

Senate Bill 397

Sponsored by Senator WESTLUND

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Denies unemployment benefits to employee who fails preemployment drug or alcohol test when results are received by employer within 14 calendar days after employee begins employment.

A BILL FOR AN ACT

1
2 Relating to denial of unemployment benefits for failing preemployment drug or alcohol test; amend-
3 ing ORS 657.176.

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

5 **SECTION 1.** ORS 657.176 is amended to read:

6 657.176. (1) An authorized representative designated by the Director of the Employment De-
7 partment shall promptly examine each claim to determine whether an individual is subject to dis-
8 qualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension
9 from work or as a result of failure to apply for or accept work and shall promptly enter a director's
10 decision if required by ORS 657.267. The authorized representative may address issues raised by
11 information before the authorized representative, including but not limited to the nature of the
12 separation, notwithstanding the way the parties characterize those issues.

13 (2) An individual shall be disqualified from the receipt of benefits until the individual has per-
14 formed service in employment subject to this chapter, or for an employing unit in this or any other
15 state or Canada or as an employee of the federal government, for which remuneration is received
16 that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in
17 which the act causing the disqualification occurred, if the authorized representative designated by
18 the director finds that the individual:

19 (a) Has been discharged for misconduct connected with work;

20 (b) Has been suspended from work for misconduct connected with work;

21 (c) Voluntarily left work without good cause;

22 (d) Failed without good cause to apply for available suitable work when referred by the em-
23 ployment office or the director;

24 (e) Failed without good cause to accept suitable work when offered;

25 (f) Has been discharged or suspended for being absent or tardy in reporting to work and the
26 absence or tardiness occurred as a result of the unlawful use of any drug unless the person was
27 participating in a recognized drug rehabilitation program at the time of the absence or tardiness,
28 or is so participating within 10 days of the date of the discharge or suspension, and the person
29 provides to the Employment Department documentation of program participation. As used in this
30 paragraph, "unlawful use" does not include the use of a drug taken under the supervision of a li-
31 censed health care professional and in accordance with the prescribed directions for consumption,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 or other uses authorized by the laws of this state;

2 (g) Has been discharged or suspended for being absent or tardy in reporting to work and the
3 absence or tardiness occurred as the result of the use of alcohol on a second or any subsequent
4 occasion within a period of 12 months unless the person was participating in a recognized alcohol
5 rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days
6 of the date of the discharge or suspension, and the person provides to the department documentation
7 of program participation; or

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

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

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

17 (b) The individual has signed a written admission of such act and such written admission has
18 been presented to an authorized representative of the director; or

19 (c) Such act has resulted in a conviction by a court of competent jurisdiction.

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

25 (5) An individual shall not be disqualified from receiving benefits under subsection (2)(c) or (e)
26 of this section or under ORS 657.200 if the individual ceases work or fails to accept work when a
27 collective bargaining agreement between the individual's bargaining unit and the individual's em-
28 ployer is in effect and the employer unilaterally modifies the amount of wages payable under the
29 agreement, in breach of the agreement.

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

32 (a) That such separation would be for reasons that constitute good cause;

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

35 (c) The actual voluntary leaving of work occurs no more than 15 days prior to the planned date
36 of voluntary leaving,

37
38 then such separation from work shall be adjudicated as if the actual voluntary leaving had not oc-
39 curred and the planned voluntary leaving had occurred. However, the individual shall be ineligible
40 for benefits for the period including the week in which the actual voluntary leaving occurred
41 through the week prior to the week of the planned good cause voluntary leaving date.

42 (7) For purposes of applying subsection (2) of this section, when an employer has notified an
43 individual that the individual will be discharged on a specific date and it is determined:

44 (a) That such discharge would not be for reasons that constitute misconduct connected with the
45 work;

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

3 (c) The voluntary leaving of work occurs no more than 15 days prior to the date of the im-
4 pending discharge,

5
6 then such separation from work shall be adjudicated as if the voluntary leaving had not occurred
7 and the discharge had occurred. However, the individual shall be ineligible for benefits for the pe-
8 riod including the week in which the voluntary leaving occurred through the week prior to the week
9 in which the individual would have been discharged.

10 (8) For purposes of applying subsection (2) of this section, when an individual has notified an
11 employer that the individual will leave work on a specific date and it is determined:

12 (a) That such voluntary leaving would be for reasons that do not constitute good cause;

13 (b) The employer discharged the individual, but not for misconduct connected with work, prior
14 to the date of the planned voluntary leaving; and

15 (c) The actual discharge occurs no more than 15 days prior to the planned voluntary leaving,

16
17 then such separation from work shall be adjudicated as if the discharge had not occurred and the
18 planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the
19 period including the week in which the actual discharge occurred through the week prior to the
20 week of the planned voluntary leaving date.

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

23 (A) Fails to comply with the terms and conditions of a reasonable written policy established by
24 the employer or through collective bargaining, which may include blanket, random, periodic and
25 probable cause testing, that governs the use, sale, possession or effects of drugs or alcohol in the
26 workplace;

27 (B) Fails or refuses to take a drug or alcohol test as required by the employer's reasonable
28 written policy;

29 (C) Refuses to cooperate with or subverts or attempts to subvert a drug or alcohol testing pro-
30 cess in any employment-related test required by the employer's reasonable written policy, including
31 but not limited to:

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

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

34 (iii) Presentation of false identification;

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

37 (v) Interference with the accuracy of the test results by conduct that includes dilution or
38 adulteration of a test specimen;

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

40 (E) Possesses a drug unlawfully or in violation of the employer's reasonable written policy dur-
41 ing work;

42 (F) Tests positive for alcohol or an unlawful drug:

43 (i) In connection with employment; or

44 (ii) **In a preemployment drug or alcohol test, the results of which are received by the**
45 **employer within 14 calendar days after the date on which the employee begins employment;**

1 **or**

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

3 (b)(A) Except as provided in subparagraph (B) of this paragraph, an individual is not considered
4 to have committed a disqualifying act under this subsection if the individual, on the date of separa-
5 tion or within 10 days after the date of separation, is participating in a recognized drug or alcohol
6 rehabilitation program and provides documentation of participation in the program to the depart-
7 ment.

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

10 (c) It is no defense or excuse under this section that the individual's separation resulted from
11 alcohol use, marijuana use, unlawful drug use, alcoholism or drug addiction.

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

13 (10) For the purposes of subsection (2) of this section, an individual is considered to have com-
14 mitted a disqualifying act when the individual voluntarily leaves work, fails to apply for available
15 suitable work when referred by the employment office or the director or fails to accept suitable
16 work when offered:

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

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

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

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

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

26 (a) Works under a collective bargaining agreement;

27 (b) Elects to be laid off when the employer has decided to lay off employees; and

28 (c) Is placed on the referral list under the collective bargaining agreement.

29 (12)(a) As used in this subsection, "domestic violence" means the physical injury, sexual abuse
30 or forced imprisonment, or threat thereof, of a person by another who is related by blood or mar-
31 riage or has a significant relationship with the other person at the present, or who has been related
32 or has had a significant relationship at some time in the past, to the extent that the person's health,
33 safety or welfare is harmed or threatened thereby.

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

36 (A) The individual is a victim of domestic violence;

37 (B) The individual's health, safety or welfare is endangered at a current workplace, or would
38 be endangered at an available workplace, by a related person referred to in paragraph (a) of this
39 subsection; and

40 (C) The individual acts as a reasonable and prudent person of ordinary sensitivities and has
41 pursued all reasonable alternatives before voluntarily leaving work. Reasonable alternatives include,
42 but are not limited to, actions such as seeking a restraining order, relocating to a secure area and
43 seeking reasonable accommodations from the employer such as a transfer within the company.

44 (13) For purposes of this section:

45 (a) "Adulterant" means a substance that does not occur naturally in urine, or that occurs na-

1 turally in urine but not at the concentrations detected. “Adulterant” includes but is not limited to
2 glutaraldehyde, nitrite concentrations above physiological levels, hypochlorite or soap.

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

4 (c) “Last chance agreement” means a reasonable agreement:

5 (A) Between an employer and an employee who has violated the employer’s reasonable written
6 policy, has engaged in drug or alcohol use connected with work or has admitted to alcohol abuse,
7 marijuana use or unlawful drug use; and

8 (B) That permits the employee to return to work under conditions that may require the em-
9 ployee to:

10 (i) Abstain from alcohol use, marijuana use and unlawful drug use; and

11 (ii) Attend and comply with the requirements of a rehabilitation or education program accepta-
12 ble to the employer.

13 (d) An individual is “under the influence of intoxicants” when the level of alcohol, marijuana
14 or unlawful drugs present in the individual’s body exceeds the amount prescribed in a collective
15 bargaining agreement, or the amount prescribed in the employer’s reasonable written policy if there
16 is no applicable collective bargaining agreement provision.

17 (e) **“Preemployment drug or alcohol test” means a drug or alcohol test administered be-**
18 **fore an employee begins employment.**

19