

1 HOUSE BILL 67
2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY
4 Joy Garratt
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10 AN ACT

11 RELATING TO UNEMPLOYMENT INSURANCE; DEFINING "REASONABLE
12 ASSURANCE" FOR EMPLOYEES OF EDUCATIONAL INSTITUTIONS.
13

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

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

17 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

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

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

24 (2) has registered for work at, and thereafter
25 continued to report at, an employment office in accordance with

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1 such rules as the secretary may prescribe, except that the
2 secretary may, by rule, waive or alter either or both of the
3 requirements of this paragraph as to individuals attached to
4 regular jobs and as to such other types of cases or situations
5 with respect to which the secretary finds that compliance with
6 such requirements would be oppressive or would be inconsistent
7 with the purposes of the Unemployment Compensation Law. No
8 such rule shall conflict with Subsection A of Section 51-1-4
9 NMSA 1978;

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

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

24 (a) unless it occurs within the benefit
25 year that includes the week with respect to which the

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1 individual claims payment of benefits;

2 (b) if benefits have been paid with
3 respect thereto; and

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

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

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

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

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1 (a) the individual has completed such
2 services; or

3 (b) there is justifiable cause for the
4 individual's failure to participate in the services.

5 B. A benefit year as provided in Section 51-1-4
6 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
7 established; provided an individual may not receive benefits in
8 a benefit year unless, subsequent to the beginning of the
9 immediately preceding benefit year during which the individual
10 received benefits, the individual performed service in
11 "employment", as defined in Subsection F of Section 51-1-42
12 NMSA 1978, and earned remuneration for such service in an
13 amount equal to at least five times the individual's weekly
14 benefit amount.

15 C. Benefits based on service in employment defined
16 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
17 51-1-43 NMSA 1978 are to be paid in the same amount, on the
18 same terms and subject to the same conditions as compensation
19 payable on the basis of other services subject to the
20 Unemployment Compensation Law; except that:

21 (1) benefits based on services performed in an
22 instructional, research or principal administrative capacity
23 for an educational institution shall not be paid for any week
24 of unemployment commencing during the period between two
25 successive academic years or terms or, when an agreement

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1 provides for a similar period between two regular but not
2 successive terms, during such period or during a period of paid
3 sabbatical leave provided for in the individual's contract, to
4 any individual if the individual performs such services in the
5 first of such academic years or terms and if there is a
6 contract or a reasonable assurance that the individual will
7 perform services in any such capacity for any educational
8 institution in the second of such academic years or terms;

9 (2) benefits based on services performed for
10 an educational institution other than in an instructional,
11 research or principal administrative capacity shall not be paid
12 for any week of unemployment commencing during a period between
13 two successive academic years or terms if the services are
14 performed in the first of such academic years or terms and
15 there is a reasonable assurance that the individual will
16 perform services for any educational institution in the second
17 of such academic years or terms. If compensation is denied to
18 an individual under this paragraph and the individual was not
19 offered an opportunity to perform such services for the
20 educational institution for the second of such academic years
21 or terms, the individual shall be entitled to a retroactive
22 payment of benefits for each week for which the individual
23 filed a claim and certified for benefits in accordance with the
24 rules of the division and for which benefits were denied solely
25 by reason of this paragraph;

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1 (3) benefits shall be denied to any individual
2 for any week that commences during an established and customary
3 vacation period or holiday recess if the individual performs
4 any services described in Paragraphs (1) and (2) of this
5 subsection in the period immediately before such period of
6 vacation or holiday recess and there is a reasonable assurance
7 that the individual will perform any such services in the
8 period immediately following such vacation period or holiday
9 recess;

10 (4) benefits shall not be payable on the basis
11 of services specified in Paragraphs (1) and (2) of this
12 subsection during the periods specified in Paragraphs (1), (2)
13 and (3) of this subsection to any individual who performed such
14 services in or to or on behalf of an educational institution
15 while in the employ of a state or local governmental
16 educational service agency or other governmental entity or
17 nonprofit organization; and

18 (5) for the purpose of this subsection, to the
19 extent permitted by federal law, "reasonable assurance" means a
20 reasonable expectation of employment in a similar or higher
21 capacity in the second of such academic years or terms based
22 upon a consideration of all relevant factors [~~including the~~
23 ~~historical pattern of reemployment in such capacity, a~~
24 ~~reasonable anticipation that such employment will be available~~
25 ~~and a reasonable notice or understanding that the individual~~

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1 ~~will be eligible for and offered employment in a similar~~
2 ~~capacity].~~ A "reasonable assurance" requires that all of the
3 following are met:

4 (a) the educational institution has made
5 an offer of employment in the following academic year or term
6 that is written, oral or implied;

7 (b) the offer of employment in the
8 following academic year or term was made by an individual with
9 actual authority to offer employment;

10 (c) the employment offered in the
11 following academic year or term is substantially the same
12 position as or is in a higher position than the previous
13 employment;

14 (d) the consideration for the employment
15 offered is not less than ninety percent of the amount that the
16 claimant earned in the then-current academic year or term; and

17 (e) the offer of employment in the
18 following academic year or term is not contingent upon a factor
19 or factors that are within the educational institution's
20 control, including course programming, decisions on how to
21 allocate available funding, final course offerings, program
22 changes and facility availability.

23 D. Paragraphs (1), (2), (3), (4) and (5) of
24 Subsection C of this section shall apply to services performed
25 for all educational institutions, public or private, for profit

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1 or nonprofit, ~~[which]~~ that are operated in this state or
2 subject to an agreement for coverage under the Unemployment
3 Compensation Law of this state, unless otherwise exempt by law.

4 E. Notwithstanding any other provisions of this
5 section or Section 51-1-7 NMSA 1978, no otherwise eligible
6 individual is to be denied benefits for any week because the
7 individual is in training with the approval of the division nor
8 is the individual to be denied benefits by reason of
9 application of provisions in Paragraph (3) of Subsection A of
10 this section or Paragraph (3) of Subsection A of Section 51-1-7
11 NMSA 1978 with respect to any week in which the individual is
12 in training with the approval of the division. The secretary
13 shall provide, by rule, standards for approved training and the
14 conditions for approving training for claimants, including any
15 training approved or authorized for approval pursuant to
16 Section 236(a)(1) and (2) of the federal Trade Act of 1974, as
17 amended, or required to be approved as a condition for
18 certification of the state's Unemployment Compensation Law by
19 the United States secretary of labor.

20 F. Notwithstanding any other provisions of this
21 section, benefits shall not be payable on the basis of services
22 performed by an alien unless such alien is an individual who
23 was lawfully admitted for permanent residence at the time the
24 services were performed, was lawfully present for the purposes
25 of performing the services or was permanently residing in the

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1 United States under color of law at the time the services were
2 performed, including an alien who was lawfully present in the
3 United States as a result of the application of the provisions
4 of Section 212(d)(5) of the federal Immigration and Nationality
5 Act; provided that:

6 (1) any information required of individuals
7 applying for benefits to determine their eligibility for
8 benefits under this subsection shall be uniformly required from
9 all applicants for benefits; and

10 (2) an individual shall not be denied benefits
11 because of the individual's alien status except upon a
12 preponderance of the evidence.

13 G. Notwithstanding any other provision of this
14 section, benefits shall not be paid to any individual on the
15 basis of any services substantially all of which consist of
16 participating in sports or athletic events or training or
17 preparing to so participate for any week that commences during
18 the period between two successive sport seasons, or similar
19 periods, if the individual performed the services in the first
20 of such seasons, or similar periods, and there is a reasonable
21 assurance that the individual will perform the services in the
22 latter of such seasons or similar periods.

23 H. Students who are enrolled in a full-time course
24 schedule in an educational or training institution or program,
25 other than those persons in an approved vocational training

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1 program in accordance with Subsection E of this section, shall
2 not be eligible for unemployment benefits unless the individual
3 can demonstrate to the division's satisfaction that the
4 individual is able, available and actively seeking full- or
5 part-time work in accordance with rules prescribed by the
6 secretary.

7 I. As used in this subsection, "seasonal ski
8 employee" means an employee who has not worked for a ski area
9 operator for more than six consecutive months of the previous
10 twelve months or nine of the previous twelve months. An
11 employee of a ski area operator who has worked for a ski area
12 operator for six consecutive months of the previous twelve
13 months or nine of the previous twelve months shall not be
14 considered a seasonal ski employee. The following benefit
15 eligibility conditions apply to a seasonal ski employee:

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

24 (2) a seasonal ski employee who has been
25 employed by a ski area operator during two successive ski

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1 seasons shall be presumed to be unavailable for permanent new
2 work during a period after the second successive ski season
3 that the individual was employed as a seasonal ski employee;
4 and

5 (3) the presumption described in Paragraph (2)
6 of this subsection shall not arise as to any seasonal ski
7 employee who has been employed by the same ski area operator
8 during two successive ski seasons and has resided continuously
9 for at least twelve successive months and continues to reside
10 in the county in which the ski area facility is located.

11 J. Notwithstanding any other provision of this
12 section, an otherwise eligible individual shall not be denied
13 benefits for any week by reason of the application of Paragraph
14 (3) of Subsection A of this section because the individual is
15 before any court of the United States or any state pursuant to
16 a lawfully issued summons to appear for jury duty."