

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 372

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

0892H.01P

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 288.040, RSMo, and to enact in lieu thereof one new section relating to employment security.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 288.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.040, to read as follows:

288.040. 1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

(1) The claimant has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe;

(2) The claimant is able to work and is available for work. No person shall be deemed available for work unless such person has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall be considered not available for work, ~~[pursuant to]~~ **under** this subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible ~~[pursuant to]~~ **under** this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved ~~[pursuant to]~~ **under** Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (b) The claimant is temporarily unemployed through no fault of his or her own and has  
16 a definite recall date within ~~[eight]~~ **four** weeks of his or her first day of unemployment; however,  
17 upon application of the employer responsible for the claimant's unemployment, such  
18 ~~[eight-week]~~ **four-week** period may be extended not to exceed a total of ~~[sixteen]~~ **eight** weeks  
19 at the discretion of the director;

20 (3) The claimant has reported to an office of the division as directed by the deputy, ~~[but]~~  
21 at least once every four weeks, except that a claimant shall be exempted from the reporting  
22 requirement of this subdivision if:

23 (a) The claimant is claiming benefits in accordance with division regulations dealing  
24 with partial or temporary total unemployment; or

25 (b) The claimant is temporarily unemployed through no fault of his or her own and has  
26 a definite recall date within ~~[eight]~~ **four** weeks of his or her first day of unemployment; or

27 (c) The director of the division of employment security has determined that the claimant  
28 belongs to a group or class of workers whose opportunities for reemployment will not be  
29 enhanced by reporting, or is prevented from reporting due to emergency conditions that limit  
30 access by the general public to an office that serves the area where the claimant resides, but only  
31 during the time such circumstances exist.

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33 Ineligibility ~~[pursuant to]~~ **under** this subdivision shall begin on the first day of the week which  
34 the claimant was scheduled to claim and shall end on the last day of the week preceding the week  
35 during which the claimant does report to the division's office;

36 (4) Prior to the first week of a period of total or partial unemployment for which the  
37 claimant claims benefits he or she has been totally or partially unemployed for a waiting period  
38 of one week. No more than one waiting week will be required in any benefit year. During  
39 calendar year 2008 and each calendar year thereafter, the one-week waiting period shall become  
40 compensable once his or her remaining balance on the claim is equal to or less than the  
41 compensable amount for the waiting period. No week shall be counted as a week of total or  
42 partial unemployment for the purposes of this subsection unless it occurs within the benefit year  
43 which includes the week with respect to which the claimant claims benefits;

44 (5) The claimant has made a claim for benefits within fourteen days from the last day  
45 of the week being claimed. The fourteen-day period may, for good cause, be extended to  
46 twenty-eight days;

47 (6) The claimant has reported to an employment office to participate in a reemployment  
48 assessment and reemployment services as directed by the deputy or designated staff of an  
49 employment office, unless the deputy determines that good cause exists for the claimant's failure

50 to participate in such reemployment assessment and reemployment services. For purposes of this  
51 section, "reemployment services" may include, but not be limited to, the following:

- 52 (a) Providing an orientation to employment office services;
- 53 (b) Providing job search assistance; and
- 54 (c) Providing labor market statistics or analysis;

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56 Ineligibility under this subdivision shall begin on the first day of the week which the claimant  
57 was scheduled to report for the reemployment assessment or reemployment services and shall  
58 end on the last day of the week preceding the week during which the claimant does report in  
59 person to the employment office for such reemployment assessment or reemployment services;

60 (7) The claimant is participating in reemployment services, such as job search assistance  
61 services, as directed by the deputy if the claimant has been determined to be likely to exhaust  
62 regular benefits and to need reemployment services ~~[pursuant to]~~ **under** a profiling system  
63 established by the division, unless the deputy determines that:

- 64 (a) The individual has completed such reemployment services; or
- 65 (b) There is justifiable cause for the claimant's failure to participate in such  
66 reemployment services.

67 2. A claimant shall be ineligible for waiting week credit or benefits for any week for  
68 which the deputy finds he or she is or has been suspended by his or her most recent employer for  
69 misconduct connected with his or her work. Suspensions of four weeks or more shall be treated  
70 as discharges.

71 3. (1) Benefits based on "service in employment", described in subsections 7 and 8 of  
72 section 288.034, shall be payable in the same amount, on the same terms and subject to the same  
73 conditions as compensation payable on the basis of other service subject to this law; except that:

74 (a) With respect to service performed in an instructional, research, or principal  
75 administrative capacity for an educational institution, benefits shall not be paid based on such  
76 services for any week of unemployment commencing during the period between two successive  
77 academic years or terms, or during a similar period between two regular but not successive terms,  
78 or during a period of paid sabbatical leave provided for in the individual's contract, to any  
79 individual if such individual performs such services in the first of such academic years (or terms)  
80 and if there is a contract or a reasonable assurance that such individual will perform services in  
81 any such capacity for any educational institution in the second of such academic years or terms;

82 (b) With respect to services performed in any capacity (other than instructional, research,  
83 or principal administrative capacity) for an educational institution, benefits shall not be paid on  
84 the basis of such services to any individual for any week which commences during a period  
85 between two successive academic years or terms if such individual performs such services in the

86 first of such academic years or terms and there is a contract or a reasonable assurance that such  
87 individual will perform such services in the second of such academic years or terms;

88 (c) With respect to services described in paragraphs (a) and (b) of this subdivision,  
89 benefits shall not be paid on the basis of such services to any individual for any week which  
90 commences during an established and customary vacation period or holiday recess if such  
91 individual performed such services in the period immediately before such vacation period or  
92 holiday recess, and there is reasonable assurance that such individual will perform such services  
93 immediately following such vacation period or holiday recess;

94 (d) With respect to services described in paragraphs (a) and (b) of this subdivision,  
95 benefits payable on the basis of services in any such capacity shall be denied as specified in  
96 paragraphs (a), (b), and (c) of this subdivision to any individual who performed such services at  
97 an educational institution while in the employ of an educational service agency, and for this  
98 purpose the term "educational service agency" means a governmental agency or governmental  
99 entity which is established and operated exclusively for the purpose of providing such services  
100 to one or more educational institutions.

101 (2) If compensation is denied for any week ~~[pursuant to]~~ **under** paragraph (b) or (d) of  
102 subdivision (1) of this subsection to any individual performing services at an educational  
103 institution in any capacity (other than instructional, research or principal administrative capacity),  
104 and such individual was not offered an opportunity to perform such services for the second of  
105 such academic years or terms, such individual shall be entitled to a retroactive payment of the  
106 compensation for each week for which the individual filed a timely claim for compensation and  
107 for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1)  
108 of this subsection.

109 4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work  
110 benefits for any week for which he or she is receiving or has received remuneration exceeding  
111 his or her weekly benefit amount or shared work benefit amount in the form of:

112 (a) Compensation for temporary partial disability ~~[pursuant to]~~ **under** the workers'  
113 compensation law of any state or ~~[pursuant to]~~ **under** a similar law of the United States;

114 (b) A governmental or other pension, retirement or retired pay, annuity, or other similar  
115 periodic payment which is based on the previous work of such claimant to the extent that such  
116 payment is provided from funds provided by a base period or chargeable employer ~~[pursuant to]~~  
117 **under** a plan maintained or contributed to by such employer; but, except for such payments  
118 made ~~[pursuant to]~~ **under** the Social Security Act or the Railroad Retirement Act of 1974 (or the  
119 corresponding provisions of prior law), the provisions of this paragraph shall not apply if the  
120 services performed for such employer by the claimant after the beginning of the base period (or

121 remuneration for such services) do not affect eligibility for or increase the amount of such  
122 pension, retirement or retired pay, annuity or similar payment.

123 (2) If the remuneration referred to in this subsection is less than the benefits which would  
124 otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible,  
125 benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one  
126 dollar, such amount shall be lowered to the next multiple of one dollar.

127 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a  
128 claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act  
129 of 1974, or the corresponding provisions of prior law, no part of the payments received ~~[pursuant~~  
130 ~~to]~~ **under** such federal law shall be deductible from the amount of benefits received ~~[pursuant~~  
131 ~~to]~~ **under** this chapter.

132 5. A claimant shall be ineligible for waiting week credit or benefits for any week for  
133 which or a part of which he or she has received or is seeking unemployment benefits ~~[pursuant~~  
134 ~~to]~~ **under** an unemployment insurance law of another state or the United States; provided, that  
135 if it be finally determined that the claimant is not entitled to such unemployment benefits, such  
136 ineligibility shall not apply.

137 6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for  
138 which the deputy finds that such claimant's total or partial unemployment is due to a stoppage  
139 of work which exists because of a labor dispute in the factory, establishment or other premises  
140 in which such claimant is or was last employed. In the event the claimant secures other  
141 employment from which he or she is separated during the existence of the labor dispute, the  
142 claimant must have obtained bona fide employment as a permanent employee for at least the  
143 major part of each of two weeks in such subsequent employment to terminate his or her  
144 ineligibility. If, in any case, separate branches of work which are commonly conducted as  
145 separate businesses at separate premises are conducted in separate departments of the same  
146 premises, each such department shall for the purposes of this subsection be deemed to be a  
147 separate factory, establishment or other premises. This subsection shall not apply if it is shown  
148 to the satisfaction of the deputy that:

149 (a) The claimant is not participating in or financing or directly interested in the labor  
150 dispute which caused the stoppage of work; and

151 (b) The claimant does not belong to a grade or class of workers of which, immediately  
152 preceding the commencement of the stoppage, there were members employed at the premises  
153 at which the stoppage occurs, any of whom are participating in or financing or directly interested  
154 in the dispute.

155 (2) "Stoppage of work" as used in this subsection means a substantial diminution of the  
156 activities, production or services at the establishment, plant, factory or premises of the employing

157 unit. This definition shall not apply to a strike where the employees in the bargaining unit who  
158 initiated the strike are participating in the strike. Such employees shall not be eligible for waiting  
159 week credit or benefits during the period when the strike is in effect, regardless of diminution,  
160 unless the employer has been found guilty of an unfair labor practice by the National Labor  
161 Relations Board or a federal court of law for an act or actions preceding or during the strike.

162 7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis  
163 of any services, substantially all of which consist of participating in sports or athletic events or  
164 training or preparing to so participate, for any week which commences during the period between  
165 two successive sport seasons (or similar periods) if such individual performed such services in  
166 the first of such seasons (or similar periods) and there is a reasonable assurance that such  
167 individual will perform such services in the later of such seasons (or similar periods).

168 8. Benefits shall not be payable on the basis of services performed by an alien, unless  
169 such alien is an individual who was lawfully admitted for permanent residence at the time such  
170 services were performed, was lawfully present for purposes of performing such services, or was  
171 permanently residing in the United States under color of law at the time such services were  
172 performed (including an alien who was lawfully present in the United States as a result of the  
173 application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

174 (1) Any data or information required of individuals applying for benefits to determine  
175 whether benefits are not payable to them because of their alien status shall be uniformly required  
176 from all applicants for benefits.

177 (2) In the case of an individual whose application for benefits would otherwise be  
178 approved, no determination that benefits to such individual are not payable because of such  
179 individual's alien status shall be made except upon a preponderance of the evidence.

180 9. A claimant shall be ineligible for waiting week credit or benefits for any week such  
181 claimant has an outstanding penalty which was assessed based upon an overpayment of benefits,  
182 as provided for in subsection 9 of section 288.380.

183 10. The directors of the division of employment security and the division of workforce  
184 development shall submit to the governor, the speaker of the house of representatives, and the  
185 president pro tem of the senate no later than October 15, 2006, a report outlining their  
186 recommendations for how to improve work search verification and claimant reemployment  
187 activities. The recommendations shall include, but not limited to how to best utilize  
188 "greathires.org", and how to reduce the average duration of unemployment insurance claims.  
189 Each calendar year thereafter, the directors shall submit a report containing their  
190 recommendations on these issues by December thirty-first of each year.

191           11. For purposes of this section, a claimant may satisfy reporting requirements provided  
192 under this section by reporting by internet communication or any other means deemed acceptable  
193 by the division of employment security.

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