

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 222

BY SENATORS WELD AND TRUMP

[Originating in the Committee on the Workforce;

reported on February 16, 2017]

1 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating
2 to disqualification for unemployment benefits; providing that an individual is disqualified
3 for benefits for any week or portion of a week in which he or she left or lost his or her job
4 as a result of a strike or other bona fide labor dispute; clarifying that a lockout is not a
5 strike; providing that operation of a facility by nonstriking employees, contractors or other
6 personnel is not reason to grant benefits; establishing the circumstances when a worker
7 is determined to leave or lose employment by reason of a lockout; providing the
8 circumstances when a worker is determined to be permanently replaced by another
9 employee; providing that contractors or employees who perform the work of a striking
10 worker on a temporary basis are not to be determined to have permanently replaced a
11 striking worker; and describing the circumstances under which employees and contractors
12 are hired to perform striking employees' work on a temporary basis.

Be it enacted by the Legislature of West Virginia:

1 That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 6. APPEALS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an individual is disqualified for
2 benefits:

3 (1) For the week in which he or she left his or her most recent work voluntarily without
4 good cause involving fault on the part of the employer and until the individual returns to covered
5 employment and has been employed in covered employment at least thirty working days.

6 For the purpose of this subdivision, an individual has not left his or her most recent work
7 voluntarily without good cause involving fault on the part of the employer if the individual leaves
8 his or her most recent work with an employer and if he or she in fact, within a fourteen-day
9 calendar period, does return to employment with the last preceding employer with whom he or

10 she was previously employed within the past year prior to his or her return to work, and which last
11 preceding employer, after having previously employed the individual for thirty working days or
12 more, laid off the individual because of lack of work, which layoff occasioned the payment of
13 benefits under this chapter or could have occasioned the payment of benefits under this chapter
14 had the individual applied for benefits. It is the intent of this subdivision to cause no disqualification
15 for benefits for an individual who complies with the foregoing set of requirements and conditions.
16 Further, for the purpose of this subdivision, an individual has not left his or her most recent work
17 voluntarily without good cause involving fault on the part of the employer, if the individual was
18 compelled to leave his or her work for his or her own health-related reasons and notifies the
19 employer prior to leaving the job or within two business days after leaving the job or as soon as
20 practicable and presents written certification from a licensed physician within thirty days of leaving
21 the job that his or her work aggravated, worsened or will worsen the individual's health problem.

22 (2) For the week in which he or she was discharged from his or her most recent work for
23 misconduct and the six weeks immediately following that week; or for the week in which he or she
24 was discharged from his or her last thirty-day employing unit for misconduct and the six weeks
25 immediately following that week. The disqualification carries a reduction in the maximum benefit
26 amount equal to six times the individual's weekly benefit. However, if the claimant returns to work
27 in covered employment for thirty days during his or her benefit year, whether or not the days are
28 consecutive, the maximum benefit amount is increased by the amount of the decrease imposed
29 under the disqualification; except that:

30 If he or she were discharged from his or her most recent work for one of the following
31 reasons, or if he or she were discharged from his or her last thirty-day employing unit for one of
32 the following reasons: Gross misconduct consisting of willful destruction of his or her employer's
33 property; assault upon the person of his or her employer or any employee of his or her employer
34 if the assault is committed at the individual's place of employment or in the course of employment;
35 reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work

36 under the influence of any controlled substance, as defined in chapter sixty-a of this code, without
37 a valid prescription, or being under the influence of any controlled substance, as defined in said
38 chapter, without a valid prescription, while at work; adulterating or otherwise manipulating a
39 sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee;
40 refusal to submit to random testing for alcohol or illegal controlled substances for employees in
41 safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code;
42 arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross
43 misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least
44 thirty days in covered employment: *Provided*, That for the purpose of this subdivision, the words
45 “any other gross misconduct” includes, but is not limited to, any act or acts of misconduct where
46 the individual has received prior written warning that termination of employment may result from
47 the act or acts.

48 (3) For the week in which he or she failed without good cause to apply for available,
49 suitable work, accept suitable work when offered, or return to his or her customary self-
50 employment when directed to do so by the commissioner, and for the four weeks which
51 immediately follow for such additional period as any offer of suitable work shall continue open for
52 his or her acceptance. The disqualification carries a reduction in the maximum benefit amount
53 equal to four times the individual’s weekly benefit amount.

54 ~~(4) For a week in which his or her total or partial unemployment is due to a stoppage of~~
55 ~~work which exists because of a labor dispute at the factory, establishment or other premises at~~
56 ~~which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was~~
57 ~~not participating, financing or directly interested in the dispute; and (2) did not belong to a grade~~
58 ~~or class of workers who were participating, financing or directly interested in the labor dispute~~
59 ~~which resulted in the stoppage of work. No disqualification under this subdivision is imposed if the~~
60 ~~employees are required to accept wages, hours or conditions of employment substantially less~~
61 ~~favorable than those prevailing for similar work in the locality, or if employees are denied the right~~

62 ~~of collective bargaining under generally prevailing conditions, or if an employer shuts down his or~~
63 ~~her plant or operation or dismisses his or her employees in order to force wage reduction, changes~~
64 ~~in hours or working conditions. For the purpose of this subdivision if any stoppage of work~~
65 ~~continues longer than four weeks after the termination of the labor dispute which caused stoppage~~
66 ~~of work, there is a rebuttable presumption that part of the stoppage of work which exists after a~~
67 ~~period of four weeks after the termination of the labor dispute did not exist because of the labor~~
68 ~~dispute; and in that event the burden is upon the employer or other interested party to show~~
69 ~~otherwise~~ For any week or portion thereof in which he or she did not work as a result of:

70 (a) A strike or other bona fide labor dispute which caused him or her to leave or lose his
71 or her employment.

72 (b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied
73 benefits by reason of a lockout. However, the operation of a facility by nonstriking employees of
74 the company, contractors or other personnel is not a reason to grant employees of the company
75 on strike unemployment compensation benefit payments. If the operation of a facility is with
76 workers hired to permanently replace the employees on strike, the employees would be eligible
77 for benefits.

78 (c) For the purpose of this subsection, an individual shall be determined to leave or lose
79 his or her employment by reason of a lockout where the individual employee has established that:

80 (i) The individual presented himself or herself physically for work at the workplace and identified
81 that he or she was reporting for and prepared to work; and (ii) the employer denied the individual
82 the opportunity to perform work and instructed him or her to leave the workplace.

83 (d) For purposes of this subsection, an individual is determined to be permanently
84 replaced where the individual employee establishes that: (i) He or she is currently employed by
85 an employer who is the subject of a strike or other bona fide labor dispute; and (ii) the position of
86 the employee has been occupied by another employee who has been notified they are
87 permanently replacing the employee who previously occupied the position. Employees or

88 contractors who are hired to perform striking employees' work on a temporary basis, such as the
89 duration of a strike or other bona fide labor dispute, or a shorter period of time, may not be
90 determined to have permanently replaced a striking employee.

91 (5) For a week with respect to which he or she is receiving or has received:

92 (a) Wages in lieu of notice;

93 (b) Compensation for temporary total disability under the workers' compensation law of
94 any state or under a similar law of the United States; or

95 (c) Unemployment compensation benefits under the laws of the United States or any other
96 state.

97 (6) For the week in which an individual has voluntarily quit employment to marry or to
98 perform any marital, parental or family duty, or to attend to his or her personal business or affairs
99 and until the individual returns to covered employment and has been employed in covered
100 employment at least thirty working days: *Provided*, That an individual who has voluntarily quit
101 employment to accompany a spouse serving in active military service who has been reassigned
102 from one military assignment to another is not disqualified for benefits pursuant to this subdivision:
103 *Provided, however*, That the account of the employer of an individual who leaves the employment
104 to accompany a spouse reassigned from one military assignment to another may not be charged.

105 (7) Benefits may not be paid to any individual on the basis of any services, substantially
106 all of which consist of participating in sports or athletic events or training or preparing to so
107 participate, for any week which commences during the period between two successive sport
108 seasons, or similar periods, if the individual performed the services in the first of the seasons, or
109 similar periods and there is a reasonable assurance that the individual will perform the services
110 in the latter of the seasons, or similar periods.

111 (8) (a) Benefits may not be paid on the basis of services performed by an alien unless the
112 alien is an individual who was lawfully admitted for permanent residence at the time the services
113 were performed, was lawfully present for purposes of performing the services or was permanently

114 residing in the United States under color of law at the time the services were performed (including
115 an alien who is lawfully present in the United States as a result of the application of the provisions
116 of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That
117 any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act
118 as provided by Public Law 94-566 which specify other conditions or other effective dates than
119 stated in this subdivision for the denial of benefits based on services performed by aliens and
120 which modifications are required to be implemented under state law as a condition for full tax
121 credit against the tax imposed by the federal Unemployment Tax Act are applicable under the
122 provisions of this section.

123 (b) Any data or information required of individuals applying for benefits to determine
124 whether benefits are not payable to them because of their alien status shall be uniformly required
125 from all applicants for benefits.

126 (c) In the case of an individual whose application for benefits would otherwise be
127 approved, no determination that benefits to the individual are not payable because of his or her
128 alien status may be made except upon a preponderance of the evidence.

129 (9) For each week in which an individual is unemployed because, having voluntarily left
130 employment to attend a school, college, university or other educational institution, he or she is
131 attending that school, college, university or other educational institution, or is awaiting entrance
132 thereto or is awaiting the starting of a new term or session thereof, and until the individual returns
133 to covered employment.

134 (10) For each week in which he or she is unemployed because of his or her request, or
135 that of his or her duly authorized agent, for a vacation period at a specified time that would leave
136 the employer no other alternative but to suspend operations.

137 (11) In the case of an individual who accepts an early retirement incentive package, unless
138 he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective
139 facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a

140 substantial loss by not accepting the early retirement incentive package.

141 (12) For each week with respect to which he or she is receiving or has received benefits
142 under Title II of the Social Security Act or similar payments under any Act of Congress, or
143 remuneration in the form of an annuity, pension or other retirement pay from a base period
144 employer or chargeable employer or from any trust or fund contributed to by a base period
145 employer or chargeable employer or any combination of the above, the weekly benefit amount
146 payable to the individual for that week shall be reduced (but not below zero) by the prorated
147 weekly amount of those benefits, payments or remuneration: *Provided*, That if the amount of
148 benefits is not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided*,
149 *however*, That there is no disqualification if in the individual's base period there are no wages
150 which were paid by the base period employer or chargeable employer paying the remuneration,
151 or by a fund into which the employer has paid during the base period: *Provided further*, That
152 notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount
153 payable to the individual for that week may not be reduced by any retirement benefits he or she
154 is receiving or has received under Title II of the Social Security Act or similar payments under any
155 Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving
156 or has been receiving remuneration in the form of an annuity, pension or other retirement pay
157 from a base period employer or chargeable employer or from a trust fund contributed to by a base
158 period employer or chargeable employer.

159 (13) For each week in which and for fifty-two weeks thereafter, beginning with the date of
160 the decision, if the commissioner finds the individual who within twenty-four calendar months
161 immediately preceding the decision, has made a false statement or representation knowing it to
162 be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment
163 under this article: *Provided*, That disqualification under this subdivision does not preclude
164 prosecution under section seven, article ten of this chapter.

NOTE: The purpose of this bill is to provide that an individual is disqualified for benefits for any week, or portion of a week, in which he or she left or lost his or her job as a result of a strike. The bill clarifies that a lockout is not a strike. The bill establishes the circumstances when a worker is determined to leave or lose employment by reason of a lockout. The bill provides the circumstances when a worker is determined to be permanently replaced by another employee. The bill provides that contractor employees who perform the work of a striking worker is not to be determined to have permanently replaced a striking worker.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.