

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2544

BY DELEGATES FOSTER, G., HOWELL, WILSON, FAST,
FRICH, HANSHAW, SHOTT, COWLES, HAMRICK, MILLER, C.
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[Introduced February 20, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating
 2 to establishing that an employee’s termination from employment for testing positive on a
 3 drug or alcohol test required by the employer disqualifies that employee for benefits.

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. EMPLOYEE ELIGIBILITY; BENEFITS.

§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 workday, and which
 11 last preceding employer, after having previously employed the individual for thirty working days
 12 or 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 paragraph 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 days 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 by
40 the employer; testing positive on a drug or alcohol screen required of an employee by the
41 employer; refusal to submit to random testing for alcohol or illegal controlled substances for
42 employees that is required by the employer; ~~in safety sensitive positions as defined in section~~
43 ~~two, article one-d, chapter twenty-one of this code~~ arson, theft, larceny, fraud or embezzlement
44 in connection with his or her work; or any other gross misconduct, he or she is disqualified for

45 benefits until he or she has thereafter worked for at least thirty days in covered employment:
46 *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct"
47 includes, but is not limited to, any act or acts of misconduct where the individual has received
48 prior written warning that termination of employment may result from the act or acts.

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

55 (4) For a week in which his or her total or partial unemployment is due to a stoppage of
56 work which exists because of a labor dispute at the factory, establishment or other premises at
57 which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was
58 not participating, financing or directly interested in the dispute; and (2) did not belong to a grade
59 or class of workers who were participating, financing or directly interested in the labor dispute
60 which resulted in the stoppage of work. No disqualification under this subdivision is imposed if the
61 employees are required to accept wages, hours or conditions of employment substantially less
62 favorable than those prevailing for similar work in the locality, or if employees are denied the right
63 of collective bargaining under generally prevailing conditions, or if an employer shuts down his or
64 her plant or operation or dismisses his or her employees in order to force wage reduction, changes
65 in hours or working conditions. For the purpose of this subdivision if any stoppage of work
66 continues longer than four weeks after the termination of the labor dispute which caused stoppage
67 of work, there is a rebuttable presumption that part of the stoppage of work which exists after a
68 period of four weeks after the termination of the labor dispute did not exist because of the labor
69 dispute; and in that event the burden is upon the employer or other interested party to show
70 otherwise.

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

72 (a) Wages in lieu of notice;

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

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

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

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

91 (8) (a) Benefits may not be paid on the basis of services performed by an alien unless the
92 alien is an individual who was lawfully admitted for permanent residence at the time the services
93 were performed, was lawfully present for purposes of performing the services or was permanently
94 residing in the United States under color of law at the time the services were performed (including
95 an alien who is lawfully present in the United States as a result of the application of the provisions
96 of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That

97 any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act
98 as provided by Public Law 94-566 which specify other conditions or other effective date than
99 stated in this subdivision for the denial of benefits based on services performed by aliens and
100 which modifications are required to be implemented under state law as a condition for full tax
101 credit against the tax imposed by the federal Unemployment Tax Act are applicable under the
102 provisions of this section.

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

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

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

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

117 (11) In the case of an individual who accepts an early retirement incentive package, unless
118 he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective
119 facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a
120 substantial loss by not accepting the early retirement incentive package.

121 (12) For each week with respect to which he or she is receiving or has received benefits
122 under Title II of the Social Security Act or similar payments under any Act of Congress, or

123 remuneration in the form of an annuity, pension or other retirement pay from a base period
124 employer or chargeable employer or from any trust or fund contributed to by a base period
125 employer or chargeable employer or any combination of the above, the weekly benefit amount
126 payable to the individual for that week shall be reduced (but not below zero) by the prorated
127 weekly amount of those benefits, payments or remuneration: *Provided*, That if the amount of
128 benefits is not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided*,
129 *however*, That there is no disqualification if in the individual's base period there are no wages
130 which were paid by the base period employer or chargeable employer paying the remuneration,
131 or by a fund into which the employer has paid during the base period: *Provided further*, That
132 notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount
133 payable to the individual for that week may not be reduced by any retirement benefits he or she
134 is receiving or has received under Title II of the Social Security Act or similar payments under any
135 Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving
136 or has been receiving remuneration in the form of an annuity, pension or other retirement pay
137 from a base period employer or chargeable employer or from a trust fund contributed to by a base
138 period employer or chargeable employer.

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

NOTE: The purpose of this bill is to establish that an employee's termination from employment for testing positive on a drug alcohol test required by the employer disqualifies that employee for benefits.

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