AMENDED IN ASSEMBLY APRIL 26, 1995

AMENDED IN ASSEMBLY MARCH 30, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 1821

Introduced by Assembly Member Battin
(Principal coauthor: Senator Mountjoy)

February 24, 1995

An act to amend Sections 1032, ~~1256,~~ 1327, 1332, 1952, and 2117 of the Unemployment Insurance Code, relating to unemployment compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1821, as amended, Battin. Unemployment compensation.

Under existing law, if a claimant for unemployment compensation left the employer's employ voluntarily and without good cause, benefits paid to the claimant which are based upon wages earned from the employer prior to the date of termination are not charged to the account of the employer, except as specified. Under existing regulations of the Employment Development Department, a claimant who leaves the employer's employ has good cause for leaving if there was a definite assurance of employment in another, substantially better job.

This bill would instead provide that unemployment compensation benefits paid to a claimant who left the employer's employ to take a substantially better job are not

chargeable to the account of the employer, except as specified.

~~Under existing law, an individual is disqualified for unemployment compensation benefits if the Director of Employment Development finds that he or she has been discharged for misconduct connected with his or her most recent work.~~

~~This bill would define "misconduct" to include insubordination, including deliberate disobedience of a reasonable instruction of an employer or his or her authorized representative, any violation of a law of this state, or any violation of a rule of the employer that created a substantial risk of damage to the employer's property or interests, or of danger to the life of an employee of the employer.~~

Under existing law, all California employers are required to file with the Director of Employment Development, for purposes of administration of the unemployment compensation law, a return and report of wages paid to employees that includes, among other things, the employer's address. The department is required to give a notice of the filing of a new or additional claim to the employing unit by which the claimant was last employed, as specified.

This bill would specify that the notice required to be sent to the employing unit shall be sent to the address that the employer has registered with the director pursuant to that provision, or to any other address duly authorized by the employer for receipt of notice.

Under existing law, the California Unemployment Insurance Appeals Board and its representatives and administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, but may conduct the hearings and appeals in a manner as to ascertain the substantial rights of the parties.

This bill would provide that at any hearing before an administrative law judge under the unemployment compensation law, the employer or the employer's representative and the employee or the employee's representative shall be allowed to fully present their cases in chief before the judge undertakes any direct examination of witnesses.

Existing law imposes various penalties with regard to false or fraudulent reports, statements, or information furnished to the Employment Development Department with respect to unemployment compensation, including a penalty for any false return, report, statement, or information that is made, rendered, signed, verified, or supplied with or without the intent to evade any lawful requirement of the department.

This bill would *require that the report, statement, or information be made with intent to evade a lawful requirement, and would* provide that this provision shall not apply to any false return, report, statement, or information that is made, rendered, signed, verified, or supplied in good faith.

This bill would also provide that a nonresponse by a person to a statement, form, or report may not be deemed as an agreement by that person to the statement, form, or report.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1032 of the Unemployment
2 Insurance Code is amended to read:
3 1032. If it is ruled under Section 1030 or 1328 that the
4 claimant left the employer's employ voluntarily and
5 without good cause or was discharged by reason of
6 misconduct connected with his or her work, or that he or
7 she was a student employed on a temporary basis and
8 whose employment began within, and ended with his or
9 her leaving to return to school at the close of, his or her
10 vacation period, or that he or she left the employer's
11 employ to accompany his or her spouse to or join her or
12 him at a place from which it is impractical to commute to
13 the employment, to which a transfer of the claimant by
14 the employer is not available, or that he or she left the
15 employer's employ to take a substantially better job,
16 benefits paid to the claimant subsequent to the
17 termination of employment due to the voluntary leaving
18 or discharge, or due to the termination of the temporary
19 employment of a student whose employment began

within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or due to the termination of employment caused by the leaving to accompany or join a spouse, or due to the termination of employment caused by the leaving to take a better job, or if it is shown the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages, which are based upon wages earned from the employer prior to the date of the termination of employment, shall not be charged to the account of the employer, except as provided by Section 1026, unless he or she failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling.

For purposes of this section and Section 1030 ''spouse'' includes a person to whom marriage is imminent.

~~SEC. 2. Section 1256 of the Unemployment Insurance Code is amended to read:~~

~~1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work. For purposes of this section, ''misconduct'' includes, but is not limited to, insubordination, including deliberate disobedience of a reasonable instruction of an employer or his or her authorized representative, any violation of a law of this state, or any violation of a rule of the employer that created a substantial risk of damage to the employer's property or interests or a substantial risk of danger to the life of any employee of the employer.~~

~~An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to~~

~~overcome the presumption. The presumption provided by this section is rebuttable.~~

~~An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.~~

~~An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse to a place from which it is impractical to commute to the employment. For purposes of this section "spouse" includes a person to whom marriage is imminent.~~

~~An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to layoff employees.~~

~~SEC. 3.~~

SEC. 2. Section 1327 of the Unemployment Insurance Code is amended to read:

1327. (a) The department shall give a notice of the filing of a new or additional claim to the employing unit by which the claimant was last employed immediately preceding the filing of the claim unless the additional claim is the result of the filing of a partial claim as defined by the department, there has not been a subsequent employing unit that is designated as the last employer, and there is no separation issue. The employing unit so notified shall submit within 10 days after the mailing of the notice any facts then known that may affect the claimant's eligibility for benefits, including, but not limited to, facts pertaining to eligibility under Section 1256. The 10-day period may be extended for good cause. If after the 10-day period the employing unit acquires knowledge of facts that may affect the eligibility of the claimant and facts could not reasonably have been known

within the period, the employing unit shall, within 10 days of acquiring the knowledge, submit the facts to the department, and the 10-day period may also be extended for good cause.

(b) A notice required to be sent to an employer or employing unit shall be sent to the address that the employer has registered with the director, or to any other address duly authorized by the employer for receipt of notice under this section.

~~SEC. 4.~~

SEC. 3. Section 1332 of the Unemployment Insurance Code is amended to read:

1332. (a) The department shall promptly serve notice of any determination of eligibility for benefits under this part or Part 3 or Part 4 of this division on the claimant and on any employer or employing unit which prior to this determination has furnished the department with information regarding the claimant's eligibility pursuant to Sections 1327 and 1331. Service shall be made personally or by mail. Failure to serve this notice shall not affect the determination of eligibility.

(1) Notice to an employer or employing unit shall be sent in conformity with the requirements of Section 1346.

(2) ''Notice'' is that notification which apprises the party of a determination of eligibility and allows that party to respond accordingly.

(3) If the department is or should be aware that the notice was not received by the party to whom it was addressed, including, but not limited to, the return to the department of the notice by the United States Post Office, the department shall reissue the notice at that time as the department can determine a corrected mailing address for the affected party or otherwise ensure receipt. The affected party shall have appeal rights pursuant to subdivisions (b) and (c), and pursuant to Section 1328.

(b) The department may for good cause reconsider any determination within 15 days after an appeal to an administrative law judge is filed. If no appeal is filed, the department may for good cause reconsider any determination within 20 days after mailing or personal

service of the notice of determination. The department may, if a claimant has not filed an appeal to an administrative law judge from any determination which finds that a claimant is ineligible or disqualified, or if an appeal has been filed but is either withdrawn or dismissed, for good cause also reconsider the determination during the benefit year or extended duration period or extended benefit period to which the determination relates. The department shall give notice of any reconsidered determination to the claimant and any employer or employing unit which received notice under Sections 1328 and 1331 and the claimant or employer may appeal therefrom in the manner prescribed in Section 1328.

The director shall designate individuals to review and reconsider appealed determinations. No individual designated shall be the same individual who made the initial determination in the same matter.

(c) The department may for good cause reconsider any computation or recomputation provided for in this article during the benefit year or extended duration period to which the notice of computation or recomputation relates, except that no recomputation may be considered with respect to any issue considered or under consideration in an appeal taken from a denial of recomputation. The department shall promptly notify the claimant and each of the claimant's base period employers of the recomputation. The claimant and any base period employer may protest the accuracy of the recomputation as prescribed in Section 1330.

~~SEC. 5.~~

SEC. 4. Section 1952 of the Unemployment Insurance Code is amended to read:

1952. (a) The appeals board and its representatives and administrative law judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in a manner as to ascertain the substantial rights of the parties. A full and complete record shall be kept of all proceedings in connection with disputed

claims. Testimony at a hearing held in this state upon a disputed claim arising under this division shall be recorded and, when feasible, by a reporter in shorthand or by machine writing. The testimony need not be transcribed unless the disputed claim is further appealed.

(b) At a hearing before an administrative law judge, the employer or the employer's representative and the employee or the employee's representative shall be allowed to fully present their cases in chief before the judge undertakes a direct examination of witnesses.

~~SEC. 6.~~

SEC. 5. Section 2117 of the Unemployment Insurance Code is amended to read:

2117. (a) A person who, with ~~or without~~ intent to evade a requirement of this code or a lawful requirement of the department under this code, fails to file a return or report or supply information required by this code or who, with ~~or without~~ like intent, makes, renders, signs, or verifies a false or fraudulent return, report, or statement, or supplies a false or fraudulent information, is liable for a civil penalty of not more than one thousand dollars ($1,000), and is also guilty of a misdemeanor and shall, upon conviction, be fined an amount not to exceed one thousand dollars ($1,000), or be imprisoned for not more than one year, or both the fine and imprisonment, at the discretion of the court. A nonresponse by a person to a statement, form, or report may not be deemed as an agreement by that person to the statement, form, or report.

(b) This section shall not apply to a false return, report, statement, or information that is made, rendered, signed, verified, or supplied in good faith.

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