

1 SENATE BILL 263

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Timothy Z. Jennings

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10 AN ACT

11 RELATING TO UNEMPLOYMENT COMPENSATION; DENYING BENEFITS TO
12 INDIVIDUALS WHO FAIL TO PASS A DRUG TEST.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

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

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

24 (2) has registered for work at, and thereafter
25 continued to report at, an employment office in accordance with

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

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

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

24 (a) unless it occurs within the benefit
25 year that includes the week with respect to which the

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1 individual claims payment of benefits;

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

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

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

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

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

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

3 (b) there is justifiable cause for the
4 individual's failure to participate in the services; and

5 (8) has successfully passed a drug test
6 pursuant to Section 51-1-5.1 NMSA 1978.

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

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

23 (1) benefits based on services performed in an
24 instructional, research or principal administrative capacity
25 for an educational institution shall not be paid for any week

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

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

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1 rules of the division and for which benefits were denied solely
2 by reason of this paragraph;

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

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

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

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1 anticipation that such employment will be available and a
2 reasonable notice or understanding that the individual will be
3 eligible for and offered employment in a similar capacity.

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

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

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1 Compensation Law by the United States secretary of labor.

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

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

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

20 G. Notwithstanding any other provision of this
21 section, benefits shall not be paid to any individual on the
22 basis of any services substantially all of which consist of
23 participating in sports or athletic events or training or
24 preparing to so participate for any week that commences during
25 the period between two successive sport seasons, or similar

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1 periods, if the individual performed the services in the first
2 of such seasons, or similar periods, and there is a reasonable
3 assurance that the individual will perform the services in the
4 latter of such seasons or similar periods.

5 H. As used in this subsection, "seasonal ski
6 employee" means an employee who has not worked for a ski area
7 operator for more than six consecutive months of the previous
8 twelve months or nine of the previous twelve months. An
9 employee of a ski area operator who has worked for a ski area
10 operator for six consecutive months of the previous twelve
11 months or nine of the previous twelve months shall not be
12 considered a seasonal ski employee. The following benefit
13 eligibility conditions apply to a seasonal ski employee:

14 (1) except as provided in Paragraphs (2) and
15 (3) of this subsection, a seasonal ski employee employed by a
16 ski area operator on a regular seasonal basis shall be
17 ineligible for a week of unemployment benefits that commences
18 during a period between two successive ski seasons unless the
19 individual establishes to the satisfaction of the secretary
20 that the individual is available for and is making an active
21 search for permanent full-time work;

22 (2) a seasonal ski employee who has been
23 employed by a ski area operator during two successive ski
24 seasons shall be presumed to be unavailable for permanent new
25 work during a period after the second successive ski season

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1 that the individual was employed as a seasonal ski employee;
2 and

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

9 I. Notwithstanding any other provision of this
10 section, an otherwise eligible individual shall not be denied
11 benefits for any week by reason of the application of Paragraph
12 (3) of Subsection A of this section because the individual is
13 before any court of the United States or any state pursuant to
14 a lawfully issued summons to appear for jury duty."

15 SECTION 2. A new section of the Unemployment Compensation
16 Law, Section 51-1-5.1 NMSA 1978, is enacted to read:

17 "51-1-5.1. [NEW MATERIAL] DRUG TEST--PREREQUISITE FOR
18 BENEFITS.--

19 A. Prior to submitting an application for benefits,
20 an individual shall take a drug test administered by the
21 division.

22 B. At the time of the test, the individual shall be
23 given information by brand name or common name, as well as by
24 chemical name, of the most common medications that may alter or
25 affect a drug test. The individual shall have the opportunity

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1 to provide information concerning prescription or
2 nonprescription medication or other relevant medical
3 information that may help explain a positive result; provided
4 that the information shall not preclude the administration of
5 the drug test but shall be taken into account in interpreting
6 the test results.

7 C. The costs of a drug test administered pursuant
8 to this section shall be paid for by the applicant for benefits
9 and may be deducted from benefits paid.

10 D. Drug test results shall be used only for the
11 purpose of determining eligibility for benefits and shall not
12 be released to any public or private person except as requested
13 by the individual tested. The division shall be responsible
14 for ensuring the confidentiality of drug test results.

15 E. The division shall provide any individual who
16 tests positive with information concerning drug treatment
17 programs that may be available in the area in which the
18 individual resides; however, the division or the state is not
19 responsible for providing or paying for drug treatment as part
20 of the testing conducted under this section.

21 F. As used in this section:

22 (1) "drug" means an amphetamine, a
23 cannabinoid, cocaine, phencyclidine, a hallucinogen,
24 methaqualone, an opiate, a barbiturate, a benzodiazepine, a
25 synthetic narcotic, a designer drug or a metabolite of any of

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1 the substances listed in this paragraph; and

2 (2) "drug test" means a chemical, biological
3 or physical instrumental analysis for the purpose of
4 determining the presence or absence of a drug."

5 SECTION 3. Section 51-1-7 NMSA 1978 (being Laws 2003,
6 Chapter 47, Section 10, as amended by Laws 2005, Chapter 3,
7 Section 3 and further amended by Laws 2005, Chapter 255,
8 Section 1) is amended to read:

9 "51-1-7. DISQUALIFICATION FOR BENEFITS.--

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

12 (1) if it is determined by the division that
13 the individual left employment voluntarily without good cause
14 in connection with the employment. No individual shall receive
15 benefits until the division has contacted the former employer
16 and determined whether the individual left the employment
17 voluntarily; provided, however, that a person shall not be
18 denied benefits under this paragraph:

19 (a) solely on the basis of pregnancy or
20 the termination of pregnancy;

21 (b) because of domestic abuse evidenced
22 by medical documentation, legal documentation or a sworn
23 statement from the claimant; or

24 (c) if the person voluntarily left work
25 to relocate because of a spouse, who is in the military service

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1 of the United States or the New Mexico national guard,
2 receiving permanent change of station orders, activation orders
3 or unit deployment orders;

4 (2) if it is determined by the division that
5 the individual has been discharged for misconduct connected
6 with the individual's employment; [~~or~~]

7 (3) if it is determined by the division that
8 the individual has failed without good cause either to apply
9 for available, suitable work when so directed or referred by
10 the division or to accept suitable work when offered; or

11 (4) if it is determined by the division that
12 the individual either failed a drug test administered pursuant
13 to Section 51-1-5.1 NMSA 1978 or refused to submit to the drug
14 test.

15 B. In determining whether or not any work is
16 suitable for an individual pursuant to Paragraph (3) of
17 Subsection A of this section, the division shall consider the
18 degree of risk involved to the individual's health, safety and
19 morals, the individual's physical fitness, prior training,
20 approved training or full-time school attendance, experience,
21 prior earnings, length of unemployment and prospects for
22 securing local work in the individual's customary occupation
23 and the distance of available work from the individual's
24 residence. Notwithstanding any other provisions of the
25 Unemployment Compensation Law, no work shall be deemed suitable

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1 and benefits shall not be denied under the Unemployment
2 Compensation Law to any otherwise eligible individual for
3 refusing to accept new work under any of the following
4 conditions:

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

7 (2) if the wages, hours or other conditions of
8 the work offered are substantially less favorable to the
9 individual than those prevailing for similar work in the
10 locality; or

11 (3) if, as a condition of being employed, the
12 individual would be required to join a company union or to
13 resign from or refrain from joining any bona fide labor
14 organizations.

15 C. An individual shall be disqualified for, and
16 shall not be eligible to receive, benefits for any week with
17 respect to which the division finds that the individual's
18 unemployment is due to a labor dispute at the factory,
19 establishment or other premises at which the individual is or
20 was last employed; provided that this subsection shall not
21 apply if it is shown to the satisfaction of the division that:

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

24 (2) the individual does not belong to a grade
25 or class of workers of which, immediately before the

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1 commencement of the labor dispute, there were members employed
2 at the premises at which the labor dispute occurs, any of whom
3 are participating in or directly interested in the dispute;
4 provided that if in any case separate branches of work that are
5 commonly conducted in separate businesses in separate premises
6 are conducted in separate departments of the same premises,
7 each such department shall, for the purposes of this
8 subsection, be deemed to be a separate factory, establishment
9 or other premises.

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

20 E. A disqualification pursuant to Paragraph (1) or
21 (2) of Subsection A of this section shall continue for the
22 duration of the individual's unemployment and until the
23 individual has earned wages in bona fide employment other than
24 self-employment, as provided by rule of the secretary, in an
25 amount equivalent to five times the individual's weekly

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

17 F. As used in this section:

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

20 (2) "employment" means employment by the
21 individual's last employer as defined by rules of the
22 secretary."

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