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HOUSE BILL 44

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF
THE UNEMPLOYMENT COMPENSATION LAW TO ELIMINATE CERTAIN
RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; DECLARING AN
EMERGENCY.

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

SECTION 1. Section 51-1-7 NMSA 1978 (being Laws 2003,
Chapter 47, Section 10, as amended) is amended to read:

"51-1-7. DISQUALIFICATION FOR BENEFITS.--

A. An individual shall be disqualified for and
shall not be eligible to receive benefits:

(1) if it is determined by the division that
the individual left employment voluntarily without good cause
in connection with the employment. No individual shall receive
benefits until the division has contacted the former employer

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1 and determined whether the individual left the employment
2 voluntarily; provided, however, that a person shall not be
3 denied benefits under this paragraph:

4 (a) solely on the basis of pregnancy or
5 the termination of pregnancy;

6 (b) because of domestic abuse evidenced
7 by medical documentation, legal documentation or a sworn
8 statement from the claimant; or

9 (c) if the person voluntarily left work
10 to relocate because of a spouse, who is in the military service
11 of the United States or the New Mexico national guard,
12 receiving permanent change of station orders, activation orders
13 or unit deployment orders;

14 (2) if it is determined by the division that
15 the individual has been discharged for misconduct connected
16 with the individual's employment; or

17 (3) if it is determined by the division that
18 the individual has failed without good cause either to apply
19 for available, suitable work when so directed or referred by
20 the division or to accept suitable work when offered.

21 B. In determining whether or not any work is
22 suitable for an individual pursuant to Paragraph (3) of
23 Subsection A of this section, the division shall consider the
24 degree of risk involved to the individual's health, safety and
25 morals, the individual's physical fitness, prior training,

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1 approved training, experience, prior earnings, length of
2 unemployment and prospects for securing local work in the
3 individual's customary occupation and the distance of available
4 work from the individual's residence. Notwithstanding any
5 other provisions of the Unemployment Compensation Law, no work
6 shall be deemed suitable and benefits shall not be denied under
7 the Unemployment Compensation Law to any otherwise eligible
8 individual for refusing to accept new work under any of the
9 following conditions:

10 (1) if the position offered is vacant due
11 directly to a strike, lockout or other labor dispute;

12 (2) if the wages, hours or other conditions of
13 the work offered are substantially less favorable to the
14 individual than those prevailing for similar work in the
15 locality; or

16 (3) if, as a condition of being employed, the
17 individual would be required to join a company union or to
18 resign from or refrain from joining any bona fide labor
19 organizations.

20 C. An individual shall be disqualified for, and
21 shall not be eligible to receive, benefits for any week with
22 respect to which the division finds that the individual's
23 unemployment is due to a labor dispute at the factory,
24 establishment or other premises at which the individual is or
25 was last employed; provided that this subsection shall not

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1 apply if it is shown to the satisfaction of the division that:

2 (1) the individual is not participating in or
3 directly interested in the labor dispute; and

4 (2) the individual does not belong to a grade
5 or class of workers of which, immediately before the
6 commencement of the labor dispute, there were members employed
7 at the premises at which the labor dispute occurs, any of whom
8 are participating in or directly interested in the dispute;
9 provided that if in any case separate branches of work that are
10 commonly conducted in separate businesses in separate premises
11 are conducted in separate departments of the same premises,
12 each such department shall, for the purposes of this
13 subsection, be deemed to be a separate factory, establishment
14 or other premises.

15 D. An individual shall be disqualified for, and
16 shall not be eligible to receive, benefits for any week with
17 respect to which, or a part of which, the individual has
18 received or is seeking, through any agency other than the
19 division, unemployment benefits under an unemployment
20 compensation law of another state or of the United States;
21 provided that if the appropriate agency of such other state or
22 of the United States finally determines that the individual is
23 not entitled to such unemployment benefits, this
24 disqualification shall not apply.

25 E. A disqualification pursuant to Paragraph (1) or
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1 (2) of Subsection A of this section shall continue for the
2 duration of the individual's unemployment and until the
3 individual has earned wages in bona fide employment other than
4 self-employment, as provided by rule of the secretary, in an
5 amount equivalent to five times the individual's weekly benefit
6 otherwise payable. A disqualification pursuant to Paragraph
7 (3) of Subsection A of this section shall include the week the
8 failure occurred and shall continue for the duration of the
9 individual's unemployment and until the individual has earned
10 wages in bona fide employment other than self-employment, as
11 provided by rule of the secretary, in an amount equivalent to
12 five times the individual's weekly benefit amount otherwise
13 payable; provided that no more than one such disqualification
14 shall be imposed upon an individual for failure to apply for or
15 accept the same position, or a similar position, with the same
16 employer, except upon a determination by the division of
17 disqualification pursuant to Subsection C of this section.

18 F. Effective until January 1, 2023, when a federal
19 or state public health emergency is declared pursuant to the
20 Public Health Emergency Response Act and for thirty days after
21 the expiration of the emergency declaration, an individual's
22 absence from work shall be presumed involuntary and for good
23 cause and an individual shall not be denied benefits when the
24 division finds that the absence from work was due to:

25 (1) an individual's exposure to or diagnosis

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1 with a threatening communicable disease that is the subject of
2 the emergency declaration;

3 (2) an individual's need to provide care to a
4 family member diagnosed with a threatening communicable disease
5 that is the subject of the emergency declaration;

6 (3) an underlying medical condition that makes
7 an individual susceptible to a threatening communicable disease
8 that is the subject of the emergency declaration;

9 (4) instructions from an individual's employer
10 to not come to the employer's place of business due to an
11 outbreak of a threatening communicable disease that is the
12 subject of the declaration; provided that working remotely is
13 impossible; or

14 (5) an individual's usual child care being
15 unavailable; provided that the individual made a good faith
16 effort to arrange alternative child care and working remotely
17 is impossible.

18 G. An individual shall be disqualified for and
19 ineligible to receive benefits for any week with respect to
20 which, or part of which, the individual has received or has
21 applied for emergency paid sick leave or emergency paid family
22 leave benefits from other state or federal programs providing
23 compensation to individuals unable to work due to the declared
24 public health emergency.

25 [~~F.~~] H. As used in this section:

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1 (1) "domestic abuse" means that term as
2 defined in Section 40-13-2 NMSA 1978; [~~and~~]

3 (2) "employment" means employment by the
4 individual's last employer as defined by rules of the
5 secretary;

6 (3) "family member" means a person who is:

7 (a) regardless of age, a biological,
8 adopted or foster child, stepchild or legal ward, a child of a
9 domestic partner, a child to whom an employee stands in loco
10 parentis or a person to whom the employee stood in loco
11 parentis when the person was a minor;

12 (b) a biological, adoptive or foster
13 parent, stepparent or legal guardian of an employee or the
14 employee's spouse or domestic partner or a person who stood in
15 loco parentis when the employee or the employee's spouse or
16 domestic partner was a minor;

17 (c) a person to whom an employee is
18 legally married under the laws of any state or a domestic
19 partner of the employee;

20 (d) a grandparent, great-grandparent,
21 grandchild or sibling, whether a biological, foster, adoptive
22 or step relationship, of an employee or an employee's spouse or
23 domestic partner; or

24 (e) any other individual related by
25 blood or affinity whose close association with the employee or

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1 employee's spouse or domestic partner is the equivalent of a
2 family relationship; and

3 (4) "threatening communicable disease" means a
4 disease that causes death or great bodily harm that passes from
5 one person to another and for which there are no means by which
6 the public can reasonably avoid the risk of contracting the
7 disease. "Threatening communicable disease" does not include
8 acquired immune deficiency syndrome or other infections caused
9 by the human immunodeficiency virus."

10 SECTION 2. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.