

No. 613, S.]

[Published August 31, 1957.

CHAPTER 644

AN ACT to amend 108.02 (3) and (6), 108.04 (1) (a), (4) (c), (5), (7) (a) and (b), (8) (d), (10), (13) (a) and (15) (intro. par.) and (b) of the statutes, to make the corrections required by Section 25 of chapter 235, laws of 1957 (Bill No. 259, S.).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 108.02 (3) and (6) of the statutes are amended to read:

108.02 (3) EMPLOYEE. (a) "Employee" means any individual who is or has been performing services for an * * * *employing unit*, in an employment, whether or not he is paid directly by such * * * *employing unit*; except as provided in par. (b). If a contractor performing services for an * * * *employing unit* is an employe under this subsection and not an employer subject to the contribution provisions of this chapter, a person employed by the contractor in fulfilment of his contract with the * * * *employing unit* shall be considered the employe of the * * * *employing unit*.

(b) Paragraph (a) shall not apply to an individual performing services for an * * * *employing unit* if the * * * *employing unit* satisfies the commission as to both the following conditions:

1. That such individual has been and will continue to be free from the * * * *employing unit's* control or direction over the performance of his services both under his contract and in fact; and

2. That such services have been performed in an independently established trade, business or profession in which the individual is customarily engaged.

(c) This subsection shall be used in determining an * * * *employing unit's* liability under the contribution provisions of this chapter, and shall likewise be used in determining the status of claimants under the benefit provisions of this chapter.

(d) Any individual who is, under this subsection, an "employee" of a given * * * *employing unit* shall be deemed "employed" by that * * * *employing unit* for the purposes of this chapter.

(6) WAGES. "Wages" means every form of remuneration payable for a given period (or paid within such period, if this basis is permitted or prescribed by the commission) to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and the reasonable (actual or estimated average) value of board, rent, housing, lodging, payments in kind, and any other similar advantage received from the individual's * * * *employing unit* or directly with respect to work for * * * *it*; but there shall not be treated as "wages" the actual (or reasonably estimated average) amount of any required or necessary expenses incurred by an individual on his job. Tips shall be counted as "wages" solely for benefit purposes.

SECTION 2. 108.04 (1) (a), (4) (c), (5), (7) (a) and (b), (8) (d), (10), (13) (a) and (15) (intro. par.) and (b), of the statutes are amended to read:

108.04 (1) AVAILABILITY FOR WORK. (a) An employe shall be ineligible for benefits for any week in which he is with due notice called on by his current * * * *employing unit* to report for work actually available within such week and is unavailable for work or physically unable to do his work.

(4) (c) An employe shall not be eligible to receive benefits from the account of an employer who is engaged in the canning of fresh perishable fruits or vegetables, based on his weeks of employment by such employer ending within a given calendar year, if during such year he has been employed by such employer solely within the active canning season or seasons (as determined by the commission) of the establishment in which he has been employed by such employer, unless he had earned wages (for services performed for one or more other * * * *employing units*, and submits adequate evidence of such wages) of \$200 or more during the 52 weeks preceding his first week of employment by such canning employer ending within such year.

(5) DISCHARGE FOR MISCONDUCT. An employe's eligibility, for benefits based on those credit weeks then accrued with respect to an * * * *employing unit*, shall be barred for any week of unemployment completed after * * * he has been discharged by the * * * *employing unit* for misconduct connected with his employment; provided, moreover, that such employe shall be deemed ineligible for benefits (from other previous employer accounts) for the week in which such discharge occurred and for the 3 next following weeks.

(7) VOLUNTARY TERMINATION OF EMPLOYMENT. (a) If an employe terminates his employment with an * * * *employing unit*, he shall be ineligible for any benefits based on such employment, and ineligible for benefits based on other previous employment for the week of termination and the 4 next following weeks, except as hereinafter provided.

(b) Paragraph (a) shall not apply if the commission determines that the employe terminated his employment with good cause attributable to the * * * *employing unit*.

(8) (d) An employe shall be deemed to have good cause under par. (a) if the commission determines that his failure related to new work for a new * * * *employing unit* at a lower grade of skill or significantly lower rate of pay than applied to him on one or more recent jobs, and that he had not yet had a reasonable opportunity (in view of labor market conditions and his degree of skill, but not to exceed 6 weeks after he became unemployed) to seek a new job substantially in line with his job skill and prior rate of pay.

(10) LABOR DISPUTE. An employe who has left (or partially or totally lost) his employment with an * * * *employing unit* because of a strike or other bona fide labor dispute shall not be eligible for benefits from such (or any previous) employer's account for any week in which such strike or other bona fide labor dispute is in active progress in the establishment in which he is or was employed.

(13) NOTIFICATION AS TO INELIGIBILITY. (a) The commission may take administrative notice of any fact indicating an employe's ineligibility, whether or not the * * * *employing unit* has reported such fact or asserted the employe's ineligibility under this chapter.

(15) RETIREMENT PAYMENTS. If an employe claims benefits based on his past work for a covered employer, but such employer duly notifies the commission pursuant to sub. (13), and the commission determines, that the employe is receiving or has claimed and will receive retirement payments, as to any week covered by his benefit claim, under a group retirement system to whose financing any * * * *employing unit* has substantially contributed or under a government retirement (or old-age insurance) system or under both, then the benefits thus claimed:

(b) Shall not be denied for any such week, from the account of such employer, if the employe is otherwise eligible and left or lost his employment with that (or any other) * * * *employing unit* because he had reached the compulsory retirement age used by the * * * *employing unit* in question.

Approved August 15, 1957.