

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 2010 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 86

AN ACT to amend the Indiana Code concerning labor and safety.

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

SECTION 1. IC 22-4-2-34, AS AMENDED BY P.L.175-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2011 (RETROACTIVE)]: Sec. 34. (a) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "extended benefit period" means a period which begins with the third week after a week for which there is a state "on" indicator and ends with the later of the following:

- (1) The third week after the first week for which there is a state "off" indicator.
- (2) The thirteenth consecutive week of such period.

(b) However, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(c) There is a state "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

- (1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period

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ending in each of the preceding two (2) calendar years; and
 (2) equaled or exceeded five percent (5%).

However, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if it did not contain subdivision (1) if the insured unemployment rate is at least six percent (6%). Any week for which there would otherwise be a state "on" indicator shall continue to be such a week and may not be determined to be a week for which there is a state "off" indicator.

(d) In addition to the test for a state "on" indicator under subsection (c), there is a state "on" indicator for this state for a week if:

- (1) the average rate of total unemployment in Indiana, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week, equals or exceeds six and five-tenths percent (6.5%); and
- (2) the average rate of total unemployment in Indiana, seasonally adjusted, as determined by the United States Secretary of Labor, for the three (3) month period referred to in subdivision (1) equals or exceeds one hundred ten percent (110%) of the average for either or both of the corresponding three (3) month periods ending in the two (2) preceding calendar years.

There is a state "off" indicator for a week if either of the requirements in subdivisions (1) and (2) are not satisfied. However, any week for which there would otherwise be a state "on" indicator under this section continues to be subject to the "on" indicator and shall not be considered a week for which there is a state "off" indicator. This subsection expires on the later of December 5, 2009, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed Workers and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(e) There is a state "off" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the requirements of subsection (c) have not been met.

(f) With respect to benefits for weeks of unemployment beginning after August 13, 1981, "rate of insured unemployment," for purposes of subsection (c), means the percentage derived by dividing:

- (1) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment

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with respect to the most recent 13 consecutive week period (as determined by the board on the basis of this state's reports to the United States Secretary of Labor); by

(2) the average monthly employment covered under this article for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

(g) "Regular benefits" means benefits payable to an individual under this article or under the law of any other state (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) other than extended benefits. "Additional benefits" means benefits other than extended benefits and which are totally financed by a state payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. If extended compensation is payable to an individual by this state and additional compensation is payable to the individual for the same week by any state, the individual may elect which of the two (2) types of compensation to claim.

(h) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. 8501 through 8525) payable to an individual under the provisions of this article for weeks of unemployment in the individual's "eligibility period". Pursuant to Section 3304 of the Internal Revenue Code extended benefits are not payable to interstate claimants filing claims in an agent state which is not in an extended benefit period, against the liable state of Indiana when the state of Indiana is in an extended benefit period. This prohibition does not apply to the first two (2) weeks claimed that would, but for this prohibition, otherwise be payable. However, only one (1) such two (2) week period will be granted on an extended claim. Notwithstanding any other provisions of this chapter, with respect to benefits for weeks of unemployment beginning after October 31, 1981, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this clause, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero (0)) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(i) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit period which begin in an extended benefit period and, if the individual's benefit period ends

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within such extended benefit period, any weeks thereafter which begin in such extended benefit period. For any weeks of unemployment beginning after February 17, 2009, and before January 1, ~~2010~~, **2012**, an individual's eligibility period (as described in Section 203(c) of the Federal-State Unemployment Compensation Act of 1970) is, for purposes of any determination of eligibility for extended compensation under state law, considered to include any week that begins:

- (1) after the date as of which the individual exhausts all rights to emergency unemployment compensation; and
- (2) during an extended benefit period that began on or before the date described in subdivision (1).

(j) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

- (1) has received, prior to such week, all of the regular benefits including dependent's allowances that were available to the individual under this article or under the law of any other state (including benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. 8501 through 8525) in the individual's current benefit period that includes such week. However, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit period or although a nonmonetary decision denying benefits is pending, the individual may subsequently be determined to be entitled to added regular benefits;
- (2) may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of seasonal limitations in any state unemployment insurance law; or
- (3) having had the individual's benefit period expire prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit period that would include such week;

and has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the

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appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

(k) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code.

(l) With respect to compensation for weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), in addition to the tests for a state "on" indicator under subsections (c) and (d), there is a state "on" indicator for a week if:

- (1) the average rate of insured unemployment for the period consisting of the week and the immediately preceding twelve (12) weeks equals or exceeds five percent (5%); and**
- (2) the average rate of insured unemployment for the period consisting of the week and the immediately preceding twelve (12) weeks equals or exceeds one hundred twenty percent (120%) of the average rates of insured unemployment for the corresponding thirteen (13) week period ending in each of the preceding three (3) calendar years.**

(m) There is a state "off" indicator for a week based on the rate of insured unemployment only if the rate of insured unemployment for the period consisting of the week and the immediately preceding twelve (12) weeks does not result in an "on" indicator under subsection (c)(1).

(n) With respect to compensation for weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), in addition to the tests for a state "on" indicator under subsections (c), (d), and

- (l) there is a state "on" indicator for a week if:**
 - (1) the average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week equals or exceeds six and one-half percent**

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(6.5%); and

(2) the average rate of total unemployment in Indiana (seasonally adjusted), as determined by the United States Secretary of Labor, for the three (3) month period referred to in subdivision (1) equals or exceeds one hundred ten percent (110%) of the average for any or all of the corresponding three (3) month periods ending in the three (3) preceding calendar years.

(o) There is a state "off" indicator for a week based on the rate of total unemployment only if the rate of total unemployment for the period consisting of the most recent three (3) months for which data for all states are published before the close of the week does not result in an "on" indicator under subsection (d)(1).

SECTION 2. IC 22-4-2-40 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 40. As used in this article, "drug test" means a test that contains at least a five (5) drug panel that tests for the following:

- (1) Amphetamines.**
- (2) Cocaine.**
- (3) Opiates (2,000 ng/ml).**
- (4) PCP.**
- (5) THC.**

A drug test described in this section must be performed at a United States Department of Health and Human Services certified laboratory, with specimen collection performed by a collector certified by the United States Department of Transportation and the cost of the drug test paid by the employer.

SECTION 3. IC 22-4-12-4, AS AMENDED BY P.L.175-2009, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2011 (RETROACTIVE)]: Sec. 4. (a) Benefits shall be computed upon the basis of wage credits of an individual in the individual's base period. Wage credits shall be reported by the employer and credited to the individual in the manner prescribed by the board. With respect to initial claims filed for any week beginning on and after July 7, 1991, the maximum total amount of benefits payable to any eligible individual during any benefit period shall not exceed twenty-six (26) times the individual's weekly benefit, or twenty-eight percent (28%) of the individual's wage credits with respect to the individual's base period, whichever is less. If such maximum total amount of benefits is not a multiple of one dollar (\$1), it shall be computed to the next lower multiple of one dollar (\$1).

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(b) Except as provided in subsection (d), the total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit period shall be fifty percent (50%) of the total amount of regular benefits (including dependents' allowances) which were payable to the individual under this article in the applicable benefit year, or thirteen (13) times the weekly benefit amount (including dependents' allowances) which was payable to the individual under this article for a week of total unemployment in the applicable benefit year, whichever is the lesser amount.

(c) This subsection applies to individuals who file a disaster unemployment claim or a state unemployment insurance claim after June 1, 1990, and before June 2, 1991, or during another time specified in another state statute. An individual is entitled to thirteen (13) weeks of additional benefits, as originally determined, if:

- (1) the individual has established:
 - (A) a disaster unemployment claim under the Stafford Disaster Relief and Emergency Assistance Act; or
 - (B) a state unemployment insurance claim as a direct result of a major disaster;
- (2) all regular benefits and all disaster unemployment assistance benefits:
 - (A) have been exhausted by the individual; or
 - (B) are no longer payable to the individual due to the expiration of the disaster assistance period; and
- (3) the individual remains unemployed as a direct result of the disaster.

(d) For purposes of this subsection, "high unemployment period" means a period during which an extended benefit period would be in effect if IC 22-4-2-34(d)(1) were applied by substituting "eight percent (8%)" for "six and five-tenths percent (6.5%)". Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year is equal to the least of the following amounts:

- (1) Eighty percent (80%) of the total amount of regular benefits that were payable to the eligible individual under this article in the applicable benefit year.
- (2) Twenty (20) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year.
- (3) Forty-six (46) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year, reduced by the

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regular unemployment compensation benefits paid (or deemed paid) during the benefit year.

This subsection expires on the later of December 5, 2009, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed Workers and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(e) For purposes of this subsection, "high unemployment period" means a period during which an extended benefit period would be in effect if IC 22-4-2-34(n)(1) were applied by substituting "eight percent (8%)" for "six and one-half percent (6.5%)". Effective with respect to weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending four (4) weeks before the last week for which federal sharing is authorized by Section 2005(a) of Division B, Title II (the federal Assistance to Unemployed and Struggling Families Act) of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), in a high unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year is equal to the lesser of the following amounts:

- (1) Eighty percent (80%) of the total amount of regular benefits that were payable to the eligible individual under this article in the applicable benefit year.**
- (2) Twenty (20) times the weekly benefit amount that was payable to the eligible individual under this article for a week of total unemployment in the applicable benefit year.**

SECTION 4. IC 22-4-15-2, AS AMENDED BY P.L.175-2009, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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

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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 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 an amount determined as follows:

(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

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(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(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. During the fifth through the eighth consecutive week of claiming benefits, work is not considered unsuitable solely because the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. However, work is not considered suitable under this section if the work pays less than Indiana's minimum wage as determined under IC 22-2-2. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) 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.

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(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.

(g) Notwithstanding subsection (e), 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).

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

(j) An individual is considered to have refused an offer of suitable work under subsection (a) if an offer of work is withdrawn

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by an employer after an individual:

- (1) tests positive for drugs after a drug test given on behalf of the prospective employer as a condition of an offer of employment; or
- (2) refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of an offer of employment.

(k) For purposes of this article, a drug test is not found to be positive unless:

- (1) a second confirmation test:
 - (A) renders a positive result that has been performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory on the same sample used for the first screen test using gas chromatography mass spectrometry for the purposes of confirming or refuting the screen test results; and
 - (B) has been reviewed by a licensed physician and:
 - (i) the laboratory results described in clause (A);
 - (ii) the individual's medical history; and
 - (iii) other relevant biomedical information;
 confirm a positive result of the drug tests; or

(2) the individual who has submitted to the drug test has no valid medical reason for testing positive for the substance found in the drug test.

(l) The department's records concerning the results of a drug test described in subsection (j) may not be admitted against a defendant in a criminal proceeding.

SECTION 5. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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