

UNEMPLOYMENT INSURANCE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steven R. Mascaro

Senate Sponsor: Wayne L. Niederhauser

Cosponsors:

Neil A. Hansen

Christine F. Watkins

Laura Black

LONG TITLE

Committee Note:

The Workforce Services and Community and Economic Development Interim Committee recommended this bill.

General Description:

This bill modifies provisions of the Employment Security Act related to unemployment insurance benefits.

Highlighted Provisions:

This bill:

- ▶ makes modifications to the definition of base period for purposes related to qualifying for unemployment insurance benefits; and
- ▶ requires an annual report by the division on the impact of these modifications.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-4-201, as last amended by Laws of Utah 2005, Chapter 81



28 35A-4-403, as last amended by Laws of Utah 2008, Chapter 43



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section 35A-4-201 is amended to read:

32 **35A-4-201. General definitions.**

33 As used in this chapter:

34 (1) (a) [~~"Base-period"~~] Except as otherwise provided in Subsection (1)(b), "base
35 period" means the first four of the last five completed calendar quarters next preceding the first
36 day of the individual's benefit year with respect to any individual whose benefit year
37 commences on or after January 5, 1986.

38 (b) (i) For a claimant whose benefit year is effective on or after January 2, 2011, and
39 who does not have sufficient wages in the first four of the last five completed calendar quarters
40 to otherwise qualify for benefits under Subsection (1)(a), the base period is the last four
41 completed calendar quarters.

42 (ii) Wages used to establish eligibility regardless of how the base period is calculated
43 are not available for qualifying benefits in any subsequent benefit year.

44 (2) "Benefit year" means the 52 consecutive week period beginning with the first week
45 with respect to which an individual files for benefits and is found to have an insured status.

46 (3) "Benefits" means the money payments payable to an individual as provided in this
47 chapter with respect to the individual's unemployment.

48 (4) "Calendar quarter" means the period of three consecutive months ending on March
49 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule
50 prescribe.

51 (5) "Contribution" means the money payments required by this chapter to be made into
52 the Unemployment Compensation Fund by any employing unit on account of having
53 individuals in its employ.

54 (6) "Division" means the Unemployment Insurance Division.

55 (7) "Employment office" means a free public employment office or branch operated by
56 this or any other state as a part of a state-controlled system of public employment offices or by
57 a federal agency charged with the administration of an unemployment compensation program
58 or free public employment offices.

59 (8) "Employment Security Administration Fund" means the fund established by
60 Section 35A-4-505, and from which administrative expenses under this chapter shall be paid.

61 (9) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).

62 (10) "Fund" means the Unemployment Compensation Fund established by this chapter.

63 (11) "Insured average annual wage" means on or before the 15th day of May of each
64 year, the total wages of insured workers for the preceding calendar year, divided by the average
65 monthly number of insured workers, determined by dividing by 12 the total insured workers for
66 the preceding calendar year as determined under the rules of the department calculated to two
67 decimal places, disregarding any fraction of one cent.

68 (12) "Insured average fiscal year wage" means on or before the 15th day of November
69 of each year, the total wages of insured workers for the preceding fiscal year, divided by the
70 average monthly number of insured workers, determined by dividing by 12 the total insured
71 workers for the preceding fiscal year as determined under the rules of the department calculated
72 to two decimal places, disregarding any fraction of one cent.

73 (13) "Insured average fiscal year weekly wage" means the insured average fiscal year
74 wage determined in Subsection (12), divided by 52, calculated to two decimal places,
75 disregarding any fraction of one cent.

76 (14) "Insured average weekly wage" means the insured average annual wage
77 determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding
78 any fraction of one cent.

79 (15) "Insured status" means that an individual has, during the individual's base-period,
80 performed services and earned wages in employment sufficient to qualify for benefits under
81 Section 35A-4-403.

82 (16) "Insured work" means employment for an employer, as defined in Section
83 35A-4-203.

84 (17) "Monetary base period wage requirement" means 8% of the insured average fiscal
85 year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals
86 establishing benefit years in 1991, rounded up to the next higher multiple of \$100.

87 (18) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the
88 District of Columbia.

89 (19) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly owned

90 by an American Indian tribe.

91 (20) "Week" means the period or periods of seven consecutive calendar days as the
92 department may prescribe by rule.

93 Section 2. Section **35A-4-403** is amended to read:

94 **35A-4-403. Eligibility of individual -- Conditions -- Furnishing reports -- Weeks**
95 **of employment -- Successive benefit years.**

96 (1) Except as provided in Subsection (2), an unemployed individual is eligible to
97 receive benefits for any week if the division finds:

98 (a) the individual has made a claim for benefits for that week in accordance with rules
99 the department may prescribe, except as provided in Subsection (3);

100 (b) the individual has registered for work with the department and acted in a good faith
101 effort to secure employment during each and every week for which the individual made a claim
102 for benefits under this chapter in accordance with rules the department may prescribe, except as
103 provided in Subsection (3);

104 (c) the individual is able to work and is available for work during each and every week
105 for which the individual made a claim for benefits under this chapter;

106 (d) the individual has been unemployed for a waiting period of one week for each
107 benefit year, but a week may not be counted as a week of unemployment for the purpose of this
108 Subsection (1)(d):

109 (i) unless it occurs within the benefit year that includes the week for which the
110 individual claims benefits;

111 (ii) if benefits have been paid for the claim; or

112 (iii) unless the individual was eligible for benefits for the week as provided in this
113 section and Sections 35A-4-401 and 35A-4-405, except for the requirement of this Subsection
114 (1)(d);

115 (e) (i) the individual has furnished the division separation and other information the
116 department may prescribe by rule, or proves to the satisfaction of the division that the
117 individual had good cause for failing to furnish the information;

118 (ii) if an employer fails to furnish reports concerning separation and employment as
119 required by this chapter and rules adopted under the chapter, the division shall, on the basis of
120 information it obtains, determine the eligibility and insured status of an individual affected by

121 that failure and the employer is not considered to be an interested party to the determination;

122 (f) (i) the individual's base period wages were at least 1-1/2 times the individual's
123 wages for insured work paid during that quarter of the individual's base period in which the
124 individual's wages were highest; or

125 (ii) for any claimant whose benefit year is effective on or before January 1, 2011, the
126 individual shows to the satisfaction of the division that the individual worked at least 20 weeks
127 in insured work during the individual's base period and earned wages of at least 5% of the
128 monetary base period wage requirement each week, rounded to the nearest whole dollar,
129 provided that the individual's total base-period wages were not less than the monetary base
130 period wage requirement as defined in Section 35A-4-201; and

131 (g) (i) the individual applying for benefits in a successive benefit year has had
132 subsequent employment since the effective date of the preceding benefit year equal to at least
133 six times the individual's weekly benefit amount, in insured work; and

134 (ii) the individual's total wages and employment experience in the individual's base
135 period meet the requirements specified in Subsection (1)(f).

136 (2) (a) For purposes of this Subsection (2), "suitable employment" means:

137 (i) work of a substantially equal or higher skill level than the individual's past adversely
138 affected employment as defined for purposes of the Trade Act of 1974; and

139 (ii) wages for that work at not less than 80% of the individual's average weekly wage
140 as determined for purposes of the Trade Act of 1974.

141 (b) (i) An individual in training with the approval of the division is not ineligible to
142 receive benefits by reason of nonavailability for work, failure to search for work, refusal of
143 suitable work, failure to apply for or to accept suitable work, or not having been unemployed
144 for a waiting period of one week for any week the individual is in the approved training.

145 (ii) For purposes of Subsection (2)(b)(i), the division shall approve any mandatory
146 apprenticeship-related training.

147 (c) Notwithstanding any other provision of this chapter, the division may not deny an
148 otherwise eligible individual benefits for any week:

149 (i) because the individual is in training approved under Section 236 (a)(1) of the Trade
150 Act of 1974, 19 U.S.C. 2296(a);

151 (ii) for leaving work to enter training described in Subsection (2)(c)(i) if the work left

152 is not suitable employment; or
153 (iii) because of the application to any such week in training of provisions in this law or
154 any applicable federal unemployment compensation law relating to availability for work, active
155 search for work, or refusal to accept work.

156 (3) The department may, by rule, waive or alter either or both of the requirements of
157 Subsections (1)(a) and (b) as to:

158 (a) individuals attached to regular jobs;

159 (b) a disaster in Utah as declared by the President of the United States or by the state's
160 governor after giving due consideration to factors directly associated with the disaster,
161 including:

162 (i) the disaster's impact on employers and their ability to employ workers in the
163 affected area in Utah;

164 (ii) the disaster's impact on claimants and their ability to comply with filing
165 requirements in the affected area in Utah; and

166 (iii) the magnitude of the disaster and the anticipated time for recovery; and

167 (c) cases or situations when it finds that compliance with the requirements would be
168 oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does
169 not conflict with Subsection 35A-4-401(1).

170 (4) The director of the division or the director's designee shall make an annual report to
171 the Workforce Employment Advisory Council and to the Legislature's Workforce Services and
172 Community and Economic Development Interim Committee no later than November 30 of
173 2011, 2012, and 2013, concerning the impact on individuals applying for unemployment
174 compensation and the unemployment trust insurance fund as a result of amendments made to
175 Subsections 35A-4-201(1) and 35A-4-403(1)(f) during the Legislature's 2010 General Session.

Legislative Review Note
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Office of Legislative Research and General Counsel