

CHAPTER 52
FORMERLY
SENATE BILL NO. 156

AN ACT TO AMEND CHAPTER 33, TITLE 19 OF THE DELAWARE CODE RELATING TO
UNEMPLOYMENT COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend § 3326, Title 19 of the Delaware Code by deleting this section its entirety and by substituting in lieu thereof the following § 3326 to read as follows:

“§ 3326. Extended benefits.

(a) As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

- a. Begins with the third week after the first week for which there is a state "on" indicator, and
- b. Ends with either of the following weeks, whichever occurs later:
 1. The third week after the first week for which there is a state "off" indicator, or
 2. The thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(2)a. There is a state "on" indicator for a week beginning prior to September 25, 1982, if the rate of insured unemployment under the state law for the period consisting of such week and the immediately preceding 12 weeks:

1. Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and
2. Equaled or exceeded 4 percent.

b. There is a state "on" indicator for a week beginning after September 25, 1982, if the rate of insured unemployment under the state law for the period consisting of such week and the immediately preceding 12 weeks:

1. Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and
2. Equaled or exceeded 5 percent.

c. There is a state "on" indicator for a week beginning after June 6, 2009, if:

1. The rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equaled or exceeded 6.5 percent, and
2. The average rate of total unemployment in the State (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in clause 1, equals or exceeds 110 percent of such average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

(3)a. There is a state "off" indicator for a week beginning prior to September 25, 1982, if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (2)a.1. or paragraph (2)a.2. of this subsection was not satisfied.

b. There is a state "off" indicator for a week beginning after September 25, 1982, if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (2)b.1. or paragraph (2)b.2. of this subsection was not satisfied.

c. There is a state "off" indicator for a week beginning after June 6, 2009 if, for the period consisting of such week and the immediately preceding 12 weeks, either paragraph (2)c.1. or paragraph (2)c.2. of this subsection was not satisfied.

(4) 'Rate of insured unemployment', for purposes of paragraphs (2) and (3) of this subsection, means the percentage derived by dividing:

a. The average weekly number of individuals filing claims for regular benefits in this State for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the Department on the basis of its reports to the United States Secretary of Labor, by

b. The average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(5) '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.

(6) '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 this section for weeks of unemployment in the individual's eligibility period.

(7) 'Eligibility period' of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) '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-servicepersons under 5 U.S.C. Chapter 85) in the individual's current benefit year that includes such week; provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to the individual although:

1. As a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

2. The individual's benefit year, having expired prior to such week, the individual has no or insufficient wages on the basis of which the individual could establish a new benefit year that would include such week; and

b. Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) 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 unemployment benefits under the unemployment compensation law of Canada but, if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

d. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade adjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(9) 'State law' means the unemployment insurance law of any state, approved by the United States Secretary of Labor under § 3304 of the Internal Revenue Code of 1954 (26 U.S.C. § 3304).

(b) Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Department, the provisions of this part which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

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

(1) The individual is an "exhaustee" as defined in subsection (a)(8) of this section.

(2) The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) The individual has, during the individual's base period, been paid wages for employment equal to not less than 40 times the individual's weekly benefit amount and, as used in this paragraph, "wages" means wages for employment by employers for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employment unit by which such wages were paid has satisfied the conditions of subdivision (8) of § 3302 of this title or § 3343 of this title with respect to becoming an employer.

(d) The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year. Provided, that for any week during a period in which federal payments to States under § 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (August 10, 1970, Public Law 91-373) are reduced under an order issued under § 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. § 902), the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower dollar amount.

(e) The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the lesser of the following amounts; provided, however, that during any fiscal year in which federal payments to States under § 204 of the Federal State Extended Unemployment Compensation Act of 1970 (August 10, 1970, Public Law 91-373) are reduced under an order issued under § 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. § 902), the total extended benefit amount payable to an individual with respect to the individual's applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under subsection (d) of this section in the weekly amount paid to the individual:

(1) Fifty percent of the total amount of regular benefits which were payable to the individual under this chapter in the individual's applicable benefit year;

(2) Thirteen times the individual's weekly benefit amount which was payable to the individual under this chapter for a week of total unemployment in the applicable benefit year.

(f)(1) Effective with respect to weeks beginning in a high unemployment period, paragraph (e) shall be applied by substituting:

(1) "eighty percent" for "fifty percent" in subparagraph (1), and

(2). "twenty" for "thirteen" in subparagraph (2)

(2) For purposes of subparagraph (1), the term "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (a)(2)c.1. were applied by substituting "8 percent" for "6.5 percent".

(g)(1) Except as provided in paragraph (2) of this subsection, an individual shall not be eligible for extended benefits for any week if:

- a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and
- b. No extended benefit period is in effect for such week in such state.

(2) Paragraph (1) of this subsection shall not apply with respect to the first 2 weeks for which extended benefits are payable, (determined without regard to this subsection), pursuant to an interstate claim filed under the interstate benefit payment plan, to the individual from the extended benefit account established for the individual with respect to the benefit year.

(h)(1) Notwithstanding any other provisions of this chapter, payment of extended benefits shall not be made to any individual for any week of unemployment in the individual's eligibility period if the Department finds that during such period:

- a. The individual failed to accept any offer of suitable work (as defined in paragraph (3) of this subsection) or failed to apply for any suitable work to which the individual was referred by the Department; or
- b. The individual failed to actively engage in a systematic and sustained effort to obtain work during such week, and/or failed to furnish tangible evidence that the individual did engage in such effort during such week.

(2) Any individual who has been found ineligible for extended benefits for any week by reason of a failure described in paragraph (1) of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned remuneration in covered employment equal to not less than 4 times the extended weekly benefit amount.

(3) For purposes of this subsection, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

- a. The individual's extended weekly benefit amount as determined under subsection (d) of this section, plus the amount, if any, of supplemental unemployment benefits (as defined in § 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,
- b. Pays wages not less than the higher of:
 1. The minimum wage provided by § 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemptions; or
 2. The applicable state or local minimum wage;
- c. Provided, however, that no individual shall be denied extended benefits for failure to accept an offer or to apply for any job which meets the definition of suitability as described in this subsection if:
 1. The position was not offered to such individual in writing or was not listed with the employment service.
 2. Such failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 3314 of this title to the extent that the criteria of suitability in that section are not inconsistent with this paragraph.
 3. The individual furnishes satisfactory evidence to the Department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in § 3314 of this title without regard to the definition specified by this paragraph.

(4) Notwithstanding subsection (b) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under paragraphs a., b., c. and d. of subdivision (3) of § 3314 of this title.

(5) The employment service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in paragraph (3) of this subsection.

(6) The provisions of paragraphs (1), (2), (3) and (5) of this subsection shall not apply should at any time these provisions be temporarily or permanently suspended by federal law. If these provisions are suspended by federal law, the provisions of state law which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

(i)(1) Whenever an extended benefit period is to become effective in this State or an extended benefit period is to be terminated in this State, the Department shall make an appropriate public announcement.

(2) Computations required by subsection (a)(4) of this section shall be made by the Department, in accordance with regulations prescribed by the United States Secretary of Labor.

(j) The provisions of subsection (a)(2)c. shall be in effect until the week ending December 5, 2009, or until the week ending four weeks prior to the last week for which 100 percent federal sharing is authorized by Section 2005(a) of Public Law 111-5, whichever is later.

(k) To the extent that the provisions and definitions of terms in the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) are in conflict with, or supplement the provisions and definitions applicable pursuant to this section, the provisions and definitions of the American Recovery and Reinvestment Act of 2009 shall apply to this section.

(l) Notwithstanding any other provision of this section, the Governor may, if permitted by federal law, suspend the payment of extended duration benefits under this section, to the extent necessary to ensure that otherwise eligible individuals are not denied, in whole or in part, the receipt of emergency unemployment compensation benefits authorized by the federal Supplemental Appropriations Act of 2008 (Public Law 110-252), the Unemployment Compensation Extension Act of 2008 (Public Law 110-449), and the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and that the state receives maximum reimbursement from the federal government for the payment of those emergency benefits.”

Approved June 24, 2009