

FIRST REGULAR SESSION

SENATE BILL NO. 129

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR VOGEL.

Pre-filed December 17, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0681S.011

AN ACT

To repeal sections 288.030 and 288.190, RSMo, and to enact in lieu thereof two new sections relating to employment security.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 288.030 and 288.190, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 288.030 and 288.190, to read as follows:

288.030. 1. As used in this chapter, unless the context clearly requires otherwise, the following terms mean:

(1) **"Administrative appeals judge", a representative of the division designated to serve on an appeals tribunal;**

(2) "Appeals tribunal", [a referee] **an administrative appeals judge** or a body consisting of three [referees] **administrative appeals judges** appointed to conduct hearings and make decisions on appeals from administrative determinations, petitions for reassessment, and claims referred pursuant to subsection 2 of section 288.070;

[(2)] **(3)** "Base period", the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

[(3)] **(4)** "Benefit year", the one-year period beginning with the first day of the first week with respect to which an insured worker first files an initial claim for determination of such worker's insured status, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual, providing the individual is then an insured worker, next files such an initial claim after the end of the individual's last preceding benefit year;

[(4)] **(5)** "Benefits", the money payments payable to an insured worker, as provided in this chapter, with respect to such insured worker's unemployment;

[(5)] **(6)** "Calendar quarter", the period of three consecutive calendar months ending

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

on March thirty-first, June thirtieth, September thirtieth, or December thirty-first;

[(6)] (7) "Claimant", an individual who has filed an initial claim for determination of such individual's status as an insured worker, a notice of unemployment, a certification for waiting week credit, or a claim for benefits;

[(7)] (8) "Commission", the labor and industrial relations commission of Missouri;

[(8)] (9) "Common paymaster", two or more related corporations in which one of the corporations has been designated to disburse remuneration to concurrently employed individuals of any of the related corporations;

[(9)] (10) "Contributions", the money payments to the unemployment compensation fund required by this chapter, exclusive of interest and penalties;

[(10)] (11) "Decision", a ruling made by an appeals tribunal or the commission after a hearing;

[(11)] (12) "Deputy", a representative of the division designated to make investigations and administrative determinations on claims or matters of employer liability or to perform related work;

[(12)] (13) "Determination", any administrative ruling made by the division without a hearing;

[(13)] (14) "Director", the administrative head of the division of employment security;

[(14)] (15) "Division", the division of employment security which administers this chapter;

[(15)] (16) "Employing unit", any individual, organization, partnership, corporation, common paymaster, or other legal entity, including the legal representatives thereof, which has or, subsequent to June 17, 1937, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual engaged to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by such employing unit for all the purposes of this chapter, whether such individual was engaged or paid directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work;

[(16)] (17) "Employment office", a free public employment office operated by this or any other state as a part of a state controlled system of public employment offices including any location designated by the state as being a part of the one-stop career system;

[(17)] (18) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire;

[(18)] (19) "Fund", the unemployment compensation fund established by this chapter;

[(19)] **(20)** "Governmental entity", the state, any political subdivision thereof, any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions and any instrumentality of this state or any political subdivision thereof and one or more other states or political subdivisions;

[(20)] **(21)** "Initial claim", an application, in a form prescribed by the division, made by an individual for the determination of the individual's status as an insured worker;

[(21)] **(22)** "Insured work", employment in the service of an employer;

[(22)] **(23)** (a) As to initial claims filed after December 31, 1990, "insured worker", a worker who has been paid wages for insured work in the amount of one thousand dollars or more in at least one calendar quarter of such worker's base period and total wages in the worker's base period equal to at least one and one-half times the insured wages in that calendar quarter of the base period in which the worker's insured wages were the highest, or in the alternative, a worker who has been paid wages in at least two calendar quarters of such worker's base period and whose total base period wages are at least one and one-half times the maximum taxable wage base, taxable to any one employer, in accordance with subsection 2 of section 288.036. For the purposes of this definition, "wages" shall be considered as wage credits with respect to any benefit year, only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has become an employer;

(b) As to initial claims filed after December 31, 2004, wages for insured work in the amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or more, after December 31, 2007, one thousand five hundred dollars or more in at least one calendar quarter of such worker's base period and total wages in the worker's base period equal to at least one and one-half times the insured wages in that calendar quarter of the base period in which the worker's insured wages were the highest, or in the alternative, a worker who has been paid wages in at least two calendar quarters of such worker's base period and whose total base period wages are at least one and one-half times the maximum taxable wage base, taxable to any one employer, in accordance with subsection 2 of section 288.036;

[(23)] **(24)** "Lessor", in a lease, the party granting the use of equipment, with or without a driver to another;

[(24)] **(25)** "Misconduct", an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his or her employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer;

[(25) "Referee", a representative of the division designated to serve on an appeals tribunal;]

(26) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

(27) "Temporary employee", an employee assigned to work for the clients of a temporary help firm;

(28) "Temporary help firm", a firm that hires its own employees and assigns them to clients to support or supplement the clients' workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(29) (a) An individual shall be deemed "totally unemployed" in any week during which the individual performs no services and with respect to which no wages are payable to such individual;

(b) a. An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages payable to such individual for such week do not equal or exceed the individual's weekly benefit amount plus twenty dollars;

b. Effective for calendar year 2007 and each year thereafter, an individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages payable to such individual for such week do not equal or exceed the individual's weekly benefit amount plus twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater;

(c) An individual's "week of unemployment" shall begin the first day of the calendar week in which the individual registers at an employment office except that, if for good cause the individual's registration is delayed, the week of unemployment shall begin the first day of the calendar week in which the individual would have otherwise registered. The requirement of registration may by regulation be postponed or eliminated in respect to claims for partial unemployment or may by regulation be postponed in case of a mass layoff due to a temporary cessation of work;

(30) "Waiting week", the first week of unemployment for which a claim is allowed in a benefit year or if no waiting week has occurred in a benefit year in effect on the effective date of a shared work plan, the first week of participation in a shared work unemployment compensation program pursuant to section 288.500.

2. The Missouri average annual wage shall be computed as of June thirtieth of each year, and shall be applicable to the following calendar year. The Missouri average annual wage shall be calculated by dividing the total wages reported as paid for insured work in the preceding calendar year by the average of mid-month employment reported by employers for the same calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri average annual wage as computed in this subsection by fifty-two.

288.190. 1. The director shall designate an impartial [referee or referees] **administrative appeals judge or judges** to hear and decide disputed determinations, claims referred pursuant to subsection 2 of section 288.070, and petitions for reassessment. No employee of the division shall participate on behalf of the division in any case in which the division employee is an interested party.

2. The manner in which disputed determinations, referred claims, and petitions for reassessment shall be presented and the conduct of hearings shall be in accordance with regulations prescribed by the division for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual in respect to two or more weeks of unemployment, the same time and place for considering each such claim or claims may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, if in the judgment of the appeals tribunal or the commission having jurisdiction of the proceeding such consolidation would not be prejudicial to any party. A full and complete record shall be kept of all proceedings in connection with a disputed determination, referred claim, or petition for reassessment. The appeals tribunal shall include in the record and consider as evidence all records of the division that are material to the issues. All testimony at any hearing shall be recorded but need not be transcribed unless the matter is further appealed.

3. Unless an appeal on a disputed determination or referred claim is withdrawn, an appeals tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or reverse the determination of the deputy, or shall remand the matter to the deputy with directions. In addition, in any case wherein the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. The director may transfer to another appeals tribunal the proceedings on an appeal determination before an appeals tribunal. The parties shall be duly notified of an appeals tribunal's decision or order, together with its reason therefor, which shall be deemed to be the final decision or order of the division unless, within thirty days after the date of notification or mailing of such decision, further appeal is initiated pursuant to section 288.200; except that, within thirty days of either notification or mailing of the appeals tribunal's decision or order, the appeals tribunal, on its own motion, may reconsider any decision or order when it appears that such reconsideration is essential to the accomplishment of the object and purpose of this law.

4. Unless a petition for reassessment is withdrawn or is allowed without a hearing, the petitioners shall be given a reasonable opportunity for a fair hearing before an appeals tribunal upon each such petition. The appeals tribunal shall promptly notify the interested

parties of its decision upon such petition together with its reason therefor. In addition, in any case wherein the appellant, after having been duly notified of the date, time, and place of the hearing, shall fail to appear at such hearing, the appeals tribunal may enter an order dismissing the appeal. In the absence of the filing of an application for review of such decision, the decision, whether it results in a reassessment or otherwise, shall become final thirty days after the date of notification or mailing thereof; except that, within thirty days of either notification or mailing of the appeals tribunal's decision or order, the appeals tribunal, on its own motion, may reconsider any decision or order when it appears that such reconsideration is essential to the accomplishment of the object and purposes of this law.

5. Any party subject to any decision of an appeals tribunal pursuant to this chapter has a right to counsel and shall be notified prior to a hearing conducted pursuant to this chapter that a decision of the appeals tribunal is presumptively conclusive for the purposes of this chapter as provided in section 288.200.

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