

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 302

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; REQUIRING UNEMPLOYED  
INDIVIDUALS TO CERTIFY WHETHER THEIR UNEMPLOYMENT RELATES TO  
POSITIVE DRUG TEST RESULTS; DISQUALIFYING INDIVIDUALS WHO TEST  
POSITIVE FOR ILLEGAL DRUG USE FROM UNEMPLOYMENT BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 51-1-5 NMSA 1978 (being Laws 2003,  
Chapter 47, Section 9, as amended) is amended to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to  
receive benefits with respect to any week only if the  
individual:

(1) has made a claim for benefits with respect  
to such week in accordance with such rules as the secretary may  
prescribe;

.191541.1

underscoring material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material] = delete~~

1                   (2) has registered for work at, and thereafter  
2 continued to report at, an employment office in accordance with  
3 such rules as the secretary may prescribe, except that the  
4 secretary may, by rule, waive or alter either or both of the  
5 requirements of this paragraph as to individuals attached to  
6 regular jobs and as to such other types of cases or situations  
7 with respect to which the secretary finds that compliance with  
8 such requirements would be oppressive or would be inconsistent  
9 with the purposes of the Unemployment Compensation Law. No  
10 such rule shall conflict with Subsection A of Section 51-1-4  
11 NMSA 1978;

12                   (3) is able to work and is available for work  
13 and is actively seeking permanent full-time work or part-time  
14 work in accordance with Subsection I of Section 51-1-42 NMSA  
15 1978 and in accordance with the terms, conditions and hours  
16 common in the occupation or business in which the individual is  
17 seeking work, except that the secretary may, by rule, waive  
18 this requirement for individuals who are on temporary layoff  
19 status from their regular employment with an assurance from  
20 their employers that the layoff shall not exceed four weeks or  
21 who have an express offer in writing of substantially full-time  
22 work that will begin within a period not exceeding four weeks;

23                   (4) has been unemployed for a waiting period  
24 of one week. A week shall not be counted as a week of  
25 unemployment for the purposes of this paragraph:

.191541.1

underscoring material = new  
[bracketed material] = delete

1 (a) unless it occurs within the benefit  
2 year that includes the week with respect to which the  
3 individual claims payment of benefits;

4 (b) if benefits have been paid with  
5 respect thereto; and

6 (c) unless the individual was eligible  
7 for benefits with respect thereto as provided in this section  
8 and Section 51-1-7 NMSA 1978, except for the requirements of  
9 this subsection and of Subsection D of Section 51-1-7 NMSA  
10 1978;

11 (5) has been paid wages in at least two  
12 quarters of the individual's base period;

13 (6) has reported to an office of the division  
14 in accordance with the rules of the secretary for the purpose  
15 of an examination and review of the individual's availability  
16 for and search for work, for employment counseling, referral  
17 and placement and for participation in a job finding or  
18 employability training and development program. An individual  
19 shall not be denied benefits under this section for any week  
20 that the individual is participating in a job finding or  
21 employability training and development program; ~~and~~

22 (7) participates in reemployment services,  
23 such as job search assistance services, if the division  
24 determines that the individual is likely to exhaust regular  
25 benefits and needs reemployment services pursuant to a

.191541.1

underscored material = new  
[bracketed material] = delete

1 profiling system established by the division, unless the  
2 division determines that:

3 (a) the individual has completed such  
4 services; or

5 (b) there is justifiable cause for the  
6 individual's failure to participate in the services; and

7 (8) has certified in the individual's claim  
8 for benefits with respect to that week that the individual did  
9 not become unemployed or fail to secure employment because the  
10 individual tested positive for illegal drug use in a test  
11 administered or required by the individual's last employer or  
12 by a prospective employer.

13 B. The secretary shall prescribe rules requiring an  
14 unemployed individual to certify, on the individual's weekly  
15 claim for benefits, whether the individual is unemployed  
16 because the individual tested positive for illegal drug use in  
17 a test administered or required by the individual's former  
18 employer or by a prospective employer.

19 ~~[B-]~~ C. A benefit year as provided in Section  
20 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978  
21 may be established; provided an individual may not receive  
22 benefits in a benefit year unless, subsequent to the beginning  
23 of the immediately preceding benefit year during which the  
24 individual received benefits, the individual performed service  
25 in "employment", as defined in Subsection F of Section 51-1-42

.191541.1

underscoring material = new  
~~[bracketed material] = delete~~

1 NMSA 1978, and earned remuneration for such service in an  
2 amount equal to at least five times the individual's weekly  
3 benefit amount.

4 ~~[G-]~~ D. Benefits based on service in employment  
5 defined in Paragraph (8) of Subsection F of Section 51-1-42 and  
6 Section 51-1-43 NMSA 1978 are to be paid in the same amount, on  
7 the same terms and subject to the same conditions as  
8 compensation payable on the basis of other services subject to  
9 the Unemployment Compensation Law; except that:

10 (1) benefits based on services performed in an  
11 instructional, research or principal administrative capacity  
12 for an educational institution shall not be paid for any week  
13 of unemployment commencing during the period between two  
14 successive academic years or terms or, when an agreement  
15 provides for a similar period between two regular but not  
16 successive terms, during such period or during a period of paid  
17 sabbatical leave provided for in the individual's contract, to  
18 any individual if the individual performs such services in the  
19 first of such academic years or terms and if there is a  
20 contract or a reasonable assurance that the individual will  
21 perform services in any such capacity for any educational  
22 institution in the second of such academic years or terms;

23 (2) benefits based on services performed for  
24 an educational institution other than in an instructional,  
25 research or principal administrative capacity shall not be paid

.191541.1

underscoring material = new  
~~[bracketed material] = delete~~

1 for any week of unemployment commencing during a period between  
2 two successive academic years or terms if the services are  
3 performed in the first of such academic years or terms and  
4 there is a reasonable assurance that the individual will  
5 perform services for any educational institution in the second  
6 of such academic years or terms. If compensation is denied to  
7 an individual under this paragraph and the individual was not  
8 offered an opportunity to perform such services for the  
9 educational institution for the second of such academic years  
10 or terms, the individual shall be entitled to a retroactive  
11 payment of benefits for each week for which the individual  
12 filed a claim and certified for benefits in accordance with the  
13 rules of the division and for which benefits were denied solely  
14 by reason of this paragraph;

15 (3) benefits shall be denied to any individual  
16 for any week that commences during an established and customary  
17 vacation period or holiday recess if the individual performs  
18 any services described in Paragraphs (1) and (2) of this  
19 subsection in the period immediately before such period of  
20 vacation or holiday recess and there is a reasonable assurance  
21 that the individual will perform any such services in the  
22 period immediately following such vacation period or holiday  
23 recess;

24 (4) benefits shall not be payable on the basis  
25 of services specified in Paragraphs (1) and (2) of this

.191541.1

underscored material = new  
[bracketed material] = delete

1 subsection during the periods specified in Paragraphs (1), (2)  
2 and (3) of this subsection to any individual who performed such  
3 services in or to or on behalf of an educational institution  
4 while in the employ of a state or local governmental  
5 educational service agency or other governmental entity or  
6 nonprofit organization; and

7 (5) for the purpose of this subsection, to the  
8 extent permitted by federal law, "reasonable assurance" means a  
9 reasonable expectation of employment in a similar capacity in  
10 the second of such academic years or terms based upon a  
11 consideration of all relevant factors, including the historical  
12 pattern of reemployment in such capacity, a reasonable  
13 anticipation that such employment will be available and a  
14 reasonable notice or understanding that the individual will be  
15 eligible for and offered employment in a similar capacity.

16 [~~D-~~] E. Paragraphs (1), (2), (3), (4) and (5) of  
17 Subsection [~~G~~] D of this section shall apply to services  
18 performed for all educational institutions, public or private,  
19 for profit or nonprofit, which are operated in this state or  
20 subject to an agreement for coverage under the Unemployment  
21 Compensation Law of this state, unless otherwise exempt by law.

22 [~~E-~~] F. Notwithstanding any other provisions of  
23 this section or Section 51-1-7 NMSA 1978, no otherwise eligible  
24 individual is to be denied benefits for any week because the  
25 individual is in training with the approval of the division nor

.191541.1

underscored material = new  
[bracketed material] = delete

1 is the individual to be denied benefits by reason of  
2 application of provisions in Paragraph (3) of Subsection A of  
3 this section or Paragraph (3) of Subsection A of Section 51-1-7  
4 NMSA 1978 with respect to any week in which the individual is  
5 in training with the approval of the division. The secretary  
6 shall provide, by rule, standards for approved training and the  
7 conditions for approving training for claimants, including any  
8 training approved or authorized for approval pursuant to  
9 Section 236(a)(1) and (2) of the federal Trade Act of 1974, as  
10 amended, or required to be approved as a condition for  
11 certification of the state's Unemployment Compensation Law by  
12 the United States secretary of labor.

13 ~~[F-]~~ G. Notwithstanding any other provisions of  
14 this section, benefits shall not be payable on the basis of  
15 services performed by an alien unless such alien is an  
16 individual who was lawfully admitted for permanent residence at  
17 the time the services were performed, was lawfully present for  
18 the purposes of performing the services or was permanently  
19 residing in the United States under color of law at the time  
20 the services were performed, including an alien who was  
21 lawfully present in the United States as a result of the  
22 application of the provisions of Section 212(d)(5) of the  
23 federal Immigration and Nationality Act; provided that:

24 (1) any information required of individuals  
25 applying for benefits to determine their eligibility for

.191541.1



underscored material = new  
[bracketed material] = delete

1 benefits under this subsection shall be uniformly required from  
2 all applicants for benefits; and

3 (2) an individual shall not be denied benefits  
4 because of the individual's alien status except upon a  
5 preponderance of the evidence.

6 [~~G.~~] H. Notwithstanding any other provision of this  
7 section, benefits shall not be paid to any individual on the  
8 basis of any services substantially all of which consist of  
9 participating in sports or athletic events or training or  
10 preparing to so participate for any week that commences during  
11 the period between two successive sport seasons, or similar  
12 periods, if the individual performed the services in the first  
13 of such seasons, or similar periods, and there is a reasonable  
14 assurance that the individual will perform the services in the  
15 latter of such seasons or similar periods.

16 [~~H.~~] I. Students who are enrolled in a full-time  
17 course schedule in an educational or training institution or  
18 program, other than those persons in an approved vocational  
19 training program in accordance with Subsection [~~E.~~] F. of this  
20 section, shall not be eligible for unemployment benefits unless  
21 the individual can demonstrate to the division's satisfaction  
22 that the individual is able, available and actively seeking  
23 full- or part-time work in accordance with rules prescribed by  
24 the secretary.

25 [~~F.~~] J. As used in this subsection, "seasonal ski

.191541.1

underscoring material = new  
~~[bracketed material] = delete~~

1 employee" means an employee who has not worked for a ski area  
2 operator for more than six consecutive months of the previous  
3 twelve months or nine of the previous twelve months. An  
4 employee of a ski area operator who has worked for a ski area  
5 operator for six consecutive months of the previous twelve  
6 months or nine of the previous twelve months shall not be  
7 considered a seasonal ski employee. The following benefit  
8 eligibility conditions apply to a seasonal ski employee:

9 (1) except as provided in Paragraphs (2) and  
10 (3) of this subsection, a seasonal ski employee employed by a  
11 ski area operator on a regular seasonal basis shall be  
12 ineligible for a week of unemployment benefits that commences  
13 during a period between two successive ski seasons unless the  
14 individual establishes to the satisfaction of the secretary  
15 that the individual is available for and is making an active  
16 search for permanent full-time work;

17 (2) a seasonal ski employee who has been  
18 employed by a ski area operator during two successive ski  
19 seasons shall be presumed to be unavailable for permanent new  
20 work during a period after the second successive ski season  
21 that the individual was employed as a seasonal ski employee;  
22 and

23 (3) the presumption described in Paragraph (2)  
24 of this subsection shall not arise as to any seasonal ski  
25 employee who has been employed by the same ski area operator

.191541.1

underscored material = new  
[bracketed material] = delete

1 during two successive ski seasons and has resided continuously  
2 for at least twelve successive months and continues to reside  
3 in the county in which the ski area facility is located.

4 [~~J.~~] K. Notwithstanding any other provision of this  
5 section, an otherwise eligible individual shall not be denied  
6 benefits for any week by reason of the application of Paragraph  
7 (3) of Subsection A of this section because the individual is  
8 before any court of the United States or any state pursuant to  
9 a lawfully issued summons to appear for jury duty."

10 SECTION 2. Section 51-1-7 NMSA 1978 (being Laws 2003,  
11 Chapter 47, Section 10, as amended) is amended to read:

12 "51-1-7. DISQUALIFICATION FOR BENEFITS.--

13 A. An individual shall be disqualified for and  
14 shall not be eligible to receive benefits:

15 (1) if it is determined by the division that  
16 the individual left employment voluntarily without good cause  
17 in connection with the employment. No individual shall receive  
18 benefits until the division has contacted the former employer  
19 and determined whether the individual left the employment  
20 voluntarily; provided, however, that a person shall not be  
21 denied benefits under this paragraph:

22 (a) solely on the basis of pregnancy or  
23 the termination of pregnancy;

24 (b) because of domestic abuse evidenced  
25 by medical documentation, legal documentation or a sworn

.191541.1

underscored material = new  
[bracketed material] = delete

1 statement from the claimant; or

2 (c) if the person voluntarily left work  
3 to relocate because of a spouse, who is in the military service  
4 of the United States or the New Mexico national guard,  
5 receiving permanent change of station orders, activation orders  
6 or unit deployment orders;

7 (2) if it is determined by the division that  
8 the individual has been discharged for misconduct connected  
9 with the individual's employment; [~~or~~]

10 (3) if it is determined by the division that  
11 the individual has failed without good cause either to apply  
12 for available, suitable work when so directed or referred by  
13 the division or to accept suitable work when offered; or

14 (4) if it is determined by the division that  
15 the individual was discharged from employment or was unable to  
16 accept an offer of suitable work because the individual tested  
17 positive for illegal drug use in a test administered or  
18 required by a former or prospective employer.

19 B. In determining whether or not any work is  
20 suitable for an individual pursuant to Paragraph (3) of  
21 Subsection A of this section, the division shall consider the  
22 degree of risk involved to the individual's health, safety and  
23 morals, the individual's physical fitness, prior training,  
24 approved training, experience, prior earnings, length of  
25 unemployment and prospects for securing local work in the

.191541.1

underscoring material = new  
~~[bracketed material] = delete~~

1 individual's customary occupation and the distance of available  
2 work from the individual's residence. Notwithstanding any  
3 other provisions of the Unemployment Compensation Law, no work  
4 shall be deemed suitable and benefits shall not be denied under  
5 the Unemployment Compensation Law to any otherwise eligible  
6 individual for refusing to accept new work under any of the  
7 following conditions:

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

10 (2) if the wages, hours or other conditions of  
11 the work offered are substantially less favorable to the  
12 individual than those prevailing for similar work in the  
13 locality; or

14 (3) if, as a condition of being employed, the  
15 individual would be required to join a company union or to  
16 resign from or refrain from joining any bona fide labor  
17 organizations.

18 C. An individual shall be disqualified for, and  
19 shall not be eligible to receive, benefits for any week with  
20 respect to which the division finds that the individual's  
21 unemployment is due to a labor dispute at the factory,  
22 establishment or other premises at which the individual is or  
23 was last employed; provided that this subsection shall not  
24 apply if it is shown to the satisfaction of the division that:

25 (1) the individual is not participating in or

.191541.1

underscoring material = new  
[bracketed material] = delete

1 directly interested in the labor dispute; and

2 (2) the individual does not belong to a grade  
3 or class of workers of which, immediately before the  
4 commencement of the labor dispute, there were members employed  
5 at the premises at which the labor dispute occurs, any of whom  
6 are participating in or directly interested in the dispute;  
7 provided that if in any case separate branches of work that are  
8 commonly conducted in separate businesses in separate premises  
9 are conducted in separate departments of the same premises,  
10 each such department shall, for the purposes of this  
11 subsection, be deemed to be a separate factory, establishment  
12 or other premises.

13 D. An individual shall be disqualified for, and  
14 shall not be eligible to receive, benefits for any week with  
15 respect to which, or a part of which, the individual has  
16 received or is seeking, through any agency other than the  
17 division, unemployment benefits under an unemployment  
18 compensation law of another state or of the United States;  
19 provided that if the appropriate agency of such other state or  
20 of the United States finally determines that the individual is  
21 not entitled to such unemployment benefits, this  
22 disqualification shall not apply.

23 E. A disqualification pursuant to Paragraph (1),  
24 [~~or~~] (2) or (4) of Subsection A of this section shall continue  
25 for the duration of the individual's unemployment and until the

.191541.1

underscoring material = new  
~~[bracketed material] = delete~~

1 individual has earned wages in bona fide employment other than  
2 self-employment, as provided by rule of the secretary, in an  
3 amount equivalent to five times the individual's weekly benefit  
4 otherwise payable. A disqualification pursuant to Paragraph  
5 (3) of Subsection A of this section shall include the week the  
6 failure occurred and shall continue for the duration of the  
7 individual's unemployment and until the individual has earned  
8 wages in bona fide employment other than self-employment, as  
9 provided by rule of the secretary, in an amount equivalent to  
10 five times the individual's weekly benefit amount otherwise  
11 payable; provided that no more than one such disqualification  
12 shall be imposed upon an individual for failure to apply for or  
13 accept the same position, or a similar position, with the same  
14 employer, except upon a determination by the division of  
15 disqualification pursuant to Subsection C of this section.

16 F. As used in this section:

17 (1) "domestic abuse" means that term as  
18 defined in Section 40-13-2 NMSA 1978; and

19 (2) "employment" means employment by the  
20 individual's last employer as defined by rules of the  
21 secretary."

22 SECTION 3. Section 51-1-32 NMSA 1978 (being Laws 1959,  
23 Chapter 321, Section 12, as amended) is amended to read:

24 "51-1-32. DISCLOSURE OF INFORMATION--PENALTY.--

25 A. Information obtained from any employing unit or

.191541.1

underscored material = new  
[bracketed material] = delete

1 individual pursuant to the administration of the Unemployment  
2 Compensation Law, including drug test results, and  
3 determinations as to benefit rights of any individual are  
4 confidential and shall not be disclosed or be open to public  
5 inspection in any manner revealing the individual's or  
6 employing unit's identity, except that such information may be  
7 made available to those designated persons and agencies and for  
8 purposes specified in regulations issued by the secretary.

9 B. Information will be provided from the records of  
10 the department only pursuant to an agreement [~~which~~] that  
11 specifies in addition to other requirements established by the  
12 secretary:

13 (1) the express purpose for which the  
14 information will be used;

15 (2) assurances that the requesting party will  
16 protect the confidentiality of the information against  
17 unauthorized use or disclosure;

18 (3) assurances that the requesting agency will  
19 reciprocate on a continuing basis in providing information  
20 requested by the department in the administration of employment  
21 and unemployment compensation programs; and

22 (4) the obligation of the requesting party or  
23 agency to pay to the department the reasonable cost, as  
24 determined by the secretary, of providing the information.

25 C. Any employee or member of the department or

.191541.1



underscoring material = new  
~~[bracketed material] = delete~~

1 board of review who, in violation of the provisions of this  
2 section, makes any disclosure of information obtained from any  
3 employing unit or individual in the administration of the  
4 Unemployment Compensation Law or any person who has obtained  
5 any list of applicants for work or of claimants or recipients  
6 of benefits under the Unemployment Compensation Law who uses or  
7 permits the use of such list for any political purpose shall be  
8 fined not less than twenty dollars (\$20.00) or more than two  
9 hundred dollars (\$200) or imprisoned for not more than ninety  
10 days or both."

11 SECTION 4. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2013.

13 - 17 -