

## IC 22-4-15

### Chapter 15. Disqualification for Benefits

#### IC 22-4-15-1

##### **Grounds for disqualification; modifications**

Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification

because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual shall not be subject to disqualification if the individual voluntarily left employment or was discharged due to circumstances directly caused by domestic or family violence (as defined in IC 31-9-2-42). An individual who may be entitled to benefits based on this modification may apply to the office of the attorney general under IC 5-26.5 to have an address designated by the office of the attorney general to serve as the individual's address for purposes of this article.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;

(3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers;

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or

(9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

(e) To verify that domestic or family violence has occurred, an individual who applies for benefits under subsection (c)(8) shall

provide one (1) of the following:

- (1) A report of a law enforcement agency (as defined in IC 10-13-3-10).
- (2) A protection order issued under IC 34-26-5.
- (3) A foreign protection order (as defined in IC 34-6-2-48.5).
- (4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

*(Formerly: Acts 1947, c.208, s.1501; Acts 1957, c.261, s.1; Acts 1965, c.190, s.9; Acts 1967, c.310, s.19; Acts 1971, P.L.355, SEC.35; Acts 1972, P.L.174, SEC.1; Acts 1974, P.L.110, SEC.4.) As amended by Acts 1977, P.L.262, SEC.25; Acts 1980, P.L.158, SEC.5; Acts 1982, P.L.95, SEC.4; P.L.20-1986, SEC.9; P.L.80-1990, SEC.13; P.L.21-1995, SEC.83; P.L.166-1996, SEC.3; P.L.290-2001, SEC.7; P.L.189-2003, SEC.3; P.L.97-2004, SEC.82; P.L.175-2009, SEC.23.*

### **IC 22-4-15-2**

#### **Availability and acceptance of work; exceptions; application to extended benefit rights**

Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

- (1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
- (2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or
- (3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, 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 eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, 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.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent failure to apply for or accept suitable work, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved. During the fifth through the eighth consecutive week of claiming benefits, work is not considered unsuitable solely because the work pays not less than ninety percent (90%) of the individual's prior weekly wage. After eight (8) consecutive weeks of

claiming benefits, work is not considered unsuitable solely because the work pays not less than eighty percent (80%) of the individual's prior weekly wage. However, work is not considered suitable under this section if the work pays less than Indiana's minimum wage as determined under IC 22-2-2. For an individual who is subject to section 1(c)(8) of this chapter, the determination of suitable work for the individual must reasonably accommodate the individual's need to address the physical, psychological, legal, and other effects of domestic or family violence.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- (4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:
  - (A) the individual's average weekly benefit amount for the individual's benefit year; plus
  - (B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.
- (2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.
- (3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

- (4) If the position pays wages less than the higher of:
  - (A) the minimum wage provided by 29 U.S.C. 206(a)(1) (the Fair Labor Standards Act of 1938), without regard to any exemption; or
  - (B) the state minimum wage (IC 22-2-2).
- (i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.
- (j) An individual is considered to have refused an offer of suitable work under subsection (a) if an offer of work is withdrawn by an employer after an individual:
  - (1) tests positive for drugs after a drug test given on behalf of the prospective employer as a condition of an offer of employment; or
  - (2) refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of an offer of employment.
- (k) For purposes of this article, a drug test is not found to be positive unless:
  - (1) a second confirmation test:
    - (A) renders a positive result that has been performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory on the same sample used for the first screen test using gas chromatography mass spectrometry for the purposes of confirming or refuting the screen test results; and
    - (B) has been reviewed by a licensed physician and:
      - (i) the laboratory results described in clause (A);
      - (ii) the individual's medical history; and
      - (iii) other relevant biomedical information;confirm a positive result of the drug tests; or
  - (2) the individual who has submitted to the drug test has no valid medical reason for testing positive for the substance found in the drug test.
- (l) The department's records concerning the results of a drug test described in subsection (j) may not be admitted against a defendant in a criminal proceeding.  
*(Formerly: Acts 1947, c.208, s.1502; Acts 1953, c.177, s.15; Acts 1957, c.261, s.2; Acts 1971, P.L.355, SEC.36; Acts 1974, P.L.110, SEC.5.) As amended by Acts 1977, P.L.262, SEC.26; Acts 1980, P.L.158, SEC.6; Acts 1981, P.L.209, SEC.8; Acts 1982, P.L.95, SEC.5; P.L.20-1986, SEC.10; P.L.2-1987, SEC.31; P.L.18-1987, SEC.45; P.L.21-1995, SEC.84; P.L.290-2001, SEC.8; P.L.189-2003, SEC.4; P.L.97-2004, SEC.83; P.L.175-2009, SEC.24; P.L.12-2011, SEC.4.*

### **IC 22-4-15-3**

#### **Labor disputes; financing; sympathy strikes**

Sec. 3. (a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which his total or partial or part-total unemployment is due to a labor dispute at the factory,

establishment, or other premises at which he was last employed.

(b) This section shall not apply to an individual if he has terminated his employment, or his employment has been terminated, with the employer involved in the labor dispute; or if the labor dispute which caused his unemployment has terminated and any period necessary to resume normal activities at his place of employment has elapsed; or if all of the following conditions exist: He is not participating in or financing or directly interested in the labor dispute which caused his unemployment: and he does not belong to a grade or class of workers of which, immediately before the commencement of his unemployment, there were members employed at the same premises as he, any of whom are participating in or financing or directly interested in the dispute; and he has not voluntarily stopped working, other than at the direction of his employer, in sympathy with employees in some other establishment or factory in which a labor dispute is in progress.

(c) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(d) Upon request of any claimant or employer involved in an issue arising under this section, the deputy shall, and in any other case the deputy may, refer claims of individuals with respect to whom there is an issue of the application of this section to an administrative law judge who shall make the initial determination with respect thereto, in accordance with the procedure in IC 22-4-17-3.

(e) Notwithstanding any other provisions of this article, an individual shall not be ineligible for waiting period or benefit rights under this section solely by reason of his failure or refusal to apply for or to accept recall to work or reemployment with an employer during the continuance of a labor dispute at the factory, establishment, or other premises of the employer, if the individual's last separation from the employer occurred prior to the start of the labor dispute and was permanent or for an indefinite period.

*(Formerly: Acts 1947, c.208, s.1504; Acts 1953, c.177, s.16; Acts 1971, P.L.355, SEC.37; Acts 1974, P.L.110, SEC.6.) As amended by Acts 1980, P.L.158, SEC.7; P.L.135-1990, SEC.4.*

#### **IC 22-4-15-4**

##### **Retirement; annuities; Social Security**

Sec. 4. (a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding the individual's weekly benefit amount in the form of:

- (1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or
- (2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. The following apply to a disqualification

under this subdivision:

(A) The disqualification shall apply only if some or all of the benefits otherwise payable:

- (i) are chargeable to the experience or reimbursable account of such employer; or
- (ii) would have been chargeable except for the application of this chapter.

(B) Notwithstanding clause (A), the disqualification does not apply to a distribution from a pension, retirement, or annuity plan of an employer when an individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the individual's control.

(C) Federal old age, survivors, and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than an individual's weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

*(Formerly: Acts 1947, c.208, s.1505; Acts 1953, c.177, s.17; Acts 1967, c.310, s.20; Acts 1971, P.L.355, SEC.38.) As amended by Acts 1981, P.L.209, SEC.9; P.L.3-1998, SEC.1; P.L.290-2001, SEC.9; P.L.2-2011, SEC.14.*

#### **IC 22-4-15-5**

##### **Receiving benefits from another state; federal employees' benefits**

Sec. 5. Except as provided in IC 1971, 22-4-22, an individual shall be ineligible for waiting period or benefit rights: For any week with respect to which or a part of which he receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States: Provided, That this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such employment benefits, including benefits to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85.

*(Formerly: Acts 1947, c.208, s.1506; Acts 1953, c.177, s.18; Acts 1955, c.317, s.9; Acts 1971, P.L.355, SEC.39.)*

#### **IC 22-4-15-6**

**Repealed**

*(Repealed by P.L.1-1991, SEC.150.)*

**IC 22-4-15-6.1**

**Gross misconduct**

Sec. 6.1. (a) Notwithstanding any other provisions of this article, all of the individual's wage credits established prior to the day upon which the individual was discharged for gross misconduct in connection with work are canceled.

(b) As used in this section, "gross misconduct" means any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:

- (1) A felony.
- (2) A Class A misdemeanor.
- (3) Working, or reporting for work, in a state of intoxication caused by the individual's use of alcohol or a controlled substance (as defined in IC 35-48-1-9).
- (4) Battery on another individual while on the employer's property or during working hours.
- (5) Theft or embezzlement.
- (6) Fraud.

(c) An employer:

- (1) has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross misconduct; and
- (2) may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee's discharge.

(d) Evidence that a discharged employee's conduct did not result in:

- (1) a prosecution for an offense; or
- (2) a conviction of an offense;

may be presented.

(e) If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct under this section.

(f) Lawful conduct not otherwise prohibited by an employer is not gross misconduct under this section.

*As added by P.L.1-1991, SEC.151. Amended by P.L.175-2009, SEC.25.*

**IC 22-4-15-7**

**Repealed**

*(Repealed by Acts 1971, P.L.355, SEC.47.)*

**IC 22-4-15-8**

**Private unemployment benefit plans**

Sec. 8. Notwithstanding any other provisions of this article, benefits otherwise payable for any week under this article shall not

be denied or reduced on account of any payment or payments the claimant receives, has received, will receive, or accrues right to receive with respect to or based upon such week under a private unemployment benefit plan financed in whole or part by the claimant's employer or former employer. No claim for repayment of benefits and no deduction from benefits otherwise payable under this article shall be made under IC 22-4-13-1(d) and IC 22-4-13-1(e) because of payments which have been or will be made under such private unemployment benefit plans.

*(Formerly: Acts 1947, c.208, s.1509; Acts 1957, c.129, s.2; Acts 1959, c.241, s.1.) As amended by P.L.144-1986, SEC.104; P.L.108-2006, SEC.27.*