

HOUSE BILL No. 2196

By Committee on Commerce, Labor and Economic Development

2-1

Proposed Amendments for HB 2196
Committee on Commerce, Labor
and Economic Development
Probst A
February 18, 2021
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Office of Revisor of Statutes

1 AN ACT concerning employment security; creating the unemployment
2 compensation modernization and improvement council; providing for
3 development of a new unemployment insurance information
4 technology system; claimant tax information; website publication of
5 trust fund data; maximum benefit period; charging of employer
6 accounts for benefits paid; employer contribution rate determination
7 and schedules; abolishing the employment security interest assessment
8 fund; crediting employer accounts for fraudulent or erroneous
9 payments; transferring moneys from the state general fund to the
10 unemployment insurance trust fund for improper benefit payments;
11 services performed by petroleum landmen; lessor employment unit
12 employee leasing restrictions; relating to other unemployment trust
13 fund provisions; shared work compensation program, amending K.S.A.
14 44-758 and K.S.A. 2020 Supp. 44-703, 44-704, ~~44-710, 44-710a, 44-~~
15 ~~710b and 44-757~~ and repealing the existing sections.
16

permitting benefits for privately contracted school bus drivers;

44-706,

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

18 New Section 1. (a) (1) There is hereby created the unemployment
19 compensation modernization and improvement council. The council shall
20 consist of 11 members appointed as follows:

21 (A) Two members who, on account of their vocation, employment or
22 affiliations, may be classed as representative of employers, to be selected
23 by the workers compensation and employment security boards nominating
24 committee established under K.S.A. 44-551, and amendments thereto, and
25 appointed by the governor;

26 (B) two members who, on account of their vocation, employment or
27 affiliation, may be classed as representative of employees, to be selected
28 by the workers compensation and employment security boards nominating
29 committee and appointed by the governor;

30 (C) the chairpersons of the standing committees of the senate and the
31 house of representatives to which legislation pertaining to the employment
32 security law is customarily referred, appointed by the president of the
33 senate and the speaker of the house of representatives, respectively;

34 (D) two members of the senate appointed by the president of the
35 senate, one of whom is a member of the majority party and one of whom is
36 a member of the minority party;

1 beginning of the benefit year, the three-month seasonally adjusted average
 2 unemployment rate for the state of Kansas is: (1) Less than 4.5%, a
 3 claimant shall be eligible for a maximum of 16 weeks of benefits; (2) at
 4 least 4.5% but less than 6%, a claimant shall be eligible for a maximum of
 5 20 weeks of benefits; or (3) at least 6%, a claimant shall be eligible for a
 6 maximum of 26 weeks of benefits.

7 (k) On and after the effective date of this act, a claimant shall be
 8 eligible for a maximum of 26 weeks of benefits. A claimant who filed a
 9 new claim on or after January 1, 2020, and before the effective date of this
 10 act shall be eligible for a maximum of 26 weeks of benefits including the
 11 number of weeks of benefits received after January 1, 2020, and before the
 12 effective date of this act. This subsection shall not apply to initial claims
 13 effective on and after April 1, 2021.

14 (l) *For weeks commencing on and after April 1, 2021, if at the*
 15 *beginning of the benefit year, the three-month seasonally adjusted average*
 16 *employment rate for the state of Kansas is: (1) Less than 5%, a claimant*
 17 *shall be eligible for a maximum of 16 weeks of benefits; (2) at least 5%*
 18 *but less than 6%, a claimant shall be eligible for a maximum of 20 weeks*
 19 *of benefits; or (3) at least 6%, a claimant shall be eligible for a maximum*
 20 *of 26 weeks of benefits.*

21 Sec. 7. K.S.A. 2020 Supp. 44-710 is hereby amended to read as
 22 follows: 44-710. (a) *Payment.* Contributions shall accrue and become
 23 payable by each contributing employer for each calendar year that the
 24 contributing employer is subject to the employment security law with
 25 respect to wages paid for employment. Such contributions shall become
 26 due and be paid by each contributing employer to the secretary for the
 27 employment security fund in accordance with such rules and regulations as
 28 the secretary may adopt and shall not be deducted, in whole or in part,
 29 from the wages of individuals in such employer's employ. In the payment
 30 of any contributions, a fractional part of \$.01 shall be disregarded unless it
 31 amounts to \$.005 or more, in which case it shall be increased to \$.01.
 32 Should contributions for any calendar quarter be less than \$5, no payment
 33 shall be required.

34 (b) *Rates and base of contributions.* (1) Except as provided in
 35 paragraph (2) ~~of this subsection~~, each contributing employer shall pay
 36 contributions on wages paid by the contributing employer during each
 37 calendar year with respect to employment as provided in K.S.A. 44-710a,
 38 and amendments thereto. Except that, notwithstanding the federal law
 39 requiring the secretary of labor to annually recalculate the contribution
 40 rate, for calendar years 2010, 2011, 2012, 2013 and 2014, the secretary
 41 shall charge each contributing employer in rate groups 1 through 32 the
 42 contribution rate in the 2010 original tax rate computation table, with
 43 contributing employers in rate groups 33 through 51 being capped at a

See attached insert

And by renumbering remaining sections accordingly

Insert

Sec. 7. K.S.A. 2018 Supp. 44-706 is hereby amended to read as follows: 44-706. The secretary shall examine whether an individual has separated from employment for each week claimed. The secretary shall apply the provisions of this section to the individual's most recent employment prior to the week claimed. An individual shall be disqualified for benefits:

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

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to

the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available. As used in this paragraph "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job. For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist

shall include, but shall not be limited to, a consideration of: (A) The safety measures used or the lack thereof; and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal trade act of 1974, and wages for ~~such~~ the work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge and that would impel the average worker to give up ~~such~~ the worker's employment;

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

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to

perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

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

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

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

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

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

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

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

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

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

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction;

(ii) a police record documenting the abuse;

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2018 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments thereto, where the victim was a family or household member;

(iv) medical documentation of the abuse;

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

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

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

(b) If the individual has been discharged or suspended for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and in cases where the disqualification is due to discharge for misconduct has had earnings from insured work of at least three times the

individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, ~~such the~~ individual shall be disqualified for benefits until ~~such the~~ individual again becomes employed and has had earnings from insured work of at least eight times ~~such the~~ individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No ~~such~~ cancellation of wage credits shall affect prior payments made as a result of a prior separation.

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

(2) (A) Failure of the employee to notify the employer of an absence and an individual's leaving work prior to the end of ~~such the~~ individual's assigned work period without permission shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

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

- (i) The individual was absent or tardy without good cause;
- (ii) the individual had knowledge of the employer's attendance expectation; and

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

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

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

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

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

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

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

(a) The test was either:

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

(2) administered as part of an employee assistance program or other drug or alcohol treatment program in which the

employee was participating voluntarily or as a condition of further employment;

(3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;

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

(5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(b) the test sample was collected either:

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

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

(3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

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

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

(c) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other

individual certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

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

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

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

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

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

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

(b) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

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

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

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

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

(C) For purposes of this subsection:

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

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

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

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

(v) "controlled substance" shall be defined as provided in K.S.A. 2018 Supp. 21-5701, and amendments thereto;

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

(vii) "positive breath test" shall mean a test result showing an alcohol concentration of 0.04 or greater, or the levels listed in

49 C.F.R. part 40, if applicable, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" shall mean a test result showing an alcohol concentration at or above the levels provided for in the assistance or treatment program;

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

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

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

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

- (i) Inefficiency;
- (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience;
- (iii) isolated instances of ordinary negligence or inadvertence;
- (iv) good-faith errors in judgment or discretion; or
- (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or
- (C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, ~~such the~~ disqualification shall begin with the week in which ~~such the~~ failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times ~~such the~~ individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or

for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing ~~such~~ the individual's most recent work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; and (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, or legal needs relating to ~~such~~ the domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were

members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each ~~such~~ separate department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, failure or refusal to cross a picket line or refusal for any reason during the continuance of ~~such~~ the labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of ~~such~~ the other state or the United States finally determines that the individual is not entitled to ~~such~~ the unemployment benefits, this disqualification shall not apply.

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

(g) For the period of five years beginning with the first day following the last week of unemployment for which the individual received benefits, or for five years from the date the act was committed, whichever is the later, if the individual, or another

in ~~such~~ the individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor. In addition to the penalties set forth in K.S.A. 44-719, and amendments thereto, an individual who has knowingly made a false statement or representation or who has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor shall be liable for a penalty in the amount equal to 25% of the amount of benefits unlawfully received. Notwithstanding any other provision of law, ~~such~~ the penalty shall be deposited into the employment security trust fund.

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

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

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

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

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if ~~such the~~ week begins during the period between two successive sport seasons or similar period if ~~such the~~ individual performed services in the first of ~~such the~~ successive seasons or similar periods and

there is a reasonable assurance that ~~such the~~ individual will perform ~~such the~~ services in the later of ~~such the~~ successive seasons or similar periods.

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

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by ~~such the~~ employer, except that: (1) If the entire contributions to ~~such the~~ plan were provided by the base period employer but ~~such the~~ individual's weekly benefit amount exceeds ~~such the~~ governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to ~~such the~~ week, the weekly benefit amount payable to the individual shall be reduced, but not below zero, by an amount equal to the amount of ~~such the~~ pension, retirement or retired pay, annuity or other similar periodic payment

which is attributable to ~~such the~~ week; or (2) if only a portion of contributions to ~~such the~~ plan were provided by the base period employer, the weekly benefit amount payable to ~~such the~~ individual for ~~such the~~ week shall be reduced, but not below zero, by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by ~~such the~~ individual; or (3) if the entire contributions to the plan were provided by ~~such the~~ individual, or by the individual and an employer, or any person or organization, who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for ~~such the~~ week shall be made under this subsection; or (4) whatever portion of contributions to ~~such the~~ plan were provided by the base period employer, if the services performed for the employer by ~~such the~~ individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, ~~such the~~ pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for ~~such the~~ week shall be made under this subsection. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

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

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

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

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

- (1) The individual was engaged in full-time employment concurrent with the individual's school attendance;
- (2) the individual is attending approved training as defined in K.S.A. 44-703(s), and amendments thereto; or
- (3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under K.S.A. 44-705(c), and amendments thereto.

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

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

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

~~(s)~~(s) (1) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary of labor, secretary of commerce or secretary for children and families, and a job skills program approved by the secretary of labor,

secretary of commerce or the secretary for children and families. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive unemployment benefits until completion of ~~such~~ the substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, ~~such~~ the applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary of labor. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until ~~such~~ the applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

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

~~(t)~~(t) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970 or 65-5117, and

amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

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