

SECOND REGULAR SESSION

HOUSE BILL NO. 2297

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZPATRICK.

6547H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 288.030 and 288.050, RSMo, and to enact in lieu thereof two new sections relating to disqualification from unemployment benefits.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 288.030 and 288.050, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 288.030 and 288.050, to read as follows:

288.030. 1. As used in this chapter, unless the context clearly requires otherwise, the following terms mean:

(1) "Appeals tribunal", a referee or a body consisting of three referees appointed to conduct hearings and make decisions on appeals from administrative determinations, petitions for reassessment, and claims referred pursuant to subsection 2 of section 288.070;

(2) "Base period", the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(3) "Benefit year", the one-year period beginning with the first day of the first week with respect to which an insured worker first files an initial claim for determination of such worker's insured status, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual, providing the individual is then an insured worker, next files such an initial claim after the end of the individual's last preceding benefit year;

(4) "Benefits", the money payments payable to an insured worker, as provided in this chapter, with respect to such insured worker's unemployment;

(5) "Calendar quarter", the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (6) "Claimant", an individual who has filed an initial claim for determination of such
18 individual's status as an insured worker, a notice of unemployment, a certification for waiting
19 week credit, or a claim for benefits;
- 20 (7) "Commission", the labor and industrial relations commission of Missouri;
- 21 (8) "Common paymaster", two or more related corporations in which one of the
22 corporations has been designated to disburse remuneration to concurrently employed individuals
23 of any of the related corporations;
- 24 (9) "Contributions", the money payments to the unemployment compensation fund
25 required by this chapter, exclusive of interest and penalties;
- 26 (10) "Decision", a ruling made by an appeals tribunal or the commission after a hearing;
- 27 (11) "Deputy", a representative of the division designated to make investigations and
28 administrative determinations on claims or matters of employer liability or to perform related
29 work;
- 30 (12) "Determination", any administrative ruling made by the division without a hearing;
- 31 (13) "Director", the administrative head of the division of employment security;
- 32 (14) "Division", the division of employment security which administers this chapter;
- 33 (15) "Employing unit", any individual, organization, partnership, corporation, common
34 paymaster, or other legal entity, including the legal representatives thereof, which has or,
35 subsequent to June 17, 1937, had in its employ one or more individuals performing services for
36 it within this state. All individuals performing services within this state for any employing unit
37 which maintains two or more separate establishments within this state shall be deemed to be
38 employed by a single employing unit for all the purposes of this chapter. Each individual
39 engaged to perform or to assist in performing the work of any person in the service of an
40 employing unit shall be deemed to be engaged by such employing unit for all the purposes of this
41 chapter, whether such individual was engaged or paid directly by such employing unit or by such
42 person, provided the employing unit had actual or constructive knowledge of the work;
- 43 (16) "Employment office", a free public employment office operated by this or any other
44 state as a part of a state controlled system of public employment offices including any location
45 designated by the state as being a part of the one-stop career system;
- 46 (17) "Equipment", a motor vehicle, straight truck, tractor, semi-trailer, full trailer, any
47 combination of these and any other type of equipment used by authorized carriers in the
48 transportation of property for hire;
- 49 (18) "Fund", the unemployment compensation fund established by this chapter;
- 50 (19) "Governmental entity", the state, any political subdivision thereof, any
51 instrumentality of any one or more of the foregoing which is wholly owned by this state and one

52 or more other states or political subdivisions and any instrumentality of this state or any political
53 subdivision thereof and one or more other states or political subdivisions;

54 (20) "Initial claim", an application, in a form prescribed by the division, made by an
55 individual for the determination of the individual's status as an insured worker;

56 (21) "Insured work", employment in the service of an employer;

57 (22) (a) As to initial claims filed after December 31, 1990, "insured worker", a worker
58 who has been paid wages for insured work in the amount of one thousand dollars or more in at
59 least one calendar quarter of such worker's base period and total wages in the worker's base
60 period equal to at least one and one-half times the insured wages in that calendar quarter of the
61 base period in which the worker's insured wages were the highest, or in the alternative, a worker
62 who has been paid wages in at least two calendar quarters of such worker's base period and
63 whose total base period wages are at least one and one-half times the maximum taxable wage
64 base, taxable to any one employer, in accordance with subsection 2 of section 288.036. For the
65 purposes of this definition, "wages" shall be considered as wage credits with respect to any
66 benefit year, only if such benefit year begins subsequent to the date on which the employing unit
67 by which such wages were paid has become an employer;

68 (b) As to initial claims filed after December 31, 2004, wages for insured work in the
69 amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand
70 three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or
71 more, after December 31, 2007, one thousand five hundred dollars or more in at least one
72 calendar quarter of such worker's base period and total wages in the worker's base period equal
73 to at least one and one-half times the insured wages in that calendar quarter of the base period
74 in which the worker's insured wages were the highest, or in the alternative, a worker who has
75 been paid wages in at least two calendar quarters of such worker's base period and whose total
76 base period wages are at least one and one-half times the maximum taxable wage base, taxable
77 to any one employer, in accordance with subsection 2 of section 288.036;

78 (23) "Misconduct", [an act of wanton or willful disregard of the employer's interest, a
79 deliberate violation of the employer's rules, a disregard of standards of behavior which the
80 employer has the right to expect of his or her employee, or negligence in such degree or
81 recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and
82 substantial disregard of the employer's interest or of the employee's duties and obligations to the
83 employer] **only as the term is used in this chapter, conduct or failure to act in a manner that**
84 **is connected with work, regardless of whether such conduct or failure to act occurs at the**
85 **workplace or during work hours, which shall include:**

86 **(a) Conduct or a failure to act demonstrating knowing disregard of the employer's**
87 **interest or a knowing violation of the standards which the employer expects of his or her**
88 **employee;**

89 **(b) Conduct or a failure to act demonstrating carelessness or negligence in such**
90 **degree or recurrence as to manifest culpability, wrongful intent, or a knowing disregard**
91 **of the employer's interest or of the employee's duties and obligations to the employer;**

92 **(c) A violation of an employer's no-call, no-show policy; chronic absenteeism or**
93 **tardiness in violation of a known policy of the employer; or two or more unapproved**
94 **absences following a written reprimand or warning relating to an unapproved absence**
95 **unless such absences are protected by law;**

96 **(d) A knowing violation of a state standard or regulation by an employee of an**
97 **employer licensed or certified by the state, which would cause the employer to be**
98 **sanctioned or have its license or certification suspended or revoked; or**

99 **(e) A violation of an employer's rule, unless the employee can demonstrate that:**
100 **a. He or she did not know, and could not reasonably know, of the rule's**
101 **requirements;**

102 **b. The rule is not lawful; or**

103 **c. The rule is not fairly or consistently enforced;**

104 (24) "Referee", a representative of the division designated to serve on an appeals
105 tribunal;

106 (25) "State" includes, in addition to the states of the United States of America, the
107 District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

108 (26) "Temporary employee", an employee assigned to work for the clients of a temporary
109 help firm;

110 (27) "Temporary help firm", a firm that hires its own employees and assigns them to
111 clients to support or supplement the clients' workforce in work situations such as employee
112 absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

113 (28) (a) An individual shall be deemed "totally unemployed" in any week during which
114 the individual performs no services and with respect to which no wages are payable to such
115 individual;

116 (b) a. An individual shall be deemed "partially unemployed" in any week of less than
117 full-time work if the wages payable to such individual for such week do not equal or exceed the
118 individual's weekly benefit amount plus twenty dollars;

119 b. Effective for calendar year 2007 and each year thereafter, an individual shall be
120 deemed "partially unemployed" in any week of less than full-time work if the wages payable to

121 such individual for such week do not equal or exceed the individual's weekly benefit amount plus
122 twenty dollars or twenty percent of his or her weekly benefit amount, whichever is greater;

123 (c) An individual's "week of unemployment" shall begin the first day of the calendar
124 week in which the individual registers at an employment office except that, if for good cause the
125 individual's registration is delayed, the week of unemployment shall begin the first day of the
126 calendar week in which the individual would have otherwise registered. The requirement of
127 registration may by regulation be postponed or eliminated in respect to claims for partial
128 unemployment or may by regulation be postponed in case of a mass layoff due to a temporary
129 cessation of work;

130 (29) "Waiting week", the first week of unemployment for which a claim is allowed in
131 a benefit year or if no waiting week has occurred in a benefit year in effect on the effective date
132 of a shared work plan, the first week of participation in a shared work unemployment
133 compensation program pursuant to section 288.500.

134 2. The Missouri average annual wage shall be computed as of June thirtieth of each year,
135 and shall be applicable to the following calendar year. The Missouri average annual wage shall
136 be calculated by dividing the total wages reported as paid for insured work in the preceding
137 calendar year by the average of mid-month employment reported by employers for the same
138 calendar year. The Missouri average weekly wage shall be computed by dividing the Missouri
139 average annual wage as computed in this subsection by fifty-two.

288.050. 1. Notwithstanding the other provisions of this law, a claimant shall be
2 disqualified for waiting week credit or benefits until after the claimant has earned wages for
3 work insured pursuant to the unemployment compensation laws of any state equal to ten times
4 the claimant's weekly benefit amount if the deputy finds:

5 (1) That the claimant has left work voluntarily without good cause attributable to such
6 work or to the claimant's employer. A temporary employee of a temporary help firm will be
7 deemed to have voluntarily quit employment if the employee does not contact the temporary help
8 firm for reassignment prior to filing for benefits. Failure to contact the temporary help firm will
9 not be deemed a voluntary quit unless the claimant has been advised of the obligation to contact
10 the firm upon completion of assignments and that unemployment benefits may be denied for
11 failure to do so. **"Good cause", for the purposes of this subdivision, shall include only that**
12 **cause which would compel a reasonable employee to cease working or which would require**
13 **separation from work due to illness or disability.** The claimant shall not be disqualified:

14 (a) If the deputy finds the claimant quit such work for the purpose of accepting a more
15 remunerative job which the claimant did accept and earn some wages therein;

16 (b) If the claimant quit temporary work to return to such claimant's regular employer; or

17 (c) If the deputy finds the individual quit work, which would have been determined not
18 suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within
19 twenty-eight calendar days of the first day worked;

20 (d) As to initial claims filed after December 31, 1988, if the claimant presents evidence
21 supported by competent medical proof that she was forced to leave her work because of
22 pregnancy, notified her employer of such necessity as soon as practical under the circumstances,
23 and returned to that employer and offered her services to that employer as soon as she was
24 physically able to return to work, as certified by a licensed and practicing physician, but in no
25 event later than ninety days after the termination of the pregnancy. An employee shall have been
26 employed for at least one year with the same employer before she may be provided benefits
27 pursuant to the provisions of this paragraph;

28 (e) If the deputy finds that, due to the spouse's mandatory and permanent military change
29 of station order, the claimant quit work to relocate with the spouse to a new residence from
30 which it is impractical to commute to the place of employment and the claimant remained
31 employed as long as was reasonable prior to the move. The claimant's spouse shall be a member
32 of the U.S. Armed Forces who is on active duty, or a member of the National Guard or other
33 reserve component of the U.S. Armed Forces who is on active National Guard or reserve duty.
34 The provisions of this paragraph shall only apply to individuals who have been determined to
35 be an insured worker as provided in subdivision (22) of subsection 1 of section 288.030;

36 (2) That the claimant has retired pursuant to the terms of a labor agreement between the
37 claimant's employer and a union duly elected by the employees as their official representative
38 or in accordance with an established policy of the claimant's employer; or

39 (3) That the claimant failed without good cause either to apply for available suitable
40 work when so directed by a deputy of the division or designated staff of an employment office
41 as defined in subsection 1 of section 288.030, or to accept suitable work when offered the
42 claimant, either through the division or directly by an employer by whom the individual was
43 formerly employed, or to return to the individual's customary self-employment, if any, when so
44 directed by the deputy. An offer of work shall be rebuttably presumed if an employer notifies
45 the claimant in writing of such offer by sending an acknowledgment via any form of certified
46 mail issued by the United States Postal Service stating such offer to the claimant at the claimant's
47 last known address. Nothing in this subdivision shall be construed to limit the means by which
48 the deputy may establish that the claimant has or has not been sufficiently notified of available
49 work.

50 (a) In determining whether or not any work is suitable for an individual, the division
51 shall consider, among other factors and in addition to those enumerated in paragraph (b) of this
52 subdivision, the degree of risk involved to the individual's health, safety and morals, the

53 individual's physical fitness and prior training, the individual's experience and prior earnings, the
54 individual's length of unemployment, the individual's prospects for securing work in the
55 individual's customary occupation, the distance of available work from the individual's residence
56 and the individual's prospect of obtaining local work; except that, if an individual has moved
57 from the locality in which the individual actually resided when such individual was last
58 employed to a place where there is less probability of the individual's employment at such
59 individual's usual type of work and which is more distant from or otherwise less accessible to
60 the community in which the individual was last employed, work offered by the individual's most
61 recent employer if similar to that which such individual performed in such individual's last
62 employment and at wages, hours, and working conditions which are substantially similar to those
63 prevailing for similar work in such community, or any work which the individual is capable of
64 performing at the wages prevailing for such work in the locality to which the individual has
65 moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable
66 for the individual;

67 (b) Notwithstanding any other provisions of this law, no work shall be deemed suitable
68 and benefits shall not be denied pursuant to this law to any otherwise eligible individual for
69 refusing to accept new work under any of the following conditions:

70 a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

71 b. If the wages, hours, or other conditions of the work offered are substantially less
72 favorable to the individual than those prevailing for similar work in the locality;

73 c. If as a condition of being employed the individual would be required to join a
74 company union or to resign from or refrain from joining any bona fide labor organization.

75 2. If a deputy finds that a claimant has been discharged for misconduct connected with
76 the claimant's work, such claimant shall be disqualified for waiting week credit and benefits, and
77 no benefits shall be paid nor shall the cost of any benefits be charged against any employer for
78 any period of employment within the base period until the claimant has earned wages for work
79 insured under the unemployment laws of this state or any other state as prescribed in this section.

80 In addition to the disqualification for benefits pursuant to this provision the division may in the
81 more aggravated cases of misconduct cancel all or any part of the individual's wage credits,
82 which were established through the individual's employment by the employer who discharged
83 such individual, according to the seriousness of the misconduct. A disqualification provided for
84 pursuant to this subsection shall not apply to any week which occurs after the claimant has
85 earned wages for work insured pursuant to the unemployment compensation laws of any state
86 in an amount equal to six times the claimant's weekly benefit amount. Should a claimant be
87 disqualified on a second or subsequent occasion within the base period or subsequent to the base

88 period the claimant shall be required to earn wages in an amount equal to or in excess of six
89 times the claimant's weekly benefit amount for each disqualification.

90 3. [Absenteeism or tardiness may constitute a rebuttable presumption of misconduct,
91 regardless of whether the last incident alone constitutes misconduct, if the discharge was the
92 result of a violation of the employer's attendance policy, provided the employee had received
93 knowledge of such policy prior to the occurrence of any absence or tardy upon which the
94 discharge is based.

95 4.] Notwithstanding the provisions of subsection 1 of this section, a claimant may not
96 be determined to be disqualified for benefits because the claimant is in training approved
97 pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as
98 amended), or because the claimant left work which was not suitable employment to enter such
99 training. For the purposes of this subsection "suitable employment" means, with respect to a
100 worker, work of a substantially equal or higher skill level than the worker's past adversely
101 affected employment, and wages for such work at not less than eighty percent of the worker's
102 average weekly wage as determined for the purposes of the Trade Act of 1974.

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