



Oregon

Theodore R. Kulongoski, Governor

Employment Department

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June 23, 2009

Cheryl Atkinson, Administrator
Office of Workforce Security
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210



Dear Ms. Atkinson:

On behalf of the State of Oregon, I hereby apply for an Unemployment Compensation Modernization Incentive payment pursuant to Section 2003(a) of Public Law 111-5. Oregon's application for the first third of the Unemployment Modernization Incentive payment, based on alternate base year provisions, was approved by the Department of Labor on June 5, 2009. Today, I am submitting an application on behalf of the State of Oregon for the remaining two-thirds of the Unemployment Modernization Incentive payment for which Oregon can qualify.

Our application is submitted under provisions 2 and 3 of Public Law No. 111-5, Section 2003(a), as explained in UIPL No. 14-09:

- (2) An individual is not disqualified from unemployment compensation for separations due to certain compelling family reasons.
- (3) An additional 26 weeks of unemployment compensation is paid to exhaustees who are enrolled in and making satisfactory progress in certain training programs.

I hereby certify that both Oregon law and the administrative rules and practices currently include provisions to carry out requirements number 2 and number 3, listed above. Accordingly, I respectfully request certification that Oregon qualifies for a full distribution of the remaining two-thirds of the Unemployment Modernization Incentive payment.

On May 21, 2009, Governor Ted Kulongoski signed House Bill 2203A (attached) into law. The bill became effective immediately upon signing. This bill made minor technical modifications to Oregon's statutes dealing with unemployment insurance job separations for domestic purposes and training programs. I certify that this bill permanently amends Oregon law and is not subject to discontinuation other than repeal by a future legislature.

I further certify that this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which it is based.

In accordance with the instructions in UIPL 14-09, the following details how Oregon complies with two of the above requirements, numbers 2 and 3.

Requirement 2: Leaving work for compelling family reasons

Oregon has, for decades, allowed benefits to claimants leaving work for compelling domestic reasons, including:

- a) joining or following a spouse or domestic partner to another area,
- b) to care for a relative, or
- c) to escape domestic violence.

Oregon's compliance with the UI Modernization requirements is described below.

a) Leaving work to follow a spouse:

Since 1983, Oregon has allowed benefits to claimants leaving work to follow their spouse or domestic partner to a new location. Oregon law does not require the spouse to have work at the new location. Claimants leaving work to follow the spouse to preserve the family unit are granted 'good cause'. This is actually a broader interpretation of quitting to accompany a spouse than prescribed in UIPL 14-09.

ORS 657.176(2) requires disqualification "if the authorized representative designated by the director finds that the individual:

- (a) Has been discharged for misconduct connected with work;
- (b) Has been suspended from work for misconduct connected with work;
- (c) Voluntarily left work without good cause;"

"Good cause" is defined in Oregon administrative rule 471-030-0038 (copy attached):

(4) Good cause for voluntarily leaving work under ORS 657.176(2)(c) is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work. Except as provided in OAR 471-030-0038(5)(g), for all individuals, the reason must be of such gravity that the individual has no reasonable alternative but to leave work.

OAR 471-030-0038(5)(g) grants good cause to individuals leaving work due to "compelling family reasons", without requiring the individual pursue all reasonable alternatives.:

- (g) Leaving work with good cause includes, but is not limited to, leaving work due to "compelling family reasons."

OAR 471-030-0038(1)(e) describes “compelling family reasons”:

- (e) For purposes of this rule, “compelling family reasons” means:
 - (A) Domestic violence, as defined in OAR 471-30-0150, which causes the individual reasonably to believe that the individual’s continued employment would jeopardize the safety of the individual or a member of the individual’s immediate family; or
 - (B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off; or
 - (C) The need to accompany the individual’s spouse or domestic partner,
 - (i) to a place from which it is impractical for such individual to commute; and
 - (ii) due to a change in location of the spouse’s or domestic partner’s employment.

Section (1)(f) of this rule defines family member:

- (f) As used in OAR 471-030-0150 and this rule, "a member of the individual’s immediate family” includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.

b) Leaving work to care for a relative:

Oregon law and administrative rule has provided eligibility to individuals who leave work to care for a family member for decades. Oregon’s administrative rule, OAR 471-030-0038 (quoted above), now specifically precludes the consideration of *reasonable alternatives for domestic separations, including* leaving to care for a relative. Leaving work to care for a relative is now specifically addressed in rule under OAR 471-030-0038(1)(e)(B) (included in citation above) with the other “compelling family reasons.”

In reference to UIPL 14-09, Q&A III-10, Oregon does not deny benefits when a claimant is discharged due to absenteeism caused by caring for a relative. ORS 657.176(2) provides the statutory authority for denying benefits that result from misconduct. In part, it requires a disqualification “if the authorized representative designated by the director finds that the individual: (a) *Has been discharged for misconduct connected with work;*

Misconduct is defined on Oregon’s administrative rule 471-030-0038 (3):

- (3) (a) As used in ORS 657.176(2)(a) and (b) a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.

(b) Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct.

(c) The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual.

(d) Discharge for “compelling family reasons,” when the individual has made the attempt to maintain the employer-employee relationship, is not misconduct.

Subsection (d) of the above administrative rule specifically precludes a misconduct ruling from being applied to absenteeism for compelling family reasons.

c) Leaving work to avoid domestic violence:

House Bill 2203 amended ORS 657.176(12) to expand Oregon’s domestic violence statute to include leaving work to protect a family member. In addition, the amendment eliminated the requirement that the claimant pursue *reasonable alternatives* in domestic violence situations. Oregon does not have any statutes or rules requiring specific evidence to establish the existence of domestic violence. In practice, Oregon bases administrative decisions to allow benefits upon the credibility of statements from claimants and employers.

ORS 657.176(12) precludes a denial of benefits when a separation results from domestic abuse. As a result of House Bill 2203, ORS 657.176(12) now reads:

(12) An individual may not be disqualified from receiving benefits under subsection (2)(c), (d) or

(e) of this section or be considered unavailable for purposes of ORS 657.155 if:

(a) The individual or a member of the individual’s immediate family is a victim of domestic violence, stalking or sexual assault, or the individual believes that the individual or a member of the individual’s immediate family could become a victim of domestic violence, stalking or sexual assault; and

(b) The individual leaves work, fails to apply for available suitable work or fails to accept suitable work when offered in order to protect the individual or a member of the individual’s immediate family from domestic violence, stalking or sexual assault that the individual reasonably believes will occur as a result of the individual’s continued employment or acceptance of work.

OAR 471-030-0150, see page 3, defines family members for applying the above law:

(1) As used in ORS 657.176(12) and for purposes of this rule, “a member of the individual’s immediate family” has the same meaning as the term is defined in OAR 471-030-0038(1).

- (2) As used in ORS 657.176(12), "domestic violence" means the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage or has a significant relationship with the other person at the present, or who has been related or has had a significant relationship at some time in the past, to the extent that the person's health, safety or welfare is harmed or threatened thereby.
- (3) As used in ORS 657.176(12), "stalking" means:
 - (a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person thereby alarming or coercing the other person;
 - (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and
 - (c) The repeated and unwanted contact causes the individual or a member of the individual's immediate family reasonable apprehension regarding the personal safety of the individual or the family member.
- (4) As used in ORS 657.176(12), "sexual assault" means any unwanted touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.
- (5) The effective date for implementing this rule shall be May 21, 2009.

Requirement number 3: Training benefits

ORS 657.340 authorizes paying an additional 26 weeks of unemployment compensation to exhaustees enrolled in and making satisfactory progress in Oregon's worker training program. House Bill 2203 permanently amended this statute to ensure all such exhaustees are eligible for the additional payments and eliminated making such payments subject to the "availability of funds." The law already disregarded claim expirations in allowing the additional benefits. House Bill 2203 is attached. The relevant sections of law, ORS 657.335 and 657.340, are located in Sections 8 and 9 of HB 2203.

Use of Funds:

The State of Oregon intends to use the incentive funds granted for the payment of unemployment compensation and administrative costs as authorized by federal law.

A copy of House Bill 2203A (Attachment A) is attached to support this application. If you have any questions, or need additional information, please feel free to contact me.

Sincerely,



Laurie A. Warner
Director

Attachment

Enrolled
House Bill 2203

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Employment Department)

CHAPTER

AN ACT

Relating to unemployment insurance; creating new provisions; amending ORS 657.176, 657.265, 657.321, 657.335 and 657.340; repealing ORS 657.337 and 657.342; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 657.

SECTION 2. For purposes of this chapter, if any provision of state law conflicts with any provision of this chapter, this chapter shall control.

SECTION 3. ORS 657.176 is amended to read:

657.176. (1) An authorized representative designated by the Director of the Employment Department shall promptly examine each claim to determine whether an individual is subject to disqualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension from work or as a result of failure to apply for or accept work and shall promptly enter a director's decision if required by ORS 657.267. The authorized representative may address issues raised by information before the authorized representative, including but not limited to the nature of the separation, notwithstanding the way the parties characterize those issues.

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment[, as defined in ORS 657.030 (2), in this state or in employment, as defined by a law equivalent to ORS 657.030 (2), in any other state or Canada] **subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2)** or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

- (a) Has been discharged for misconduct connected with work;
- (b) Has been suspended from work for misconduct connected with work;
- (c) Voluntarily left work without good cause;
- (d) Failed without good cause to apply for available suitable work when referred by the employment office or the director;
- (e) Failed without good cause to accept suitable work when offered;
- (f) Has been discharged or suspended for being absent or tardy in reporting to work and the absence or tardiness occurred as a result of the unlawful use of any drug unless the person was participating in a recognized drug rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the Employment Department documentation of program participation. As used in this

paragraph, "unlawful use" does not include the use of a drug taken under the supervision of a licensed health care professional and in accordance with the prescribed directions for consumption, or other uses authorized by the laws of this state;

(g) Has been discharged or suspended for being absent or tardy in reporting to work and the absence or tardiness occurred as the result of the use of alcohol on a second or any subsequent occasion within a period of 12 months unless the person was participating in a recognized alcohol rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the department documentation of program participation; or

(h) Has committed a disqualifying act described in subsection (9) or (10) of this section.

(3) If the authorized representative designated by the director finds that an individual was discharged for misconduct because of the individual's commission of a felony or theft in connection with the individual's work, all benefit rights based on wages earned prior to the date of the discharge shall be canceled if the individual's employer notifies the director of the discharge within 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance of the notice provided for in ORS 657.266, and:

(a) The individual has admitted commission of the felony or theft to an authorized representative of the director;

(b) The individual has signed a written admission of the felony or theft and the written admission has been presented to an authorized representative of the director; or

(c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

(4) An individual disqualified under subsection (2) of this section shall have the individual's maximum benefit amount reduced by eight times the individual's weekly benefit amount. However, in no event shall the individual's maximum benefit amount be reduced to less than the individual's weekly benefit amount unless the individual has previously received benefits during the individual's benefit year.

(5) An individual may not be disqualified from receiving benefits under subsection (2)(c) or (e) of this section or under ORS 657.200 if the individual ceases work or fails to accept work when a collective bargaining agreement between the individual's bargaining unit and the individual's employer is in effect and the employer unilaterally modifies the amount of wages payable under the agreement, in breach of the agreement.

(6) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

(a) The separation would be for reasons that constitute good cause;

(b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and

(c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving,

then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

(7) For purposes of applying subsection (2) of this section, when an employer has notified an individual that the individual will be discharged on a specific date and it is determined that:

(a) The discharge would not be for reasons that constitute misconduct connected with the work;

(b) The individual voluntarily left work without good cause prior to the date of the impending discharge; and

(c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge,

then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the voluntary leaving occurred through the week prior to the week in which the individual would have been discharged.

(8) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The voluntary leaving would be for reasons that do not constitute good cause;
- (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and
- (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,

then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

(9)(a) For the purposes of subsection (2) of this section, an individual is considered to have committed a disqualifying act when the individual:

(A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs or alcohol in the workplace;

(B) Fails or refuses to take a drug or alcohol test as required by the employer's reasonable written policy;

(C) Refuses to cooperate with or subverts or attempts to subvert a drug or alcohol testing process in any employment-related test required by the employer's reasonable written policy, including but not limited to:

- (i) Refusal or failure to complete proper documentation that authorizes the test;
- (ii) Refusal or failure to sign a chain of custody form;
- (iii) Presentation of false identification;
- (iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is identified by a testing facility; or
- (v) Interference with the accuracy of the test results by conduct that includes dilution or adulteration of a test specimen;

(D) Is under the influence of intoxicants while performing services for the employer;

(E) Possesses a drug unlawfully or in violation of the employer's reasonable written policy during work;

(F) Tests positive for alcohol or an unlawful drug in connection with employment; or

(G) Refuses to enter into or violates the terms of a last chance agreement with the employer.

(b)(A) Except as provided in subparagraph (B) of this paragraph, an individual is not considered to have committed a disqualifying act under this subsection if the individual, on the date of separation or within 10 days after the date of separation, is participating in a recognized drug or alcohol rehabilitation program and provides documentation of participation in the program to the department.

(B) This paragraph does not apply to an individual who has refused to enter into or has violated the terms of a last chance agreement with the employer.

(c) It is no defense or excuse under this section that the individual's separation resulted from alcohol use, marijuana use, unlawful drug use, alcoholism or drug addiction.

(d) The department shall adopt rules to carry out the provisions of this subsection.

(10) For the purposes of subsection (2) of this section, an individual is considered to have committed a disqualifying act when the individual voluntarily leaves work, fails to apply for available suitable work when referred by the employment office or the director or fails to accept suitable work when offered:

(a) Because the employer has or introduces a reasonable written drug-free workplace policy that is consistent with subsection (9)(a)(A) of this section;

(b) Because the employer requires the employee to consent to present or future drug or alcohol tests under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section;

(c) To avoid taking a drug or alcohol test under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section; or

(d) To avoid meeting the requirements of a last chance agreement.

(11) An individual may not be disqualified from receiving benefits under subsection (2)(c) of this section and shall be deemed laid off if the individual:

(a) Works under a collective bargaining agreement;

(b) Elects to be laid off when the employer has decided to lay off employees; and

(c) Is placed on the referral list under the collective bargaining agreement.

(12) An individual may not be disqualified from receiving benefits under subsection (2)(c), (d) or (e) of this section or be considered unavailable for purposes of ORS 657.155 if:

(a) The individual or a member of the individual's immediate family is a victim[, or is the parent or guardian of a minor child who is a victim,] of domestic violence, stalking or sexual assault[;], or the individual believes that the individual or a member of the individual's immediate family could become a victim of domestic violence, stalking or sexual assault; and

(b) The individual leaves work, fails to apply for available suitable work or fails to accept suitable work when offered in order to protect the individual or [the minor child] a member of the individual's immediate family from [further] domestic violence, stalking or sexual assault that the individual reasonably believes will occur [at the workplace or elsewhere; and] as a result of the individual's continued employment or acceptance of work.

[(c) The individual pursues reasonable available alternatives to leaving work, failing to apply for available suitable work or failing to accept suitable work when offered.]

(13) For purposes of this section:

(a) "Adulterant" means a substance that does not occur naturally in urine, or that occurs naturally in urine but not at the concentrations detected. "Adulterant" includes but is not limited to glutaraldehyde, nitrite concentrations above physiological levels, hypochlorite or soap.

(b) "Drug" means a controlled substance as defined in ORS 475.005.

(c) "Last chance agreement" means a reasonable agreement:

(A) Between an employer and an employee who has violated the employer's reasonable written policy, has engaged in drug or alcohol use connected with work or has admitted to alcohol abuse, marijuana use or unlawful drug use; and

(B) That permits the employee to return to work under conditions that may require the employee to:

(i) Abstain from alcohol use, marijuana use and unlawful drug use; and

(ii) Attend and comply with the requirements of a rehabilitation or education program acceptable to the employer.

(d) An individual is "under the influence of intoxicants" when the level of alcohol, marijuana or unlawful drugs present in the individual's body exceeds the amount prescribed in a collective bargaining agreement, or the amount prescribed in the employer's reasonable written policy if there is no applicable collective bargaining agreement provision.

SECTION 4. ORS 657.265 is amended to read:

657.265. When a claimant files an initial claim or an additional claim, the Employment Department promptly shall give written notice of the claim filing to the claimant's most recent employing unit. If the claimant did not receive or will not receive remuneration from qualifying employment, as described in ORS 657.176, in an amount greater than or equal to four times the claimant's weekly benefit amount from the claimant's most recent employing unit, the Employment Department shall notify the claimant's next previous employing unit or units until the Employment Department has notified [those] all of the claimant's former employing units [which] that, in the aggregate, have paid or will pay the claimant remuneration from qualifying employment, as described in ORS

657.176, in an amount [which] that is equal to or exceeds four times the claimant's weekly benefit amount.

SECTION 5. ORS 657.321 is amended to read:

657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

(1) "Eligibility period" of an individual means the period consisting of:

(a) The weeks in the individual's benefit year that begin in an extended benefit period and, if the benefit year ends within such extended benefit period, any subsequent weeks [thereafter] that begin in [such] the extended benefit period[.]; or

(b) Any week that begins:

(A) After the date the individual exhausts all rights to Emergency Unemployment Compensation; and

(B) During an extended benefit period that began on or before the date described in subparagraph (A) of this paragraph.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) Has received prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current benefit year that includes such week (provided that an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in the current benefit year, the individual may subsequently be determined to be entitled to added regular benefits); or

(b)(A) The individual's benefit year having expired prior to such week, has no, or insufficient, wages and employment to establish a new benefit year that would include such week;

(B) Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(C) Has not received and is not seeking, or the appropriate agency has finally determined that the individual is not entitled to receive, unemployment benefits under the unemployment compensation law of Canada.

(3)(a) "Extended benefit period" means a period that:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period, whichever occurs later.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period that was in effect with respect to this state.

(c) There is a state "on" indicator for any week for which the Director of the Employment Department determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted):

(A) Equaled or exceeded five percent and equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years;

(B) Equaled or exceeded six percent; or

(C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in sub-subparagraph (i)

of this subparagraph, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(d) There is a state "off" indicator for any week for which the director determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, none of the options specified in subsection (3)(c) of this section results in an "on" indicator.

(4) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this chapter for weeks of unemployment in the individual's eligibility period.

(5) "High unemployment period" means any period during which an extended benefit period would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting "eight percent" for "6.5 percent."

(6) "Rate of insured unemployment," for the purpose of subsection (3)(c) and (d) of this section, means the percentage derived by dividing:

(a) The average weekly number of regular continued weeks of unemployment claimed by individuals in this state with respect to the most recent 13-consecutive-week period, as determined by the director on the basis of reports to the United States Secretary of Labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters before the end of such 13-week period.

(7) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code.

SECTION 6. ORS 657.321, as amended by section 5 of this 2009 Act, is amended to read: 657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

(1) "Eligibility period" of an individual means the period consisting of:

(a) The weeks in the individual's benefit year that begin in an extended benefit period and any subsequent weeks that begin in the extended benefit period; or

(b) Any week that begins:

(A) After the date the individual exhausts all rights to Emergency Unemployment Compensation; and

(B) During an extended benefit period that began on or before the date described in subparagraph (A) of this paragraph, **provided the individual received extended benefits for one or more weeks of unemployment during the period from February 22, 2009, through December 26, 2009.**

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) Has received prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current benefit year that includes such week (provided that an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in the current benefit year, the individual may subsequently be determined to be entitled to added regular benefits); or

(b)(A) The individual's benefit year having expired prior to such week, has no, or insufficient, wages and employment to establish a new benefit year that would include such week;

(B) Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(C) Has not received and is not seeking, or the appropriate agency has finally determined that the individual is not entitled to receive, unemployment benefits under the unemployment compensation law of Canada.

(3)(a) "Extended benefit period" means a period that:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period, whichever occurs later.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period that was in effect with respect to this state.

(c) There is a state "on" indicator for any week for which the Director of the Employment Department determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted):

(A) Equaled or exceeded five percent and equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years;

(B) Equaled or exceeded six percent; or

(C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in sub-subparagraph (i) of this subparagraph, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(d) There is a state "off" indicator for any week for which the director determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, none of the options specified in subsection (3)(c) of this section results in an "on" indicator.

(4) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this chapter for weeks of unemployment in the individual's eligibility period.

(5) "High unemployment period" means any period during which an extended benefit period would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting "eight percent" for "6.5 percent."

(6) "Rate of insured unemployment," for the purpose of subsection (3)(c) and (d) of this section, means the percentage derived by dividing:

(a) The average weekly number of regular continued weeks of unemployment claimed by individuals in this state with respect to the most recent 13-consecutive-week period, as determined by the director on the basis of reports to the United States Secretary of Labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters before the end of such 13-week period.

(7) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code.

SECTION 7. ORS 657.321, as amended by sections 5 and 6 of this 2009 Act, is amended to read: 657.321. As used in ORS 657.321 to 657.329 unless the context requires otherwise:

(1) "Eligibility period" of an individual means the period consisting of[.]

[(a)] the weeks in the individual's benefit year that begin in an extended benefit period and, if the benefit year ends within the extended benefit period, any subsequent weeks that begin in the extended benefit period; or]

[(b) Any week that begins:]

[(A) After the date the individual exhausts all rights to Emergency Unemployment Compensation; and]

[(B) During an extended benefit period that began on or before the date described in subparagraph (A) of this paragraph, provided the individual received extended benefits for one or more weeks of unemployment during the period from February 22, 2009, through December 26, 2009].

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) Has received prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the current benefit year that includes such week (provided that an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in the current benefit year, the individual may subsequently be determined to be entitled to added regular benefits); or

(b)(A) The individual's benefit year having expired prior to such week, has no, or insufficient, wages and employment to establish a new benefit year that would include such week;

(B) Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(C) Has not received and is not seeking, or the appropriate agency has finally determined that the individual is not entitled to receive, unemployment benefits under the unemployment compensation law of Canada.

(3)(a) "Extended benefit period" means a period that:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period, whichever occurs later.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period that was in effect with respect to this state.

(c) There is a state "on" indicator for any week for which the Director of the Employment Department determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted):

(A) Equalled or exceeded five percent and equalled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years;

(B) Equalled or exceeded six percent; or

(C) With respect to benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment in the state (seasonally adjusted), as determined by the United States Secretary of Labor, for the three-month period referred to in sub-subparagraph (i) of this subparagraph, equals or exceeds 110 percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(d) There is a state "off" indicator for any week for which the director determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week

and the immediately preceding 12 weeks, none of the options specified in subsection (3)(c) of this section results in an "on" indicator.

(4) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this chapter for weeks of unemployment in the individual's eligibility period.

(5) "High unemployment period" means any period during which an extended benefit period would be in effect if subsection (3)(c)(C)(i) of this section were applied by substituting "eight percent" for "6.5 percent."

(6) "Rate of insured unemployment," for the purpose of subsection (3)(c) and (d) of this section, means the percentage derived by dividing:

(a) The average weekly number of regular continued weeks of unemployment claimed by individuals in this state with respect to the most recent 13-consecutive-week period, as determined by the director on the basis of reports to the United States Secretary of Labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters before the end of such 13-week period.

(7) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code.

SECTION 8. ORS 657.335 is amended to read:

657.335. As used in ORS 657.335 to 657.360:

(1) "Eligible dislocated workers" means individuals who **are not disqualified from benefits under ORS 657.176 and who:**

(a) Have been terminated or laid off or who have received a notice of termination or layoff, are eligible for or have exhausted their entitlement to unemployment compensation and are unlikely to return to their previous industry or occupation;

(b) Have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise;

(c) Are long term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age;

(d) Were self-employed, including farmers and ranchers, and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters; [or]

(e) Returned to service in the Oregon National Guard or the military reserve forces of the United States following active duty service [as set forth in ORS 657.340 (3)(d)];

(f) **Have separated from a declining industry; or**

(g) **Have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at their place of employment.**

(2) "Professional technical training" means professional and technical training or retraining and basic education, including literacy skills, designed to prepare individuals for gainful employment in recognized or new occupations or to prepare individuals to become self-employed. The term does not include programs of instruction for an individual (including transfer credit programs of instruction given at community colleges) which are primarily intended to lead toward a baccalaureate or higher degree or training that has for its purpose the preparation of individuals for employment in occupations which require a baccalaureate or higher degree from institutions of higher education unless approved by the Director of the Employment Department.

SECTION 9. ORS 657.340 is amended to read:

657.340. (1) Dislocated workers approved for professional technical training may not be denied unemployment insurance benefits solely because they are attending professional technical training, nor shall such individual be denied benefits by reason of leaving work to enter such training if the

work left was part-time or temporary or paid less than 80 percent of the individual's average weekly wage during the base year.

(2) Notwithstanding provisions of this chapter relating to availability for work, actively seeking work or refusal to accept suitable work, dislocated workers approved for professional technical training and otherwise eligible for benefits are not ineligible for such benefits or waiting week credit because of attendance in professional technical training.

(3)(a) Eligible dislocated workers who file valid unemployment compensation claims, upon exhaustion of regular benefits, are eligible, *subject to the availability of funds,* for supplemental benefits from 1 to 26 times the individual's most recent weekly benefit amount based upon the amount needed to continue or complete approved professional technical training.

(b) Supplemental benefits shall be paid under the same terms and conditions as regular benefits under this chapter, except that the Director of the Employment Department may extend the benefit year of an individual attending an approved professional technical training program a sufficient number of weeks to allow the individual to complete the training program.

(c) Supplemental benefits *[under ORS 657.335 to 657.360]* may be paid only when the eligible dislocated worker is not eligible to receive extended benefits as provided in ORS 657.321 to 657.329 or additional benefits as provided in ORS 657.331 to 657.334.

[(d) Supplemental benefits may be paid only to eligible dislocated workers whose unemployment, as determined by the director:]

[(A) Is substantially due to the lack of employment opportunities in the workers' local labor market resulting from:]

[(i) High energy costs;]

[(ii) Extended drought conditions and the attendant economic conditions;]

[(iii) Secondary effects of foreign trade; or]

[(iv) A shift of production to another state or territory of the United States; or]

[(B) Resulted from the workers' return to service in the Oregon National Guard or military reserve forces of the United States following a change in status from serving under Title 32 to serving under Title 10 of the United States Code at a time designated by the President of the United States by executive order as a period of combatant activities.]

(4) The receipt of supplemental benefits is conditioned upon the individual's demonstrating satisfactory progress and attendance in professional technical training.

SECTION 10. (1) The amendments to ORS 657.176 and 657.265 by sections 3 and 4 of this 2009 Act apply to claims for benefits filed on or after the effective date of this 2009 Act.

(2) The amendments to ORS 657.321 by section 5 of this 2009 Act apply to weeks, as defined in ORS 657.010 (15), beginning on or after February 22, 2009, and ending on or before December 26, 2009.

(3) The amendments to ORS 657.321 by section 6 of this 2009 Act apply to weeks, as defined in ORS 657.010 (15), beginning on or after December 27, 2009, and ending on or before May 29, 2010.

(4) The amendments to ORS 657.321 by section 7 of this 2009 Act apply to weeks, as defined in ORS 657.010 (15), beginning on or after May 30, 2010.

SECTION 11. ORS 657.337 and 657.342 are repealed.

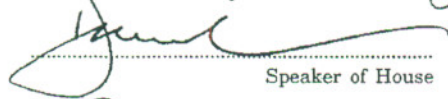
SECTION 12. Notwithstanding section 24, chapter ____, Oregon Laws 2009 (Enrolled House Bill 2109) (amending ORS 657.337), if House Bill 2109 becomes law, ORS 657.337 is repealed by section 11 of this 2009 Act.

SECTION 13. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.


Passed by House March 9, 2009

Repassed by House May 15, 2009


 Chief Clerk of House


 Speaker of House

Passed by Senate May 13, 2009


 President of Senate

Received by Governor:

8:55 AM, May 20, 2009

Approved:

10:52 AM, May 21, 2009


 Governor

Filed in Office of Secretary of State:

..... M., 2009

.....
Secretary of State

