan maintained or
31 contributed to by a base period or chargeable employer, or (d) a gratuity

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

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

29 (7) For any week of unemployment if such individual is a student.
30 For the purpose of this subdivision, student shall mean an individual
31 registered for full attendance at and regularly attending an established

1 school, college, or university, unless the major portion of his or her
2 wages for insured work during his or her base period was for services
3 performed while attending school, except that attendance for training
4 purposes under a plan approved by the commissioner for such individual
5 shall not be disqualifying;

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

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

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

30 (c) In any capacity described in subdivision (8)(a) or (b) of this
31 section if such week commences during an established and customary

1 vacation period or holiday recess if such individual performs such
2 services in the period immediately before such vacation period or holiday
3 recess, and there is a reasonable assurance that such individual will
4 perform such services in the period immediately following such vacation
5 period or holiday recess;

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

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

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

29 (10) For any week of unemployment benefits if the services upon
30 which such benefits are based are performed by an alien unless such alien
31 is an individual who was lawfully admitted for permanent residence at the

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

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

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

30 (13) For any week of unemployment benefits or for waiting week
31 credit if he or she has been disqualified from the receipt of benefits

1 pursuant to section 48-663.01 two or more times in the five-year period
2 immediately prior to filing his or her most recent claim. This
3 subdivision shall not apply if the individual has repaid in full any
4 overpayments established in conjunction with the disqualifications
5 assessed under section 48-663.01 during that five-year period.

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