

D R A F T

SUMMARY

Provides that individual otherwise eligible for unemployment insurance benefits is not disqualified for any week that individual's unemployment is due to labor dispute in active progress at individual's place of employment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unemployment insurance benefits for employees unemployed due
3 to labor dispute; creating new provisions; amending ORS 657.176 and
4 657.200; and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 657.200 is amended to read:

7 657.200. [(1)] An individual [*is disqualified*] **who is otherwise eligible** for
8 benefits **is not disqualified** for any week with respect to which the Director
9 of the Employment Department finds that the unemployment of the individ-
10 ual is due to a labor dispute that is in active progress at the factory, estab-
11 lishment or other premises at which the individual is or was last employed
12 or at which the individual claims employment rights by union agreement or
13 otherwise.

14 [(2) *When an employer operates two or more premises in the conduct of*
15 *business they shall be considered one premises for the purposes of this chapter*
16 *if the labor dispute at one makes it impossible or impractical to conduct work*
17 *at the others or in a normal manner.]*

18 [(3) *This section does not apply if it is shown to the satisfaction of the di-*
19 *rector that the individual:]*

20 [(a) *Is unemployed due to a lockout, as defined in ORS 662.205, at the*

1 *factory, establishment or other premises at which the individual was last em-*
2 *ployed; or]*

3 *[(b)(A) Is not participating in or financing or directly interested in the la-*
4 *bor dispute that caused the unemployment of the individual; and]*

5 *[(B) Does not belong to a grade or class of workers of which, immediately*
6 *before the commencement of the labor dispute, there were members employed*
7 *at the premises at which the labor dispute occurs, any of whom are partic-*
8 *ipating in or financing or directly interested in the dispute.]*

9 *[(4) An individual who meets all other applicable benefit eligibility re-*
10 *quirements of this chapter is not disqualified from receipt of benefits by this*
11 *section if:]*

12 *[(a) The individual was laid off from the employer prior to commencement*
13 *of the labor dispute, did not work for the employer more than seven days*
14 *during the 21 calendar days immediately prior to the commencement of the*
15 *labor dispute and meets the requirements of subsection (3)(b)(A) of this section;*
16 *or]*

17 *[(b) During the labor dispute, the individual's job or position is filled by*
18 *the employer hiring a permanent replacement and the following conditions are*
19 *met:]*

20 *[(A) The individual subsequently unilaterally abandons the labor dispute*
21 *and affirmatively seeks reemployment with the employer; and]*

22 *[(B) The individual meets the requirements of subsection (3)(b)(A) of this*
23 *section.]*

24 *[(5) An individual who maintains membership in a labor union or who*
25 *continues to pay labor union dues does not violate the provisions of subsection*
26 *(3)(b)(A) of this section, for the purpose of subsection (4) of this section.]*

27 **SECTION 2.** ORS 657.176 is amended to read:

28 657.176. (1) An authorized representative designated by the Director of the
29 Employment Department shall promptly examine each claim to determine
30 whether an individual is subject to disqualification as a result of a sepa-
31 ration, termination, leaving, resignation, or disciplinary suspension from

1 work or as a result of failure to apply for or accept work and shall promptly
2 enter a director's decision if required by ORS 657.267. The authorized repre-
3 sentative may address issues raised by information before the authorized
4 representative, including but not limited to the nature of the separation,
5 notwithstanding the way the parties characterize those issues.

6 (2) An individual shall be disqualified from the receipt of benefits until
7 the individual has performed service in employment subject to this chapter
8 or the equivalent law of another state or Canada or as defined in ORS
9 657.030 (2) or as an employee of the federal government, for which
10 remuneration is received that equals or exceeds four times the individual's
11 weekly benefit amount subsequent to the week in which the act causing the
12 disqualification occurred, if the authorized representative designated by the
13 director finds that the individual:

- 14 (a) Has been discharged for misconduct connected with work;
- 15 (b) Has been suspended from work for misconduct connected with work;
- 16 (c) Voluntarily left work without good cause;
- 17 (d) Failed without good cause to apply for available suitable work when
18 referred by the employment office or the director;
- 19 (e) Failed without good cause to accept suitable work when offered;
- 20 (f) Has been discharged or suspended for being absent or tardy in report-
21 ing to work and the absence or tardiness occurred as a result of the unlawful
22 use of any drug unless the person was participating in a recognized drug
23 rehabilitation program at the time of the absence or tardiness, or is so par-
24 ticipating within 10 days after the date of the discharge or suspension, and
25 the person provides to the Employment Department documentation of pro-
26 gram participation. As used in this paragraph, "unlawful use" does not in-
27 clude the use of a drug taken under the supervision of a licensed health care
28 professional and in accordance with the prescribed directions for consump-
29 tion, or other uses authorized by the laws of this state;
- 30 (g) Has been discharged or suspended for being absent or tardy in re-
31 porting to work and the absence or tardiness occurred as the result of the

1 use of alcohol or cannabis on a second or any subsequent occasion within a
2 period of 12 months unless the person was participating in a recognized al-
3 cohol or cannabis rehabilitation program at the time of the absence or
4 tardiness, or is so participating within 10 days after the date of the discharge
5 or suspension, and the person provides to the department documentation of
6 program participation; or

7 (h) Has committed a disqualifying act described in subsection (9) or (10)
8 of this section.

9 (3) If the authorized representative designated by the director finds that
10 an individual was discharged for misconduct because of the individual's
11 commission of a felony or theft in connection with the individual's work, all
12 benefit rights based on wages earned prior to the date of the discharge shall
13 be canceled if the individual's employer notifies the director of the discharge
14 within 10 days following issuance of the notice provided for in ORS 657.265
15 or 30 days following issuance of the notice provided for in ORS 657.266, and:

16 (a) The individual has admitted commission of the felony or theft to an
17 authorized representative of the director;

18 (b) The individual has signed a written admission of the felony or theft
19 and the written admission has been presented to an authorized representative
20 of the director; or

21 (c) The felony or theft has resulted in a conviction by a court of compe-
22 tent jurisdiction.

23 (4) An individual disqualified under subsection (2) of this section shall
24 have the individual's maximum benefit amount reduced by eight times the
25 individual's weekly benefit amount. However, in no event shall the
26 individual's maximum benefit amount be reduced to less than the individual's
27 weekly benefit amount unless the individual has previously received benefits
28 during the individual's benefit year.

29 (5) An individual may not be disqualified from receiving benefits under
30 subsection (2)(c) or (e) of this section [*or under ORS 657.200*] if the individual
31 ceases work or fails to accept work when a collective bargaining agreement

1 between the individual's bargaining unit and the individual's employer is in
2 effect and the employer unilaterally modifies the amount of wages payable
3 under the agreement, in breach of the agreement.

4 (6) For purposes of applying subsection (2) of this section, when an indi-
5 vidual has notified an employer that the individual will leave work on a
6 specific date and it is determined that:

7 (a) The separation would be for reasons that constitute good cause;

8 (b) The individual voluntarily left work without good cause prior to the
9 date of the impending good cause voluntary leaving date; and

10 (c) The actual voluntary leaving of work occurred no more than 15 days
11 prior to the planned date of voluntary leaving, then the separation from
12 work shall be adjudicated as if the actual voluntary leaving had not occurred
13 and the planned voluntary leaving had occurred. However, the individual
14 shall be ineligible for benefits for the period including the week in which the
15 actual voluntary leaving occurred through the week prior to the week of the
16 planned good cause voluntary leaving date.

17 (7) For purposes of applying subsection (2) of this section, when an em-
18 ployer has notified an individual that the individual will be discharged on
19 a specific date and it is determined that:

20 (a) The discharge would not be for reasons that constitute misconduct
21 connected with the work;

22 (b) The individual voluntarily left work without good cause prior to the
23 date of the impending discharge; and

24 (c) The voluntary leaving of work occurred no more than 15 days prior
25 to the date of the impending discharge, then the separation from work shall
26 be adjudicated as if the voluntary leaving had not occurred and the discharge
27 had occurred. However, the individual shall be ineligible for benefits for the
28 period including the week in which the voluntary leaving occurred through
29 the week prior to the week in which the individual would have been dis-
30 charged.

31 (8) For purposes of applying subsection (2) of this section, when an indi-

1 individual has notified an employer that the individual will leave work on a
2 specific date and it is determined that:

3 (a) The voluntary leaving would be for reasons that do not constitute
4 good cause;

5 (b) The employer discharged the individual, but not for misconduct con-
6 nected with work, prior to the date of the planned voluntary leaving; and

7 (c) The actual discharge occurred no more than 15 days prior to the
8 planned voluntary leaving, then the separation from work shall be adjudi-
9 cated as if the discharge had not occurred and the planned voluntary leaving
10 had occurred. However, the individual shall be eligible for benefits for the
11 period including the week in which the actual discharge occurred through
12 the week prior to the week of the planned voluntary leaving date.

13 (9)(a) For the purposes of subsection (2) of this section, an individual is
14 considered to have committed a disqualifying act when the individual:

15 (A) Fails to comply with the terms and conditions of a reasonable written
16 policy established by the employer or through collective bargaining, which
17 may include blanket, random, periodic and probable cause testing, that gov-
18 erns the use, sale, possession or effects of drugs, cannabis or alcohol in the
19 workplace;

20 (B) Fails or refuses to take a drug, cannabis or alcohol test as required
21 by the employer's reasonable written policy;

22 (C) Refuses to cooperate with or subverts or attempts to subvert a drug,
23 cannabis or alcohol testing process in any employment-related test required
24 by the employer's reasonable written policy, including but not limited to:

25 (i) Refusal or failure to complete proper documentation that authorizes
26 the test;

27 (ii) Refusal or failure to sign a chain of custody form;

28 (iii) Presentation of false identification;

29 (iv) Placement of an adulterant in the individual's specimen for testing,
30 when the adulterant is identified by a testing facility; or

31 (v) Interference with the accuracy of the test results by conduct that in-

1 cludes dilution or adulteration of a test specimen;

2 (D) Is under the influence of intoxicants while performing services for the
3 employer;

4 (E) Possesses cannabis or a drug unlawfully or in violation of the
5 employer's reasonable written policy during work;

6 (F) Tests positive for alcohol, cannabis or an unlawful drug in connection
7 with employment; or

8 (G) Refuses to enter into or violates the terms of a last chance agreement
9 with the employer.

10 (b)(A) Except as provided in subparagraph (B) of this paragraph, an indi-
11 vidual is not considered to have committed a disqualifying act under this
12 subsection if the individual, on the date of separation or within 10 days after
13 the date of separation, is participating in a recognized drug, cannabis or al-
14 cohol rehabilitation program and provides documentation of participation in
15 the program to the department.

16 (B) This paragraph does not apply to an individual who has refused to
17 enter into or has violated the terms of a last chance agreement with the
18 employer.

19 (c) It is no defense or excuse under this section that the individual's
20 separation resulted from alcohol use, cannabis use, unlawful drug use,
21 alcoholism or addiction to cannabis or drugs.

22 (d) The department shall adopt rules to carry out the provisions of this
23 subsection.

24 (10) For the purposes of subsection (2) of this section, an individual is
25 considered to have committed a disqualifying act when the individual vol-
26 untarily leaves work, fails to apply for available suitable work when referred
27 by the employment office or the director or fails to accept suitable work
28 when offered:

29 (a) Because the employer has or introduces a reasonable written
30 cannabis-free or drug-free workplace policy that is consistent with subsection
31 (9)(a)(A) of this section;

1 (b) Because the employer requires the employee to consent to present or
2 future drug, cannabis or alcohol tests under a reasonable written policy that
3 is consistent with subsection (9)(a)(A) of this section;

4 (c) To avoid taking a drug, cannabis or alcohol test under a reasonable
5 written policy that is consistent with subsection (9)(a)(A) of this section; or

6 (d) To avoid meeting the requirements of a last chance agreement.

7 (11) An individual may not be disqualified from receiving benefits under
8 subsection (2)(c) of this section and shall be deemed laid off if the individual:

9 (a) Works under a collective bargaining agreement;

10 (b) Elects to be laid off when the employer has decided to lay off em-
11 ployees; and

12 (c) Is placed on the referral list under the collective bargaining agree-
13 ment.

14 (12) An individual may not be disqualified from receiving benefits under
15 subsection (2)(c), (d) or (e) of this section or be considered unavailable for
16 purposes of ORS 657.155 if:

17 (a) The individual or a member of the individual's immediate family is a
18 victim of domestic violence, stalking, sexual assault or intimidation, or the
19 individual believes that the individual or a member of the individual's im-
20 mediate family could become a victim of domestic violence, stalking, sexual
21 assault or intimidation; and

22 (b) The individual leaves work, fails to apply for available suitable work
23 or fails to accept suitable work when offered in order to protect the indi-
24 vidual or a member of the individual's immediate family from domestic vi-
25 olence, stalking, sexual assault or intimidation that the individual
26 reasonably believes will occur as a result of the individual's continued em-
27 ployment or acceptance of work.

28 (13) For purposes of this section:

29 (a) "Adulterant" means a substance that does not occur naturally in
30 urine, or that occurs naturally in urine but not at the concentrations de-
31 tected. "Adulterant" includes but is not limited to glutaraldehyde, nitrite

1 concentrations above physiological levels, hypochlorite or soap.

2 (b) “Drug” means a controlled substance as defined in ORS 475.005.

3 (c) “Intimidation” means:

4 (A) Conduct that, in the determination of the director, more likely than
5 not constitutes the crime of intimidation in the first degree described in ORS
6 166.165 (2017 Edition) or the crime of intimidation in the second degree de-
7 scribed in ORS 166.155 (2017 Edition); or

8 (B) Similar conduct, as defined by the director by rule.

9 (d) “Last chance agreement” means a reasonable agreement:

10 (A) Between an employer and an employee who has violated the
11 employer’s reasonable written policy, has engaged in drug, cannabis or al-
12 cohol use connected with work or has admitted to alcohol abuse, cannabis
13 abuse or unlawful drug use; and

14 (B) That permits the employee to return to work under conditions that
15 may require the employee to:

16 (i) Abstain from alcohol use, cannabis use and unlawful drug use; and

17 (ii) Attend and comply with the requirements of a rehabilitation or edu-
18 cation program acceptable to the employer.

19 (e) “Under the influence of intoxicants” means the level of alcohol,
20 cannabis or unlawful drugs present in an individual’s body exceeds the
21 amount prescribed in a collective bargaining agreement or the amount pre-
22 scribed in the employer’s reasonable written policy if there is no applicable
23 collective bargaining agreement provision.

24 **SECTION 3. The amendments to ORS 657.176 and 657.200 by sections**
25 **1 and 2 of this 2020 Act apply to weeks as defined in ORS 657.010 that**
26 **begin on or after the effective date of this 2020 Act.**

27 **SECTION 4. (1) If the United States Secretary of Labor serves no-**
28 **tice that the amendments to ORS 657.200 by section 1 of this 2020 Act**
29 **fail to meet the requirements of the Social Security Act or the Federal**
30 **Unemployment Tax Act, the amendments to ORS 657.176 and 657.200**
31 **by sections 1 and 2 of this 2020 Act shall no longer be of any force or**

1 **effect.**

2 **(2) The Director of the Employment Department shall notify the**
3 **Legislative Counsel as soon as practicable after receipt of the notice**
4 **described in subsection (1) of this section.**

5 **SECTION 5. This 2020 Act being necessary for the immediate pres-**
6 **ervation of the public peace, health and safety, an emergency is de-**
7 **clared to exist, and this 2020 Act takes effect on its passage.**

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