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HOUSE BILL NO. 389

Offered January 8, 2014

Prefiled January 3, 2014

A BILL to amend and reenact § 60.2-618, as it is currently effective and as it may become effective, of the Code of Virginia, relating to unemployment compensation; voluntarily leaving work.

Patrons—Minchew, LaRock and Morris; Senators: Black and Garrett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-618, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 60.2-618. (Contingent expiration date) Disqualification for benefits.

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked 30 days or 240 hours or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause.

If (a) at the time of commencing employment with such employing unit an individual is enrolled in an accredited academic program of study provided by an institution of higher education for students that have been awarded a baccalaureate degree, which academic program culminates in the awarding of a master's, doctoral, or professional degree; (b) the individual's employment with such employing unit commenced and ended during the period between spring and fall semesters of the academic program in which the individual is enrolled; and (c) the individual returned to such academic program following his separation from such employing unit, there shall be a rebuttable presumption that the individual left work voluntarily.

As used in this chapter, "good cause" shall not include (i) voluntarily leaving work with an employer to become self-employed or (ii) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining

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59 whether misconduct occurred.

60 (5) An employee's loss of or failure to renew a license or certification that is a requisite of the
61 position held by the employee, provided the employer is not at fault for the employee's loss of or failure
62 to renew the license or certification. The Commission may consider evidence of mitigating
63 circumstances in determining whether misconduct occurred.

64 3. a. If it is determined by the Commission that such individual has failed, without good cause, either
65 to apply for available, suitable work when so directed by the employment office or the Commission or
66 to accept suitable work when offered him. The disqualification shall commence with the week in which
67 such failure occurred, and shall continue for the period of unemployment next ensuing until he has
68 performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii)
69 for 240 hours, and subsequently becomes totally or partially separated from such employment.

70 b. In determining whether or not any work is suitable for an individual, the Commission shall
71 consider the degree of risk involved to his health, safety and morals, his physical fitness and prior
72 training, his experience, his length of unemployment and the accessibility of the available work from his
73 residence.

74 c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise
75 eligible individual for refusing to accept new work under any of the following conditions:

76 (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

77 (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the
78 individual than those prevailing for similar work in the locality; or

79 (3) If as a condition of being employed the individual would be required to join a company union or
80 to resign from or refrain from joining any bona fide labor organization.

81 d. No individual shall be qualified for benefits during any week that such individual, in connection
82 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
83 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition
84 of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized
85 standards by a laboratory accredited by the United States Department of Health and Human Services, or
86 the College of American Pathology, or the American Association for Clinical Chemistry, or the
87 equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in
88 accordance with the employer's bona fide drug policy. The disqualification shall commence with the
89 week in which such a test was conducted, and shall continue for the period of unemployment next
90 ensuing until he has performed services for an employer (i) during 30 days, whether or not such days
91 are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such
92 employment.

93 4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds
94 that such individual, within 36 calendar months immediately preceding such determination or decision,
95 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose
96 a material fact, to obtain or increase any benefit or payment under this title, the unemployment
97 compensation of any other state, or any other program of the federal government which is administered
98 in any way under this title, either for himself or any other person. Overpayments that have been
99 fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall be
100 recoverable as provided in § 60.2-633.

101 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his
102 release from prison or jail until he has performed services for an employer for (i) 30 days, whether or
103 not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated
104 from such employment.

105 6. If such separation arose as a condition of the individual's parole or release from a custodial or
106 penal institution and such individual was participating in the Diversion Center Incarceration Program
107 pursuant to § 19.2-316.3.

108 **§ 60.2-618. (Contingent effective date) Disqualification for benefits.**

109 An individual shall be disqualified for benefits upon separation from the last employing unit for
110 whom he has worked 30 days or 240 hours or from any subsequent employing unit:

111 1. For any week benefits are claimed until he has performed services for an employer (i) during 30
112 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally
113 or partially separated from such employment, if the Commission finds such individual is unemployed
114 because he left work voluntarily without good cause.

115 *If (a) at the time of commencing employment with such employing unit an individual is enrolled in*
116 *an accredited academic program of study provided by an institution of higher education for students*
117 *that have been awarded a baccalaureate degree, which academic program culminates in the awarding*
118 *of a master's, doctoral, or professional degree; (b) the individual's employment with such employing unit*
119 *commenced and ended during the period between spring and fall semesters of the academic program in*
120 *which the individual is enrolled; and (c) the individual returns to such academic program following his*

separation from such employing unit, there shall be a rebuttable presumption that the individual left work voluntarily.

As used in this chapter, "good cause" shall not include ~~(a)~~ (1) voluntarily leaving work with an employer to become self-employed or ~~(b)~~ (2) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality, except where an individual leaves employment to accompany his or her spouse to the location of the spouse's new duty assignment if ~~(4)~~ (A) the spouse is on active duty in the military or naval services of the United States; ~~(2)~~ (B) the spouse's relocation to a new military-related assignment is pursuant to a permanent change of station order; ~~(3)~~ (C) the location of the spouse's new duty assignment is not readily accessible from the individual's place of employment; and ~~(4)~~ (D) except for members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work voluntarily without good cause. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(5) An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which such failure occurred, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

b. 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, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.

c. No work shall be deemed suitable and benefits shall not be denied under this title 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 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; or

182 (3) If as a condition of being employed the individual would be required to join a company union or
183 to resign from or refrain from joining any bona fide labor organization.

184 d. No individual shall be qualified for benefits during any week that such individual, in connection
185 with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance,
186 identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition
187 of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized
188 standards by a laboratory accredited by the United States Department of Health and Human Services, or
189 the College of American Pathology, or the American Association for Clinical Chemistry, or the
190 equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in
191 accordance with the employer's bona fide drug policy. The disqualification shall commence with the
192 week in which such a test was conducted, and shall continue for the period of unemployment next
193 ensuing until he has performed services for an employer (a) during 30 days, whether or not such days
194 are consecutive, or (b) for 240 hours, and subsequently becomes totally or partially separated from such
195 employment.

196 4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds
197 that such individual, within 36 calendar months immediately preceding such determination or decision,
198 has made a false statement or representation knowing it to be false, or has knowingly failed to disclose
199 a material fact, to obtain or increase any benefit or payment under this title, the unemployment
200 compensation of any other state, or any other program of the federal government which is administered
201 in any way under this title, either for himself or any other person. Overpayments of benefits that have
202 been fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall
203 be recoverable as provided in § 60.2-633.

204 5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his
205 release from prison or jail until he has performed services for an employer for (i) 30 days, whether or
206 not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated
207 from such employment.

208 6. If such separation arose as a condition of the individual's parole or release from a custodial or
209 penal institution and such individual was participating in the Diversion Center Incarceration Program
210 pursuant to § 19.2-316.3.