

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 593

BY SENATOR CARMICHAEL

[Originating in the Committee on the Judiciary;

reported on February 23, 2016.]

1 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating
2 to disqualification for unemployment benefits; providing that an individual shall be
3 disqualified for benefits for any week, or portion of a week, in which he or she left or lost
4 his or her job as a result of a strike; clarifying that a lockout shall not be deemed to be a
5 strike; providing that a lockout shall not form the basis of any disqualification from benefits;
6 providing that operation of a facility by employees of the company shall not be deemed
7 reason to grant employees on strike unemployment benefits; and establishing that
8 operation of a facility by workers hired to replace the employees on strike would make
9 striking workers eligible for benefits.

Be it enacted by the Legislature of West Virginia:

1 That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 6. APPEALS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an individual is disqualified for
2 benefits:

3 (1) For the week in which he or she left his or her most recent work voluntarily without
4 good cause involving fault on the part of the employer and until the individual returns to covered
5 employment and has been employed in covered employment at least thirty working days.

6 For the purpose of this subdivision, an individual has not left his or her most recent work
7 voluntarily without good cause involving fault on the part of the employer if the individual leaves
8 his or her most recent work with an employer and if he or she in fact, within a fourteen-day
9 calendar period, does return to employment with the last preceding employer with whom he or
10 she was previously employed within the past year prior to his or her return to work, and which last
11 preceding employer, after having previously employed the individual for thirty working days or
12 more, laid off the individual because of lack of work, which layoff occasioned the payment of

13 benefits under this chapter or could have occasioned the payment of benefits under this chapter
14 had the individual applied for benefits. It is the intent of this paragraph to cause no disqualification
15 for benefits for an individual who complies with the foregoing set of requirements and conditions.
16 Further, for the purpose of this subdivision, an individual has not left his or her most recent work
17 voluntarily without good cause involving fault on the part of the employer, if the individual was
18 compelled to leave his or her work for his or her own health-related reasons and notifies the
19 employer prior to leaving the job, or within two business days after leaving the job, or as soon as
20 practicable and presents written certification from a licensed physician within thirty days of leaving
21 the job that his or her work aggravated, worsened or will worsen the individual's health problem.

22 (2) For the week in which he or she was discharged from his or her most recent work for
23 misconduct and the six weeks immediately following that week; or for the week in which he or she
24 was discharged from his or her last thirty-day employing unit for misconduct and the six weeks
25 immediately following that week. The disqualification carries a reduction in the maximum benefit
26 amount equal to six times the individual's weekly benefit. However, if the claimant returns to work
27 in covered employment for thirty days during his or her benefit year, whether or not the days are
28 consecutive, the maximum benefit amount is increased by the amount of the decrease imposed
29 under the disqualification; except that:

30 If he or she were discharged from his or her most recent work for one of the following
31 reasons, or if he or she were discharged from his or her last thirty days employing unit for one of
32 the following reasons: Gross misconduct consisting of willful destruction of his or her employer's
33 property; assault upon the person of his or her employer or any employee of his or her employer;
34 if the assault is committed at the individual's place of employment or in the course of employment;
35 reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work
36 under the influence of any controlled substance, as defined in chapter sixty-a of this code, without
37 a valid prescription or being under the influence of any controlled substance, as defined in said
38 chapter, without a valid prescription, while at work; adulterating or otherwise manipulating a

39 sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee;
40 refusal to submit to random testing for alcohol or illegal controlled substances for employees in
41 safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code;
42 arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross
43 misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least
44 thirty days in covered employment: *Provided*, That for the purpose of this subdivision, the words
45 “any other gross misconduct” include, but are not limited to, any act or acts of misconduct where
46 the individual has received prior written warning that termination of employment may result from
47 the act or acts.

48 (3) For the week in which he or she failed, without good cause, to apply for available,
49 suitable work, accept suitable work when offered, or return to his or her customary self-
50 employment when directed to do so by the commissioner, and for the four weeks which
51 immediately follow for such additional period as any offer of suitable work shall continue open for
52 his or her acceptance. The disqualification carries a reduction in the maximum benefit amount
53 equal to four times the individual’s weekly benefit amount.

54 (4) For a week in which his or her total or partial unemployment is due to a stoppage of
55 work which exists because of a labor dispute at the factory, establishment or other premises at
56 which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was
57 not participating, financing or directly interested in the dispute; and (2) did not belong to a grade
58 or class of workers who were participating, financing or directly interested in the labor dispute
59 which resulted in the stoppage of work. No disqualification under this subdivision is imposed if the
60 employees are required to accept wages, hours or conditions of employment substantially less
61 favorable than those prevailing for similar work in the locality, or if employees are denied the right
62 of collective bargaining under generally prevailing conditions, or if an employer shuts down his or
63 her plant or operation or dismisses his or her employees in order to force wage reduction, changes
64 in hours or working conditions. For the purpose of this subdivision if any stoppage of work

65 continues longer than four weeks after the termination of the labor dispute which caused stoppage
66 of work, there is a rebuttable presumption that part of the stoppage of work which exists after a
67 period of four weeks after the termination of the labor dispute did not exist because of the labor
68 dispute; and in that event the burden is upon the employer or other interested party to show
69 otherwise. For any week, or portion thereof, in which he or she did not work as a result of a strike
70 or other bona fide labor dispute which caused him or her to leave or lose his or her employment.
71 For the purpose of this subdivision, a lockout shall not be deemed to be a strike or a bona fide
72 labor dispute and no individual shall be denied benefits by reason of a lockout. Operation of a
73 facility by employees of the company shall not be deemed reason to grant employees of the
74 company on strike unemployment compensation benefit payments. If the operation of a facility is
75 with workers hired to replace the employees on strike, the employees would be eligible for
76 benefits.

77 (5) For a week with respect to which he or she is receiving or has received:

78 (a) Wages in lieu of notice;

79 (b) Compensation for temporary total disability under the workers' compensation law of
80 any state or under a similar law of the United States; or

81 (c) Unemployment compensation benefits under the laws of the United States or any other
82 state.

83 (6) For the week in which an individual has voluntarily quit employment to marry or to
84 perform any marital, parental or family duty, or to attend to his or her personal business or affairs
85 and until the individual returns to covered employment and has been employed in covered
86 employment at least thirty working days: *Provided*, That an individual who has voluntarily quit
87 employment to accompany a spouse serving in active military service who has been reassigned
88 from one military assignment to another is not disqualified for benefits pursuant to this subdivision:
89 *Provided, however*, That the account of the employer of an individual who leaves the employment
90 to accompany a spouse reassigned from one military assignment to another may not be charged.

91 (7) Benefits may not be paid to any individual on the basis of any services, substantially
92 all of which consist of participating in sports or athletic events or training or preparing to so
93 participate, for any week which commences during the period between two successive sport
94 seasons, or similar periods, if the individual performed the services in the first of the seasons, or
95 similar periods, and there is a reasonable assurance that the individual will perform the services
96 in the later of the seasons, or similar periods.

97 (8) (a) Benefits may not be paid on the basis of services performed by an alien unless the
98 alien is an individual who was lawfully admitted for permanent residence at the time the services
99 were performed, was lawfully present for purposes of performing the services or was permanently
100 residing in the United States under color of law at the time the services were performed, including
101 an alien who is lawfully present in the United States as a result of the application of the provisions
102 of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act: *Provided*, That
103 any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act
104 as provided by Public Law 94-566 which specify other conditions or other effective date than
105 stated in this subdivision for the denial of benefits based on services performed by aliens and
106 which modifications are required to be implemented under state law as a condition for full tax
107 credit against the tax imposed by the federal Unemployment Tax Act are applicable under the
108 provisions of this section.

109 (b) Any data or information required of individuals applying for benefits to determine
110 whether benefits are not payable to them because of their alien status shall be uniformly required
111 from all applicants for benefits.

112 (c) In the case of an individual whose application for benefits would otherwise be
113 approved, no determination that benefits to the individual are not payable because of his or her
114 alien status may be made except upon a preponderance of the evidence.

115 (9) For each week in which an individual is unemployed because, having voluntarily left
116 employment to attend a school, college, university or other educational institution, he or she is

117 attending that school, college, university or other educational institution, or is awaiting entrance
118 thereto or is awaiting the starting of a new term or session thereof, and until the individual returns
119 to covered employment.

120 (10) For each week in which he or she is unemployed because of his or her request, or
121 that of his or her duly authorized agent, for a vacation period at a specified time that would leave
122 the employer no other alternative but to suspend operations.

123 (11) In the case of an individual who accepts an early retirement incentive package, unless
124 he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective
125 facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a
126 substantial loss by not accepting the early retirement incentive package.

127 (12) For each week with respect to which he or she is receiving, or has received, benefits
128 under Title II of the Social Security Act or similar payments under any act of Congress, or
129 remuneration in the form of an annuity, pension or other retirement pay from a base period
130 employer or chargeable employer or from any trust or fund contributed to by a base period
131 employer or chargeable employer or any combination of the above, the weekly benefit amount
132 payable to the individual for that week shall be reduced, but not below zero, by the prorated weekly
133 amount of those benefits, payments or remuneration: *Provided*, That if the amount of benefits is
134 not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided, however*,
135 That there is no disqualification if in the individual's base period there are no wages which were
136 paid by the base period employer or chargeable employer paying the remuneration, or by a fund
137 into which the employer has paid during the base period: *Provided further*, That notwithstanding
138 any other provision of this subdivision to the contrary, the weekly benefit amount payable to the
139 individual for that week may not be reduced by any retirement benefits he or she is receiving or
140 has received under Title II of the Social Security Act or similar payments under any act of
141 Congress. A claimant may be required to certify as to whether or not he or she is receiving or has
142 been receiving remuneration in the form of an annuity, pension or other retirement pay from a

143 base period employer or chargeable employer or from a trust fund contributed to by a base period
144 employer or chargeable employer.

145 (13) For each week in which and for fifty-two weeks thereafter, beginning with the date of
146 the decision, if the commissioner finds the individual, who within twenty-four calendar months
147 immediately preceding the decision, has made a false statement or representation knowing it to
148 be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment
149 under this article: *Provided*, That disqualification under this subdivision does not preclude
150 prosecution under section seven, article ten of this chapter.