

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1451

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AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-4-5-1, AS AMENDED BY P.L.2-2011, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) "Deductible income" wherever used in this article, means income deductible from the weekly benefit amount of an individual in any week, and shall include, but shall not be limited to, any of the following:

- (1) Remuneration for services from employing units, whether or not such remuneration is subject to contribution under this article, except as provided in subsection (c).
- (2) Dismissal pay **or severance pay, including:**
  - (A) money that an employer pays to a dismissed employee to compensate the employee for income lost due to unemployment; and**
  - (B) remuneration paid to a dismissed employee under a separation agreement.**
- (3) Vacation pay.
- (4) Pay for idle time.
- ~~(5) Holiday pay.~~
- ~~(6) (5) Sick pay.~~
- ~~(7) (6) Traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual.~~
- ~~(8) (7) Net earnings from self-employment.~~

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~~(9)~~ **(8)** Payments in lieu of compensation for services.

~~(10)~~ **(9)** Awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment, or any such payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board.

~~(11)~~ **(10)** Payments made to an individual by an employing unit pursuant to the terms of the Fair Labor Standards Act (Federal Wage and Hour Law, 29 U.S.C. 201 et seq.).

~~(12)~~ This subdivision applies to initial claims for unemployment filed for a week that begins after March 14, 2008; and before October 1, 2011. For a week in which a payment is actually received by an individual; payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure:

~~(13)~~ This subdivision applies to initial claims for unemployment filed for a week that begins after March 14, 2008; and before October 1, 2011. Except as provided in subsection (c)(2); the part of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week:

~~(A)~~ occurs after an individual receives the payment; and

~~(B)~~ was used under the terms of a written agreement to compute the payment.

(b) Deductible income shall not include ~~the first three dollars (\$3); or twenty percent (20%)~~ **one hundred dollars (\$100)** of the claimant's weekly benefit amount rounded to the next lowest dollar, whichever is the larger; of remuneration paid or payable to an individual with respect to any week. ~~by other than the individual's base period employer or employers.~~

(c) For the purpose of deductible income only, remuneration for services from employing units does not include

~~(1)~~ **holiday pay**, bonuses, gifts, or prizes awarded to an employee by an employing unit. ~~or~~

~~(2)~~ for initial claims for unemployment filed for a week that begins after March 14, 2008; and before October 1, 2011; compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure; without regard to how the compensation is characterized by the contract or agreement.

(d) Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.

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(e) Deductible income does not include any payments made to an individual by a court system under a summons for jury service.

SECTION 2. IC 22-4-5-2, AS AMENDED BY P.L.121-2014, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) Payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the vacation occurs.

(b) The payment of accrued vacation pay, dismissal pay, or severance pay to an individual separated from employment by an employing unit shall be allocated to the period of time for which such payment is made immediately following the date of separation, and an individual receiving such payments shall not be deemed unemployed with respect to a week during which such allocated deductible income equals or exceeds the weekly benefit amount of the individual's claim.

(c) Pay for:

- (1) idle time;
- (2) sick pay;
- (3) traveling expenses granted to an individual by an employing unit and not fully accounted for by such individual;
- (4) earnings from self-employment;
- (5) awards by the National Labor Relations Board of additional pay, back pay, or for loss of employment;
- (6) payments made under an agreement entered into by an employer, a union, and the National Labor Relations Board; or
- (7) payments to an employee by an employing unit made pursuant to the terms and provisions of the Fair Labor Standards Act;

shall be deemed to constitute deductible income with respect to the week or weeks for which such payments are made. However, if payments made under subsection (c)(5) or (c)(6) are not, by the terms of the order or agreement under which the payments are made, allocated to any designated week or weeks, then, and in such cases, such payments shall be considered as deductible income in and with respect to the week in which the same is actually paid.

~~(d) Holiday pay shall be deemed to constitute deductible income with respect to the week in which the holiday occurs.~~

~~(e)~~ (d) Payment of vacation pay shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made.

SECTION 3. IC 22-4-13-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) **This section does not apply to cases of improper payments under any of the following provisions:**

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**(1) Section 1(c) of this chapter.**

**(2) Section 1(d) of this chapter.**

**(3) IC 22-4-11.5.**

**(b) The department may accept an offer in compromise from an employer or claimant to reduce past due debt arising from contributions or benefit overpayments imposed under this article.**

**(c) The department may adopt rules under IC 4-22-2 to carry out this section.**

SECTION 4. IC 22-4-15-4, AS AMENDED BY P.L.2-2011, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding the individual's weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. The following apply to a disqualification under this subdivision:

(A) The disqualification shall apply only if some or all of the benefits otherwise payable:

(i) are chargeable to the experience or reimbursable account of such employer; or

(ii) would have been chargeable except for the application of this chapter.

(B) Notwithstanding clause (A), the disqualification does not apply to a distribution from a pension, retirement, or annuity plan of an employer when an individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the individual's control.

(C) Federal old age, survivors, and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than an individual's weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a



claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

SECTION 5. IC 22-4-37-1, AS AMENDED BY P.L.136-2018, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. **(a)** It is declared to be the purpose of this article to secure to the state of Indiana and to employers and employees in Indiana all the rights and benefits which are conferred under the provisions of 42 U.S.C. 501 through 504, 42 U.S.C. 1101 through 1109, 26 U.S.C. 3301 through 3311, and 29 U.S.C. 49 et seq., and the amendments to those statutes. Whenever the department shall find it necessary, it shall have power to formulate rules after public hearing and opportunity to be heard whereof due notice is given as is provided in this article for the adoption of rules pursuant to IC 4-22-2, and with the approval of the governor of Indiana, to adopt such rules as shall effectuate the declared purposes of this article.

**(b) This section does not:**

**(1) require the state of Indiana to participate in; or**

**(2) preclude the state of Indiana from ceasing to participate in;**

**any offered or enacted voluntary, optional, special, or emergency federal program.**



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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