

CHAPTER 94

LABOR AND INDUSTRY

HOUSE BILL 95-1275

BY REPRESENTATIVES Berry, Dyer, May, Schauer, Congrove, Epps, Foster, Friednash, Hagedorn, Jerke, Lamm, Lawrence, Musgrave, Prinzler, Reeser, and Schwarz;
also SENATORS Dennis, R. Powers, Schroeder, Tebedo, Wattenberg, Blickensderfer, and Matsunaka.

AN ACT**CONCERNING LIMITATIONS ON THE GRANTING OF UNEMPLOYMENT COMPENSATION BENEFITS DUE TO ACTS AND OMISSIONS OF WORKERS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-73-108 (4) (b) (I), (4) (b) (II), (4) (b) (IV), (4) (e), (4) (k), (5) (e) (VI), (5) (e) (VII), (5) (e) (IX), and (5) (e) (X), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-73-108. Benefit awards. (4) **Full award.** An individual separated from a job shall be given a full award of benefits if any of the following reasons and pertinent conditions related thereto are determined by the division to have existed. The determination of whether or not the separation from employment shall result in a full award of benefits shall be the responsibility of the division. The following reasons shall be considered, along with any other factors which may be pertinent to such determination:

(b) (I) The health of the worker is such that ~~he~~ **THE WORKER** is separated from his OR HER employment and must refrain from working for a period of time **THAT EXCEEDS THE GREATER OF THE EMPLOYER'S MEDICAL LEAVE OF ABSENCE POLICY OR THE PROVISIONS OF THE FEDERAL "FAMILY AND MEDICAL LEAVE ACT OF 1993", IF APPLICABLE,** or the worker's health is such that ~~he~~ **THE WORKER** must seek a new occupation, or the health of the worker ~~his~~ **OR THE WORKER'S** spouse or ~~his~~ **dependent child** is such that the worker must leave the vicinity of ~~his~~ **THE WORKER'S** employment; except that, if the health of the worker or ~~that of his~~ **THE WORKER'S** spouse or ~~his~~ **dependent child** has caused the separation from work, the worker, in order to be entitled to a full award, must have complied with the following requirements: Informed ~~his~~ **THE WORKER'S** employer **IN WRITING, IF THE EMPLOYER**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

HAS POSTED OR GIVEN ACTUAL ADVANCE NOTICE OF THIS WRITING REQUIREMENT, of the condition of ~~his~~ THE WORKER'S health or the health of ~~his~~ THE WORKER'S spouse or dependent child prior to ~~his~~ separation from employment AND ALLOWED THE EMPLOYER THE OPPORTUNITY TO MAKE REASONABLE ACCOMMODATIONS FOR THE WORKER'S CONDITION; substantiated the cause by a competent written medical statement issued by a licensed practicing physician prior to the date of ~~his~~ separation from employment when so requested by the employer prior to the date of ~~his~~ separation from employment or within a reasonable period thereafter; submitted himself or ~~his~~ HERSELF OR THE WORKER'S spouse or ~~his~~ dependent child to an examination by a licensed practicing physician selected and paid by the interested employer when so requested by the employer prior to the date of ~~his~~ separation from employment or within a reasonable period thereafter; or provided the division, when so requested, with a written medical statement issued by a licensed practicing physician. FOR PURPOSES OF PROVIDING THE MEDICAL STATEMENT OR SUBMITTING TO AN EXAMINATION FOR AN EMPLOYER, "A REASONABLE PERIOD THEREAFTER" SHALL INCLUDE THE TIME BEFORE ADJUDICATION BY EITHER A DEPUTY OR REFEREE OF THE DIVISION. An award of benefits pursuant to this subparagraph (I) shall include benefits to a worker who, either voluntarily or involuntarily, is separated from employment because of pregnancy and who otherwise satisfies the requirements of this subparagraph (I).

(II) In the event of an injury or sudden illness of the worker which would preclude VERBAL OR WRITTEN notification of the employer prior to such occurrence, the failure of the worker to notify the employer prior to such occurrence will not in itself constitute a reason for the denial of benefits if the worker has notified the employer at the earliest practicable time after such occurrence. SUCH NOTICE SHALL BE GIVEN NO LATER THAN TWO WORKING DAYS FOLLOWING SUCH OCCURRENCE UNLESS THE WORKER'S PHYSICIAN PROVIDES A WRITTEN STATEMENT TO THE EMPLOYER WITHIN ONE WEEK OF THE EMPLOYER'S REQUEST THAT THE WORKER'S CONDITION MADE GIVING SUCH NOTICE IMPRACTICABLE AND SUBSTANTIATING THE ILLNESS OR INJURY.

(IV) The off-the-job or on-the-job use of not medically prescribed intoxicating beverages or controlled substances, as defined in section 12-22-303 (7), C.R.S., may be reason for a determination for a full award pursuant to this paragraph (b), but only if:

(A) The worker has declared to the division that he is addicted to intoxicating beverages or controlled substances;

(B) The worker has substantiated the addiction by a competent written medical statement issued by a physician licensed to practice medicine pursuant to article 36 of title 12, C.R.S., or has substantiated the successful completion of, or ongoing participation in, a treatment program as described in sub-subparagraph (C) of this subparagraph (IV) within four weeks of the claimant's admission. SUCH SUBSTANTIATION SHALL BE IN WRITING TO THE DIVISION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE APPROVED TREATMENT PROGRAM.

(C) A worker who is not affiliated with an approved treatment program must present to the division within four weeks after the date of the medical statement referred to in sub-subparagraph (B) of this subparagraph (IV), SUBSTANTIATION OF REGISTRATION IN a program of corrective action which will commence within four

weeks after the date of the medical statement and which is provided by an approved private treatment facility or an approved public treatment facility as defined in section 25-1-302 (2) or (3), C.R.S., or by an alcoholics anonymous program. SUCH SUBSTANTIATION SHALL BE IN WRITING TO THE DIVISION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE APPROVED TREATMENT PROGRAM. ~~and~~

(D) THE DIVISION SUBSTANTIATES AND SO NOTIFIES THE EMPLOYER THAT no prior award under the provisions of THIS subparagraph (IV) ~~of this paragraph (b)~~ has been made to the worker within the preceding five years.

(e) Unreasonable reduction in the worker's rate of pay as determined by the division. In determining whether or not there has been an unreasonable reduction in the worker's rate of pay, the division shall consider, but shall not be limited to a consideration of, whether or not the reduction in pay was applied by the employer to all workers in the same or similar class or merely to this individual, the general economic conditions prevailing in the state, the financial condition of the employer involved, and whether or not the reduction in wage was agreed to by other workers employed in the same or similar work. THE WORKER'S LOSS OF A SHIFT DIFFERENTIAL OR OVERTIME PAY SHALL NOT BE CONSIDERED AN UNREASONABLE REDUCTION IN THE WORKER'S RATE OF PAY UNDER THIS PARAGRAPH (e), UNLESS SUCH SHIFT DIFFERENTIAL OR OVERTIME PAY WAS GUARANTEED BY THE EMPLOYER.

(k) Refusing with good cause to work overtime without reasonable advance notice. Good cause as used in this paragraph (k) shall be restricted to REASONABLE, compelling personal reasons AS DETERMINED BY THE DIVISION affecting either the worker or ~~his~~ THE WORKER'S immediate family.

(5) **Disqualification.** (e) Subject to the maximum reduction consistent with federal law, and insofar as consistent with interstate agreements, if a separation from employment occurs for any of the following reasons, the employer from whom such separation occurred shall not be charged for benefits which are attributable to such employment and, because any payment of benefits which are attributable to such employment out of the fund as defined in section 8-70-103 (13) shall be deemed to have an adverse effect on such employer's account in such fund, no payment of such benefits shall be made from such fund:

(VI) Insubordination such as: Deliberate disobedience of a reasonable instruction of an employer or ~~his~~ AN EMPLOYER'S duly authorized representative, refusal or failure to obtain, MAINTAIN, or renew licenses, CERTIFICATIONS, CREDENTIALS, CONDITIONS, OR OTHER PROFESSIONAL DESIGNATIONS which are necessary to permit the claimant to perform ~~his~~ A job, failure to keep in good standing with the union because of nonpayment of dues, or repeated acts of agitation against employer working conditions, pay scale, policies, or procedures; except that orderly action on the part of an employee or through union negotiation shall not be so considered if such action does not interfere with work performance;

(VII) Violation of a statute or of a company rule which resulted or could have resulted in serious damage to the employer's property or interests or could have endangered the life of the worker or other ~~employees~~ PERSONS, such as: Mistreatment of patients in a hospital or nursing home; serving liquor to minors; selling prescription items without prescriptions from licensed doctors; ~~profane or obscene language after~~

warnings; immoral conduct which has an effect on worker's job status; divulging of confidential information which resulted or could have resulted in damage to the employer's interests; failure to observe conspicuously posted safety rules; intentional falsification of expense accounts, inventories, or other records or reports WHETHER OR NOT SUBSTANTIAL HARM OR INJURY WAS INCURRED; or removal or attempted removal of employer's property from the premises of the employer without proper authority;

(IX) On-the-job use of OR DISTRIBUTION OF not medically prescribed intoxicating beverages or controlled substances, as defined in section 12-22-303 (7), C.R.S.;

(X) Incarceration after conviction of a violation of any law, or loss of license, ~~which~~ CERTIFICATION, CREDENTIAL, CONDITION, OR OTHER PROFESSIONAL DESIGNATION THAT is essential to job performance; ~~through a violation of any law;~~

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 20, 1995