

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Committee Substitute**

**for**

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**for**

**House Bill 2441**

By Delegate Street

[Reported February 28, 2025, from the Committee on  
the Judiciary]

1 A BILL to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating  
2 to unemployment compensation; employee eligibility; and providing that an employee who  
3 fails random testing for alcohol or illegal controlled substances where alcohol or drug use  
4 creates an inherent risk to the health and safety of the employee or others, or the employee  
5 is employed in a safety-sensitive position is disqualified for benefits.

*Be it enacted by the Legislature of West Virginia:*

**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 good  
4 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 30 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 his  
8 or her most recent work with an employer and if he or she in fact, within a 14-day calendar period,  
9 does return to employment with the last preceding employer with whom he or she was previously  
10 employed within the past year prior to his or her return to work, and which last preceding employer,  
11 after having previously employed the individual for 30 working days or more, laid off the individual  
12 because of lack of work, which layoff occasioned the payment of benefits under this chapter or  
13 could have occasioned the payment of benefits under this chapter had the individual applied for  
14 benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual  
15 who complies with the foregoing set of requirements and conditions. Further, for the purpose of  
16 this subdivision, an individual has not left his or her most recent work voluntarily without good  
17 cause involving fault on the part of the employer, if the individual was compelled to leave his or her  
18 work for his or her own health-related reasons and notifies the employer prior to leaving the job or

19 within two business days after leaving the job or as soon as practicable and presents written  
20 certification from a licensed physician within 30 days of leaving the job that his or her work  
21 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 30-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 30 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 30 days employing unit for one of the  
32 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; if  
34 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 60A of this code without a  
37 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, or failure of, random testing for alcohol or illegal controlled substances for  
41 employees in an employment position where alcohol or drug use creates an inherent risk to the  
42 health and safety of the employee or others, or employees in safety-sensitive positions as defined  
43 in §21-1D-2 of this code; violation of an employer's drug-free workplace program; violation of an  
44 employer's alcohol-free workplace program; arson, theft, larceny, fraud, or embezzlement in

connection with his or her work; or any other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least 30 days in covered employment: *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the act or acts.

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

(4) For any week or portion thereof in which he or she did not work as a result of:

(a) A strike or other bona fide labor dispute which caused him or her to leave or lose his or her employment.

(b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied benefits by reason of a lockout. However, the operation of a facility by nonstriking employees of the company, contractors, or other personnel is not a reason to grant employees of the company on strike unemployment compensation benefit payments. If the operation of a facility is with workers hired to permanently replace the employees on strike, the employees would be eligible for benefits.

(c) For the purpose of this subsection, an individual shall be determined to leave or lose his or her employment by reason of a lockout where the individual employee has established that: (i) The individual presented himself or herself physically for work at the workplace on the first day of such lockout or on the first day he or she is able to present himself at the workplace or herself; and (ii) the employer denied the individual the opportunity to perform work.

(d) For purposes of this subsection, an individual is determined to be permanently replaced

71 where the individual employee establishes that: (i) He or she is currently employed by an employer  
72 who is the subject of a strike or other bona fide labor dispute; and (ii) the position of the employee  
73 has been occupied by another employee who has been notified they are permanently replacing  
74 the employee who previously occupied the position. Employees or contractors who are hired to  
75 perform striking employees' work on a temporary basis, such as the duration of a strike or other  
76 bona fide labor dispute, or a shorter period of time, may not be determined to have permanently  
77 replaced a striking employee.

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

79 (a) Wages in lieu of notice;

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

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

84 (6) For the week in which an individual has voluntarily quit employment to marry or to  
85 perform any marital, parental, or family duty, or to attend to his or her personal business or affairs  
86 and until the individual returns to covered employment and has been employed in covered  
87 employment at least 30 working days: *Provided*, That an individual who has voluntarily quit  
88 employment to accompany a spouse serving in active military service who has been reassigned  
89 from one military assignment to another is not disqualified for benefits pursuant to this subdivision:  
90 *Provided, however*, That the account of the employer of an individual who leaves the employment  
91 to accompany a spouse reassigned from one military assignment to another may not be charged.

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

the later of the seasons (or similar periods).

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

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

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

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

(10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the

123 employer no other alternative but to suspend operations.

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

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

146 (13) For each week in which and for 52 weeks thereafter, beginning with the date of the  
147 decision, if the commissioner finds the individual who within 24 calendar months immediately  
148 preceding the decision, has made a false statement or representation knowing it to be false or

149 knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this  
150 article: *Provided*, That disqualification under this subdivision does not preclude prosecution under  
151 §21A-10-7 of this code.

NOTE: The purpose of this bill is to provide that a person, who fails a random testing for alcohol or illegal controlled substances for employees in safety-sensitive positions, is disqualified for unemployment compensation benefits.

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