

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 4741

FISCAL  
NOTE

By Delegates Street, Foggin and Heckert

[Introduced January 15, 2024; Referred  
to the Committee on Workforce Development then  
Judiciary ]

1 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to unemployment compensation; employee eligibility; and providing that a person who fails  
 3 a random testing for alcohol or illegal controlled substances for employees in safety-  
 4 sensitive positions is disqualified for benefits.

*Be it enacted by the Legislature of West Virginia:*

**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 good  
 4 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 30 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 his  
 8 or her most recent work with an employer and if he or she in fact, within a 14-day calendar period,  
 9 does return to employment with the last preceding employer with whom he or she was previously  
 10 employed within the past year prior to his or her return to work, and which last preceding employer,  
 11 after having previously employed the individual for 30 working days or more, laid off the individual  
 12 because of lack of work, which layoff occasioned the payment of benefits under this chapter or  
 13 could have occasioned the payment of benefits under this chapter had the individual applied for  
 14 benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual  
 15 who complies with the foregoing set of requirements and conditions. Further, for the purpose of  
 16 this subdivision, an individual has not left his or her most recent work voluntarily without good  
 17 cause involving fault on the part of the employer, if the individual was compelled to leave his or her  
 18 work for his or her own health-related reasons and notifies the employer prior to leaving the job or  
 19 within two business days after leaving the job or as soon as practicable and presents written

20 certification from a licensed physician within 30 days of leaving the job that his or her work  
21 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 30-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 30 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 30 days employing unit for one of the  
32 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; if  
34 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 60A of this code without a  
37 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, or failure of, random testing for alcohol or illegal controlled substances for  
41 employees in safety-sensitive positions as defined in §21-1D-2 of this code; violation of an  
42 employer's drug-free workplace program; violation of an employer's alcohol-free workplace  
43 program; arson, theft, larceny, fraud, or embezzlement in connection with his or her work; or any  
44 other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked  
45 for at least 30 days in covered employment: *Provided*, That for the purpose of this subdivision, the

46 words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct  
47 where the individual has received prior written warning that termination of employment may result  
48 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 any week or portion thereof in which he or she did not work as a result of:

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

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

64 (c) For the purpose of this subsection, an individual shall be determined to leave or lose his  
65 or her employment by reason of a lockout where the individual employee has established that: (i)  
66 The individual presented himself or herself physically for work at the workplace on the first day of  
67 such lockout or on the first day he or she is able to present himself at the workplace or herself; and  
68 (ii) the employer denied the individual the opportunity to perform work.

69 (d) For purposes of this subsection, an individual is determined to be permanently replaced  
70 where the individual employee establishes that: (i) He or she is currently employed by an employer  
71 who is the subject of a strike or other bona fide labor dispute; and (ii) the position of the employee

72 has been occupied by another employee who has been notified they are permanently replacing  
73 the employee who previously occupied the position. Employees or contractors who are hired to  
74 perform striking employees' work on a temporary basis, such as the duration of a strike or other  
75 bona fide labor dispute, or a shorter period of time, may not be determined to have permanently  
76 replaced a striking employee.

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

78 (a) Wages in lieu of notice;

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

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

83 (6) For the week in which an individual has voluntarily quit employment to marry or to  
84 perform any marital, parental, or family duty, or to attend to his or her personal business or affairs  
85 and until the individual returns to covered employment and has been employed in covered  
86 employment at least 30 working days: *Provided*, That an individual who has voluntarily quit  
87 employment to accompany a spouse serving in active military service who has been reassigned  
88 from one military assignment to another is not disqualified for benefits pursuant to this subdivision:  
89 *Provided, however*, That the account of the employer of an individual who leaves the employment  
90 to accompany a spouse reassigned from one military assignment to another may not be charged.

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

97 (8) (a) Benefits may not be paid on the basis of services performed by an alien unless the

98 alien is an individual who was lawfully admitted for permanent residence at the time the services  
99 were performed, was lawfully present for purposes of performing the services or was permanently  
100 residing in the United States under color of law at the time the services were performed (including  
101 an alien who is lawfully present in the United States as a result of the application of the provisions  
102 of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That  
103 any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act as  
104 provided by Public Law 94-566 which specify other conditions or other effective date than stated in  
105 this subdivision for the denial of benefits based on services performed by aliens and which  
106 modifications are required to be implemented under state law as a condition for full tax credit  
107 against the tax imposed by the federal Unemployment Tax Act are applicable under the provisions  
108 of this section.

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

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

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

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

123 (11) In the case of an individual who accepts an early retirement incentive package, unless

124 he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective  
125 facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a  
126 substantial loss by not accepting the early retirement incentive package.

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

145 (13) For each week in which and for 52 weeks thereafter, beginning with the date of the  
146 decision, if the commissioner finds the individual who within 24 calendar months immediately  
147 preceding the decision, has made a false statement or representation knowing it to be false or  
148 knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this  
149 article: *Provided*, That disqualification under this subdivision does not preclude prosecution under

150 §21A-10-7 of this code.

NOTE: The purpose of this bill is to provide that a person, who fails a random testing for alcohol or illegal controlled substances for employees in safety-sensitive positions, is disqualified for unemployment compensation 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.