

## **IC 22-4-14**

### **Chapter 14. Eligibility for Benefits**

#### **IC 22-4-14-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.138-2008 apply to initial claims for unemployment filed for weeks that begin after March 14, 2008.

*As added by P.L.220-2011, SEC.366.*

#### **IC 22-4-14-1**

##### **Claims; inverse seniority layoffs; other layoffs and plant closures**

Sec. 1. (a) Except as provided in IC 22-4-5-1 or subsection (b) or (c), an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits in accordance with IC 22-4-17.

(b) A person who:

- (1) accepts a layoff under an inverse seniority clause of a validly negotiated contract; and
- (2) otherwise meets the eligibility requirements established by this article;

is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

(c) This subsection applies to initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011. This subsection does not apply to a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments. Except as provided in IC 22-4-5-1, a person who:

- (1) accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure; and
- (2) otherwise meets the eligibility requirements established by this article;

is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

*(Formerly: Acts 1947, c.208, s.1401; Acts 1971, P.L.355, SEC.29.)*

*As amended by P.L.138-2008, SEC.3; P.L.2-2011, SEC.12.*

#### **IC 22-4-14-2**

##### **Employment offices; registration; reporting; issuance of warrants; job counseling and training**

Sec. 2. (a) An unemployed individual is eligible to receive benefits with respect to any week only if the individual has:

- (1) registered for work at an employment office or branch thereof or other agency designated by the commissioner within the time limits that the department by rule adopts; and
- (2) subsequently reported with the frequency and in the manner,

either in person or in writing, that the department by rule adopts.

(b) Failure to comply with subsection (a) shall be excused by the commissioner or the commissioner's authorized representative upon a showing of good cause therefor. The department shall waive or alter the requirements of this section as to such types of cases or situations that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this article.

(c) The department shall provide job counseling or training to an individual who remains unemployed for at least four (4) weeks. The manner and duration of the counseling shall be determined by the department.

(d) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) is entitled to complete the reporting, counseling, or training that must be conducted in person at a one stop center selected by the individual. The department shall advise an eligible individual that this option is available.

(e) The department may waive the requirements of subsection (a) for a week only when one (1) of the following applies to an individual for that week:

(1) The individual is attending training or retraining approved by the department.

(2) The individual is a job-attached worker with a specific recall date that is not more than sixty (60) days after the individual's separation date.

(3) The individual is using:

(A) a hiring service;

(B) a referral service; or

(C) another job placement service as determined by the department.

(4) Any other situation exists for which the department considers requiring compliance by the individual with this section to be inconsistent with the purposes of this article.

*(Formerly: Acts 1947, c.208, s.1402; Acts 1953, c.177, s.14; Acts 1969, c.300, s.3.) As amended by P.L.144-1986, SEC.103; P.L.18-1987, SEC.41; P.L.80-1990, SEC.12; P.L.1-1991, SEC.149; P.L.21-1995, SEC.78; P.L.108-2006, SEC.25; P.L.175-2009, SEC.19.*

### **IC 22-4-14-3**

#### **Ability to work; available for work; military service; approved training**

Sec. 3. (a) An individual who is receiving benefits as determined under IC 22-4-15-1(c)(8) may restrict the individual's availability because of the individual's need to address the physical, psychological, or legal effects of being a victim of domestic or family violence (as defined in IC 31-9-2-42).

(b) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual:

(1) is physically and mentally able to work;

- (2) is available for work;
- (3) is found by the department to be making an effort to secure full-time work; and
- (4) participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services under a profiling system established by the department, unless the department determines that:
  - (A) the individual has completed the reemployment services;
  - or
  - (B) failure by the individual to participate in or complete the reemployment services is excused by the director under IC 22-4-14-2(b).

The term "effort to secure full-time work" shall be defined by the department through rule which shall take into consideration whether such individual has a reasonable assurance of reemployment and, if so, the length of the prospective period of unemployment. However, if an otherwise eligible individual is unable to work or unavailable for work on any normal work day of the week the individual shall be eligible to receive benefits with respect to such week reduced by one-third (1/3) of the individual's weekly benefit amount for each day of such inability to work or unavailability for work.

(c) For the purpose of this article, unavailability for work of an individual exists in, but is not limited to, any case in which, with respect to any week, it is found:

- (1) that such individual is engaged by any unit, agency, or instrumentality of the United States, in charge of public works or assistance through public employment, or any unit, agency, or instrumentality of this state, or any political subdivision thereof, in charge of any public works or assistance through public employment;
- (2) that such individual is in full-time active military service of the United States, or is enrolled in civilian service as a conscientious objector to military service;
- (3) that such individual is suspended for misconduct in connection with the individual's work; or
- (4) that such individual is in attendance at a regularly established public or private school during the customary hours of the individual's occupation or is in any vacation period intervening between regular school terms during which the individual is a student. However, this subdivision does not apply to any individual who is attending a regularly established school, has been regularly employed and upon becoming unemployed makes an effort to secure full-time work and is available for suitable full-time work with the individual's last employer, or is available for any other full-time employment deemed suitable.

(d) Notwithstanding any other provisions in this section or IC 22-4-15-2, no otherwise eligible individual shall be denied benefits for any week because the individual is in training with the

approval of the department, nor shall such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of the provisions of this section with respect to the availability for work or active search for work or by reason of the application of the provisions of IC 22-4-15-2 relating to failure to apply for, or the refusal to accept, suitable work. The department shall by rule prescribe the conditions under which approval of such training will be granted.

(e) Notwithstanding subsection (b), (c), or (d), or IC 22-4-15-2, an otherwise eligible individual shall not be denied benefits for any week or determined not able, available, and actively seeking work, because the individual is responding to a summons for jury service. The individual shall:

- (1) obtain from the court proof of the individual's jury service; and
- (2) provide to the department, in the manner the department prescribes by rule, proof of the individual's jury service.

*(Formerly: Acts 1947, c.208, s.1403; Acts 1951, c.307, s.3; Acts 1955, c.317, s.8; Acts 1967, c.310, s.18; Acts 1971, P.L.355, SEC.30; Acts 1975, P.L.253, SEC.1.) As amended by Acts 1976, P.L.114, SEC.4; Acts 1980, P.L.158, SEC.3; P.L.227-1983, SEC.7; P.L.18-1987, SEC.42; P.L.21-1995, SEC.79; P.L.189-2003, SEC.2; P.L.108-2006, SEC.26; P.L.175-2009, SEC.20; P.L.110-2010, SEC.30.*

#### **IC 22-4-14-4**

##### **Waiting period**

Sec. 4. As a condition precedent to the payment of benefits to an individual with respect to any week such individual shall be required to serve a waiting period of one (1) week in which he has been totally, partially or part-totally unemployed and with respect to which he has received no benefits, but during which he was eligible for benefits in all other respects and was not otherwise ineligible for benefits under any provisions of this article. Such waiting period shall be a week in the individual's benefit period and during such week such individual shall be physically and mentally able to work and available for work. No individual in a benefit period may file for waiting period or benefit period rights with respect to any subsequent period. Provided, however, That no waiting period shall be required as a prerequisite for drawing extended benefits.

*(Formerly: Acts 1947, c.208, s.1404; Acts 1971, P.L.355, SEC.31.)*

#### **IC 22-4-14-5**

##### **Wage credits**

Sec. 5. (a) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after July 1, 1995, but before January 1, 2010:

- (1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in

IC 22-4-4-3 and within the meaning of IC 22-4-22-3) equal to at least one and one-quarter (1.25) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than one thousand six hundred fifty dollars (\$1,650) and an aggregate in the four (4) calendar quarters of the individual's base period of not less than two thousand seven hundred fifty dollars (\$2,750).

(b) As a further condition precedent to the payment of benefits to an individual with respect to a benefit year established on and after July 1, 1995, an insured worker may not receive benefits in a benefit year unless after the beginning of the immediately preceding benefit year during which the individual received benefits, the individual performed insured work and earned wages in employment under IC 22-4-8 in an amount not less than the individual's weekly benefit amount established for the individual in the preceding benefit year in each of eight (8) weeks.

(c) As further conditions precedent to the payment of benefits to an individual with respect to benefit periods established on and after January 1, 2010:

(1) the individual must have established, after the last day of the individual's last base period, if any, wage credits (as defined in IC 22-4-4-3 and within the meaning of wages under IC 22-4-22-3) equal to at least one and five-tenths (1.5) times the wages paid to the individual in the calendar quarter in which the individual's wages were highest; and

(2) the individual must have established wage credits in the last two (2) calendar quarters of the individual's base period in a total amount of not less than two thousand five hundred dollars (\$2,500) and a total amount in the four (4) calendar quarters of the individual's base period of not less than four thousand two hundred dollars (\$4,200).

*(Formerly: Acts 1947, c.208, s.1405; Acts 1965, c.190, s.8; Acts 1971, P.L.355, SEC.32; Acts 1974, P.L.110, SEC.3.) As amended by Acts 1980, P.L.158, SEC.4; P.L.34-1985, SEC.6; P.L.171-1991, SEC.5; P.L.21-1995, SEC.80; P.L.166-1996, SEC.2; P.L.175-2009, SEC.21.*

#### **IC 22-4-14-6**

##### **Extended benefits; eligibility; effect of disqualification**

Sec. 6. (a) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the commissioner finds that with respect to such week:

(1) the individual is an "exhaustee" (as defined in IC 22-4-2-34(j)); and

(2) the individual has satisfied the requirements of this article for the receipt of regular benefits that are applicable to extended

benefits, including not being subject to a disqualification for the receipt of benefits.

(b) If an individual has been disqualified from receiving extended benefits for failure to actively engage in seeking work under IC 22-4-15-2(c), the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks. For purposes of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

- (1) the individual has engaged in a systematic and sustained effort to obtain work during the week; and
- (2) the individual provides tangible evidence to the department of workforce development that the individual has engaged in an effort to obtain work during the week.

(c) For claims for extended benefits established after September 25, 1982, notwithstanding any other provision of this article, an individual shall be eligible to receive extended benefits only if the individual's insured wages in the base period with respect to which the individual exhausted all rights to regular compensation were equal to or exceeded one and one-half (1 1/2) times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

*(Formerly: Acts 1971, P.L.355, SEC.33.) As amended by Acts 1981, P.L.209, SEC.7; Acts 1982, P.L.95, SEC.3; P.L.18-1987, SEC.43; P.L.21-1995, SEC.81; P.L.175-2009, SEC.22.*

#### **IC 22-4-14-7**

##### **Institutions of higher education and other educational institutions; service providers to or on behalf of educational institutions**

Sec. 7. (a) Benefits based on service in employment defined in IC 22-4-8-2(i) and IC 22-4-8-2(j) shall be payable in the same amount, on the terms, and subject to the same conditions as compensation payable on the basis of other service subject to this article, unless otherwise specifically provided, subject to the following exceptions:

- (1) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits may not be paid based on the service for any week of unemployment commencing during the period between two (2) successive academic years, or terms, or during the period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a reasonable assurance that the individual will perform services in an instructional, research, or principal administrative capacity for any educational institution in the second of the academic years or terms.
- (2) With respect to services performed in any capacity (other

than those listed in subdivision (1) of this section) for an educational institution, benefits may not be paid based on the service of an individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, with respect to weeks of unemployment beginning on or after January 1, 1984, if compensation is denied to any individual under this subdivision and the individual was not offered an opportunity to perform such services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subdivision.

(3) With respect to any services described in subdivision (1) or (2), compensation payable for these services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if there is reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(4) With respect to any services described in subdivisions (1) and (2), benefits shall not be payable on the basis of services in any such capacities as specified in subdivisions (1), (2), and (3), to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subdivision, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(5) For services to which 26 U.S.C. 3309(a)(1) applies, if the services are provided to or on behalf of an educational institution, compensation payable based on the services may be denied as specified in subdivisions (1), (2), (3), and (4).

(b) For purposes of this section, benefits may not be denied during the period between academic years or terms to any individual having wage credits earned with other than an educational institution if the wage credits qualify the individual under section 5 of this chapter and the individual is otherwise eligible. In these cases, the claim shall be computed based on the wage credits earned with employers other than educational institutions reported for the individual during the base period, in accordance with IC 22-4-12-2 and IC 22-4-12-4. Benefits paid based on the computation shall be only for weeks of unemployment occurring between academic years or terms. For any weeks of unemployment claims other than between academic years or terms, the claims of these individuals shall be recomputed to

include all base period wages.

*(Formerly: Acts 1971, P.L.355, SEC.34.) As amended by Acts 1977, P.L.262, SEC.22; Acts 1978, P.L.122, SEC.2; Acts 1979, P.L.229, SEC.3; P.L.227-1983, SEC.8; P.L.129-1984, SEC.2; P.L.2-2011, SEC.13.*

#### **IC 22-4-14-8**

##### **Sports; period between seasons**

Sec. 8. For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid to any individual on the basis of any service substantially all of which consists of participating in sports or athletic events or training or preparing to participate in these events for any week which commences during the period between two (2) successive sport seasons or similar periods, if the individual performed the services in the first of the seasons or similar periods and there is a reasonable assurance that the individual will perform the services in the second of the seasons or similar periods.

Benefits may not be denied, however, for any week which commences during the period between two (2) successive sport seasons or similar periods if the individual has performed services in employment other than participating in sports or athletic events or training or preparing to participate in these events with wage credits earned in the other employment during his base period in sufficient amount to qualify under IC 22-4-14-5 and the individual is otherwise eligible. In these cases, the claim shall be computed based on the wage credits earned with employers other than those employing the individual in sports or athletic events reported for the individual during his base period and in accordance with IC 22-4-12-2 and IC 22-4-12-4. Benefits paid based on this computation shall be only for weeks of unemployment occurring between sport seasons or similar periods. For any weeks of unemployment claimed other than between sports seasons or similar periods, the claims of these individuals shall be recomputed to include all base period wages.

*As added by Acts 1977, P.L.262, SEC.23.*

#### **IC 22-4-14-9**

##### **Aliens**

Sec. 9. (a) As used in this section, "SAVE program" refers to the Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color of law at the time the services are performed (including

an alien who is lawfully present in the United States as a result of the application of the provisions of Section 207, Section 208, or Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the status of the individual as a qualified alien (as defined in 8 U.S.C. 1641) through the SAVE program to determine the individual's eligibility for benefits. The department shall implement this subsection in accordance with federal law.

*As added by Acts 1977, P.L.262, SEC.24. Amended by P.L.135-1990, SEC.3; P.L.171-2011, SEC.14.*

#### **IC 22-4-14-10**

##### **Repealed**

*(Repealed by Acts 1982, P.L.137, SEC.1.)*

#### **IC 22-4-14-11**

##### **Seasonal employment; benefit claims; application for seasonal determination; appeal**

Sec. 11. (a) For weeks of unemployment occurring after October 1, 1983, benefits may be paid to an individual on the basis of service performed in seasonal employment (as defined in IC 22-4-8-4) only if the claim is filed within the operating period of the seasonal employment. If the claim is filed outside the operating period of the seasonal employment, benefits may be paid on the basis of nonseasonal wages only.

(b) An employer shall file an application for a seasonal determination (as defined by IC 22-4-7-3) with the department of workforce development. A seasonal determination shall be made by the department within ninety (90) days after the filing of such an application. Until a seasonal determination by the department has been made in accordance with this section, no employer or worker

may be considered seasonal.

(c) Any interested party may file an appeal regarding a seasonal determination within fifteen (15) calendar days after the determination by the department and obtain review of the determination in accordance with IC 22-4-32.

(d) Whenever an employer is determined to be a seasonal employer, the following provisions apply:

(1) The seasonal determination becomes effective the first day of the calendar quarter commencing after the date of the seasonal determination.

(2) The seasonal determination does not affect any benefit rights of seasonal workers with respect to employment before the effective date of the seasonal determination.

(e) If a seasonal employer, after the date of its seasonal determination, operates its business or its seasonal operation during a period or periods of twenty-six (26) weeks or more in a calendar year, the employer shall be determined by the department to have lost its seasonal status with respect to that business or operation effective at the end of the then current calendar quarter. The redetermination shall be reported in writing to the employer. Any interested party may file an appeal within fifteen (15) calendar days after the redetermination by the department and obtain review of the redetermination in accordance with IC 22-4-32.

(f) Seasonal employers shall keep account of wages paid to seasonal workers within the seasonal period as determined by the department and shall report these wages on a special seasonal quarterly report form provided by the department.

(g) The board shall adopt rules applicable to seasonal employers for determining their normal seasonal period or periods.

*As added by P.L.228-1983, SEC.4. Amended by P.L.18-1987, SEC.44; P.L.21-1995, SEC.82.*