

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2106

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2106

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6785

Committee Clerk Signature

*Eva Lubelt*

Minutes:

Chairman Klein called the hearing to order. Bill 2106 anyone to speak to that?

Darren Brostrom, Job Service testified in support of SB#2106. See attachment 1.

(Discussed when to use monetary penalties).

Chairman Klein: Darren, why don't we take a look at attachment A, to see if there are any questions.

Darren Brostrom: Mr. Chairman, I can certainly do that. (Discusses attachment A).

Senator Nodland: What are we trying to do here? These are treated differently and we're trying to treat them the same?

Darren Brostrom: Goal is to treat them the same. Discusses what's in the handout, explaining further their intent.

Chairman Klein: Darren do you feel it's unfair the way it is being done, or are you trying to make it easier for the agency?

Darren Brostrom: There is an issue where two claimants are treated differently.

(Continued discussion on the fairness of 2106 for the employee and if it is necessary to do any changing).

Chairman Klein: Darren, you say that less than one percent would be affected by the change proposed in this bill?

Darren Brostrom: One percent was just put out there because it represents a low number. Sixty five individuals were affected by this in 2008. (There was more discussion on understanding of the bill.)

Chairman Klein: Any others in favor? Anyone else in opposition of 2016?

David L. Kemnitz, President of ND AFL- CIO, in opposition of the bill. The sixty three individuals that are impacted by this are just trying to make ends meet as best they can. North Dakota is an at will State, any reason or no reason a person can be let go from employment without recourse. Mr. Kemnitz continues to explain his opposition, stating that these individuals are trying to do their best and should be recognized for that.

Chairman Klein: Questions?

Senator Potter: Mr. President, you're saying that a person can be employed at one job and be receiving benefits from another job?

David L. Kemnitz: There is an offset to what they will receive, that is already in place. We are talking about a very minimal impact to the fund but a big impact to the individual.

Chairman Klein: I think we are just trying to make it even and easy so everyone is treated the same.

David L. Kemnitz: Mr. Chairman, I agree but we should treat them on the positive end of that rather than the....

Chairman Klein: That's a whole different bill, not what we're talking about today.

David L. Kemnitz: We feel Job Service is interpreting it differently than it was intended.

Senator Potter: I find myself in agreement with the Chairman. We may need an amendment to this or another piece of legislation.

Chairman Klein : We will need to hold 2106 over for awhile because the sponsor is not here at this time.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2106

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6975

Committee Clerk Signature

*Eva Lubell*

Minutes:

Chairman Klein: Committee, can we go back to 2106? The idea here is to create clarity. Is there any discussion on Senate Bill 2106?

Senator Potter: I know it's all about fairness, if a person has a second job and they're trying to get along and an employer made it difficult for them to stay, to deny their claim is difficult. But the bill itself is all about fairness.

Chairman Klein: I don't think the intent is to put any one on the street. My experience over the years is Job Service tends to lean to the claimants.

Senator Nodland: I have it noted here on page three of the testimony, it really sums it up. It allows claimant to begin receiving unemployment benefits immediately after serving their waiting week.

Chairman Klein: We have a motion for do pass.

Motion made by Senator Andrist for a do pass and Seconded by Senator Nodland.

Roll Call Vote: Yes 7 No 0 Absent 0

Floor Assignment: Senator Nodland

Date: 1/14/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. ~~\_\_\_\_\_~~

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee

Legislative Council Amendment Number 2104

Action Taken  Pass  Do Not Pass  Amended

Motion Made By Senator Andrist Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Nodland

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 14, 2009 1:04 p.m.

**Module No: SR-07-0296**  
**Carrier: Nodland**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2106: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2106 was placed on the Eleventh order on the calendar.**

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2106



# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2106

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10088

Committee Clerk Signature

*Eileen Peterson*

**Chairman Keiser:** Opened the hearing on SB relating to overcoming disqualification from unemployment compensation benefits.

**Darren Brostrom~Job Service North Dakota.** See testimony attachment.

**Representative Amerman:** Under current law, if the individual quits and terminates on the first job and is terminated at 3:00 in the afternoon, the second job starts at 7:00 at night, he goes and started to work on the second job and planning to file unemployment, so they would qualify because they went to work for the second employer?

**Brostrom:** You are correct in that situation; they would be able to use the wages from that second job that they went to work from the past for disqualification.

**Representative Amerman:** But under the new, what you are proposing, they wouldn't, correct?

**Brostrom:** What this would propose would be that in all situations, whether or not you worked that shift or worked a second shift that only the wages earned from the point of claim filing wholly could be used to overcome a disqualification. So you would still be able to use those wages from the second employer, but you would be able to use past wages prior to the separation for benefits qualification. So, it put everyone on an even playing ground because now everyone is the same.

**Representative Amerman:** It seems to me one of those are getting punished.

**Chairman Keiser:** The scenarios you have given us here are the two scenarios. Let's draw a third scenario, what this bill would do, which one of these if this bill passes.

**Brostrom:** What it ultimately does is you would be able to use the wages only from the point of separation forward. So it would be number two that would be most representative of what would be occurring going forward.

**Chairman Keiser:** Could you use the marker board and draw the scenario of three, what this bill does using the same approach.

**Brostrom:** Draws a picture of Chairman Keiser's request and explains the scenarios in the picture.

**Chairman Keiser:** Which wages would you be able to use?

**Brostrom:** You would be able to use any wage from employer to this point forward. Previously we could use wages earned by employer to six months ago, which to us seems contrary to a disqualification because we would be using wages earned in the past to overcome a situation that you are now ineligible for.

**Chairman Keiser:** You would use wages from employer one to file your claim and a misconduct you would have to have 10 times the benefit in that previous period, for termination you have to have eight times, based just on employer alone?

**Brostrom:** That's correct, what we are doing here is when you are separated from employment, we use wages from the base period from employer one and employer two to calculate a monetary eligibility. Then we determine whether or not based on reason for your separation from your employment, if you should receive benefits. Now, say you are terminated from employment and we found you (ineligible), we wouldn't use wages from employer one to overcome a disqualification because that's when separation occurred. What we do is

then look for wages from another employer to overcome that disqualification. So employer two in this situation provides those wages to work on the disqualification, our concern is that we treat everyone the same and draw a line in the sand, this is the point where we can start using those wages from an employer to overcome the disqualification rather than letting claimants use wages from six months ago and some claimants using wages going forward.

**Representative Amerman:** Is there a different scenario of what happens if this passes, in this shift I get laid off and I go over to second shift, what happens, layoff versus quit or termination?

**Brostrom:** A layoff is a different situation because there is no disqualification. Generally in the last situation because of lack of work, we go and pull monetary penalty for disqualification. In those situations you would get the benefit of using different ways, employer two, if they were the base period to increase their benefits amount monetary, but they aren't in the mix and you don't have to have wages from them to overcome any disqualification because you are going to get benefits in the first place.

**Representative Boe:** Could you give some more examples of why we have disqualifications? You said a layoff is a different scenario, what is the scenario that got us into this, you mentioned theft.

**Brostrom:** There could be a multitude of reasons but we need clear that it's two specific types of separations that would cause this situation. The first would be if you quit your job and the second situation is called misconduct for our terms. That could be anything from breaking the rules over and over again; it's hard to define misconduct because it's willful and wanton disregard of an employer's best interest. Theft is just an easy one to understand. There is a variety of things it could apply to but layoff is not one of those. If there is a lack of work or layoff due to a lack of work, this situation doesn't apply.

**Representative Boe:** A layoff would still have the desire employee and the employee you are describing now is no longer desired.

**Brostrom:** You are exactly right.

**Representative Ruby:** The amount of income you need to re-qualify for benefits again, whether you worked at the same time or worked for another employer.

**Brostrom:** That's correct, we are not changing the dollar amount earn, qualification requirement for eligibility, we would like to draw a line in the sand.

**Chairman Keiser:** Is there anyone here to testify in opposition of SB 2106.

**Dave Kemnitz~President of the North Dakota AFL-CIO.** We oppose SB 2106. We did talk to the sponsors of Job Service prior and asked questions that I'm going to ask you. In this scenario, it appears that an individual that understood the ways of the system would get the benefits and the ones who don't get penalized. What we see that somebody working two or more jobs, is probably pay check to pay check. The reasons they have left the most recent could be not always be of misconduct. I would like to know how many were misconduct and how many were just had good reason to leave that employment and yet look for another. We ask the question then, why don't we go the other way? Especially, in today's economy, with people who are borderline anyway. If there are reasons to leave an employer when you have two or three it would be many, some are very difficult. It might be there is some misunderstanding with the workers themselves, personality conflicts, and sexual harassment. Sexual harassment is not attributable to the employer but it's not the fault of the employee. There are reasons that people leave and it's not misconduct. We ask that instead of where everybody is out; why not consider putting everybody in and we are talking about 65 claimants. They are already paycheck to paycheck, if they got the second employer, but the first income they have lost, is the one that fixes the everyday unexpected expenses, so they can sustain

their employment now with the employer they have now and why shouldn't we sustain some of that until they move on to another second or third job. It was befuddling to us why this agency would move to disqualify everyone else, when in today's times, we see people working hard to make ends meet and if you have two or more jobs that means you are. See page two, line 29-31, "for the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily & without good cause attributable to the employer", there are exceptions to these things that put into law that seems deemed necessary for punishment and these people have been punished. Why, we have reached so far to change so much to catch 65 people and we haven't determined yet what it is that may have sent them off from that employment. I would like you to look at something else instead of that language that's underscored on page one and three.

Take that out and on line 11 after the words "services in" insert "all covered" and the same on page three, line 21. These people are trying to make a difference; they don't even get the waiting period of what used to be that was taken away. I don't understand why we would do such a thing.

**Representative Ruby:** If they left and don't qualify for benefits from the position they just left or terminated from, either way, they didn't really qualify for benefits whether that was their only job or another job, so it doesn't effect them in that way. It would only be if they immediately left the second job or third job and then there was an attempt to receive benefits. The scenario that you are concerned with would really have to be quite a process before it would really affect them negatively.

**Kemnitz:** It's to help these people through a system. As you explained it to me, I don't understand it in the same way. Goes on about to explain how he sees it with a example.

So what Job Service say, while to make this even, nobody gets benefits and we are saying, why aren't we looking at it that if they are working hard, they have wages from a different employer that is used in any other instance, now they can't because we have just changed the law to exclude them all. I think the interpret of the statue and the Job Service's interpretation of legislative intent from 20 years age can't prove it either way is what their using to apply law today. The only way you can turn that is by saying, "no that's what we meant, this is what we meant" and you have to change the law to make sure that happens. That's where our debate really moves to the point of the issue, "why have they done this in the first place and why wouldn't those individuals be eligible because the law isn't that clear, but the interpretation of the application of the agency is lost in the negative. You should reward people who are trying to make ends meet by just not working just one job or six hour job, so they work another one or maybe a third one. Going back to our understanding or what they said was that it didn't matter whether they had two or three; it's the first job they left, whatever the circumstances may be, because it was not misconduct but because of the litigating circumstances. Now they are punished even if they are still working and trying to make ends meet. Part of the exceptions in here says that under appeals is the individual didn't go back and the employer they had opt that you just have an award, then they are not considered unemployed either. Unemployment is more complicated that Worker's Compensation. Why don't we go the other way and give them the benefit of the doubt rather than them assume misconduct. It's not always misconduct.

**Chairman Keiser:** Darren, could you come back up, I'm thinking the committee doesn't completely understand this, but I might be wrong. Let's see if we can get to where we understand this. You have a person who is working two jobs, it doesn't matter whether they need to or choose to, do we have to assume that they are full time?

**Brostrom:** No

**Chairman Keiser:** So we don't have to worry about that but in one of the positions there comes a point of separation and that point of separation is due to misconduct which is a termination but the employer or they quite because they want.

**Brostrom:** I just want to clarify one thing here. We talk about sexual harassment, in those situations, if there is good cause for quitting, we would allow benefits.

**Chairman Keiser:** How could they quit and get benefits?

**Brostrom:** In order to quit and receive benefits it has to be for good cause attributable to the employer.

**Chairman Keiser:** So this is for misconduct or they quit for cause?

**Brostrom:** For their own personal reasons.

**Chairman Keiser:** They are still going to get coverage on that first job?

**Brostrom:** Those are the individuals that would originally become disqualified on that first job and they would fall into the situation where they would need to earn wages to overcome that disqualification.

**Chairman Keiser:** So, for either termination, they can't use the wages from the first job at all.

**Brostrom:** Correct, from the separated job.

**Chairman Keiser:** They can't use the second job unless right now there is a loophole in the law where they go to that second job one shift and then file.

**Brostrom:** No matter what, they can use wages from that second job, point of going forward in every situation, right now in the future if this legislation passed. What this legislation addresses is usage of wages from that second job prior to the claim file, which could meaning six or nine months ago you earned, adding that accumulatively to overcome a disqualification that may have occurred of an action yesterday.

**Chairman Keiser:** So, under this law, I have to stay in my second job long enough to earn that 8 or 10 times, then come back and qualify for the supplement from the first job.

**Brostrom:** You are correct.

**Chairman Keiser:** The loophole now is if I go to my second job before I apply, I get to use it and if I don't do that, or didn't know that and applied, but went to the second job the third day, I don't get it, but someone who went that day get it.

**Brostrom:** It doesn't necessarily have to be that day, it's as long as you worked prior filing you claim for unemployment checks, that then becomes your last employer. You have the concept correct.

**Chairman Keiser:** You heard Dave Kemnitz argument that you have 65 people here, why not let anybody just use that second job to overcome?

**Brostrom:** We are looking at it as there is a reason for the monetary penalty. To just randomly say that someone decided to quit, let's say, for harassment and they fall into the situation that isn't true, the purpose of the penalty is to prevent those individuals from quitting a job to collect benefits or fighting with their employer and getting terminated to receive benefits. The feeling is the intent of the legislation was to provide a penalty for some actions. We can work with this either way, we just think it's more equitable piece.

**Chairman Keiser:** So your fear is that the incentive, regardless of what happens, people will abuse the system and try to get on unemployment because they will qualify.

**Brostrom:** We do want to make any inconsistencies. Our primary thing is to have equity but we also think that there should be reason for the penalty.

**Representative Ruby:** So if I'm understanding this correctly, if you work both jobs for a long period of time and you were let go from one job, you normally be disqualified, you could almost always qualify for benefits using the second job's wages which you could always qualify for



that. Of course, you can still receive benefits while still working a second job as well to offset what you are losing. You can always qualify if you worked both job long enough.

**Brostrom:** Always is a pretty type word there, but you are correct. I think in almost all situations you could qualify for benefits which does give you the freedom to give to some things that you may not want to do the job.

**Chairman Keiser:** Whose account takes the hit?

**Brostrom:** The base period employer.

**Chairman Keiser:** The one who terminated, that you separated from.

**Brostrom:** It may not even be terminating employer; the hit always goes to base period employer who provided those wages.

**Chairman Keiser:** But let's assume that it won't go back to the second person who wages would be used to re-qualify them for the future, but going backwards, it wouldn't be assessed against them.

**Brostrom:** It could be assessed against them, depending on upon their response to us. If that second employer provided a base period wages did not respond to a notice of a claim that we sent out.

**Chairman Keiser:** Assuming that they respond, they are not going to get charged.

**Brostrom:** That correct.

**Representative Amerman:** I had it clear, now I'm confused. So an employee has two jobs, quits his first one, litigating circumstances, if this passes, you go to a second job, to qualify you have to work 8 or 10 weeks depend if they expired or quit. Then I went to my second job and was laid off in two weeks, would I get any unemployment benefits?

**Brostrom:** First, I want to understand litigating circumstances.

**Representative Amerman:** Just say I quit.

**Brostrom:** You were quitting for disqualifying benefits, is that what you are saying?

**Representative Amerman:** Say I'm fired, I'm not a quitter. I go to my second job and get two or three weeks down the road I get laid off, can I collect unemployment from somebody?

**Brostrom:** It doesn't come down to a time frame, it comes down to a dollar amount. We assign that dollar amount base upon a time frame and you must earn eight times the weekly benefit amount, which typically may be (?) weeks, depending upon your earning amount and what your benefit amount was, you could receive benefits. It all comes down to how much you earned in that time period.

**Kemnitz:** I would like clarify; I made a statement about sexual harassment and clarify his comment about the sexual harassment.

**Chairman Keiser:** Closes the hearing on SB 2106, what are the wishes of the committee?

**Representative Ruby:** Moves a Do Pass on SB 2106.

**Representative Vigesaa:** Second.

**Chairman Keiser:** Further discussion.

**Representative Boe:** This is just to do with the disqualification. It's just put the line in there that says we are not going drag any of these other wages forward to overcome the disqualification because if we do that, there is really no point in having a disqualification.

**Chairman Keiser:** That was Dave's point; one option is just to eliminate the disqualification clause in effect.

**Representative Boe:** I would like to drag out another scenario, what would happen in the case where the guy works two jobs and he talks to the one guy and say I have big thing going on and I'm expecting business to go up and I want to make you full time. So he quits his other job and goes to work for the guy full time and that job fails, and get laid off?

**Chairman Keiser:** That's whole different scenario. This doesn't affect that, an involuntary layoff where the employee through no fault of their own, gets laid off, that a whole different scenario.

**Representative Boe:** He doesn't have to re-qualify?

**Chairman Keiser:** He's qualifying as he goes forward.

**Brostrom:** He would have to make a certain amount.

**Chairman Keiser:** It's built on your earning over the last quarters, right?

**Brostrom:** You would have to have the earned from that employer full time employment; you would have to arrange to overcome that disqualification. You would have to earn that in your situation.

**Representative Boe:** Is that law in there right now if you disqualify prior to that?

**Brostrom:** Yes, if the wages you earned going forward.

**Representative Boe:** In the case where the guy says I quit my job, I finally get my full time job at the ethanol plant and works three weeks, he doesn't have his prior works experience as a part time to go back with?

**Brostrom:** He would have the wages he would use from the ethanol plant, which those are the only wages he could use to overcome the disqualification at this point and that would be the point of going forward.

**Chairman Keiser:** This isn't a disqualification, this is an involuntary termination.

**Voting roll call was taken on SB 2106 for a Do Pass with 11 ayes, 2 nays, 0 absent and**

**Representative Boe is the carrier.**

Date: March 3 - 2009

Roll Call Vote # 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO. 2106**

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Ruby Seconded By Vigasaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman		7
Vice Chairman Kasper	7		Representative Boe	7	
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe		7
Representative Ruby	7				
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 11 No 2

Absent 0

Floor Assignment Boe

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2106: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2106 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

SB 2106

Senate Bill 2106  
Testimony of Darren Brostrom  
Job Service North Dakota  
Before the  
Senate Committee On  
Industry, Business and Labor  
Senator Jerry Klein, Chairman  
January 12, 2009

*Same  
testimony +  
handout given  
to House  
3-3-09.*

Mr. Chairman and members of the committee, I am Darren Brostrom, the Unemployment Insurance Director for Job Service North Dakota. I am here today in support of Senate Bill 2106.

Senate Bill 2106 addresses a situation of claimant and employer equity by proposing guidance as to when to use wages to overcome a monetary penalty established due to a disqualifying separation. The change would specify that wages used to overcome monetary determinations be earned after the point of separation from employment. We are proposing this change so that the impact of monetary penalties is the same for all claimants, and is equitable to chargeable employers.

This proposed change would affect a very small percentage of claimants who are disqualified from receiving unemployment benefits as a result of being discharged for misconduct or quitting their employment. A recent study demonstrated that less than 1%

of claimants would be affected by the change proposed in this bill. The maximum number of affected claimants identified within each of the last several years has been sixty-five claimants in a year.

To understand the effect of this bill, I need to provide some background as to how monetary penalties are applied when an individual is terminated for misconduct, or quits a job.

A monetary penalty in this situation is not a penalty that must be paid to Job Service or any other entity; it is a requirement that an individual earn a certain amount of money prior to becoming eligible to receive unemployment insurance benefits. This is to help minimize manipulation of the unemployment insurance system, and to ensure that employers are not penalized when a claimant is discharged or quits through no fault of the employer.

Two different penalty types are established for claimants. In the case of a discharge separation, the claimant must earn ten times their weekly benefit amount to be eligible for benefits. For example, if the claimant's weekly unemployment insurance benefit amount was \$300, they would have to earn \$3,000 from a liable employer prior to becoming eligible for benefits. In the case of a quit separation, the claimant must earn eight times their weekly benefit amount to be eligible for benefits. Using the same weekly benefit



amount as noted above, the individual would have to earn \$2,400 from a liable employer prior to becoming eligible for benefits.

In certain limited circumstances, a loophole in the wording of the current statute creates an unintended situation where claimants working two or more jobs concurrently are able to avoid the impact of a monetary penalty associated with a separation disqualification. This allows a claimant to begin receiving unemployment benefits immediately after serving their waiting week, even though they were disqualified from receiving benefits.

Two variables must exist to bring about this situation. The first variable is that the individuals must be working at two or more jobs concurrently. The second variable is the timing of when the claim is filed in relation to the claimant's work schedule.

Following are two scenarios in which claimants in similar circumstances would be treated differently under current statute. In both scenarios, the claimants could share identical employment histories, and even work for the same employers. The key difference with the scenarios is the timing of when the claimant files a claim for unemployment insurance benefits.

## Scenario 1

1. Individual quits or is terminated from their first job
2. Individual works a shift at their second job
3. Individual files a claim for unemployment insurance

In this situation, the claimant is able to use all of the wages they earned from their second job, including those earned in the past, prior to the date of the claim being filed, to overcome the disqualification from the job that the individual quit. This means that past wages earned at their second job can automatically make them eligible for benefits because they have overcome the disqualification imposed.

However, if the same individual filed their claim for unemployment insurance after quitting their first job, but before working a shift at their second job, they could not use wages earned in the past to overcome the disqualification. This situation is outlined in scenario 2.

## Scenario 2

1. Individual quits or is terminated from their first job
2. Individual files a claim for unemployment insurance
3. Individual works a shift at their second job

In this situation, because the claimant filed their unemployment insurance claim prior to working a shift at their second job, the claimant is not able to use past wages earned from their second job to overcome the disqualification.

In both of the provided scenarios, the wages earned from the second employer after the date of separation can be used to overcome the disqualification. The inequity is in the use of wages earned in the past, prior to the separation.

To assist in understanding these scenarios, an attachment has been provided to give you a visual example of how this situation could occur. This visual example has been labeled Attachment A, and is included at the end of the testimony.

Some may view the proposed change as penalizing those who work concurrently at more than one job, however, one must take into consideration that the claimant is able to use wages from the second job in the calculation of their weekly benefit amount. This has

the effect of potentially increasing the claimant's weekly benefit amount and duration of benefits.

Another question that could be raised may be "why not use the wages from the past in all situations to overcome disqualifications?". While this would provide consistency, it seems contrary to the purpose of a disqualification to allow someone to circumvent a disqualification by using wages earned prior to the separation from employment.

We must also consider the financial impact on the base period employers responsible for their proportionate share of any benefit payments made to the claimant. In effect, base period employers could potentially accrue charges to their accounts, even if the individual was found to be initially ineligible for benefits.

Mr. Chairman, this concludes my testimony. At this time, I would be happy to answer any questions from the committee.

## Addressing Inequity With the Process of Using Wages to Overcome a Monetary Penalty

### Scenario 1

		Mon	Tue	Wed	Thu	Fri
Claimant A	Job 1	Individual Worked	Individual Worked	Individual Worked		
	Job 2	Individual Worked	Individual Worked		Individual Worked	

Employee quits or is discharged at end of shift Wednesday

↓

Claim for UI benefits filed on Friday

↑

1. Individual quits or is terminated from their first job
2. Individual works a shift at their second job
3. Individual files a claim for unemployment insurance

In this scenario, the claimant is able to use all of the wages they earned from their second job, including those earned in the past, prior to the date of the claim being filed, to overcome the disqualification from the job that the individual quit.

### Scenario 2

		Mon	Tue	Wed	Thu	Fri
Claimant B	Job 1	Individual Worked	Individual Worked	Individual Worked		
	Job 2	Individual Worked	Individual Worked			Individual Worked

Employee quits or is discharged at end of shift Wednesday

↓

Claim for UI benefits filed on Thursday

↑

1. Individual quits or is terminated from their first job
2. Individual files a claim for unemployment insurance
3. Individual works a shift at their second job

In this scenario, because the claimant filed their unemployment insurance claim prior to working a shift at their second job, the claimant is not able to use past wages earned from their second job to overcome the disqualification.