SENATE BILL No. 4

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.5-1.1-5; IC 22-4.

Synopsis: Waiting periods and award reductions. Eliminates the one week waiting period for unemployment compensation. Eliminates the 25% reduction of unemployment compensation award for disqualifying conditions and failure to find work. Makes a conforming amendment.

Effective: July 1, 2000.

Blade

November 16, 1999, read first time and referred to Committee on Pensions and Labor.

C o p y

Introduced

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

C o p y

SENATE BILL No. 4

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.5-1.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. (a) Except as provided in subsections (b) through (c), if the county adjusted gross income tax is not in effect during a county taxpayer's entire taxable year, then the amount of county adjusted gross income tax that the county taxpayer owes for that taxable year equals the product of:

(1) the amount of county adjusted gross income tax the county taxpayer would owe if the tax had been imposed during the county taxpayer's entire taxable year; multiplied by

(2) a fraction:

(A) The numerator of the fraction equals the number of days during the county taxpayer's taxable year during which the county adjusted gross income tax was in effect.

(B) The denominator of the fraction equals the total number of days in the county taxpayer's taxable year.

(b) If a county taxpayer:

(1) is unemployed for a part of the taxpayer's taxable year;

(2) was not discharged for just cause (as defined in ~~IC 22-4-15-1(e)),~~ **IC 22-4-15-1(c));** and

(3) has no earned income for the part of the taxpayer's taxable year that the tax was in effect;

the county taxpayer's adjusted gross income for the taxable year is reduced by the amount of the taxpayer's earned income for the taxable year.

(c) A taxpayer who qualifies under subsection (b) must file a claim for a refund for the difference between the county adjusted gross income tax owed, as determined under subsection (a), and the tax owed, as determined under subsection (b). A claim for a refund must be on a form approved by the department and include all supporting documentation reasonably required by the department.

SECTION 2. IC 22-4-2-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 22. "Valid claim" means a claim filed by an individual who has established qualifying wage credits and who is totally, partially, or part-totally unemployed; Provided, no individual in a benefit period may file a valid claim for ~~a waiting period or~~ benefit period rights with respect to any period subsequent to the expiration of such benefit period.

SECTION 3. IC 22-4-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 29. "Insured unemployment" means unemployment during a given week for which ~~waiting period credit or~~ benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

SECTION 4. IC 22-4-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause is ineligible for ~~waiting period or~~ benefit rights for the week in which the disqualifying separation occurred and until he has earned remuneration in employment equal to or exceeding the weekly benefit amount of his claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) ~~When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of his current claim, as~~

C o p y

~~initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. When twenty-five percent (25%) of the maximum benefit amount, as initially determined, exceeds the unpaid balance remaining in the claim, such reduction will be limited to the unpaid balance.~~

~~(c)~~ The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from his prior employment if:

(A) he left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of betterment of wages or working conditions and thereafter was employed on said job for not less than ten (10) weeks;

(B) having been simultaneously employed by two (2) employers, he leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) he left to accept recall made by a base-period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left his work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, he shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because he is in training approved under Section

C o p y

236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's prior employment if:

(A) the prior employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

~~(d)~~ **(c)** "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer;

(3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

C o p y

(4) damaging the employer's property through willful negligence;
(5) refusing to obey instructions;
(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
(7) conduct endangering safety of self or coworkers; or
(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

SECTION 5. IC 22-4-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for ~~waiting period or~~ benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or
(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the

C o p y

individual's claim in each of four (4) weeks.

(d) ~~If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. When twenty-five percent (25%) of the maximum benefit amount, as initially determined, exceeds the unpaid balance remaining in the claim, such reduction shall be limited to the unpaid balance.~~

~~(e)~~ In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved.

~~(f)~~ **(e)** Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

C o p y

~~(g)~~ **(f)** Notwithstanding subsection ~~(e),~~ **(d),** with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection ~~(e).~~ **(d).**

~~(h)~~ **(g)** With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (The Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

~~(i)~~ **(h)** The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection ~~(g))~~ **(f))** to which subsection ~~(h)~~ **(g)** would not apply.

SECTION 6. IC 22-4-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. (a) An individual shall be ineligible for ~~waiting period or~~ benefit rights for any week with respect to which his total or partial or part-total unemployment is due to a labor dispute at the factory, establishment, or other premises at which he was last employed.

(b) This section shall not apply to an individual if he has terminated

C o p y

his employment, or his employment has been terminated, with the employer involved in the labor dispute; or if the labor dispute which caused his unemployment has terminated and any period necessary to resume normal activities at his place of employment has elapsed; or if all of the following conditions exist: He is not participating in or financing or directly interested in the labor dispute which caused his unemployment: and he does not belong to a grade or class of workers of which, immediately before the commencement of his unemployment, there were members employed at the same premises as he, any of whom are participating in or financing or directly interested in the dispute; and he has not voluntarily stopped working, other than at the direction of his employer, in sympathy with employees in some other establishment or factory in which a labor dispute is in progress.

(c) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(d) Upon request of any claimant or employer involved in an issue arising under this section, the deputy shall, and in any other case the deputy may, refer claims of individuals with respect to whom there is an issue of the application of this section to an administrative law judge who shall make the initial determination with respect thereto, in accordance with the procedure in IC 22-4-17-3.

(e) Notwithstanding any other provisions of this article, an individual shall not be ineligible for ~~waiting period or~~ benefit rights under this section solely by reason of his failure or refusal to apply for or to accept recall to work or reemployment with an employer during the continuance of a labor dispute at the factory, establishment, or other premises of the employer, if the individual's last separation from the employer occurred prior to the start of the labor dispute and was permanent or for an indefinite period.

SECTION 7. IC 22-4-15-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) An individual shall be ineligible for ~~waiting period or~~ benefit rights: For any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding his weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all

C o p y

of the money. This disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience or reimbursable account of such employer, or would have been chargeable except for the application of this chapter. For the purposes of this subdivision (2), federal old age, survivors and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than his weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

SECTION 8. IC 22-4-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. Except as provided in IC 1971, 22-4-22, an individual shall be ineligible for ~~waiting period or~~ benefit rights: For any week with respect to which or a part of which he receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States: Provided, That this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such employment benefits, including benefits to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85.

SECTION 9. IC 22-4-16-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. Notwithstanding any other provisions of this article, if an individual knowingly fails to disclose amounts earned during any week in his ~~waiting period,~~ benefit period or extended benefit period with respect to which benefit rights or extended benefit rights are claimed, or knowingly fails to disclose or has falsified as to any fact which would have disqualified him or rendered him ineligible for benefits or extended benefits or would have reduced his benefit rights or extended benefit rights during such a week, all of his wage credits established prior to the week of the falsification or failure to disclose shall be cancelled, and any benefits or extended benefits which might otherwise have become payable to him and any benefit rights or extended benefit rights based upon those wage credits shall be forfeited.

SECTION 10. IC 22-4-17-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) When an individual files an initial claim, the division shall promptly make a determination of his status as an insured worker in a form prescribed

C o p y

by the board. A written notice of the determination of insured status shall be furnished him promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within twenty (20) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within twenty (20) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to ~~waiting period credits or~~ benefits, shall notify the division of such facts promptly in accordance with regulations prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims ~~waiting period credit or~~ benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto

C o p y

in accordance with the procedure in IC 22-4-17-3.

(e) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for ~~waiting period credit or~~ benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within twenty (20) days after such notification was mailed to the claimant's or the employer's last known address, or otherwise delivered to the claimant or the employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. With respect to notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless such claimant or employer, within twenty-five (25) days after such notification was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. If such hearing is desired, the request therefor shall be filed with the commissioner in writing within the prescribed periods as above set forth in this subsection and shall be in such form as the board may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

(f) No person may participate on behalf of the department in any case in which the person is an interested party.

(g) Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge

C o p y

regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

(h) Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

SECTION 11. IC 22-4-14-4 IS REPEALED [EFFECTIVE JULY 1, 2000].

Copy