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HOUSE BILL 185

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Rick Little

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION BENEFITS; DISQUALIFYING  
CERTAIN STATE EMPLOYEES FROM UNEMPLOYMENT COMPENSATION  
BENEFITS.

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 if it is determined  
by the division that the individual:

(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; or

21 (4) performed services in the individual's  
22 employment as described in Paragraphs (1) through (5) of  
23 Subsection A of Section 51-1-44 NMSA 1978.

24 B. In determining whether or not any work is  
25 suitable for an individual pursuant to Paragraph (3) of

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1 Subsection A of this section, the division shall consider the  
2 degree of risk involved to the individual's health, safety and  
3 morals, the individual's physical fitness, prior training,  
4 approved training, experience, prior earnings, length of  
5 unemployment and prospects for securing local work in the  
6 individual's customary occupation and the distance of available  
7 work from the individual's residence. Notwithstanding any  
8 other provisions of the Unemployment Compensation Law, no work  
9 shall be deemed suitable and benefits shall not be denied under  
10 the Unemployment Compensation Law to any otherwise eligible  
11 individual for refusing to accept new work under any of the  
12 following conditions:

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

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

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

23 C. An individual shall be disqualified for, and  
24 shall not be eligible to receive, benefits for any week with  
25 respect to which the division finds that the individual's

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1 unemployment is due to a labor dispute at the factory,  
2 establishment or other premises at which the individual is or  
3 was last employed; provided that this subsection shall not  
4 apply if it is shown to the satisfaction of the division that:

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

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

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

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1 not entitled to such unemployment benefits, this  
2 disqualification shall not apply.

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

21 F. As used in this section:

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

24 (2) "employment" means employment by the  
25 individual's last employer as defined by rules of the

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1 secretary."

2 SECTION 2. Section 51-1-44 NMSA 1978 (being Laws 1977,  
3 Chapter 227, Section 6, as amended) is amended to read:

4 "51-1-44. ADDITIONAL DEFINITIONS.--For purposes of the  
5 Unemployment Compensation Law:

6 A. "employment" means service performed by an  
7 individual in the employ of a governmental entity unless such  
8 service is performed by an individual in the exercise of ~~[his]~~  
9 the individual's duties:

10 (1) as an elected official;

11 (2) as a member of a legislative body or a  
12 member of the judiciary of a governmental entity of this state;

13 (3) as a member of the national guard or air  
14 national guard;

15 (4) as an employee serving on a temporary  
16 basis in case of fire, snow, earthquake, flood or similar  
17 emergency; or

18 (5) in a position ~~[which]~~ that, under or  
19 pursuant to state law, is designated as:

20 (a) a major nontenured policymaking or  
21 advisory position; ~~[or]~~

22 (b) a policymaking or advisory position  
23 the performance of the duties of which ordinarily does not  
24 require more than eight hours per week; or

25 (c) exempt and the individual is in a

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1 policymaking or supervisory position and serves at the  
2 discretion of an agency head of a governmental entity or at the  
3 discretion of an appointee of an agency head of a governmental  
4 entity;

5 B. "governmental entity" means the state or any  
6 political subdivision thereof, or any instrumentality of any  
7 one or more of the foregoing [~~which~~] that is wholly owned by  
8 one or more states or political subdivisions;

9 C. "local public body" means all political  
10 subdivisions of the state or any of their agencies,  
11 instrumentalities and institutions or any county hospitals or  
12 outpatient clinics thereof, leased to, or operated under an  
13 agreement with, a state educational institution named in  
14 Article 12, Section 11 of the constitution of New Mexico. The  
15 term "local public body" shall not be construed to mean school  
16 districts; and

17 D. "state" or "state agency" means the state of New  
18 Mexico or any of its branches, agencies, departments, boards,  
19 instrumentalities or institutions and all school districts of  
20 this state."