

## **CHAPTER 52-07.1 EXTENDED BENEFIT PROGRAM**

### **52-07.1-01. Extended benefit program - Purpose - Effective date.**

Effective January 1, 1972, an unemployment program is hereby established to provide for the payment of extended unemployment compensation benefits to hereinafter qualified workers who during periods of high unemployment in the state, or in the nation, have exhausted their rights to regular benefits under the North Dakota unemployment compensation law, or under federal law as administered by job service North Dakota.

### **52-07.1-02. Administration.**

Job service North Dakota, hereinafter called the "bureau", is vested with the duties, powers, and authority to administer the extended benefits program.

### **52-07.1-03. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Additional benefits" means benefits payable to exhaustees by reasons of conditions of high unemployment or by reason of other special factors under the provisions of any state law.
2. "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.
3. "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:
  - a. Has received, prior to such week, all of the regular benefits that were available to the individual under chapter 52-06 or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in the individual's current benefit year that includes such week; provided, that for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to the individual, although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits;
  - b. Having established a benefit year, no regular compensation is payable to the individual during such year because the individual's wage credits were canceled or the individual's right to regular compensation was totally reduced as the result of the application of a disqualification;
  - c. Has a benefit year which has expired prior to such week and has insufficient wages or employment or both on the basis of which the individual could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, the individual is precluded from receiving regular compensation by reason of a state law provision which requires that an individual who has received benefits during a benefit year must have had work since the beginning of such year in order to qualify for benefits in the individual's next benefit year; or
  - d. Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act [52 Stat. 1094; 45 U.S.C. 351 et seq.], the Trade Expansion Act of 1962 [Pub. L. 87-794; 76 Stat. 872; 19 U.S.C. 1801 et seq.], the Automotive Products Trade Act of 1965 [Pub. L. 89-283; 79 Stat. 1016; 19 U.S.C. 2001 et seq.], and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if the individual is

seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits thereunder, the individual must be considered an exhaustee.

4. "Extended benefit period" means a period which begins with the third week after a week for which there is a state "on" indicator; and ends with either of the following weeks, whichever occurs later: the third week after the first week for which there is a state "off" indicator; or the thirteenth consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.
5. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this chapter for weeks of unemployment in the individual's eligibility period.
6. Repealed by S.L. 1983, ch. 541, § 8.
7. Repealed by S.L. 1983, ch. 541, § 8.
8. "Rate of insured unemployment", for purposes of subsections 11 and 12, means the percentage derived by dividing:
  - a. The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the bureau on the basis of its reports to the United States secretary of labor, by
  - b. The average monthly employment covered under the North Dakota unemployment compensation law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.Computations provided for in this subsection must be made by the bureau in accordance with regulations provided by the United States secretary of labor.
9. "Regular benefits" means benefits payable to an individual under chapter 52-06 or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.
10. "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954 [26 U.S.C. 3304].
11. There is a "state 'off' indicator" for this state for a week if the bureau determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter:
  - a. Was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or
  - b. Was less than five percent.
12. There is a "state 'on' indicator" for this state for a week if the bureau determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter:
  - a. Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and
  - b. Equaled or exceeded five percent.

**52-07.1-04. Effect of North Dakota unemployment compensation law provisions relating to regular benefits on claims for, and the payment of, extended benefits.**

Except when the result would be inconsistent with the other provisions of this chapter, as provided by regulations of the bureau, the provisions of chapter 52-06 which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

#### **52-07.1-05. Eligibility requirements for extended benefits.**

An individual is eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the bureau finds that with respect to such week:

1. The individual is an "exhaustee" as defined in subsection 3 of section 52-07.1-03; and
2. The individual has satisfied the requirement of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

#### **52-07.1-06. Weekly extended benefit amount.**

The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period is an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year. Provided, that for any week during a period in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period must be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, must be rounded to the nearest lower full dollar amount.

#### **52-07.1-07. Total extended benefit amount.**

The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year must be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to the individual under chapter 52-06 in the individual's applicable benefit year; or
2. Thirteen times the individual's weekly benefit amount which was payable to the individual under chapter 52-06 for a week of total unemployment in the applicable benefit year. Provided further, that during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to the individual's applicable benefit year must be reduced by an amount equal to the aggregate of the reductions under section 52-07.1-06 in the weekly amounts paid to the individual.

#### **52-07.1-08. Beginning and termination of extended benefit period.**

Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the bureau shall make an appropriate public announcement.

#### **52-07.1-08.1. Cessation of extended benefits when paid under an interstate claim in a state where extended benefit period is not in effect.**

1. Except as provided in subsection 2, an individual is not eligible for extended benefits for any week if:
  - a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and
  - b. No extended benefit period is in effect for such week in such state.
2. Subsection 1 does not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this section, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

### **52-07.1-08.2. Eligibility for extended benefits.**

1. Notwithstanding the provisions of section 52-07.1-04, an individual is ineligible for payment of extended benefits for any week of unemployment in the individual's eligibility period if the bureau finds that during such period:
  - a. The individual failed to accept any offer of "suitable work", as defined under subsection 3, or failed to apply for any suitable work to which the individual was referred by the bureau; or
  - b. The individual failed to actively engage in seeking work as prescribed under subsection 5.
2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subsection 1 must also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until the individual has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.
3. For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:
  - a. The individual's extended weekly benefit amount as determined under section 52-07.1-06; plus
  - b. The amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954 [26 U.S.C. 501], payable to such individual for such week; and further,
  - c. Pays wages not less than the higher of:
    - (1) The minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. 206], without regard to any exemption; or
    - (2) The applicable state or local minimum wage; and
  - d. Provided, however, that no individual may be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:
    - (1) The position was not offered to such individual in writing and was not listed with the bureau.
    - (2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 52-06-36 to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection.
    - (3) The individual furnishes satisfactory evidence to the bureau that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual must be made in accordance with the definition of suitable work for regular benefit claimants in section 52-06-36 without regard to the definition specified by this subsection.
4. Notwithstanding the provisions of section 52-07.1-04 to the contrary, no work may be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 [26 U.S.C. 3304] and set forth under section 52-06-36.
5. For the purposes of subdivision b of subsection 1, an individual must be treated as actively engaged in seeking work during any week if:
  - a. The individual has engaged in a systematic and sustained effort to obtain work during such week; and
  - b. The individual furnishes tangible evidence that the individual has engaged in such effort during such week.
6. The bureau shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subsection 3.

7. An individual is not eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period if such individual has been disqualified for regular benefits under this chapter because the individual voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work, unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this chapter requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

**52-07.1-08.3. Extended benefit reduction for trade readjustment allowances.**

Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends with an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, must be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

**52-07.1-09. Enforcement and carrying out of program for extended benefits.**

The provisions of chapters 52-01, 52-02, 52-03, 52-04, and 52-05 in respect to the carrying out of the provisions of this chapter shall be the same as are set forth therein and shall be applicable, insofar as the provisions thereof are consistent, with the provisions of this chapter.