

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY UNEMPLOYMENT INSURANCE

[R06-501]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 50 | Amend |
| R6-3-50155 | Amend |
| R6-3-5105 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(a) and 41-1954(A)(3)
Implementing statutes: A.R.S. §§ 23-771(D); 23-775(1), 23-775(2), and 23-727(D)
- 3. The effective date of the rules:**
December 20, 2006
- These rules will become effective immediately upon being filed with the Secretary of State. Under A.R.S. § 41-1032(A)(4), a rule may become effective immediately if the rule provides a benefit to the public and a penalty is not associated with violation of this rule. This rule benefits the public by establishing that a victim of domestic violence is eligible for benefits if the worker was forced to leave the job or is discharged from the job because of circumstances connected to the domestic violence. The rule also benefits the public by establishing that in these circumstances, an employer's unemployment tax rate will not be adversely affected since the worker left the job for reasons not attributable to the employer.
- 4. A list of all previous notices appearing in the register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 2388, June 24, 2005
Notice of Proposed Rulemaking: 11 A.A.R. 2350, June 24, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|----------|---|
| Name: | Beth Broeker |
| Address: | Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005 |
- or
- | | |
|--|---|
| | Department of Economic Security
1789 W. Jefferson, Site Code 837A
Phoenix, AZ 85007 |
|--|---|
- | | |
|------------|----------------|
| Telephone: | (602) 542-6555 |
| Fax: | (602) 542-6000 |
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

Notices of Final Rulemaking

The Arizona Department of Economic Security administers the state Unemployment Insurance (UI) program, authorized under Titles II and IX of the Social Security Act, the Federal Unemployment Tax Act, and Arizona Revised Statutes Title 23, Chapter 4.

R6-3-50155 provides guidelines for determining whether an individual who leaves work because of domestic circumstances is eligible for the receipt of unemployment insurance benefits. R6-3-5105 provides general guidelines for determining whether a person who has been discharged from a job will be eligible for benefits.

The proposed amendments to these rules were initiated in response to a petition from an advocacy group. The changes will add specific language to establish that a worker who is a victim of domestic violence is eligible for benefits if the worker was forced to leave the job or is discharged from the job because of circumstances connected to the domestic violence. The employer's unemployment insurance experience rating (tax) account will not be adversely affected since the worker left the job for reasons not attributable to the employer.

7. **A reference to any study that the agency reviewed and relied on or did not rely on in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
There will be a positive impact on small business and consumers. The changes will assure that a worker forced to leave the job due to the worker being a victim of domestic violence will be eligible for unemployment insurance benefits. Further, since this type separation is not attributable to the employer, the employer's experience rating (tax) account will not be adversely affected by the payment of these benefits.
10. **A description of the changes between the proposed rules, including supplemental notices, and the final rules:**
Minor typographical and grammatical changes were made in response to comments from G.R.R.C. staff.
11. **A summary of the comments made regarding the rule and the agency response to them:**
The Department received no comments regarding this rule.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None
13. **Incorporations by reference and their locations in the rules:**
None
14. **Was this rule previously made as an emergency rule?**
No
15. **The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY ~~RULES~~

Section
R6-3-50155. Domestic ~~circumstances~~ Circumstances

ARTICLE 51. DISCHARGE BENEFIT POLICY

Section
R6-3-5105. General

ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY ~~RULES~~

R6-3-50155. Domestic ~~circumstances~~ Circumstances

A. General.

1. A worker who ~~quits~~ left work because of a domestic ~~obligations~~ obligation involving a legal or moral ~~responsibilities~~ responsibility of such a compelling nature that ~~he the worker cannot could not~~ disregard them it would leave left work

Notices of Final Rulemaking

- for a compelling personal ~~reasons~~ reason not attributable to the employer.
2. However, the mere existence of ~~family such a domestic obligations~~ obligation under subsection (A)(1) does not of itself mean that the worker was compelled to leave. If ~~he had the worker~~ the worker had a reasonable alternative to leaving work ~~quitting which he that the worker failed to exercise, he the worker will be found to have left voluntarily.~~
 - 3- ~~The availability for work of the individual who leaves for domestic reasons must always be examined.~~
- B. Care of children.** ~~Parents or persons who assume responsibility for the welfare of children not their own are morally and legally obligated to provide care and attention for those children.~~
- 1- ~~Leaving~~ A worker who left work to provide care for ~~children~~ a child may be have left:
 1. ~~For~~ for a compelling personal ~~reasons~~ reason not attributable to the employer, depending upon the degree of necessity for the ~~claimant~~ worker to provide that care. The Department shall consider the following factors when making its determination. These factors should be considered:
 - a. Child's age,
 - b. ~~Child's health~~ Health,
 - c. Home and neighborhood surroundings ~~which that~~ that might affect the child's safety,
 - d. Availability of child care arrangements, and
 - e. Availability of a leave of absence for the worker; or:
 2. ~~With~~ The leaving may be with good cause in connection with the work if:
 - a. The hours of work or place of employment ~~are were~~ changed; or
 - b. The employer, without valid reason, ~~refuses~~ refused a leave of absence.
- C. Home, spouse, or parent in another locality.**
1. ~~The Department shall consider a~~ A spouse or unemancipated minor who ~~leaves left work to accompany or join the other spouse or a parent who has moved to a new locality, from which it is impractical to commute, shall be considered to have done so left work~~ leaves left work for a compelling personal reason not attributable to the employer, ~~and not warranting disqualification for benefits provided that if~~ and not warranting disqualification for benefits provided that if the other spouse or parent moved:
 - a. For a compelling personal reason; or
 - b. ~~For the purpose of establishing~~ To establish a domicile at the new locality for three or more months ~~or longer; or,~~
 - e. ~~From a locality other than that in which the spouse or unemancipated minor lived and other spouse or parent had no intention, within the foreseeable future, of establishing a domicile at the locality which the spouse or unemancipated minor left.~~
 2. ~~The Department shall consider a~~ A spouse or unemancipated minor who ~~leaves left work~~ leaves left work to accompany the other spouse or a parent who is a member of the armed services and who is transferred to another locality as a result of official orders ~~is considered to have left work~~ is considered to have left work for a compelling personal reason not attributable to the employer ~~and not warranting disqualification for benefits.~~
 3. For the purpose of this Section, an "unemancipated minor" is a person who is less than 18 years of age, is single, and who lives in the same household as the parent except for temporary absences, ~~e.g., such as~~ such as school attendance, vacations, ~~or hospitalization, etc.~~
- D. Household duties.** ~~An individual who quits~~ A worker who left work because working interferes with household duties ~~leaves left work~~ leaves left work without good cause in connection with ~~his the work,~~ the work, unless the household duties required of ~~him the worker~~ the worker are so compelling as to leave no reasonable alternative to leaving work.
- E. Housing.**
1. When a worker ~~quits left work~~ leaves left work because of housing problems, ~~it must be determined~~ the Department shall determine whether if his the worker left leaving was with or without good cause or for a compelling personal reason not attributable to the employer. ~~Among the~~ The Department shall consider the following factors to be considered are:
 - a. The availability of adequate housing within a reasonable distance ~~to his of the work,~~
 - b. The cost of housing in relation to wages, ~~and~~
 - c. Prospects of other work ~~offering a solution to his that would eliminate the housing problems~~ problem.
 2. A worker ~~leaves left~~ leaves left with good cause in connection with ~~his the work~~ the work if:
 - a. Adequate housing ~~is was~~ is was promised by an employer and ~~is was~~ is was not provided; or
 - b. The employer ~~informs~~ informed the worker that housing ~~is was~~ is was available, but such housing ~~is was~~ is was so primitive or sub-standard that it ~~is was~~ is was a menace to the health of the worker or ~~his the worker's~~ the worker's family.
- F. Illness or death of others.**
1. A worker who ~~quits left work~~ leaves left work because of the death, or illness of a member of ~~his the worker's~~ the worker's immediate family or to provide care for a family member ~~would leave left work~~ leaves left work for a compelling personal ~~reasons~~ reason not attributable to the employer if:
 - a. A leave of absence ~~cannot could not~~ cannot could not be obtained or would ~~be have been~~ be have been impracticable, and
 - b. No other reasonable alternative ~~exists to leaving work~~ exists to leaving work existed.
 2. A worker ~~leaves who left work to care for an ill relative left work~~ leaves who left work to care for an ill relative left work with good cause in connection with ~~his the work;~~ the work;
 - a. If ~~his the worker's~~ the worker's difficulty in caring for the ill relative ~~is was~~ is was due to a change in working conditions, or
 - b. When the employer, without a valid reason, refused to grant a leave of absence for this purpose.

Notices of Final Rulemaking

3. ~~For the purposes of this Section, the following are members of a worker's immediate family. The following shall be considered members of the immediate family in applying this policy:~~

~~Father Son
Mother Daughter
Brother Husband
Sister Wife~~

- ~~a. Spouse;
b. Parent;
c. Child;
d. Sibling; and
e. Any other person with a similar relationship to the worker, including foster parent, step-child, or guardian.~~

~~Note: This list may be extended to include other persons whose relationship to the claimant closely resembles the above because of personal circumstance, e.g., foster parents, child raised by a distant relative, etc.~~

G. Marriage

1. When a worker ~~quits~~ left work to be get married or because ~~he~~ the worker has married, the leaving is voluntary and without good cause in connection with the work.
2. If the employer ~~terminates~~ terminated the employment because of a company rule ~~which that~~ prohibits continuing employment of both employees when co-workers marry, the separation is a discharge.

H. Domestic violence. Under A.R.S. § 23-771(D), if a worker ~~left work because of domestic violence as defined in A.R.S. § 13-3601 or § 13-3601.02, the worker has left for a compelling personal reason not attributable to the employer if:~~

1. The circumstances required the worker to leave work and a leave of absence was not available or would have been impractical; or
2. Remaining with the employer would present a threat to the safety of the worker, the worker's family, or co-workers and no other reasonable alternative to leaving work existed.

ARTICLE 51. DISCHARGE BENEFIT POLICY

R6-3-5105. General

A. Misconduct

1. ~~The following constitute misconduct. Misconduct~~ sufficient to disqualify a ~~claimant worker~~ from receipt of unemployment insurance benefits pursuant to A.R.S. § 23-775(2): ~~must be~~
- a. ~~An~~ an act of wanton or willful disregard of the employer's interest;₂
- b. ~~A~~ a deliberate violation of the employer's rules;₂
- c. ~~A~~ a disregard of standards of behavior ~~which that~~ the employer has the right to expect of an employee;₂ or
- d. Negligence ~~negligence in~~ to such a degree,₂ or a recurrence of negligence that as to:
- i. Manifests ~~manifest~~ culpability, wrongful intent, or evil design, or
- ii. Shows ~~show~~ an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.
2. A ~~claimant worker does not~~ need ~~not~~ to have ~~actually acted with intent~~ intended to wrong the employer for the Department to find to result in a finding of misconduct connected with the work. Misconduct may be established if there is:
- a. Indifference ~~indifference~~ to and neglect of the duties required of the worker by the contract or terms of employment;₂ or
- b. A violation ~~material breach~~ of any material lawful duty required under the employment contract or terms of employment, when the employer expressly ~~such duty is expressed~~ or impliedly set ~~sets~~ forth the duty to the worker and the facts show the worker should have reasonably been able to avoid the situation ~~which that~~ brought about the discharge.
- 3-i. In determining whether ~~the~~ a worker ~~would be~~ should have been reasonably expected to have avoided the situation ~~which that~~ caused the discharge, ~~consideration should be given~~ the Department shall consider the worker's knowledge of the worker's responsibilities through past experience, explanations, warnings, or other similar occurrences, etc.
- ii. The Department shall evaluate the materiality of a duty and the materiality of the breach of ~~such~~ the duty ~~should be evaluated in the light of~~ by considering what is customary in the type of business in which the ~~claimant worker~~ was employed.

B. Discharge Separation for a compelling personal ~~reasons~~ reason not attributable to the employer.

1. The Department ordinarily restricts the determination of a A separation from work for compelling personal reasons is ~~usually~~ restricted to the circumstances ~~which that~~ have no direct relation to a worker's employment and ~~usually~~ occurs when a ~~claimant worker left~~ quits employment for a cause beyond the ~~claimant's~~ worker's control. However, ~~under the circumstances set forth in (B)(2) below, the Department may make a compelling personal reason determination that the worker was discharged for a compelling personal reason not attributable to the employer may be made~~

Notices of Final Rulemaking

- ~~where when~~ the employer ~~acted to discharge~~ discharged the ~~claimant~~ worker under subsections (B)(2) and (B)(3).
2. The Department may determine a determination that the claimant worker was discharged for a compelling personal reason not attributable to the employer when must establish that:
 - a. The employer had no reasonable alternative but to discharge the ~~claimant~~ worker; and
 - b. One or more of the following circumstances is present:
 - i. The ~~claimant~~ worker ~~is was~~ discharged because of an absence due to incarceration ~~which that~~ is determined not to be misconduct under R6-3-5115(E)(1);
 - ii. The ~~claimant~~ worker ~~is was~~ discharged because of a physical or mental condition ~~which that~~ might have endangered the ~~claimant's~~ worker's own safety on the job or the safety of others, ~~for example such as~~ epilepsy; ~~or~~ active tuberculosis; ~~etc.~~; or
 - iii. The ~~claimant~~ worker ~~is was~~ discharged because the ~~claimant~~ worker was unable to properly perform the work due to a physical or mental condition; or
 - iv. The ~~claimant~~ worker ~~is was~~ discharged because the employer ~~has~~ entered into an agreement with another party, other than the ~~claimant~~ worker, ~~which that~~ would result in a violation by the employer of a federal or state law if the ~~claimant~~ worker ~~is were~~ retained in employment.
 3. The Department shall determine that a discharge was for a compelling personal reason not attributable to the employer when a worker was discharged because of events beyond the worker's reasonable control as a result of the worker being a victim of domestic violence, as defined in A.R.S. §§ 13-3601 and 13-3601.02. Examples of such events are the worker receiving unsolicited phone calls, unauthorized visitors, or other types of harassment at the work place.
 34. For the purposes of this Section, the definitions of "compelling personal reasons," and "not attributable to the employer" are the same as R6-3-5005 definitions of "compelling", "personal reasons", and "attributable to the employer", refer to Voluntary Leaving, R6-3-5005(C).