

1 HOUSE BILL 151
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY
4 Christine Trujillo
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10 AN ACT

11 RELATING TO HIGHER EDUCATION; EXTENDING ELIGIBILITY FOR
12 UNEMPLOYMENT BENEFITS TO NON-TENURE-TRACK FACULTY AT COLLEGES
13 AND UNIVERSITIES.
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 51-1-5 NMSA 1978 (being Laws 2003,
17 Chapter 47, Section 9, as amended) is amended to read:

18 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

19 A. An unemployed individual shall be eligible to
20 receive benefits with respect to any week only if the
21 individual:

22 (1) has made a claim for benefits with respect
23 to such week in accordance with such rules as the secretary may
24 prescribe;

25 (2) has registered for work at, and thereafter

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1 continued to report at, an employment office in accordance with
2 such rules as the secretary may prescribe, except that the
3 secretary may, by rule, waive or alter either or both of the
4 requirements of this paragraph as to individuals attached to
5 regular jobs and as to such other types of cases or situations
6 with respect to which the secretary finds that compliance with
7 such requirements would be oppressive or would be inconsistent
8 with the purposes of the Unemployment Compensation Law. No
9 such rule shall conflict with Subsection A of Section 51-1-4
10 NMSA 1978;

11 (3) is able to work and is available for work
12 and is actively seeking permanent full-time work or part-time
13 work in accordance with Subsection I of Section 51-1-42 NMSA
14 1978 and in accordance with the terms, conditions and hours
15 common in the occupation or business in which the individual is
16 seeking work, except that the secretary may, by rule, waive
17 this requirement for individuals who are on temporary layoff
18 status from their regular employment with an assurance from
19 their employers that the layoff shall not exceed four weeks or
20 who have an express offer in writing of substantially full-time
21 work that will begin within a period not exceeding four weeks;

22 (4) has been unemployed for a waiting period
23 of one week. A week shall not be counted as a week of
24 unemployment for the purposes of this paragraph:

25 (a) unless it occurs within the benefit

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1 year that includes the week with respect to which the
2 individual claims payment of benefits;

3 (b) if benefits have been paid with
4 respect thereto; and

5 (c) unless the individual was eligible
6 for benefits with respect thereto as provided in this section
7 and Section 51-1-7 NMSA 1978, except for the requirements of
8 this subsection and of Subsection D of Section 51-1-7 NMSA
9 1978;

10 (5) has been paid wages in at least two
11 quarters of the individual's base period;

12 (6) has reported to an office of the division
13 in accordance with the rules of the secretary for the purpose
14 of an examination and review of the individual's availability
15 for and search for work, for employment counseling, referral
16 and placement and for participation in a job finding or
17 employability training and development program. An individual
18 shall not be denied benefits under this section for any week
19 that the individual is participating in a job finding or
20 employability training and development program; and

21 (7) participates in reemployment services,
22 such as job search assistance services, if the division
23 determines that the individual is likely to exhaust regular
24 benefits and needs reemployment services pursuant to a
25 profiling system established by the division, unless the

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1 division determines that:

2 (a) the individual has completed such
3 services; or

4 (b) there is justifiable cause for the
5 individual's failure to participate in the services.

6 B. A benefit year as provided in Section 51-1-4
7 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
8 established; provided an individual may not receive benefits in
9 a benefit year unless, subsequent to the beginning of the
10 immediately preceding benefit year during which the individual
11 received benefits, the individual performed service in
12 "employment", as defined in Subsection F of Section 51-1-42
13 NMSA 1978, and earned remuneration for such service in an
14 amount equal to at least five times the individual's weekly
15 benefit amount.

16 C. Benefits based on service in employment defined
17 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
18 51-1-43 NMSA 1978 are to be paid in the same amount, on the
19 same terms and subject to the same conditions as compensation
20 payable on the basis of other services subject to the
21 Unemployment Compensation Law; except that:

22 (1) benefits based on services performed in an
23 instructional, research or principal administrative capacity
24 for an educational institution shall not be paid for any week
25 of unemployment commencing during the period between two

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1 successive academic years or terms or, when an agreement
2 provides for a similar period between two regular but not
3 successive terms, during such period or during a period of paid
4 sabbatical leave provided for in the individual's contract, to
5 any individual if the individual performs such services in the
6 first of such academic years or terms and if there is a
7 contract or a reasonable assurance that the individual will
8 perform services in any such capacity for any educational
9 institution in the second of such academic years or terms;

10 (2) benefits based on services performed for
11 an educational institution other than in an instructional,
12 research or principal administrative capacity shall not be paid
13 for any week of unemployment commencing during a period between
14 two successive academic years or terms if the services are
15 performed in the first of such academic years or terms and
16 there is a reasonable assurance that the individual will
17 perform services for any educational institution in the second
18 of such academic years or terms. If compensation is denied to
19 an individual under this paragraph and the individual was not
20 offered an opportunity to perform such services for the
21 educational institution for the second of such academic years
22 or terms, the individual shall be entitled to a retroactive
23 payment of benefits for each week for which the individual
24 filed a claim and certified for benefits in accordance with the
25 rules of the division and for which benefits were denied solely

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1 by reason of this paragraph;

2 (3) benefits shall be denied to any individual
3 for any week that commences during an established and customary
4 vacation period or holiday recess if the individual performs
5 any services described in Paragraphs (1) and (2) of this
6 subsection in the period immediately before such period of
7 vacation or holiday recess and there is a reasonable assurance
8 that the individual will perform any such services in the
9 period immediately following such vacation period or holiday
10 recess;

11 (4) benefits shall not be payable on the basis
12 of services specified in Paragraphs (1) and (2) of this
13 subsection during the periods specified in Paragraphs (1), (2)
14 and (3) of this subsection to any individual who performed such
15 services in or to or on behalf of an educational institution
16 while in the employ of a state or local governmental
17 educational service agency or other governmental entity or
18 nonprofit organization; and

19 (5) for the purpose of this subsection, to the
20 extent permitted by federal law, "reasonable assurance" means a
21 reasonable expectation of employment in a similar capacity in
22 the second of such academic years or terms based upon a
23 consideration of all relevant factors ~~[including the historical~~
24 ~~pattern of reemployment in such capacity, a reasonable~~
25 ~~anticipation that such employment will be available and a~~

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1 ~~reasonable notice or understanding that the individual will be~~
2 ~~eligible for and offered employment in a similar capacity]. A~~
3 "reasonable assurance" requires that all of the following are
4 met:

5 (a) the educational institution has made
6 an offer of employment in the following academic year or term
7 that is written, oral or implied;

8 (b) the offer of employment in the
9 following academic year or term was made by an individual with
10 actual authority to offer employment;

11 (c) the employment offered in the
12 following academic year or term is in the same employment
13 position as the previous employment;

14 (d) the consideration for the employment
15 offered is not less than ninety percent of the amount that the
16 non-tenure-track faculty member claimant earned in the then-
17 current academic year or term;

18 (e) the offer of employment in the
19 following academic year or term is not contingent upon a factor
20 or factors that are within the educational institution's
21 control, including course programming, decisions on how to
22 allocate available funding, final course offerings, program
23 changes and facility availability; and

24 (f) based on a totality of the
25 circumstances, it is highly probable that there is a job

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1 available for the claimant in the following academic year or
2 term. If a job offer contains a contingency, primary weight
3 should be given to the contingent nature of the offer of
4 employment, and the totality of the circumstances must show
5 that it is highly probable that the contingencies of that
6 employment will be satisfied.

7 D. Paragraphs (1), (2), (3), (4) and (5) of
8 Subsection C of this section shall apply to services performed
9 for all educational institutions, public or private, for profit
10 or nonprofit, which are operated in this state or subject to an
11 agreement for coverage under the Unemployment Compensation Law
12 of this state, unless otherwise exempt by law.

13 E. Notwithstanding any other provisions of this
14 section or Section 51-1-7 NMSA 1978, no otherwise eligible
15 individual is to be denied benefits for any week because the
16 individual is in training with the approval of the division nor
17 is the individual to be denied benefits by reason of
18 application of provisions in Paragraph (3) of Subsection A of
19 this section or Paragraph (3) of Subsection A of Section 51-1-7
20 NMSA 1978 with respect to any week in which the individual is
21 in training with the approval of the division. The secretary
22 shall provide, by rule, standards for approved training and the
23 conditions for approving training for claimants, including any
24 training approved or authorized for approval pursuant to
25 Section 236(a)(1) and (2) of the federal Trade Act of 1974, as
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1 amended, or required to be approved as a condition for
2 certification of the state's Unemployment Compensation Law by
3 the United States secretary of labor.

4 F. Notwithstanding any other provisions of this
5 section, benefits shall not be payable on the basis of services
6 performed by an alien unless such alien is an individual who
7 was lawfully admitted for permanent residence at the time the
8 services were performed, was lawfully present for the purposes
9 of performing the services or was permanently residing in the
10 United States under color of law at the time the services were
11 performed, including an alien who was lawfully present in the
12 United States as a result of the application of the provisions
13 of Section 212(d)(5) of the federal Immigration and Nationality
14 Act; provided that:

15 (1) any information required of individuals
16 applying for benefits to determine their eligibility for
17 benefits under this subsection shall be uniformly required from
18 all applicants for benefits; and

19 (2) an individual shall not be denied benefits
20 because of the individual's alien status except upon a
21 preponderance of the evidence.

22 G. Notwithstanding any other provision of this
23 section, benefits shall not be paid to any individual on the
24 basis of any services substantially all of which consist of
25 participating in sports or athletic events or training or

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1 preparing to so participate for any week that commences during
2 the period between two successive sport seasons, or similar
3 periods, if the individual performed the services in the first
4 of such seasons, or similar periods, and there is a reasonable
5 assurance that the individual will perform the services in the
6 latter of such seasons or similar periods.

7 H. Students who are enrolled in a full-time course
8 schedule in an educational or training institution or program,
9 other than those persons in an approved vocational training
10 program in accordance with Subsection E of this section, shall
11 not be eligible for unemployment benefits unless the individual
12 can demonstrate to the division's satisfaction that the
13 individual is able, available and actively seeking full- or
14 part-time work in accordance with rules prescribed by the
15 secretary.

16 I. As used in this subsection, "seasonal ski
17 employee" means an employee who has not worked for a ski area
18 operator for more than six consecutive months of the previous
19 twelve months or nine of the previous twelve months. An
20 employee of a ski area operator who has worked for a ski area
21 operator for six consecutive months of the previous twelve
22 months or nine of the previous twelve months shall not be
23 considered a seasonal ski employee. The following benefit
24 eligibility conditions apply to a seasonal ski employee:

- 25 (1) except as provided in Paragraphs (2) and

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1 (3) of this subsection, a seasonal ski employee employed by a
2 ski area operator on a regular seasonal basis shall be
3 ineligible for a week of unemployment benefits that commences
4 during a period between two successive ski seasons unless the
5 individual establishes to the satisfaction of the secretary
6 that the individual is available for and is making an active
7 search for permanent full-time work;

8 (2) a seasonal ski employee who has been
9 employed by a ski area operator during two successive ski
10 seasons shall be presumed to be unavailable for permanent new
11 work during a period after the second successive ski season
12 that the individual was employed as a seasonal ski employee;
13 and

14 (3) the presumption described in Paragraph (2)
15 of this subsection shall not arise as to any seasonal ski
16 employee who has been employed by the same ski area operator
17 during two successive ski seasons and has resided continuously
18 for at least twelve successive months and continues to reside
19 in the county in which the ski area facility is located.

20 J. Notwithstanding any other provision of this
21 section, an otherwise eligible individual shall not be denied
22 benefits for any week by reason of the application of Paragraph
23 (3) of Subsection A of this section because the individual is
24 before any court of the United States or any state pursuant to
25 a lawfully issued summons to appear for jury duty."

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