

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2338**

BY DELEGATE ROWAN

[Introduced February 10, 2017; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §21A-6-18, all relating to  
 3 domestic violence victims' eligibility for unemployment compensation benefits; removing  
 4 disqualification for certain victims of domestic violence, sexual offenses or stalking; and  
 5 requiring training of Workforce West Virginia employees in the nature and dynamics of  
 6 domestic violence to aid employees who interact with claimants.

*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; and that said code be amended by adding thereto a new section, designated §21A-6-  
 3 18, all to read as follows:

**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

**§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 workday, and which  
 11 last preceding employer, after having previously employed the individual for thirty working days  
 12 or 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~~

19 (A) For health-related reasons and notifies the employer prior to leaving the job or within  
20 two business days after leaving the job or as soon as practicable and presents written certification  
21 from a licensed physician within thirty days of leaving the job that his or her work aggravated,  
22 worsened or will worsen the individual's health problem; or

23 (B)(i) Due to circumstances directly resulting from:

24 (I) Domestic violence, as defined in section two hundred two, article twenty-seven, chapter  
25 forty-eight;

26 (II) A sexual offense in article eight-b, chapter sixty-one of this code; or

27 (III) Stalking as provided in section nine-a, article two, chapter sixty-one by a family or  
28 household member as defined in section two hundred four, article twenty-seven, chapter forty-  
29 eight; and

30 (ii) The individual:

31 (I) Reasonably fears future domestic violence, a future sexual offense or stalking at or on  
32 route to or from the individual's place of employment;

33 (II) Wishes to relocate to another geographic area in order to avoid future domestic  
34 violence, sexual offense or stalking against the individual, the individual's family, or coworkers;

35 (III) Reasonably believes that leaving work is necessary for the future safety of the  
36 individual, the individual's family, or coworkers;

37 (IV) Is required to leave employment as a condition of receiving services or shelter from  
38 an agency which provides support services or shelter to victims of domestic violence and sexual  
39 assault; or

40 (V) Reasonably believes for any reason related to domestic violence or a sexual offense  
41 that termination of employment is necessary for the future safety of the individual, the individual's  
42 family, or coworkers.

43 (iii) The benefits payable under this paragraph (B) shall be paid from the fund provided  
44 under the provisions of article eight of this chapter and are not chargeable to the employer.

45 (iv) In the event that an employer contests the claim, the claimant must provide  
46 documentation of other action initiated by the claimant for safety including, but not limited to, a  
47 protective order application, a police report, a medical record or a safety plan from a licensed  
48 domestic violence or sexual assault center or a licensed counselor.

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

57 If he or she were discharged from his or her most recent work for one of the following  
58 reasons, or if he or she were discharged from his or her last thirty days employing unit for one of  
59 the following reasons: Gross misconduct consisting of willful destruction of his or her employer's  
60 property; assault upon the person of his or her employer or any employee of his or her employer;  
61 if the assault is committed at the individual's place of employment or in the course of employment;  
62 reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work  
63 under the influence of any controlled substance, as defined in chapter sixty-a of this code without  
64 a valid prescription, or being under the influence of any controlled substance, as defined in ~~said~~  
65 chapter sixty-a without a valid prescription, while at work; adulterating or otherwise manipulating  
66 a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee;

67 refusal to submit to random testing for alcohol or illegal controlled substances for employees in  
68 safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code;  
69 arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross  
70 misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least  
71 thirty days in covered employment: *Provided*, That for the purpose of this subdivision, the words  
72 "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where  
73 the individual has received prior written warning that termination of employment may result from  
74 the act or acts: *Provided, however, That "misconduct" does not include any discharge due to*  
75 *circumstances directly resulting from domestic violence, as defined in section two hundred two,*  
76 *article twenty-seven, chapter forty-eight; a sexual offense in article eight-b, chapter sixty-one of*  
77 *this code; or stalking as defined by section nine-a, article two, chapter sixty-one by a family or*  
78 *household member as defined in section two hundred four, article twenty-seven, chapter forty-*  
79 *eight.*

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

86 (4) For a week in which his or her total or partial unemployment is due to a stoppage of  
87 work which exists because of a labor dispute at the factory, establishment or other premises at  
88 which he or she was last employed, unless the commissioner is satisfied that he or she: ~~(1)~~ (A)  
89 Was not participating, financing or directly interested in the dispute; and ~~(2)~~ (B) did not belong to  
90 a grade or class of workers who were participating, financing or directly interested in the labor  
91 dispute which resulted in the stoppage of work. No disqualification under this subdivision is  
92 imposed if the employees are required to accept wages, hours or conditions of employment  
93 substantially less favorable than those prevailing for similar work in the locality, or if employees

94 are denied the right of collective bargaining under generally prevailing conditions, or if an  
95 employer shuts down his or her plant or operation or dismisses his or her employees in order to  
96 force wage reduction, changes in hours or working conditions. For the purpose of this subdivision  
97 if any stoppage of work continues longer than four weeks after the termination of the labor dispute  
98 which caused stoppage of work, there is a rebuttable presumption that part of the stoppage of  
99 work which exists after a period of four weeks after the termination of the labor dispute did not  
100 exist because of the labor dispute; and in that event the burden is upon the employer or other  
101 interested party to show otherwise.

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

103 ~~(a)~~ (A) Wages in lieu of notice;

104 ~~(b)~~ (B) Compensation for temporary total disability under the workers' compensation law  
105 of any state or under a similar law of the United States; or

106 ~~(c)~~ (C) Unemployment compensation benefits under the laws of the United States or any  
107 other state.

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

116 (7) Benefits may not be paid to any individual on the basis of any services, substantially  
117 all of which consist of participating in sports or athletic events or training or preparing to ~~se~~  
118 participate, for any week which commences during the period between two successive sport  
119 seasons (or similar periods) if the individual performed the services in the first of the seasons (or

120 similar periods) and there is a reasonable assurance that the individual will perform the services  
121 in the later of the seasons (or similar periods).

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

134       ~~(b)~~ (B) Any data or information required of individuals applying for benefits to determine  
135 whether benefits are not payable to them because of their alien status shall be uniformly required  
136 from all applicants for benefits.

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

140       (9) For each week in which an individual is unemployed because, having voluntarily left  
141 employment to attend a school, college, university or other educational institution, he or she is  
142 attending that school, college, university or other educational institution, or is awaiting entrance  
143 thereto or is awaiting the starting of a new term or session thereof, and until the individual returns  
144 to covered employment.

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

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

152 (12) For each week with respect to which he or she is receiving or has received benefits  
153 under Title II of the Social Security Act or similar payments under any Act of Congress, or  
154 remuneration in the form of an annuity, pension or other retirement pay from a base period  
155 employer or chargeable employer or from any trust or fund contributed to by a base period  
156 employer or chargeable employer or any combination of the above, the weekly benefit amount  
157 payable to the individual for that week shall be reduced (but not below zero) by the prorated  
158 weekly amount of those benefits, payments or remuneration: *Provided*, That if the amount of  
159 benefits is not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided*,  
160 *however*, That there is no disqualification if in the individual's base period there are no wages  
161 which were paid by the base period employer or chargeable employer paying the remuneration,  
162 or by a fund into which the employer has paid during the base period: *Provided further*, That  
163 notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount  
164 payable to the individual for that week may not be reduced by any retirement benefits he or she  
165 is receiving or has received under Title II of the Social Security Act or similar payments under any  
166 Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving  
167 or has been receiving remuneration in the form of an annuity, pension or other retirement pay  
168 from a base period employer or chargeable employer or from a trust fund contributed to by a base  
169 period employer or chargeable employer.

170 (13) For each week in which and for fifty-two weeks thereafter, beginning with the date of  
171 the decision, if the commissioner finds the individual who within twenty-four calendar months



172 immediately preceding the decision, has made a false statement or representation knowing it to  
 173 be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment  
 174 under this article: *Provided*, That disqualification under this subdivision does not preclude  
 175 prosecution under section seven, article ten of this chapter.

**§21A-6-18. Administration of domestic violence claims.**

1 The Executive Director of Workforce West Virginia shall: (1) Promulgate procedural rules  
 2 providing for the confidentiality of information, including without limitation, addresses and contact  
 3 information obtained in evaluating claims for domestic violence, sexual offenses and stalking by  
 4 family or household members; and

5 (2) Establish and implement a training curriculum addressing the nature and dynamics of  
 6 domestic violence to aid employees who interact with claimants:

7 (A) In determining whether a claimant's separation stems from domestic violence, a sexual  
 8 offense or stalking by family or household members; and

9 (B) In reliably screening, identifying and adjudicating those claims.

NOTE: The purpose of this bill is to prevent an individual from being disqualified from receiving unemployment compensation benefits when their separation from employment is due to domestic violence, sexual offenses or stalking by family or household members. The individual must seek and accept new suitable work in order to remain eligible for benefits. The bill provides that the employer is not chargeable for benefits paid when the separation from work is for those reasons.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.