

CHAPTER 604

S.B. No. 1251

AN ACT

relating to the Texas Unemployment Compensation Act; defining temporary help firm and temporary employee.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 5, Texas Unemployment Compensation Act (Article 5221b-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount, unless the individual left work to move with a spouse from the area in which the individual worked. In that case, the disqualification shall be for not less than six (6) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case. Provided no claimant shall be disqualified because of his or her leaving due to medically verified illness of the claimant or

the claimant's minor child, injury, disability, or pregnancy and is still available for work. A medically verified illness of a minor child only prevents disqualification under this subsection if there is no reasonable alternative care available to the child and the employer refused to allow the employee a reasonable amount of time off during the illness. Military personnel who do not reenlist may not be considered to have left work voluntarily without good cause connected with work. An individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified under this subsection. *A temporary employee of a temporary help firm will be deemed to have left his last work voluntarily without good cause connected with his work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee will not be deemed to have left his work voluntarily without good cause connected with his work unless the temporary employee has been advised of the obligation to contact the temporary help firm on completion of assignments and that unemployment benefits may be denied for failure to do so.*

(b) If the Commission finds he has been discharged for misconduct connected with his last work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) 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 any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that 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 purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended, or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

(f) For a benefit period occurring from the date of the sale of a business until the date that an individual is employed and is eligible for benefits based on the wage credits received through the new employment, if:

(1) the business is a corporation and the individual is:

(A) an officer of the corporation;

(B) a majority or controlling shareholder in the corporation; and

(C) involved in the sale of the corporation;

(2) the business is a limited or general partnership and the individual is a limited or general partner who is involved in the sale of the partnership; or

(3) the business is a sole proprietorship and the individual is the proprietor who sells the business.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566 requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provision stated in the preceding paragraph.

(i) This Section does not disqualify a claimant whose work-related reason for separation from employment was urgent, compelling, and of a necessitous nature so as to make separation involuntary.

(j) If the Commission finds that he has left his last work voluntarily rather than provide services included within the course and scope of his employment to an individual infected with a communicable disease. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times the claimant's weekly benefit amount. A claimant is not disqualified under this subsection unless the individual or organization for whom the claimant last worked made available to the claimant the facilities, equipment, training, and supplies necessary to permit the claimant to take reasonable precautions to preclude the infection of the claimant with the communicable disease.

(k) If the Commission finds that he has been discharged from his last work based on a refusal by him to provide services included within the course and scope of his employment to an individual infected with a communicable disease. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times the claimant's weekly benefit amount. A claimant is not disqualified under this subsection unless the individual or organization for whom the claimant last worked made available to the claimant the facilities, equipment, training, and supplies necessary to preclude the infection of the claimant with the communicable disease.

SECTION 2. Section 19, Texas Unemployment Compensation Act (Article 5221b-17, Vernon's Texas Civil Statutes), is amended by adding Subsections (r) and (s) to read as follows:

(r) *"Temporary help firm" means a firm or business that employs individuals for the purpose of assigning them to the temporary help firm's clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal work loads, and special assignments and projects. For the purposes of this Act, the temporary help firm is deemed to be the employer of the temporary employee.*

(s) *"Temporary employee" means an individual employed by a temporary help firm for the purpose of being assigned to work for the clients of a temporary help firm.*

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 6, 1993: Yeas 31, Nays 0; passed the House on May 21, 1993, by a non-record vote.

Approved June 15, 1993.

Effective Sept. 1, 1993.