

HOUSE BILL No. 2704

By Committee on Commerce, Labor and Economic Development

2-14

1 AN ACT concerning employment security law; relating to disqualification
2 for benefits; disqualification begin dates, illness or injury, receipt of
3 pension or retirement pay, part-time employment for an educational
4 institution; amending K.S.A. 2019 Supp. 44-706 and repealing the
5 existing section.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2019 Supp. 44-706 is hereby amended to read as
9 follows: 44-706. The secretary shall examine whether an individual has
10 separated from employment for each week claimed. The secretary shall
11 apply the provisions of this section to the individual's most recent
12 employment prior to the week claimed. An individual shall be disqualified
13 for benefits:

14 (a) If the individual left work voluntarily without good cause
15 attributable to the work or the employer, subject to the other provisions of
16 this subsection. For purposes of this subsection, "good cause" is cause of
17 such gravity that would impel a reasonable, not supersensitive, individual
18 exercising ordinary common sense to leave employment. Good cause
19 requires a showing of good faith of the individual leaving work, including
20 the presence of a genuine desire to work. Failure to return to work after
21 expiration of approved personal or medical leave, or both, shall be
22 considered a voluntary resignation. After a temporary job assignment,
23 failure of an individual to affirmatively request an additional assignment
24 on the next succeeding workday, if required by the employment
25 agreement, after completion of a given work assignment, shall constitute
26 leaving work voluntarily. The disqualification shall begin ~~the day~~
27 ~~following the separation~~ *on the effective date of the claim* and shall
28 continue until after the individual has become reemployed and has had
29 earnings from insured work of at least three times the individual's weekly
30 benefit amount. An individual shall not be disqualified under this
31 subsection if:

32 (1) The individual was forced to leave work because of illness or
33 injury upon the advice of a licensed and practicing health care provider
34 and, upon learning of the necessity for absence, immediately notified the
35 employer thereof, or the employer consented to the absence, ~~and after~~
36 ~~recovery from the illness or injury, when recovery was certified by a~~

- 1 ~~practicing health care provider, the individual returned to the employer and~~
2 ~~offered to perform services and the individual's regular work or~~
3 ~~comparable and suitable work was not available.~~ As used in this paragraph
4 "health care provider" means any person licensed by the proper licensing
5 authority of any state to engage in the practice of medicine and surgery,
6 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;
- 7 (2) the individual left temporary work to return to the regular
8 employer;
- 9 (3) the individual left work to enlist in the armed forces of the United
10 States, but was rejected or delayed from entry;
- 11 (4) the spouse of an individual who is a member of the armed forces
12 of the United States who left work because of the voluntary or involuntary
13 transfer of the individual's spouse from one job to another job, ~~which that~~
14 is for the same employer or for a different employer, at a geographic
15 location ~~which that~~ makes it unreasonable for the individual to continue
16 work at the individual's job. For the purposes of this provision the term
17 "armed forces" means active duty in the army, navy, marine corps, air
18 force, coast guard or any branch of the military reserves of the United
19 States;
- 20 (5) the individual left work because of hazardous working conditions;
21 in determining whether or not working conditions are hazardous for an
22 individual, the degree of risk involved to the individual's health, safety and
23 morals, the individual's physical fitness and prior training and the working
24 conditions of workers engaged in the same or similar work for the same
25 and other employers in the locality shall be considered; as used in this
26 paragraph, "hazardous working conditions" means working conditions that
27 could result in a danger to the physical or mental well-being of the
28 individual; each determination as to whether hazardous working
29 conditions exist shall include, but shall not be limited to, a consideration
30 of: (A) The safety measures used or the lack thereof; and (B) the condition
31 of equipment or lack of proper equipment; no work shall be considered
32 hazardous if the working conditions surrounding the individual's work are
33 the same or substantially the same as the working conditions generally
34 prevailing among individuals performing the same or similar work for
35 other employers engaged in the same or similar type of activity;
- 36 (6) the individual left work to enter training approved under section
37 236(a)(1) of the federal trade act of 1974, provided the work left is not of a
38 substantially equal or higher skill level than the individual's past adversely
39 affected employment, as defined for purposes of the federal trade act of
40 1974, and wages for such work are not less than 80% of the individual's
41 average weekly wage as determined for the purposes of the federal trade
42 act of 1974;
- 43 (7) the individual left work because of unwelcome harassment of the

1 individual by the employer or another employee ~~of which~~ *that* the
2 employing unit had knowledge *of* and that would impel the average worker
3 to give up such worker's employment;

4 (8) the individual left work to accept better work; each determination
5 as to whether or not the work accepted is better work shall include, but
6 shall not be limited to, consideration of: (A) The rate of pay, the hours of
7 work and the probable permanency of the work left as compared to the
8 work accepted; (B) the cost to the individual of getting to the work left in
9 comparison to the cost of getting to the work accepted; and (C) the
10 distance from the individual's place of residence to the work accepted in
11 comparison to the distance from the individual's residence to the work left;

12 (9) the individual left work as a result of being instructed or requested
13 by the employer, a supervisor or a fellow employee to perform a service or
14 commit an act in the scope of official job duties ~~which~~ *that* is in violation
15 of an ordinance or statute;

16 (10) the individual left work because of a substantial violation of the
17 work agreement by the employing unit and, before the individual left, the
18 individual had exhausted all remedies provided in such agreement for the
19 settlement of disputes before terminating. For the purposes of this
20 paragraph, a demotion based on performance does not constitute a
21 violation of the work agreement;

22 (11) after making reasonable efforts to preserve the work, the
23 individual left work due to a personal emergency of such nature and
24 compelling urgency that it would be contrary to good conscience to
25 impose a disqualification; or

26 (12) (A) the individual left work due to circumstances resulting from
27 domestic violence, including:

28 (i) The individual's reasonable fear of future domestic violence at or
29 en route to or from the individual's place of employment;

30 (ii) the individual's need to relocate to another geographic area in
31 order to avoid future domestic violence;

32 (iii) the individual's need to address the physical, psychological and
33 legal impacts of domestic violence;

34 (iv) the individual's need to leave employment as a condition of
35 receiving services or shelter from an agency ~~which~~ *that* provides support
36 services or shelter to victims of domestic violence; or

37 (v) the individual's reasonable belief that termination of employment
38 is necessary to avoid other situations ~~which~~ *that* may cause domestic
39 violence and to provide for the future safety of the individual or the
40 individual's family.

41 (B) An individual may prove the existence of domestic violence by
42 providing one of the following:

43 (i) A restraining order or other documentation of equitable relief by a

1 court of competent jurisdiction;

2 (ii) a police record documenting the abuse;

3 (iii) documentation that the abuser has been convicted of one or more
4 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
5 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of
6 chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2019 Supp. 21-
7 6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments
8 thereto, where the victim was a family or household member;

9 (iv) medical documentation of the abuse;

10 (v) a statement provided by a counselor, social worker, health care
11 provider, clergy, shelter worker, legal advocate, domestic violence or
12 sexual assault advocate or other professional who has assisted the
13 individual in dealing with the effects of abuse on the individual or the
14 individual's family; or

15 (vi) a sworn statement from the individual attesting to the abuse.

16 (C) No evidence of domestic violence experienced by an individual,
17 including the individual's statement and corroborating evidence, shall be
18 disclosed by the department of labor unless consent for disclosure is given
19 by the individual.

20 (b) If the individual has been discharged or suspended for misconduct
21 connected with the individual's work. The disqualification shall begin ~~the~~
22 ~~day following the separation~~ *on the effective date of the claim* and shall
23 continue until after the individual becomes reemployed and in cases where
24 the disqualification is due to discharge for misconduct has had earnings
25 from insured work of at least three times the individual's determined
26 weekly benefit amount, except that if an individual is discharged for gross
27 misconduct connected with the individual's work, such individual shall be
28 disqualified for benefits until such individual again becomes employed and
29 has had earnings from insured work of at least eight times such
30 individual's determined weekly benefit amount. In addition, all wage
31 credits attributable to the employment ~~from which~~ *that* the individual was
32 discharged *from* for gross misconduct connected with the individual's work
33 shall be canceled. No such cancellation of wage credits shall affect prior
34 payments made as a result of a prior separation.

35 (1) For the purposes of this subsection, "misconduct" is defined as a
36 violation of a duty or obligation reasonably owed the employer as a
37 condition of employment including, but not limited to, a violation of a
38 company rule, including a safety rule, if: (A) The individual knew or
39 should have known about the rule; (B) the rule was lawful and reasonably
40 related to the job; and (C) the rule was fairly and consistently enforced.

41 (2) (A) Failure of the employee to notify the employer of an absence
42 and an individual's leaving work prior to the end of such individual's
43 assigned work period without permission shall be considered prima facie

1 evidence of a violation of a duty or obligation reasonably owed the
2 employer as a condition of employment.

3 (B) For the purposes of this subsection, misconduct shall include, but
4 not be limited to, violation of the employer's reasonable attendance
5 expectations if the facts show:

6 (i) The individual was absent or tardy without good cause;

7 (ii) the individual had knowledge of the employer's attendance
8 expectation; and

9 (iii) the employer gave notice to the individual that future absence or
10 tardiness may or will result in discharge.

11 (C) For the purposes of this subsection, if an employee disputes being
12 absent or tardy without good cause, the employee shall present evidence
13 that a majority of the employee's absences or tardiness were for good
14 cause. If the employee alleges that the employee's repeated absences or
15 tardiness were the result of health related issues, such evidence shall
16 include documentation from a licensed and practicing health care provider
17 as defined in subsection (a)(1).

18 (3) (A) The term "gross misconduct" as used in this subsection shall
19 be construed to mean conduct evincing extreme, willful or wanton
20 misconduct as defined by this subsection. Gross misconduct shall include,
21 but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to
22 property; (iv) intentional infliction of personal injury; or (v) any conduct
23 that constitutes a felony.

24 (B) For the purposes of this subsection, the following shall be
25 conclusive evidence of gross misconduct:

26 (i) The use of alcoholic liquor, cereal malt beverage or a
27 nonprescribed controlled substance by an individual while working;

28 (ii) the impairment caused by alcoholic liquor, cereal malt beverage
29 or a nonprescribed controlled substance by an individual while working;

30 (iii) a positive breath alcohol test or a positive chemical test,
31 provided:

32 (a) The test was either:

33 (1) Required by law and was administered pursuant to the drug free
34 workplace act, 41 U.S.C. § 701 et seq.;

35 (2) administered as part of an employee assistance program or other
36 drug or alcohol treatment program ~~in which~~ *that* the employee was
37 participating *in* voluntarily or as a condition of further employment;

38 (3) requested pursuant to a written policy of the employer ~~of which~~
39 *that* the employee had knowledge *of* and was a required condition of
40 employment;

41 (4) required by law and the test constituted a required condition of
42 employment for the individual's job; or

43 (5) there was reasonable suspicion to believe that the individual used,

1 had possession of, or was impaired by alcoholic liquor, cereal malt
2 beverage or a nonprescribed controlled substance while working;

3 (b) the test sample was collected either:

4 (1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et
5 seq.;

6 (2) as prescribed by an employee assistance program or other drug or
7 alcohol treatment program ~~in which~~ *that* the employee was participating *in*
8 voluntarily or as a condition of further employment;

9 (3) as prescribed by the written policy of the employer ~~of which~~ *that*
10 the employee had knowledge *of* and ~~which~~ *that* constituted a required
11 condition of employment;

12 (4) as prescribed by a test ~~which~~ *that* was required by law and ~~which~~
13 *that* constituted a required condition of employment for the individual's
14 job; or

15 (5) at a time contemporaneous with the events establishing probable
16 cause;

17 (c) the collecting and labeling of a chemical test sample was
18 performed by a licensed health care professional or any other individual
19 certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or
20 label test samples by federal or state law, or a federal or state rule or
21 regulation having the force or effect of law, including law enforcement
22 personnel;

23 (d) the chemical test was performed by a laboratory approved by the
24 United States department of health and human services or licensed by the
25 department of health and environment, except that a blood sample may be
26 tested for alcohol content by a laboratory commonly used for that purpose
27 by state law enforcement agencies;

28 (e) the chemical test was confirmed by gas chromatography, gas
29 chromatography-mass spectroscopy or other comparably reliable
30 analytical method, except that no such confirmation is required for a blood
31 alcohol sample or a breath alcohol test;

32 (f) the breath alcohol test was administered by an individual trained
33 to perform breath tests, the breath testing instrument used was certified
34 and operated strictly according to a description provided by the
35 manufacturers and the reliability of the instrument performance was
36 assured by testing with alcohol standards; and

37 (g) the foundation evidence establishes, beyond a reasonable doubt,
38 that the test results were from the sample taken from the individual;

39 (iv) an individual's refusal to submit to a chemical test or breath
40 alcohol test, provided:

41 (a) The test meets the standards of the drug free workplace act, 41
42 U.S.C. § 701 et seq.;

43 (b) the test was administered as part of an employee assistance

1 program or other drug or alcohol treatment program ~~in which~~ *that* the
2 employee was participating *in* voluntarily or as a condition of further
3 employment;

4 (c) the test was otherwise required by law and the test constituted a
5 required condition of employment for the individual's job;

6 (d) the test was requested pursuant to a written policy of the employer
7 ~~of which~~ *that* the employee had knowledge *of* and was a required
8 condition of employment; or

9 (e) there was reasonable suspicion to believe that the individual used,
10 possessed or was impaired by alcoholic liquor, cereal malt beverage or a
11 nonprescribed controlled substance while working;

12 (v) an individual's dilution or other tampering of a chemical test.

13 (C) For purposes of this subsection:

14 (i) "Alcohol concentration" means the number of grams of alcohol
15 per 210 liters of breath;

16 (ii) "alcoholic liquor" shall be defined as provided in K.S.A. 41-102,
17 and amendments thereto;

18 (iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-
19 2701, and amendments thereto;

20 (iv) "chemical test" shall include, but is not limited to, tests of urine,
21 blood or saliva;

22 (v) "controlled substance" shall be defined as provided in K.S.A.
23 2019 Supp. 21-5701, and amendments thereto;

24 (vi) "required by law" means required by a federal or state law, a
25 federal or state rule or regulation having the force and effect of law, a
26 county resolution or municipal ordinance, or a policy relating to public
27 safety adopted in an open meeting by the governing body of any special
28 district or other local governmental entity;

29 (vii) "positive breath test" shall mean a test result showing an alcohol
30 concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if
31 applicable, unless the test was administered as part of an employee
32 assistance program or other drug or alcohol treatment program ~~in which~~
33 *that* the employee was participating *in* voluntarily or as a condition of
34 further employment, ~~in which~~ *that* case "positive chemical test" shall mean
35 a test result showing an alcohol concentration at or above the levels
36 provided for in the assistance or treatment program;

37 (viii) "positive chemical test" shall mean a chemical result showing a
38 concentration at or above the levels listed in K.S.A. 44-501, and
39 amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or
40 abuse listed therein, unless the test was administered as part of an
41 employee assistance program or other drug or alcohol treatment program
42 ~~in which~~ *that* the employee was participating *in* voluntarily or as a
43 condition of further employment, ~~in which~~ *that* case "positive chemical

1 test" shall mean a chemical result showing a concentration at or above the
2 levels provided for in the assistance or treatment program.

3 (4) An individual shall not be disqualified under this subsection if the
4 individual is discharged under the following circumstances:

5 (A) The employer discharged the individual after learning the
6 individual was seeking other work or when the individual gave notice of
7 future intent to quit, except that the individual shall be disqualified after
8 the time ~~at which~~ *when* such individual intended to quit and any individual
9 who commits misconduct after such individual gives notice to such
10 individual's intent to quit shall be disqualified;

11 (B) the individual was making a good-faith effort to do the assigned
12 work but was discharged due to:

13 (i) Inefficiency;

14 (ii) unsatisfactory performance due to inability, incapacity or lack of
15 training or experience;

16 (iii) isolated instances of ordinary negligence or inadvertence;

17 (iv) good-faith errors in judgment or discretion; or

18 (v) unsatisfactory work or conduct due to circumstances beyond the
19 individual's control; or

20 (C) the individual's refusal to perform work in excess of the contract
21 of hire.

22 (c) If the individual has failed, without good cause, to either apply for
23 suitable work when so directed by the employment office of the secretary
24 of labor, or to accept suitable work when offered to the individual by the
25 employment office, the secretary of labor, or an employer, such
26 disqualification shall begin with the week ~~in which~~ *that* such failure
27 occurred and shall continue until the individual becomes reemployed and
28 has had earnings from insured work of at least three times such
29 individual's determined weekly benefit amount. In determining whether or
30 not any work is suitable for an individual, the secretary of labor, or a
31 person or persons designated by the secretary, shall consider the degree of
32 risk involved to health, safety and morals, physical fitness and prior
33 training, experience and prior earnings, length of unemployment and
34 prospects for securing local work in the individual's customary occupation
35 or work ~~for which~~ *that* the individual is reasonably fitted by training or
36 experience *for*, and the distance of the available work from the individual's
37 residence. Notwithstanding any other provisions of this act, an otherwise
38 eligible individual shall not be disqualified for refusing an offer of suitable
39 employment, or failing to apply for suitable employment when notified by
40 an employment office, or for leaving the individual's most recent work
41 accepted during approved training, including training approved under
42 section 236(a)(1) of the trade act of 1974, if the acceptance of or applying
43 for suitable employment or continuing such work would require the

1 individual to terminate approved training and no work shall be deemed
2 suitable and benefits shall not be denied under this act to any otherwise
3 eligible individual for refusing to accept new work under any of the
4 following conditions: (1) If the position offered is vacant due directly to a
5 strike, lockout or other labor dispute; (2) if the remuneration, hours or
6 other conditions of the work offered are substantially less favorable to the
7 individual than those prevailing for similar work in the locality; (3) if as a
8 condition of being employed, the individual would be required to join or to
9 resign from or refrain from joining any labor organization; and (4) if the
10 individual left employment as a result of domestic violence, and the
11 position offered does not reasonably accommodate the individual's
12 physical, psychological, safety, or legal needs relating to such domestic
13 violence.

14 (d) For any week with respect to which the secretary of labor, or a
15 person or persons designated by the secretary, finds that the individual's
16 unemployment is due to a stoppage of work ~~which~~ *that* exists because of a
17 labor dispute or there would have been a work stoppage had normal
18 operations not been maintained with other personnel previously and
19 currently employed by the same employer at the factory, establishment or
20 other premises ~~at which~~ *where* the individual is or was last employed,
21 except that this subsection (d) shall not apply if it is shown to the
22 satisfaction of the secretary of labor, or a person or persons designated by
23 the secretary, that: (1) The individual is not participating in or financing or
24 directly interested in the labor dispute ~~which~~ *that* caused the stoppage of
25 work; and (2) the individual does not belong to a grade or class of workers
26 of which, immediately before the commencement of the stoppage, there
27 were members employed at the premises ~~at which~~ *where* the stoppage
28 occurs any of whom are participating in or financing or directly interested
29 in the dispute. If in any case separate branches of work ~~which~~ *that* are
30 commonly conducted as separate businesses in separate premises are
31 conducted in separate departments of the same premises, each such
32 department shall, for the purpose of this subsection be deemed to be a
33 separate factory, establishment or other premises. For the purposes of this
34 subsection, failure or refusal to cross a picket line or refusal for any reason
35 during the continuance of such labor dispute to accept the individual's
36 available and customary work at the factory, establishment or other
37 premises where the individual is or was last employed shall be considered
38 as participation and interest in the labor dispute.

39 (e) For any week with respect to which or a part of which the
40 individual has received or is seeking unemployment benefits under the
41 unemployment compensation law of any other state or of the United
42 States, except that if the appropriate agency of such other state or the
43 United States finally determines that the individual is not entitled to such

1 unemployment benefits, this disqualification shall not apply.

2 (f) For any week with respect to which the individual is entitled to
3 receive any unemployment allowance or compensation granted by the
4 United States under an act of congress to ex-service men and women in
5 recognition of former service with the military or naval services of the
6 United States.

7 ~~(g) For the period of five years beginning with the first day following~~
8 ~~the last week of unemployment for which the individual received benefits,~~
9 ~~or for five years from the date the act was committed, whichever is the~~
10 ~~later.~~ If the individual, or another ~~in~~ *on* such individual's behalf with the
11 knowledge of the individual, has knowingly made a false statement or
12 representation, or has knowingly failed to disclose a material fact to obtain
13 or increase benefits under this act or any other unemployment
14 compensation law administered by the secretary of labor. *The*
15 *disqualification shall begin on the first day following the last week of*
16 *unemployment that the individual received benefits for, or on the date the*
17 *act was committed, whichever is later, and continue for five years, or until*
18 *the claimant repays any resulting overpayment, penalty and interest,*
19 *whichever is earlier.* In addition to the penalties set forth in K.S.A. 44-719,
20 and amendments thereto, an individual who has knowingly made a false
21 statement or representation or who has knowingly failed to disclose a
22 material fact to obtain or increase benefits under this act or any other
23 unemployment compensation law administered by the secretary of labor
24 shall be liable for a penalty in the amount equal to 25% of the amount of
25 benefits unlawfully received. Notwithstanding any other provision of law,
26 such penalty shall be deposited into the employment security trust fund.

27 (h) For any week with respect to which the individual is receiving
28 compensation for temporary total disability or permanent total disability
29 under the workmen's compensation law of any state or under a similar law
30 of the United States.

31 (i) For any week of unemployment on the basis of service in an
32 instructional, research or principal administrative capacity for an
33 educational institution as defined in K.S.A. 44-703(v), and amendments
34 thereto, if such week begins during the period between two successive
35 academic years or terms or, when an agreement provides instead for a
36 similar period between two regular but not successive terms during such
37 period or during a period of paid sabbatical leave provided for in the
38 individual's contract, if the individual performs such services in the first of
39 such academic years or terms and there is a contract or a reasonable
40 assurance that such individual will perform services in any such capacity
41 for any educational institution in the second of such academic years or
42 terms.

43 (j) For any week of unemployment on the basis of service in any

1 capacity other than service in an instructional, research, or administrative
2 capacity in an educational institution, as defined in K.S.A. 44-703(v), and
3 amendments thereto, if such week begins during the period between two
4 successive academic years or terms if the individual performs such
5 services in the first of such academic years or terms and there is a
6 reasonable assurance that the individual will perform such services in the
7 second of such academic years or terms, except that if benefits are denied
8 to the individual under this subsection and the individual was not offered
9 an opportunity to perform such services for the educational institution for
10 the second of such academic years or terms, such individual shall be
11 entitled to a retroactive payment of benefits for each week ~~for which that~~
12 the individual filed a timely claim for benefits ~~for and for which that~~
13 benefits were denied solely by reason of this subsection.

14 (k) For any week of unemployment on the basis of service in any
15 capacity for an educational institution as defined in K.S.A. 44-703(v), and
16 amendments thereto, if such week begins during an established and
17 customary vacation period or holiday recess, if the individual performs
18 services in the period immediately before such vacation period or holiday
19 recess and there is a reasonable assurance that such individual will perform
20 such services in the period immediately following such vacation period or
21 holiday recess.

22 (l) For any week of unemployment on the basis of any services,
23 substantially all of which consist of participating in sports or athletic
24 events or training or preparing to so participate, if such week begins during
25 the period between two successive sport seasons or similar period if such
26 individual performed services in the first of such seasons or similar periods
27 and there is a reasonable assurance that such individual will perform such
28 services in the later of such seasons or similar periods.

29 (m) For any week on the basis of services performed by an alien
30 unless such alien is an individual who was lawfully admitted for
31 permanent residence at the time such services were performed, was
32 lawfully present for purposes of performing such services, or was
33 permanently residing in the United States under color of law at the time
34 such services were performed, including an alien who was lawfully present
35 in the United States as a result of the application of the provisions of
36 section 212(d)(5) of the federal immigration and nationality act. Any data
37 or information required of individuals applying for benefits to determine
38 whether benefits are not payable to them because of their alien status shall
39 be uniformly required from all applicants for benefits. In the case of an
40 individual whose application for benefits would otherwise be approved, no
41 determination that benefits to such individual are not payable because of
42 such individual's alien status shall be made except upon a preponderance
43 of the evidence.

1 (n) For any week in which an individual is receiving a governmental
2 or other pension, retirement or retired pay, annuity or other similar
3 periodic payment under a plan maintained by a base period employer and
4 to which the entire contributions were provided by such employer, except
5 that: (1) If the entire contributions to such plan were provided by the base
6 period employer but such individual's weekly benefit amount exceeds such
7 governmental or other pension, retirement or retired pay, annuity or other
8 similar periodic payment attributable to such week, the weekly benefit
9 amount payable to the individual shall be reduced, but not below zero, by
10 an amount equal to the amount of such pension, retirement or retired pay,
11 annuity or other similar periodic payment which is attributable to such
12 week; or (2) if only a portion of contributions to such plan were provided
13 by the base period employer, the weekly benefit amount payable to such
14 individual for such week shall be reduced, but not below zero, by the
15 prorated weekly amount of the pension, retirement or retired pay, annuity
16 or other similar periodic payment after deduction of that portion of the
17 pension, retirement or retired pay, annuity or other similar periodic
18 payment that is directly attributable to the percentage of the contributions
19 made to the plan by such individual; or (3) if the entire contributions to the
20 plan were provided by such individual, or by the individual and an
21 employer, or any person or organization, who is not a base period
22 employer, no reduction in the weekly benefit amount payable to the
23 individual for such week shall be made under this subsection; or (4)
24 whatever portion of contributions to such plan were provided by the base
25 period employer, if the services performed for the employer by such
26 individual during the base period, or remuneration received for the
27 services, did not affect the individual's eligibility for, or increased the
28 amount of, such pension, retirement or retired pay, annuity or other similar
29 periodic payment, no reduction in the weekly benefit amount payable to
30 the individual for such week shall be made under this subsection. No
31 reduction shall be made for payments made under the social security act or
32 railroad retirement act of 1974.

33 ~~(o)~~ For any week of unemployment on the basis of services
34 performed in any capacity and under any of the circumstances described in
35 subsection (i), (j) or (k) ~~which~~ that an individual performed in an
36 educational institution while in the employ of an educational service
37 agency. For the purposes of this subsection, the term "educational service
38 agency" means a governmental agency or entity ~~which~~ that is established
39 and operated exclusively for the purpose of providing such services to one
40 or more educational institutions.

41 ~~(p)~~(o) For any week of unemployment on the basis of service as a
42 school bus or other motor vehicle driver employed by a private contractor
43 to transport pupils, students and school personnel to or from school-related

1 functions or activities for an educational institution, as defined in K.S.A.
2 44-703(v), and amendments thereto, if such week begins during the period
3 between two successive academic years or during a similar period between
4 two regular terms, whether or not successive, if the individual has a
5 contract or contracts, or a reasonable assurance thereof, to perform
6 services in any such capacity with a private contractor for any educational
7 institution for both such academic years or both such terms. An individual
8 shall not be disqualified for benefits as provided in this subsection for any
9 week of unemployment on the basis of service as a bus or other motor
10 vehicle driver employed by a private contractor to transport persons to or
11 from nonschool-related functions or activities.

12 ~~(q)~~(p) For any week of unemployment on the basis of services
13 performed by the individual in any capacity and under any of the
14 circumstances described in subsection (i), (j), (k) or ~~(o)~~ ~~which~~ (n) that are
15 provided to or on behalf of an educational institution, as defined in K.S.A.
16 44-703(v), and amendments thereto, while the individual is in the employ
17 of an employer ~~which~~ that is a governmental entity, Indian tribe or any
18 employer described in section 501(c)(3) of the federal internal revenue
19 code of 1986 ~~which~~ that is exempt from income under section 501(a) of
20 the code.

21 ~~(r)~~(q) For any week in which an individual is registered at and
22 attending an established school, training facility or other educational
23 institution, or is on vacation during or between two successive academic
24 years or terms. An individual shall not be disqualified for benefits as
25 provided in this subsection provided:

26 (1) The individual was engaged in full-time employment concurrent
27 with the individual's school attendance;

28 (2) the individual is attending approved training as defined in K.S.A.
29 44-703(s), and amendments thereto; or

30 (3) the individual is attending evening, weekend or limited day time
31 classes, ~~which~~ that would not affect availability for work, and is otherwise
32 eligible under K.S.A. 44-705(c), and amendments thereto.

33 ~~(s)~~(r) For any week with respect to which an individual is receiving
34 or has received remuneration in the form of a back pay award or
35 settlement. The remuneration shall be allocated to the week or weeks in
36 the manner as specified in the award or agreement, or in the absence of
37 such specificity in the award or agreement, such remuneration shall be
38 allocated to the week or weeks ~~in which~~ that such remuneration, in the
39 judgment of the secretary, would have been paid.

40 (1) For any such weeks that an individual receives remuneration in
41 the form of a back pay award or settlement, an overpayment will be
42 established in the amount of unemployment benefits paid and shall be
43 collected from the claimant.

1 (2) If an employer chooses to withhold from a back pay award or
2 settlement, amounts paid to a claimant while they claimed unemployment
3 benefits, such employer shall pay the department the amount withheld.
4 With respect to such amount, the secretary shall have available all of the
5 collection remedies authorized or provided in K.S.A. 44-717, and
6 amendments thereto.

7 ~~(t)~~(s) (1) Any applicant for or recipient of unemployment benefits
8 who tests positive for unlawful use of a controlled substance or controlled
9 substance analog shall be required to complete a substance abuse treatment
10 program approved by the secretary of labor, secretary of commerce or
11 secretary for children and families, and a job skills program approved by
12 the secretary of labor, secretary of commerce or the secretary for children
13 and families. Subject to applicable federal laws, any applicant for or
14 recipient of unemployment benefits who fails to complete or refuses to
15 participate in the substance abuse treatment program or job skills program
16 as required under this subsection shall be ineligible to receive
17 unemployment benefits until completion of such substance abuse
18 treatment and job skills programs. Upon completion of both substance
19 abuse treatment and job skills programs, such applicant for or recipient of
20 unemployment benefits may be subject to periodic drug screening, as
21 determined by the secretary of labor. Upon a second positive test for
22 unlawful use of a controlled substance or controlled substance analog, an
23 applicant for or recipient of unemployment benefits shall be ordered to
24 complete again a substance abuse treatment program and job skills
25 program, and shall be terminated from unemployment benefits for a period
26 of 12 months, or until such applicant for or recipient of unemployment
27 benefits completes both substance abuse treatment and job skills programs,
28 whichever is later. Upon a third positive test for unlawful use of a
29 controlled substance or controlled substance analog, an applicant for or a
30 recipient of unemployment benefits shall be terminated from receiving
31 unemployment benefits, subject to applicable federal law.

32 (2) Any individual who has been discharged or refused employment
33 for failing a preemployment drug screen required by an employer may
34 request that the drug screening specimen be sent to a different drug testing
35 facility for an additional drug screening. Any such individual who requests
36 an additional drug screening at a different drug testing facility shall be
37 required to pay the cost of drug screening.

38 ~~(t)~~(t) If the individual was found not to have a disqualifying
39 adjudication or conviction under K.S.A. 39-970 or 65-5117, and
40 amendments thereto, was hired and then was subsequently convicted of a
41 disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments
42 thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and
43 amendments thereto. The disqualification shall begin ~~the day following the~~

1 ~~separation on the effective date of the claim~~ and shall continue until after
2 the individual becomes reemployed and has had earnings from insured
3 work of at least three times the individual's determined weekly benefit
4 amount.

5 ~~(v)~~(u) Notwithstanding the provisions of any subsection, an
6 individual shall not be disqualified for such week of part-time employment
7 ~~in a substitute capacity~~ for an educational institution if such individual's
8 most recent employment prior to the individual's benefit year begin date
9 was for a non-educational institution and such individual demonstrates
10 application for work in such individual's customary occupation or for work
11 ~~for which~~ that the individual is reasonably fitted by training or experience
12 for.

13 Sec. 2. K.S.A. 2019 Supp. 44-706 is hereby repealed.

14 Sec. 3. This act shall take effect and be in force from and after its
15 publication in the statute book.