

Senate Engrossed House Bill

~~unemployment benefits; requirements; disqualifications~~
(now: unemployment; requirements; disqualifications; shared work)

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2108

AN ACT

AMENDING SECTIONS 23-634.01, 23-762, 23-763, 23-771, 23-773 AND 23-776,
ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-634.01, Arizona Revised Statutes, is amended
3 to read:

4 23-634.01. Denial of benefits for failure to accept suitable
5 work or actively seek work; definition

6 A. Notwithstanding section 23-776, an individual who is found by
7 the department, with respect to any week in an eligibility period ~~which~~
8 ~~THAT~~ begins from and after April 4, 1981, to have failed to apply for or
9 accept available suitable work to which ~~he~~ ~~THE INDIVIDUAL~~ was referred by
10 the department or to have failed to actively engage in seeking work is
11 disqualified from receiving extended benefits. The disqualification shall
12 begin with the week in which the failure occurred and continue until the
13 individual has been employed in each of four subsequent weeks, whether or
14 not consecutive, and has earned remuneration equal to ~~not less than~~ ~~AT~~
15 ~~LEAST~~ four times ~~his~~ ~~THE INDIVIDUAL'S~~ weekly benefit amount.

16 B. An individual shall not be denied extended benefits for failure
17 to accept an offer of or apply for available suitable work as defined in
18 subsection G of this section, if:

19 1. The position was not offered to the individual in writing or was
20 not listed with the department.

21 2. The failure would not result in a denial of benefits under
22 section 23-776 to the extent that the criteria of suitability in section
23 23-776 are not inconsistent with this section.

24 C. If an individual furnishes evidence satisfactory to the
25 department that prospects for obtaining work in ~~his~~ ~~THE INDIVIDUAL'S~~
26 customary occupation within a reasonably short period are good, the
27 determination of whether any work is suitable with respect to the
28 individual shall be made in accordance with ~~the provisions of~~ section
29 23-776 without reference to the definition contained in this section.

30 D. Work shall not be considered suitable work under this section if
31 it would not be considered suitable under section 23-776, subsection ~~E~~ ~~E~~.

32 E. For the purposes of this section, an individual shall be treated
33 as actively engaged in seeking work during any week if the department
34 finds from tangible evidence provided by the individual that ~~he~~ ~~THE~~
35 ~~INDIVIDUAL~~ has engaged in a systematic and sustained effort to obtain work
36 during such week.

37 F. The department shall refer an individual entitled to extended
38 benefits under this chapter to any work ~~which~~ ~~THAT~~ is suitable work.

39 G. For the purposes of this section, "suitable work" with respect
40 to any individual means work within the individual's capabilities in
41 which:

42 1. The gross average weekly wages payable for the work exceed the
43 sum of the individual's weekly benefit amount plus the amount of any
44 supplemental unemployment benefits payable to the individual for such
45 week.

1 2. The wages for the work are at least equal to the higher of:
2 (a) The minimum wages provided by section 6(a)(1) of the fair labor
3 standards act of 1938, without regard to any exemption.

4 (b) The state or local minimum wage.

5 Sec. 2. Section 23-762, Arizona Revised Statutes, is amended to
6 read:

7 23-762. Requirements of shared work plan; approval

8 A. An employer ~~wishing~~ **THAT WISHES** to participate in the shared
9 work unemployment compensation program shall submit a signed, written
10 shared work plan to the department for approval. The department shall
11 approve a shared work plan only if the plan:

12 1. Specifies the employees in the affected group.

13 2. Applies to only one affected group.

14 3. If feasible, includes a description of the employer's plan for
15 notifying an employee whose ~~work week~~ **WORKWEEK** is to be reduced.

16 4. Includes a certified statement by the employer that, for the
17 six-month period immediately preceding the date the plan is submitted,
18 compensation was payable from the shared work employer, or its
19 predecessors whether or not they were shared work employers, to each
20 employee in the affected group in an amount equal to or greater than the
21 wages for insured work in one calendar quarter as provided in section
22 23-771, subsection A, paragraph ~~6~~ **7**. An employee who joins an affected
23 group after the approval of the shared work plan is automatically covered
24 under the previously approved plan, effective the week that the department
25 receives written notice from the shared work employer that the employee
26 has joined and certification from the employer that the employee meets the
27 provisions of section 23-771, subsection A, paragraph ~~6~~ **7**.

28 5. Includes a certified statement by the employer that for the
29 duration of the plan the reduction in the total normal weekly hours of
30 work of the employees in the affected group is instead of layoffs ~~which~~
31 **THAT** otherwise would result in at least as large a reduction in the total
32 normal weekly hours of work. The employer shall include an estimate of
33 the number of layoffs that would have occurred without an approved shared
34 work plan.

35 6. Specifies the manner in which the employer will treat fringe
36 benefits of the employees in the affected group if the employees' hours
37 are reduced to less than their normal weekly hours of work. The employer
38 must certify, if the employer provides health benefits and retirement
39 benefits under a defined benefit plan to any employee whose workweek is
40 reduced under the plan, that these benefits will continue to be provided
41 to an employee participating in the shared work plan under the same terms
42 and conditions as though the workweek of the employee had not been reduced
43 or to the same extent as other employees not participating in the shared
44 work program.

1 7. Specifies an expiration date that is ~~no~~ NOT more than one year
2 ~~from~~ AFTER the date the employer submits the plan for approval, except
3 that on written request by the employer, the department may approve an
4 extension of the plan for a period of not more than one year ~~from~~ AFTER
5 the date of the request.

6 8. Is approved in writing by the collective bargaining agent for
7 each collective bargaining agreement that covers any employee in the
8 affected group.

9 B. The plan prescribed in subsection A of this section and the
10 implementation of the plan must be consistent with the employer's
11 obligations under all other federal and state laws.

12 C. The department shall approve or disapprove the plan within
13 fifteen days after receipt of the plan by the department. The department
14 shall notify the employer of the reasons for denial of a shared work plan
15 within ten days ~~of~~ AFTER the determination.

16 Sec. 3. Section 23-763, Arizona Revised Statutes, is amended to
17 read:

18 23-763. Shared work benefits; eligibility; requirements

19 A. An individual is eligible to receive shared work benefits with
20 respect to any week only if, in addition to meeting the requirements of
21 article 6 of this chapter as modified by subsection E of this section, the
22 department finds that during the week:

23 1. The individual is employed as a member of an affected group in
24 an approved plan that was approved before the week and is in effect for
25 the week.

26 2. The individual's normal weekly hours of work were reduced at
27 least ten ~~per cent~~ PERCENT but not more than forty ~~per cent~~ PERCENT.

28 3. The individual met the requirements of section 23-771,
29 subsection A, paragraphs 3, ~~and~~ 4 AND 5.

30 B. Eligible individuals may participate in training to enhance job
31 skills, including ~~employer sponsored~~ EMPLOYER-SPONSORED training or worker
32 training funded under the workforce investment act of 1998, if the
33 training is approved by the department.

34 C. The department shall not pay an individual shared work benefits
35 for more than twenty-six weeks in a benefit year, except that this
36 limitation does not apply to a week if for the period consisting of the
37 week and the immediately preceding twelve weeks the rate, not seasonally
38 adjusted, of insured unemployment in this state is equal to or greater
39 than four ~~per cent~~ PERCENT.

40 D. The total amount of regular benefits and shared work benefits
41 that the department pays to an individual for weeks in the individual's
42 benefit year shall not exceed the total for the benefit year as provided
43 in section 23-780.

1 E. Notwithstanding section 23-621 or any other provision of this
2 chapter, for purposes of this article an individual is unemployed in any
3 week for which compensation is payable to the individual, as an employee
4 in an affected group, for less than the individual's normal weekly hours
5 of work in accordance with an approved plan in effect for the week.

6 Sec. 4. Section 23-771, Arizona Revised Statutes, is amended to
7 read:

8 23-771. Eligibility for benefits

9 A. An unemployed individual is eligible to receive benefits with
10 respect to any week only if the department finds that the individual:

11 1. Has registered for work at and thereafter has continued to
12 report at an employment office in accordance with the regulations
13 prescribed by the department.

14 2. Has made a claim for benefits in accordance with section 23-772.

15 3. Is able to work.

16 4. IS AVAILABLE FOR WORK.

17 ~~5.~~ 5. Except for an individual who is applying for shared work
18 benefits pursuant to article 5.1 of this chapter, ~~is available for work~~
19 ~~and both of the following apply:~~

20 ~~(a) The individual has engaged in a systematic and sustained effort~~
21 ~~to obtain work during at least four days of the week.~~

22 ~~(b) The individual has made at least one job contact per day on~~
23 ~~four different days of the week.~~ ACTIVELY SEEKS AND APPLIES FOR SUITABLE
24 WORK AND:

25 (a) CONDUCTS AT LEAST FIVE WORK SEARCH ACTIONS EACH WEEK IN ORDER
26 TO QUALIFY AS ACTIVELY SEEKING AND APPLYING FOR SUITABLE WORK. THE
27 ACTIONS SHALL INCLUDE ANY OF THE FOLLOWING:

28 (i) SUBMITTING RESUMES TO EMPLOYERS.

29 (ii) COMPLETING JOB APPLICATIONS AND SUBMITTING THE APPLICATIONS TO
30 EMPLOYERS.

31 (iii) ATTENDING JOB FAIRS THAT ARE RECOGNIZED BY THE DEPARTMENT AND
32 THE INDIVIDUAL'S ATTENDANCE IS VERIFIABLE BY THE DEPARTMENT.

33 (iv) ATTENDING INTERVIEWS WITH POTENTIAL EMPLOYERS.

34 (v) ATTENDING A DEPARTMENT-APPROVED TRAINING PROGRAM, WHICH SHALL
35 COUNT AS ONE WORK SEARCH ACTION FOR THE WEEK THE INDIVIDUAL ATTENDED THE
36 TRAINING PROGRAM.

37 (b) IF THE INDIVIDUAL IS APPLYING FOR A WEEKLY BENEFIT, PROVIDES A
38 WEEKLY REPORT TO THE DEPARTMENT THAT DETAILS THE INDIVIDUAL'S WORK SEARCH
39 ACTIONS FOR EVERY WEEK A BENEFIT IS SOUGHT.

40 ~~5.~~ 6. Has been unemployed for a waiting period of one week. A
41 week is not counted as a week of unemployment for the purpose of this
42 paragraph:

43 (a) Unless it occurs within the benefit year that includes the week
44 with respect to which the individual claims payment of benefits.

1 (b) Unless the individual was eligible for benefits with respect to
2 the week as provided in this section and sections 23-775, 23-776 and
3 23-777.

4 (c) If benefits have been paid in respect to the week.

5 ~~6.~~ 7. Has met one of the following requirements:

6 (a) Has been paid wages for insured work during the individual's
7 base period equal to at least one and one-half times the wages paid to the
8 individual in the calendar quarter of the individual's base period in
9 which the wages were highest, and the individual has been paid wages for
10 insured work in one calendar quarter of the individual's base period equal
11 to an amount that is equal to at least three hundred ninety times the
12 minimum wage prescribed by section 23-363 that is in effect when the
13 individual files a claim for benefits.

14 (b) For a benefit year beginning on or after September 2, 1984, has
15 been paid wages for insured work during at least two quarters of the
16 individual's base period and the amount of the wages paid in one quarter
17 would be sufficient to qualify the individual for the maximum weekly
18 benefit amount payable under this chapter and the total of the
19 individual's base-period wages is equal to or greater than the taxable
20 limit as specified in section 23-622, subsection B, paragraphs 1 and 2.

21 ~~7.~~ 8. Following the beginning date of a benefit year established
22 under this chapter or the unemployment compensation law of any other state
23 and before the effective date of a subsequent benefit year under this
24 chapter, has performed services whether or not in employment as defined in
25 section 23-615 for which wages were payable in an amount equal to or in
26 excess of eight times the weekly benefit amount for which the individual
27 is otherwise qualified under section 23-779. In making a determination
28 under this paragraph, the department shall use information available in
29 its records or require the individual to furnish necessary information
30 within thirty days after the date notice is given that the information is
31 required.

32 B. If an unemployed individual cannot establish a benefit year as
33 defined in section 23-609 due to receipt during the base period of
34 compensation for a temporary total disability pursuant to chapter 6 of
35 this title, or any similar federal law, the individual's base period shall
36 be the first four of the last five completed calendar quarters immediately
37 preceding the first day of the calendar week in which the disability
38 began. Wages previously used to establish a benefit year may not be
39 reused. This subsection does not apply unless all of the following occur:

40 1. The individual has filed a claim for benefits not later than the
41 fourth calendar week of unemployment after the end of the period of
42 disability.

1 2. The claim is filed within two years after the period of
2 disability begins.

3 3. The individual meets the requirements of subsection A of this
4 section.

5 4. The individual has attempted to return to the employment where
6 the temporary total disability occurred.

7 C. If an unemployed individual is a member of the national guard or
8 other reserve component of the United States armed forces, the individual
9 is not considered to be either employed or unavailable for work by reason
10 of the individual's participation in drill, training or other national
11 guard or reserve activity that occurs on not more than one weekend per
12 month or in lieu of a weekend drill or the equivalent.

13 D. The department shall not disqualify an individual from receiving
14 benefits under this chapter on the basis of the individual's separation
15 from employment if the individual is a victim of domestic violence and
16 leaves employment due to a documented case involving domestic violence
17 pursuant to section 13-3601 or 13-3601.02. Benefits paid to an individual
18 pursuant to this subsection shall not be charged against an employer's
19 account pursuant to section 23-727, subsection G.

20 E. The department shall not disqualify an individual from receiving
21 benefits under this chapter on the basis of the individual's separation
22 from employment if the individual was terminated from employment for not
23 receiving a COVID-19 vaccine or COVID-19 booster shot required by the
24 employer. Benefits paid to an individual pursuant to this subsection
25 shall not be charged against an employer's account pursuant to section
26 23-727 if the employer's requirement that employees receive the COVID-19
27 vaccine or COVID-19 booster shot is required by law.

28 F. For the purposes of subsection A, paragraph ~~6~~ 7 of this
29 section, wages shall be counted as wages for insured work for benefit
30 purposes with respect to any benefit year only if that benefit year begins
31 subsequent to the date on which the employing unit by which those wages
32 were paid has become an employer subject to this chapter.

33 Sec. 5. Section 23-773, Arizona Revised Statutes, is amended to
34 read:

35 23-773. Examination and determination of claims

36 A. A representative designated by the department as a deputy shall
37 promptly examine any claim for benefits and, on the basis of the facts
38 found by the deputy, shall determine whether ~~or not~~ the claim is valid.
39 If the claim is valid, the deputy shall also determine the week with
40 respect to which the benefit year shall commence, the weekly benefit
41 amount payable and the maximum duration of the benefit.

42 B. The deputy shall promptly notify the claimant and any other
43 interested parties of the determination and the reasons for the
44 determination. Except as provided in subsection D of this section, unless
45 the claimant or an interested party, within seven calendar days after the

1 delivery of notification, or within fifteen calendar days after
2 notification was mailed to the claimant's or interested party's last known
3 address, files an appeal from the determination, it shall become final,
4 and benefits shall be paid or denied in accordance with the determination.
5 The department shall adopt rules to allow an appeal to be filed in
6 writing, electronically or by telephone. If an appeal tribunal affirms a
7 determination of the deputy allowing benefits, or the appeals board
8 affirms a determination or decision allowing benefits, the benefits shall
9 be paid regardless of any appeal that may thereafter be taken, but if that
10 decision is finally reversed, no employer's account shall be charged with
11 benefits so paid.

12 C. On receipt of a request from an interested party for information
13 about a deputy's determination made pursuant to this section or section
14 23-673, the department shall make available by memorandum or other written
15 document within five days after receipt of the request the following
16 information:

17 1. The facts considered and the facts relied on in making the
18 determination.

19 2. The specific statutes, regulations or other authority relied on
20 in making the determination.

21 3. The reasoning applied in making the determination.

22 D. Before the time for appeal as prescribed in subsection B of this
23 section has expired, an interested party may request a reconsidered
24 determination. The department shall examine the request and, within seven
25 calendar days, deny the request or issue a reconsidered determination.
26 The interested party may prove that a response was timely filed by using
27 evidence of fax records that documents the date and time when a faxed
28 response was transmitted and received by the department. A request for
29 reconsideration that is denied shall be treated as an appeal, and the same
30 procedure shall be followed as provided for in case of appeal from the
31 original determination. If a reconsidered determination is issued, the
32 time for appeal shall run from the date of issuance of the reconsidered
33 determination. The employer and the claimant shall each be ~~permitted no~~
34 ~~ALLOWED NOT~~ more than one request for reconsideration on each case.

35 E. Before the actual filing of an appeal under subsection B of this
36 section, but not later than the time ~~permitted~~ ~~ALLOWED~~ to appeal, the
37 department on its own motion may issue a reconsidered determination.
38 After the time for appeal has expired, but within one year after the
39 issuance of the original determination, the department with authorization
40 of the unemployment insurance program administrator may issue a
41 reconsidered determination, on the basis of newly discovered evidence that
42 by due diligence could not have been previously discovered, if no
43 administrative or judicial review has occurred or is pending on the
44 original determination. If a redetermination is based on fraud, the ~~one~~

1 ~~year~~ ONE-YEAR limitation on the issuance of redeterminations does not
2 apply.

3 F. Prompt notice in writing of any reconsidered determination under
4 subsection E of this section and the reasons for reconsideration shall be
5 given to all interested parties. An interested party may appeal within
6 the time prescribed under subsection B of this section, and the same
7 procedure shall be followed as provided for in case of an appeal from the
8 original determination.

9 G. IN DETERMINING THE VALIDITY OF CLAIMS PURSUANT TO SUBSECTION A
10 OF THIS SECTION, THE DEPARTMENT MAY NOT PAY BENEFITS FOR AN INITIAL OR
11 ONGOING CLAIM UNTIL THE INITIAL CLAIM IS CROSS-CHECKED, OR AN ONGOING
12 CLAIM IS CROSS-CHECKED ON A WEEKLY BASIS, AGAINST THE FOLLOWING DATA SETS:

13 1. THE NATIONAL ASSOCIATION OF STATE WORKFORCE AGENCIES' INTEGRITY
14 DATA HUB.

15 2. THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
16 NATIONAL DIRECTORY OF NEW HIRES.

17 3. THE DEPARTMENT OF ECONOMIC SECURITY'S NEW HIRE REPORTING SYSTEM.

18 4. THE STATE DEPARTMENT OF CORRECTIONS INMATE DATABASES.

19 5. THE SOCIAL SECURITY ADMINISTRATION'S PRISONER UPDATE PROCESSING
20 SYSTEM.

21 6. THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S NATIONAL VITAL
22 STATISTICS SYSTEM'S DEATH RECORDS DATABASE.

23 7. THE DEPARTMENT OF HEALTH SERVICES BUREAU OF VITAL RECORDS DEATH
24 RECORDS DATABASE.

25 H. IF A CROSS-CHECK PURSUANT TO SUBSECTION G OF THIS SECTION
26 RESULTS IN INFORMATION INDICATING THAT A CLAIM IS INELIGIBLE OR
27 FRAUDULENT, THAT CLAIM MAY NOT BE PAID, AND THE CLAIMANT SHALL BE
28 DISQUALIFIED FROM RECEIVING BENEFITS PURSUANT TO SECTION 23-778 AND
29 REFERRED FOR PROSECUTION.

30 I. THE DEPARTMENT SHALL EXAMINE ANY INITIAL CLAIM FOR BENEFITS AND
31 CONFIRM ITS VALIDITY BEFORE BENEFITS ARE PAID IF THE INITIAL CLAIM:

32 1. WAS SUBMITTED ELECTRONICALLY THROUGH AN INTERNET PROTOCOL
33 ADDRESS LOCATED OUTSIDE OF THIS STATE OR THE UNITED STATES.

34 2. REFERENCES A MAILING ADDRESS OR RESIDENTIAL ADDRESS FOR WHICH
35 ANOTHER CURRENT CLAIM WAS SUBMITTED.

36 3. IS ASSOCIATED WITH A DIRECT DEPOSIT FOR A BANK ACCOUNT ALREADY
37 USED FOR ANOTHER CURRENT CLAIM.

38 J. IF A FRAUDULENT CLAIM WAS FILED, THE DEPARTMENT MAY REFER THE
39 MATTER FOR PROSECUTION.

40 Sec. 6. Section 23-776, Arizona Revised Statutes, is amended to
41 read:

42 23-776. Disqualification from benefits for failure to accept
43 suitable work or actively seek work; exceptions

44 A. An individual shall be disqualified for benefits if the
45 department finds the individual has failed without cause ~~either to apply~~

1 ~~for available, suitable work, when so directed by the employment office or~~
2 ~~the department, to actively engage in seeking work, to accept suitable~~
3 ~~work when offered or to return to the individual's customary~~
4 ~~self-employment when so directed by the department~~ TO ACTIVELY SEEK AND
5 APPLY FOR SUITABLE WORK, TO ACCEPT AN OFFER OF SUITABLE WORK OR TO ACCEPT
6 REEMPLOYMENT AT THE SAME EMPLOYER FOR SUITABLE WORK, IF OFFERED. The
7 disqualification shall begin with the week in which the failure occurred
8 and shall continue for the duration of the individual's unemployment and
9 until the individual has earned wages in an amount equivalent to eight
10 times the individual's weekly benefit amount otherwise payable.

11 B. AN EMPLOYER SHALL REPORT TO THE DEPARTMENT WHEN AN INDIVIDUAL
12 WHO WAS PREVIOUSLY EMPLOYED WITH THAT EMPLOYER DOES ANY OF THE FOLLOWING:

- 13 1. REFUSES TO RETURN TO WORK.
- 14 2. REFUSES TO ACCEPT AN OFFER OF SUITABLE WORK.
- 15 3. FAILS, WITHOUT CAUSE, TO APPEAR FOR A SCHEDULED INTERVIEW.
- 16 4. FAILS TO RESPOND TO AN OFFER OF EMPLOYMENT.

17 C. THE DEPARTMENT SHALL ALLOW EMPLOYERS TO SUBMIT THE REPORTS
18 PURSUANT TO SUBSECTION B OF THIS SECTION DIGITALLY OR THROUGH EMAIL AND
19 SHALL CONDUCT AN INDEPENDENT REVIEW OF EACH REPORT TO DETERMINE WHETHER AN
20 INDIVIDUAL SHOULD BE DISQUALIFIED FROM RECEIVING BENEFITS.

21 ~~B.~~ D. In determining whether ~~or not~~ work is suitable for an
22 individual:

23 1. During the first four weeks of a benefit period, the department
24 shall consider the degree of risk involved to the individual's health,
25 safety and morals, the individual's physical fitness and prior training,
26 the individual's experience and prior earnings, the individual's length of
27 unemployment and prospects for securing local work in the individual's
28 customary occupation and the distance of the available work from the
29 individual's residence.

30 2. After the first four weeks of a benefit period, the department
31 shall consider any employment offer that pays one hundred twenty percent
32 of the individual's weekly benefit amount to be suitable work.

33 ~~C.~~ E. Notwithstanding any other provisions of this chapter, work
34 shall not be deemed suitable and benefits shall not be denied under this
35 chapter to an otherwise eligible individual for refusing to accept new
36 work under any of the following conditions:

37 1. The position offered is vacant due directly to a strike, lockout
38 or other labor dispute.

39 2. The wages, hours or other conditions of the work offered are
40 substantially less favorable to the individual than those prevailing for
41 similar work in the locality.

42 3. As a condition of being employed, the individual would be
43 required to join a company union or to resign from or refrain from joining
44 a bona fide labor organization.

1 ~~D.~~ F. An individual is considered to have refused an offer of
2 suitable work under subsection A of this section if an offer of work is
3 withdrawn by an employer after an individual either:

4 1. Tests positive for drugs after a drug test given pursuant to
5 chapter 2, article 14 of this title by or on behalf of a prospective
6 employer as a condition of an offer of employment.

7 2. Refuses, without good cause, to submit to a drug test that is
8 required by a prospective employer as a condition of an offer of
9 employment.