

SECOND REGULAR SESSION

SENATE BILL NO. 816

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Read 1st time February 20, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5923S.011

AN ACT

To repeal sections 288.030 and 288.050, RSMo, and to enact in lieu thereof two new sections relating to disqualification from unemployment benefits.

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

Section A. Sections 288.030 and 288.050, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 288.030 and 288.050, to read as follows:

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

(1) "Appeals tribunal", a referee or a body consisting of three referees 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) "Base period", the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

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

(5) "Calendar quarter", the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December

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

19 thirty-first;

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

23 (7) "Commission", the labor and industrial relations commission of
24 Missouri;

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

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

30 (10) "Decision", a ruling made by an appeals tribunal or the commission
31 after a hearing;

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

35 (12) "Determination", any administrative ruling made by the division
36 without a hearing;

37 (13) "Director", the administrative head of the division of employment
38 security;

39 (14) "Division", the division of employment security which administers
40 this chapter;

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

53 (16) "Employment office", a free public employment office operated by this
54 or any other state as a part of a state controlled system of public employment

55 offices including any location designated by the state as being a part of the
56 one-stop career system;

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

60 (18) "Fund", the unemployment compensation fund established by this
61 chapter;

62 (19) "Governmental entity", the state, any political subdivision thereof,
63 any instrumentality of any one or more of the foregoing which is wholly owned by
64 this state and one or more other states or political subdivisions and any
65 instrumentality of this state or any political subdivision thereof and one or more
66 other states or political subdivisions;

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

70 (21) "Insured work", employment in the service of an employer;

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

84 (b) As to initial claims filed after December 31, 2004, wages for insured
85 work in the amount of one thousand two hundred dollars or more, after December
86 31, 2005, one thousand three hundred dollars or more, after December 31, 2006,
87 one thousand four hundred dollars or more, after December 31, 2007, one
88 thousand five hundred dollars or more in at least one calendar quarter of such
89 worker's base period and total wages in the worker's base period equal to at least
90 one and one-half times the insured wages in that calendar quarter of the base

91 period in which the worker's insured wages were the highest, or in the
92 alternative, a worker who has been paid wages in at least two calendar quarters
93 of such worker's base period and whose total base period wages are at least one
94 and one-half times the maximum taxable wage base, taxable to any one employer,
95 in accordance with subsection 2 of section 288.036;

96 (23) "Misconduct", [an act of wanton or willful] **regardless of whether**
97 **the misconduct occurs at the workplace or during working hours,**
98 **includes:**

99 (a) **Conduct demonstrating conscious** disregard of the employer's
100 interest, **and found to be** a deliberate violation of the [employer's rules, a
101 disregard of] **reasonable** standards of behavior which the employer [has the
102 right to expect] **expects** of his or her employee[, or];

103 (b) **Carelessness or** negligence in such degree or recurrence as to
104 manifest culpability[,] **or** wrongful intent [or evil design], or show an intentional
105 and substantial disregard of the employer's interest or of the employee's duties
106 and obligations to the employer;

107 (c) **Chronic absenteeism or tardiness in deliberate violation of**
108 **a known policy, written or otherwise, of the employer or one or more**
109 **unapproved absences following a written reprimand or warning**
110 **relating to more than one unapproved absence;**

111 (d) **A willful and deliberate violation of a state standard or**
112 **regulation by an employee of an employer licensed or certified by the**
113 **state, which would cause the employer to be sanctioned or have its**
114 **license or certification suspended; or**

115 (e) **A violation of an employer's rule, unless the employee can**
116 **demonstrate that:**

117 a. **He or she did not know, and could not reasonably know, of the**
118 **rules requirements;**

119 b. **The rule is not lawful or not reasonably related to the job**
120 **environment or job performance; or**

121 c. **The rule is not fairly or consistently enforced;**

122 (24) "Referee", a representative of the division designated to serve on an
123 appeals tribunal;

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

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

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

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

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

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

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

152 (29) "Waiting week", the first week of unemployment for which a claim is
153 allowed in a benefit year or if no waiting week has occurred in a benefit year in
154 effect on the effective date of a shared work plan, the first week of participation
155 in a shared work unemployment compensation program pursuant to section
156 288.500.

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

163 average annual wage as computed in this subsection by fifty-two.

288.050. 1. Notwithstanding the other provisions of this law, a claimant
2 shall be disqualified for waiting week credit or benefits until after the claimant
3 has earned wages for work insured pursuant to the unemployment compensation
4 laws of any state equal to ten times the claimant's weekly benefit amount if the
5 deputy finds:

6 (1) That the claimant has left work voluntarily without good cause
7 attributable to such work or to the claimant's employer. A temporary employee
8 of a temporary help firm will be deemed to have voluntarily quit employment if
9 the employee does not contact the temporary help firm for reassignment prior to
10 filing for benefits. Failure to contact the temporary help firm will not be deemed
11 a voluntary quit unless the claimant has been advised of the obligation to contact
12 the firm upon completion of assignments and that unemployment benefits may
13 be denied for failure to do so. **"Good cause", for the purposes of this**
14 **subdivision, shall include only that cause which would compel a**
15 **reasonable employee to cease working or which would require**
16 **separation from work due to illness or disability.** The claimant shall not
17 be disqualified:

18 (a) If the deputy finds the claimant quit such work for the purpose of
19 accepting a more remunerative job which the claimant did accept and earn some
20 wages therein;

21 (b) If the claimant quit temporary work to return to such claimant's
22 regular employer; or

23 (c) If the deputy finds the individual quit work, which would have been
24 determined not suitable in accordance with paragraphs (a) and (b) of subdivision
25 (3) of this subsection, within twenty-eight calendar days of the first day worked;

26 (d) As to initial claims filed after December 31, 1988, if the claimant
27 presents evidence supported by competent medical proof that she was forced to
28 leave her work because of pregnancy, notified her employer of such necessity as
29 soon as practical under the circumstances, and returned to that employer and
30 offered her services to that employer as soon as she was physically able to return
31 to work, as certified by a licensed and practicing physician, but in no event later
32 than ninety days after the termination of the pregnancy. An employee shall have
33 been employed for at least one year with the same employer before she may be
34 provided benefits pursuant to the provisions of this paragraph;

35 (e) If the deputy finds that, due to the spouse's mandatory and permanent

36 military change of station order, the claimant quit work to relocate with the
37 spouse to a new residence from which it is impractical to commute to the place
38 of employment and the claimant remained employed as long as was reasonable
39 prior to the move. The claimant's spouse shall be a member of the U.S. Armed
40 Forces who is on active duty, or a member of the national guard or other reserve
41 component of the U.S. Armed Forces who is on active national guard or reserve
42 duty. The provisions of this paragraph shall only apply to individuals who have
43 been determined to be an insured worker as provided in subdivision (22) of
44 subsection 1 of section 288.030;

45 (2) That the claimant has retired pursuant to the terms of a labor
46 agreement between the claimant's employer and a union duly elected by the
47 employees as their official representative or in accordance with an established
48 policy of the claimant's employer; or

49 (3) That the claimant failed without good cause either to apply for
50 available suitable work when so directed by a deputy of the division or designated
51 staff of an employment office as defined in subsection 1 of section 288.030, or to
52 accept suitable work when offered the claimant, either through the division or
53 directly by an employer by whom the individual was formerly employed, or to
54 return to the individual's customary self-employment, if any, when so directed by
55 the deputy. An offer of work shall be rebuttably presumed if an employer notifies
56 the claimant in writing of such offer by sending an acknowledgment via any form
57 of certified mail issued by the United States Postal Service stating such offer to
58 the claimant at the claimant's last known address. Nothing in this subdivision
59 shall be construed to limit the means by which the deputy may establish that the
60 claimant has or has not been sufficiently notified of available work.

61 (a) In determining whether or not any work is suitable for an individual,
62 the division shall consider, among other factors and in addition to those
63 enumerated in paragraph (b) of this subdivision, the degree of risk involved to the
64 individual's health, safety and morals, the individual's physical fitness and prior
65 training, the individual's experience and prior earnings, the individual's length
66 of unemployment, the individual's prospects for securing work in the individual's
67 customary occupation, the distance of available work from the individual's
68 residence and the individual's prospect of obtaining local work; except that, if an
69 individual has moved from the locality in which the individual actually resided
70 when such individual was last employed to a place where there is less probability
71 of the individual's employment at such individual's usual type of work and which

72 is more distant from or otherwise less accessible to the community in which the
73 individual was last employed, work offered by the individual's most recent
74 employer if similar to that which such individual performed in such individual's
75 last employment and at wages, hours, and working conditions which are
76 substantially similar to those prevailing for similar work in such community, or
77 any work which the individual is capable of performing at the wages prevailing
78 for such work in the locality to which the individual has moved, if not hazardous
79 to such individual's health, safety or morals, shall be deemed suitable for the
80 individual;

81 (b) Notwithstanding any other provisions of this law, no work shall be
82 deemed suitable and benefits shall not be denied pursuant to this law to any
83 otherwise eligible individual for refusing to accept new work under any of the
84 following conditions:

85 a. If the position offered is vacant due directly to a strike, lockout, or
86 other labor dispute;

87 b. If the wages, hours, or other conditions of the work offered are
88 substantially less favorable to the individual than those prevailing for similar
89 work in the locality;

90 c. If as a condition of being employed the individual would be required to
91 join a company union or to resign from or refrain from joining any bona fide labor
92 organization.

93 2. If a deputy finds that a claimant has been discharged for misconduct
94 connected with the claimant's work, such claimant shall be disqualified for
95 waiting week credit and benefits, and no benefits shall be paid nor shall the cost
96 of any benefits be charged against any employer for any period of employment
97 within the base period until the claimant has earned wages for work insured
98 under the unemployment laws of this state or any other state as prescribed in
99 this section. In addition to the disqualification for benefits pursuant to this
100 provision the division may in the more aggravated cases of misconduct cancel all
101 or any part of the individual's wage credits, which were established through the
102 individual's employment by the employer who discharged such individual,
103 according to the seriousness of the misconduct. A disqualification provided for
104 pursuant to this subsection shall not apply to any week which occurs after the
105 claimant has earned wages for work insured pursuant to the unemployment
106 compensation laws of any state in an amount equal to six times the claimant's
107 weekly benefit amount. Should a claimant be disqualified on a second or

108 subsequent occasion within the base period or subsequent to the base period the
109 claimant shall be required to earn wages in an amount equal to or in excess of six
110 times the claimant's weekly benefit amount for each disqualification.

111 3. [Absenteeism or tardiness may constitute a rebuttable presumption of
112 misconduct, regardless of whether the last incident alone constitutes misconduct,
113 if the discharge was the result of a violation of the employer's attendance policy,
114 provided the employee had received knowledge of such policy prior to the
115 occurrence of any absence or tardy upon which the discharge is based.

116 4.] Notwithstanding the provisions of subsection 1 of this section, a
117 claimant may not be determined to be disqualified for benefits because the
118 claimant is in training approved pursuant to Section 236 of the Trade Act of 1974,
119 as amended, (19 U.S.C.A. Sec. 2296, as amended), or because the claimant left
120 work which was not suitable employment to enter such training. For the
121 purposes of this subsection "suitable employment" means, with respect to a
122 worker, work of a substantially equal or higher skill level than the worker's past
123 adversely affected employment, and wages for such work at not less than eighty
124 percent of the worker's average weekly wage as determined for the purposes of
125 the Trade Act of 1974.

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