

1 HOUSE BILL 289

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Christine Trujillo

5
6
7
8
9
10 AN ACT

11 RELATING TO HIGHER EDUCATION; SETTING A MINIMUM WAGE FOR NON-
12 TENURE-TRACK FACULTY AT COLLEGES AND UNIVERSITIES; EXTENDING
13 ELIGIBILITY FOR UNEMPLOYMENT BENEFITS TO NON-TENURE-TRACK
14 FACULTY AT COLLEGES AND UNIVERSITIES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of Chapter 21, Article 1 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] NON-TENURE-TRACK FACULTY STANDARDS--
20 MINIMUM WAGE.--

21 A. Whenever possible, all non-tenure-track faculty
22 members of any public post-secondary educational institution in
23 the state shall be:

24 (1) informed of course assignments at least
25 ten weeks before the course begins;

.219780.2

underscoring material = new
[bracketed material] = delete

1 (2) paid in full for an assignment when a
2 class is canceled less than two weeks before the beginning of a
3 semester or anytime thereafter; and

4 (3) considered to be an integral part of their
5 departments and given all of the rights normally afforded to
6 tenure-track faculty by the institution in the areas of book
7 selection, participation in department activities and the use
8 of college resources, including telephones, copy machines,
9 supplies, office space, mail boxes, clerical staff, libraries
10 and professional development.

11 B. All public post-secondary educational
12 institutions in the state shall pay all non-tenure-track
13 faculty members a minimum wage of five thousand dollars
14 (\$5,000) per course assignment credit hour.

15 C. Rules adopted pursuant to this section shall
16 meet federal requirements that are necessary for the state to
17 receive federal funds or for employers in New Mexico to be
18 granted federal unemployment tax credits."

19 SECTION 2. Section 51-1-5 NMSA 1978 (being Laws 2003,
20 Chapter 47, Section 9, as amended) is amended to read:

21 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

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

25 (1) has made a claim for benefits with respect

.219780.2

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

1 to such week in accordance with such rules as the secretary may
2 prescribe;

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

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

25 (4) has been unemployed for a waiting period

.219780.2

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

1 of one week. A week shall not be counted as a week of
2 unemployment for the purposes of this paragraph:

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

6 (b) if benefits have been paid with
7 respect thereto; and

8 (c) unless the individual was eligible
9 for benefits with respect thereto as provided in this section
10 and Section 51-1-7 NMSA 1978, except for the requirements of
11 this subsection and of Subsection D of Section 51-1-7 NMSA
12 1978;

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

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

24 (7) participates in reemployment services,
25 such as job search assistance services, if the division

.219780.2

1 determines that the individual is likely to exhaust regular
2 benefits and needs reemployment services pursuant to a
3 profiling system established by the division, unless the
4 division determines that:

5 (a) the individual has completed such
6 services; or

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

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

19 C. Benefits based on service in employment defined
20 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
21 51-1-43 NMSA 1978 are to be paid in the same amount, on the
22 same terms and subject to the same conditions as compensation
23 payable on the basis of other services subject to the
24 Unemployment Compensation Law; except that:

25 (1) benefits based on services performed in an

.219780.2

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

1 instructional, research or principal administrative capacity
2 for an educational institution shall not be paid for any week
3 of unemployment commencing during the period between two
4 successive academic years or terms or, when an agreement
5 provides for a similar period between two regular but not
6 successive terms, during such period or during a period of paid
7 sabbatical leave provided for in the individual's contract, to
8 any individual if the individual performs such services in the
9 first of such academic years or terms and if there is a
10 contract or a reasonable assurance that the individual will
11 perform services in any such capacity for any educational
12 institution in the second of such academic years or terms;

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

.219780.2

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

1 payment of benefits for each week for which the individual
2 filed a claim and certified for benefits in accordance with the
3 rules of the division and for which benefits were denied solely
4 by reason of this paragraph;

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

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

22 (5) for the purpose of this subsection, to the
23 extent permitted by federal law, "reasonable assurance" means a
24 reasonable expectation of employment in a similar capacity in
25 the second of such academic years or terms based upon a

.219780.2

underscored material = new
[bracketed material] = delete

1 consideration of all relevant factors [~~including the historical~~
2 ~~pattern of reemployment in such capacity, a reasonable~~
3 ~~anticipation that such employment will be available and a~~
4 ~~reasonable notice or understanding that the individual will be~~
5 ~~eligible for and offered employment in a similar capacity]. A
6 "reasonable assurance" requires that all of the following are
7 met:~~

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

11 (b) the offer of employment in the
12 following academic year or term was made by an individual with
13 actual authority to offer employment;

14 (c) the employment offered in the
15 following academic year or term is in the same employment
16 position as the previous employment;

17 (d) the consideration for the employment
18 offered is not less than ninety percent of the amount that the
19 non-tenure-track faculty member claimant earned in the then-
20 current academic year or term; and

21 (e) the offer of employment in the
22 following academic year or term is not contingent upon a factor
23 or factors that are within the educational institution's
24 control, including course programming, decisions on how to
25 allocate available funding, final course offerings, program

.219780.2

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

1 changes and facility availability.

2 D. Paragraphs (1), (2), (3), (4) and (5) of
3 Subsection C of this section shall apply to services performed
4 for all educational institutions, public or private, for profit
5 or nonprofit, which are operated in this state or subject to an
6 agreement for coverage under the Unemployment Compensation Law
7 of this state, unless otherwise exempt by law.

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

24 F. Notwithstanding any other provisions of this
25 section, benefits shall not be payable on the basis of services

.219780.2

1 performed by an alien unless such alien is an individual who
2 was lawfully admitted for permanent residence at the time the
3 services were performed, was lawfully present for the purposes
4 of performing the services or was permanently residing in the
5 United States under color of law at the time the services were
6 performed, including an alien who was lawfully present in the
7 United States as a result of the application of the provisions
8 of Section 212(d)(5) of the federal Immigration and Nationality
9 Act; provided that:

10 (1) any information required of individuals
11 applying for benefits to determine their eligibility for
12 benefits under this subsection shall be uniformly required from
13 all applicants for benefits; and

14 (2) an individual shall not be denied benefits
15 because of the individual's alien status except upon a
16 preponderance of the evidence.

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

.219780.2

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

1 latter of such seasons or similar periods.

2 H. Students who are enrolled in a full-time course
3 schedule in an educational or training institution or program,
4 other than those persons in an approved vocational training
5 program in accordance with Subsection E of this section, shall
6 not be eligible for unemployment benefits unless the individual
7 can demonstrate to the division's satisfaction that the
8 individual is able, available and actively seeking full- or
9 part-time work in accordance with rules prescribed by the
10 secretary.

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

20 (1) except as provided in Paragraphs (2) and
21 (3) of this subsection, a seasonal ski employee employed by a
22 ski area operator on a regular seasonal basis shall be
23 ineligible for a week of unemployment benefits that commences
24 during a period between two successive ski seasons unless the
25 individual establishes to the satisfaction of the secretary

.219780.2

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

1 that the individual is available for and is making an active
2 search for permanent full-time work;

3 (2) a seasonal ski employee who has been
4 employed by a ski area operator during two successive ski
5 seasons shall be presumed to be unavailable for permanent new
6 work during a period after the second successive ski season
7 that the individual was employed as a seasonal ski employee;
8 and

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

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