

DISQUALIFICATION DURING LABOR DISPUTE

SUMMARY OF ATTACHED CHART:

Of the 28 states surveyed, five permit locked out employees to receive benefits without exception. In Illinois, locked out employees can receive benefits, but are disqualified if the union engages in bad faith bargaining or violates the CBA.

Fifteen states disqualify locked out employees entirely.

One state, Texas, has issued conflicting decisions that disqualify locked out employees and permit them to receive benefits.

The six remaining states, including Colorado and California, disqualify employees who are “defensively” locked out. In these states, if the employer offensively locks out employees, they are not disqualified from receiving benefits.

STATE BY STATE:

Arizona:	All locked out employees disqualified.
Arkansas:	Locked out employees may receive benefits.
California:	Defensively locked out employees disqualified.
Colorado:	Defensively locked out employees disqualified.
Georgia:	All locked out employees disqualified.
Idaho:	All locked out employees disqualified.
Illinois:	Locked out employees may receive benefits.
Indiana:	All locked out employees disqualified.
Kansas:	All locked out employees disqualified.
Kentucky:	Locked out employees may receive benefits.
Michigan:	All locked out employees disqualified.
Missouri:	All locked out employees disqualified.
Montana:	Defensively locked out employees disqualified.
Nebraska:	All locked out employees disqualified.
Nevada:	All locked out employees disqualified.
New Mexico:	All locked out employees disqualified.
North Carolina:	All locked out employees disqualified.
Ohio:	Locked out employees may receive benefits.
Oklahoma:	Locked out employees may receive benefits.
Oregon:	All locked out employees disqualified.
South Carolina:	All locked out employees disqualified.
Tennessee:	Locked out employees may receive benefits.
Texas:	No clear rule on status of locked out employees.
Utah:	Defensively locked out employees disqualified.
Virginia:	All locked out employees disqualified.
Washington:	Disqualified during duration of lockout in response to whipsaw tactic.

West Virginia: Defensively locked out employees disqualified.
Wyoming: All locked out employees disqualified.

The Bill under consideration would remove Colorado's balanced approach and place it in the distinct minority, one of the few states granting benefits to all locked out employees.

DISQUALIFICATION DURING LABOR DISPUTE

		Labor Disputes		
State	Statute	Period of Disqualification	Exclusion because of Employer Actions	Exclusion for Certain Workers
Arizona	Ariz. Rev. Stat. §23-771 <i>et seq.</i>	Duration of employment caused by dispute.	Employer violation of contract or labor law.	Employee who is not participating in, financing, or directly interested in dispute.
Arkansas	Ark. Stat. Ann. §11-10-501 <i>et seq.</i>	Duration of a labor dispute.	Lockout.	Employee who is not participating in or directly interested in the dispute and who does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the establishment at which the dispute occurs, any of whom are participating in or directly interested in the dispute.
California	Cal. Unemp. Ins. Code §1251 <i>et seq.</i>	While dispute is in progress.	Lockout. However, under <u>McKinley v. California Employment Stabilization Commission</u> , 34 Cal.2d 239, 209 P.2d 602 (1949), where an employer association has bargained on an industry-wide basis and the parties knew that a work stoppage at one plant would lead to stoppage of all work, employees locked out by other plants after union initiated a strike at one plant not eligible for benefits.	
Colorado	Colo. Rev. Stat. §8-73-108 <i>et seq.</i>	Duration of work stoppage plus time needed to resume normal operations.	Offensive Lockout.	Employee who is not participating in, financing, or directly interested in dispute.
Georgia	Ga. Code Ann. §34-8-190 <i>et seq.</i>	Duration of work stoppage plus time needed to resume normal operations.	If lockout occurred following the expiration of the most recent CBA without any offer of or refusal to continue that CBA during continued negotiations for a new agreement.	Employee who is not participating in, financing, or directly interested in the dispute or employee does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were

				members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.
Idaho	Id. Stat. §72-1366	Duration of labor dispute.		
Illinois	80 Ill. Comp. Stat. §405/500 <i>et seq.</i>	Duration of labor dispute.	Lockout. Except: 1) the recognized bargaining representative of the locked out employees refused to meet under reasonable conditions with the employer; 2) there is a final adjudication under the NLRA that during a period of lockout the bargaining representatives refused to bargain in good faith; or 3) the lockout has resulted in response to a CBA violation by bargaining representative.	Employee is not participating in or financing or directly interested in the labor dispute and employee does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.
Indiana	Ind. Ann. Code § 22-4-15-1 <i>et seq.</i>	Duration of labor dispute plus time needed to resume normal operations.		Employee who is not participating in, financing or directly interested in the labor dispute; and employee does not belong to a grade or class of workers of which, immediately before the commencement of unemployment, there were members employed at the same premises as he, any of whom are participating in or financing or directly interested in the dispute; and he has not voluntarily stopped working.
Kansas	Kan. Stat. §44-706	Duration of work stoppage caused by dispute.		Employee who is not participating in, financing, or directly interested in dispute; failure to cross picket line or accept customary work constitutes participation.
Kentucky	Ky. Rev. Stat. Ann. §341.360 <i>et seq.</i>	Duration of labor dispute or strike.	Lockout.	
Michigan	Mich. Comp. Ann. §421.29, <i>et</i>	Duration of a labor dispute. Lockout specifically held a		Employee who is not participating in, directly

	<i>seq.</i>	“labor dispute disqualifying employees from benefits in Metro Detroit Plumbing v. ESC, 390 NW2d 150 (Mich. 1986)		interested in, financing, or directly involved in the dispute.
Missouri	Mo. Rev. Stat. §288.038 <i>et seq.</i>	Duration of work stoppage.		Employee who is not participating in, financing, or directly interested in dispute.
Montana	Mont. Code Ann. §39-51-2301 <i>et seq.</i>	Duration of work stoppage caused by dispute.	Employer violation of labor law or Offensive Lockout.	Employee who is not participating in, financing, or directly interested in dispute.
Nebraska	Neb. Rev. Stat. §48-624 <i>et seq.</i>	Duration of work stoppage caused by dispute.		Employee who is not participating in, financing, or directly interested in dispute.
Nevada	Nev. Rev. Stat. §612.380 <i>et seq.</i>	While dispute is in active progress.		Employee who is not participating in, financing, or directly interested in dispute.
New Mexico	NM §57-1-7	Duration of employees in a lockout.		
North Carolina	N.C. Stat. Ann. §96-12 <i>et seq.</i>	Duration of a labor dispute plus time needed to resume normal operations.		
Ohio	Ohio Rev. Code Ann. §4141.29	Duration of a labor dispute.	Lockout.	Employee who is not financing, participating in, or directly interested in such labor dispute.
Oklahoma	Okla. Stat. title 40 §2-401 <i>et seq.</i>	Duration of work stoppage caused by dispute.	Lockout.	Employee who is not participating in or directly interested in dispute.
Oregon	OR Stat. §657.200	Duration of lock out.		
South Carolina	S.C. Code Ann. 1976 §41-35-10 <i>et seq.</i>	Duration of a labor dispute.		Employee who is not participating in, financing, or directly interested in the dispute and does not belong to a grade or class of workers of which, immediately before he became unemployed by reason of the dispute, there were members employed at the premises at which the dispute exists, any of whom are participating in or directly interested in the dispute.
Tennessee	Tenn. Code Ann. §50-7-303	Duration of a labor dispute.	Lockout.	Employee was not participating in the labor dispute; the employee does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at

				which the labor dispute occurs, any of whom are participating in the dispute; and the employee was indefinitely separated from employment prior to the labor dispute.
Texas	Tex. Lab. Code §207.002 <i>et seq.</i>	Duration of work stoppage caused by dispute.	The Texas appellate courts have ruled both that employees locked out are disqualified and that locked out employees can receive benefits.	Employee who is not participating in, financing, or directly interested in dispute; failure to cross picket line or accept customary work constitutes participation.
Utah	Utah Code §35A-4-405	Duration of work stoppage.	Employer violation of labor law or Offensive Lockout. Under <u>Anderson v. Industrial Commission of Utah</u> , 737 P.2d 211 (Utah 1987), employees disqualified by strike or any "stoppage of work" caused by a strike. Thus, employees locked out in response to whip saw would be disqualified.	
Virginia	Va. Stat. §60.2-612.	Duration of the labor dispute		
Washington	WA Stat. §50.20.090	Duration of lock out in response to whip saw tactic in multi-employer bargaining.		
West Virginia	W. Va. Code §21a-6-1 <i>et seq.</i>	Duration of work stoppage caused by dispute.	Offensive lockout	Employee who is not participating in, financing, or directly interested in the dispute; Employee did not belong to the grade or class of workers who were participating, financing or directly interested in the dispute.
Wyoming	Wyo. Stat. §27-3-303 <i>et seq.</i>	Duration of work stoppage caused by dispute.		Employee who is not participating in, financing, or directly interested in dispute.