

FIRST REGULAR SESSION

SENATE BILL NO. 238

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time January 14, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1367S.011

AN ACT

To repeal section 288.040, RSMo, and to enact in lieu thereof one new section relating to eligibility for unemployment benefits.

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

Section A. Section 288.040, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 288.040, to read as follows:

288.040. 1. A claimant who is unemployed and has been determined to
2 be an insured worker shall be eligible for benefits for any week only if the deputy
3 finds that:

4 (1) The claimant has registered for work at and thereafter has continued
5 to report at an employment office in accordance with such regulations as the
6 division may prescribe;

7 (2) The claimant is able to work and is available for work. No person
8 shall be deemed available for work unless such person has been and is actively
9 and earnestly seeking work. Upon the filing of an initial or renewed claim, and
10 prior to the filing of each weekly claim thereafter, the deputy shall notify each
11 claimant of the number of work search contacts required to constitute an active
12 search for work. No person shall be considered not available for work, pursuant
13 to this subdivision, solely because he or she is a substitute teacher or is on jury
14 duty. A claimant shall not be determined to be ineligible pursuant to this
15 subdivision because of not actively and earnestly seeking work if:

16 (a) The claimant is participating in training approved pursuant to Section
17 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

18 (b) The claimant is temporarily unemployed through no fault of his or her
19 own and has a definite recall date within [eight] **four** weeks of his or her first

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

20 day of unemployment; however, upon application of the employer responsible for
21 the claimant's unemployment, such [eight-week] **four-week** period may be
22 extended not to exceed a total of [sixteen] **eight** weeks at the discretion of the
23 director;

24 (3) The claimant has reported to an office of the division as directed by
25 the deputy, but at least once every four weeks, except that a claimant shall be
26 exempted from the reporting requirement of this subdivision if:

27 (a) The claimant is claiming benefits in accordance with division
28 regulations dealing with partial or temporary total unemployment; or

29 (b) The claimant is temporarily unemployed through no fault of his or her
30 own and has a definite recall date within [eight] **four** weeks of his or her first
31 day of unemployment; or

32 (c) The director of the division of employment security has determined
33 that the claimant belongs to a group or class of workers whose opportunities for
34 reemployment will not be enhanced by reporting, or is prevented from reporting
35 due to emergency conditions that limit access by the general public to an office
36 that serves the area where the claimant resides, but only during the time such
37 circumstances exist.

38 Ineligibility pursuant to this subdivision shall begin on the first day of the week
39 which the claimant was scheduled to claim and shall end on the last day of the
40 week preceding the week during which the claimant does report to the division's
41 office;

42 (4) Prior to the first week of a period of total or partial unemployment for
43 which the claimant claims benefits he or she has been totally or partially
44 unemployed for a waiting period of one week. No more than one waiting week
45 will be required in any benefit year. During calendar year 2008 and each
46 calendar year thereafter, the one-week waiting period shall become compensable
47 once his or her remaining balance on the claim is equal to or less than the
48 compensable amount for the waiting period. No week shall be counted as a week
49 of total or partial unemployment for the purposes of this subsection unless it
50 occurs within the benefit year which includes the week with respect to which the
51 claimant claims benefits;

52 (5) The claimant has made a claim for benefits within fourteen days from
53 the last day of the week being claimed. The fourteen-day period may, for good
54 cause, be extended to twenty-eight days;

55 (6) The claimant has reported to an employment office to participate in

56 a reemployment assessment and reemployment services as directed by the deputy
57 or designated staff of an employment office, unless the deputy determines that
58 good cause exists for the claimant's failure to participate in such reemployment
59 assessment and reemployment services. For purposes of this section,
60 "reemployment services" may include, but not be limited to, the following:

- 61 (a) Providing an orientation to employment office services;
- 62 (b) Providing job search assistance; and
- 63 (c) Providing labor market statistics or analysis;

64 Ineligibility under this subdivision shall begin on the first day of the week which
65 the claimant was scheduled to report for the reemployment assessment or
66 reemployment services and shall end on the last day of the week preceding the
67 week during which the claimant does report in person to the employment office
68 for such reemployment assessment or reemployment services;

69 (7) The claimant is participating in reemployment services, such as job
70 search assistance services, as directed by the deputy if the claimant has been
71 determined to be likely to exhaust regular benefits and to need reemployment
72 services pursuant to a profiling system established by the division, unless the
73 deputy determines that:

- 74 (a) The individual has completed such reemployment services; or
- 75 (b) There is justifiable cause for the claimant's failure to participate in
76 such reemployment services.

77 2. A claimant shall be ineligible for waiting week credit or benefits for any
78 week for which the deputy finds he or she is or has been suspended by his or her
79 most recent employer for misconduct connected with his or her
80 work. Suspensions of four weeks or more shall be treated as discharges.

81 3. (1) Benefits based on "service in employment", described in subsections
82 7 and 8 of section 288.034, shall be payable in the same amount, on the same
83 terms and subject to the same conditions as compensation payable on the basis
84 of other service subject to this law; except that:

- 85 (a) With respect to service performed in an instructional, research, or
86 principal administrative capacity for an educational institution, benefits shall not
87 be paid based on such services for any week of unemployment commencing during
88 the period between two successive academic years or terms, or during a similar
89 period between two regular but not successive terms, or during a period of paid
90 sabbatical leave provided for in the individual's contract, to any individual if such
91 individual performs such services in the first of such academic years (or terms)

92 and if there is a contract or a reasonable assurance that such individual will
93 perform services in any such capacity for any educational institution in the
94 second of such academic years or terms;

95 (b) With respect to services performed in any capacity (other than
96 instructional, research, or principal administrative capacity) for an educational
97 institution, benefits shall not be paid on the basis of such services to any
98 individual for any week which commences during a period between two successive
99 academic years or terms if such individual performs such services in the first of
100 such academic years or terms and there is a contract or a reasonable assurance
101 that such individual will perform such services in the second of such academic
102 years or terms;

103 (c) With respect to services described in paragraphs (a) and (b) of this
104 subdivision, benefits shall not be paid on the basis of such services to any
105 individual for any week which commences during an established and customary
106 vacation period or holiday recess if such individual performed such services in the
107 period immediately before such vacation period or holiday recess, and there is
108 reasonable assurance that such individual will perform such services immediately
109 following such vacation period or holiday recess;

110 (d) With respect to services described in paragraphs (a) and (b) of this
111 subdivision, benefits payable on the basis of services in any such capacity shall
112 be denied as specified in paragraphs (a), (b), and (c) of this subdivision to any
113 individual who performed such services at an educational institution while in the
114 employ of an educational service agency, and for this purpose the term
115 "educational service agency" means a governmental agency or governmental
116 entity which is established and operated exclusively for the purpose of providing
117 such services to one or more educational institutions.

118 (2) If compensation is denied for any week pursuant to paragraph (b) or
119 (d) of subdivision (1) of this subsection to any individual performing services at
120 an educational institution in any capacity (other than instructional, research or
121 principal administrative capacity), and such individual was not offered an
122 opportunity to perform such services for the second of such academic years or
123 terms, such individual shall be entitled to a retroactive payment of the
124 compensation for each week for which the individual filed a timely claim for
125 compensation and for which compensation was denied solely by reason of
126 paragraph (b) or (d) of subdivision (1) of this subsection.

127 4. (1) A claimant shall be ineligible for waiting week credit, benefits or

128 shared work benefits for any week for which he or she is receiving or has received
129 remuneration exceeding his or her weekly benefit amount or shared work benefit
130 amount in the form of:

131 (a) Compensation for temporary partial disability pursuant to the workers'
132 compensation law of any state or pursuant to a similar law of the United States;

133 (b) A governmental or other pension, retirement or retired pay, annuity,
134 or other similar periodic payment which is based on the previous work of such
135 claimant to the extent that such payment is provided from funds provided by a
136 base period or chargeable employer pursuant to a plan maintained or contributed
137 to by such employer; but, except for such payments made pursuant to the Social
138 Security Act or the Railroad Retirement Act of 1974 (or the corresponding
139 provisions of prior law), the provisions of this paragraph shall not apply if the
140 services performed for such employer by the claimant after the beginning of the
141 base period (or remuneration for such services) do not affect eligibility for or
142 increase the amount of such pension, retirement or retired pay, annuity or similar
143 payment.

144 (2) If the remuneration referred to in this subsection is less than the
145 benefits which would otherwise be due, the claimant shall be entitled to receive
146 for such week, if otherwise eligible, benefits reduced by the amount of such
147 remuneration, and, if such benefit is not a multiple of one dollar, such amount
148 shall be lowered to the next multiple of one dollar.

149 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this
150 subsection, if a claimant has contributed in any way to the Social Security Act or
151 the Railroad Retirement Act of 1974, or the corresponding provisions of prior law,
152 no part of the payments received pursuant to such federal law shall be deductible
153 from the amount of benefits received pursuant to this chapter.

154 5. A claimant shall be ineligible for waiting week credit or benefits for any
155 week for which or a part of which he or she has received or is seeking
156 unemployment benefits pursuant to an unemployment insurance law of another
157 state or the United States; provided, that if it be finally determined that the
158 claimant is not entitled to such unemployment benefits, such ineligibility shall
159 not apply.

160 6. (1) A claimant shall be ineligible for waiting week credit or benefits for
161 any week for which the deputy finds that such claimant's total or partial
162 unemployment is due to a stoppage of work which exists because of a labor
163 dispute in the factory, establishment or other premises in which such claimant

164 is or was last employed. In the event the claimant secures other employment
165 from which he or she is separated during the existence of the labor dispute, the
166 claimant must have obtained bona fide employment as a permanent employee for
167 at least the major part of each of two weeks in such subsequent employment to
168 terminate his or her ineligibility. If, in any case, separate branches of work
169 which are commonly conducted as separate businesses at separate premises are
170 conducted in separate departments of the same premises, each such department
171 shall for the purposes of this subsection be deemed to be a separate factory,
172 establishment or other premises. This subsection shall not apply if it is shown
173 to the satisfaction of the deputy that:

174 (a) The claimant is not participating in or financing or directly interested
175 in the labor dispute which caused the stoppage of work; and

176 (b) The claimant does not belong to a grade or class of workers of which,
177 immediately preceding the commencement of the stoppage, there were members
178 employed at the premises at which the stoppage occurs, any of whom are
179 participating in or financing or directly interested in the dispute.

180 (2) "Stoppage of work" as used in this subsection means a substantial
181 diminution of the activities, production or services at the establishment, plant,
182 factory or premises of the employing unit. This definition shall not apply to a
183 strike where the employees in the bargaining unit who initiated the strike are
184 participating in the strike. Such employees shall not be eligible for waiting week
185 credit or benefits during the period when the strike is in effect, regardless of
186 diminution, unless the employer has been found guilty of an unfair labor practice
187 by the National Labor Relations Board or a federal court of law for an act or
188 actions preceding or during the strike.

189 7. On or after January 1, 1978, benefits shall not be paid to any
190 individual on the basis of any services, substantially all of which consist of
191 participating in sports or athletic events or training or preparing to so
192 participate, for any week which commences during the period between two
193 successive sport seasons (or similar periods) if such individual performed such
194 services in the first of such seasons (or similar periods) and there is a reasonable
195 assurance that such individual will perform such services in the later of such
196 seasons (or similar periods).

197 8. Benefits shall not be payable on the basis of services performed by an
198 alien, unless such alien is an individual who was lawfully admitted for permanent
199 residence at the time such services were performed, was lawfully present for

200 purposes of performing such services, or was permanently residing in the United
201 States under color of law at the time such services were performed (including an
202 alien who was lawfully present in the United States as a result of the application
203 of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

204 (1) Any data or information required of individuals applying for benefits
205 to determine whether benefits are not payable to them because of their alien
206 status shall be uniformly required from all applicants for benefits.

207 (2) In the case of an individual whose application for benefits would
208 otherwise be approved, no determination that benefits to such individual are not
209 payable because of such individual's alien status shall be made except upon a
210 preponderance of the evidence.

211 9. A claimant shall be ineligible for waiting week credit or benefits for any
212 week such claimant has an outstanding penalty which was assessed based upon
213 an overpayment of benefits, as provided for in subsection 9 of section 288.380.

214 10. The directors of the division of employment security and the division
215 of workforce development shall submit to the governor, the speaker of the house
216 of representatives, and the president pro tem of the senate no later than October
217 15, 2006, a report outlining their recommendations for how to improve work
218 search verification and claimant reemployment activities. The recommendations
219 shall include, but not limited to how to best utilize "greathires.org", and how to
220 reduce the average duration of unemployment insurance claims. Each calendar
221 year thereafter, the directors shall submit a report containing their
222 recommendations on these issues by December thirty-first of each year.

223 11. For purposes of this section, a claimant may satisfy reporting
224 requirements provided under this section by reporting by internet communication
225 or any other means deemed acceptable by the division of employment security.

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