**Section 2840.125 Early Retirement Or Employment Buyout Packages**

a) An individual who accepts his employer's offer of an early retirement or employment buyout package and leaves work according to the terms and conditions of the offer is ineligible under Section 601 of the Act unless, at the time the offer is accepted:

1) the individual knows or reasonably believes that, within the proximate future, his employment will be terminated by the employer under terms and conditions substantially less favorable than the terms and conditions of the offer, or

2) the individual knows or reasonably believes that his employment will continue, in the proximate future, but under terms and conditions substantially less favorable than the terms and conditions of his employment immediately prior to the offer, or

3) the individual knows that a layoff will follow if a sufficient number of employees do not accept the offer of an early retirement or employment buyout package and the individual accepts the offer to avoid the layoff of another employee.

b) The circumstances under which an individual may be found to have the reasonable belief required by subsection (a)(1) and (a)(2) above include but are not limited to circumstances in which the individual seeks but does not receive assurances from the employer that his employment will not in the proximate future be terminated under terms and conditions of the offer or that the terms and conditions of his employment will not in the proximate future become substantially less favorable than the terms and conditions immediately prior to the offer, as the case may be.

1) Example: An employer operates a plant that has consistently earned a profit. The employer offers an early retirement package. There is no indication from the employer that the offer is intended to avert layoffs and there are no rumors to that effect within the plant. An employee at the plant accepts the offer and applies for unemployment benefits after separating from the employer. These facts alone do not establish the reasonable belief required by subsection (a)(1) or (a)(2) above; the individual is ineligible under Section 601.

2) Example: An employer who operates a plant with 800 employees offers an early retirement plan on October 1 and indicates that, if by December 31 of the same year fewer than 150 employees have accepted the offer, the employer may begin laying off "nonessential" employees in no particular order of seniority, with no benefits. On October 2 of that year an employee at the plant seeks but does not receive assurances from the employer that she is considered "essential," whereupon she accepts the offer. Without other evidence to the contrary, these facts establish the reasonable belief required by subsection (a)(1) above; the individual is not ineligible under Section 601.

3) Example: An employer who operates a plant with 900 employees announces it intends to downsize by 25 percent and offers an early retirement package on October 15. Rumors circulate through the plant that, if a sufficient number of employees do not accept the offer by the end of the year, layoffs will follow, with no benefits, although the employer has made no announcement to that effect. The employer is aware of the rumors and does not take any action to dispel them. An employee seeks but does not receive assurances from the employer that he would not be laid off. Without other evidence to the contrary, if the employee accepts the offer, these facts establish the reasonable belief required by subsection (a)(1) above; the employee is not ineligible under Section 601.

4) Example: An employer operates a plant with 1,000 employees. On September 15, the employer offers an early retirement package to its most senior workers. Thereafter, rumors circulate throughout the plant that the employer is considering eliminating and restructuring jobs. In conversation with the employer, a senior employee is assured the employer has no plans to eliminate or restructure his job. However, the employer does observe that, if the next few years are as unprofitable as the current one, everybody's job could be at risk and the employer might not be able to offer early retirement packages as generous as the one now being offered. Troubled by the employer's observation, the employee accepts the offer. These facts alone are not sufficient to establish the reasonable belief required by subsection (a)(1) above; the employee is ineligible under Section 601. An employer's abstract statement of concern over what the future may bring is too speculative to establish a reasonable belief that the employee's job will be affected in the proximate future.

5) Example: An employer asks for "volunteers" to be laid off, explaining that each volunteer will receive two months of wages and extended health insurance coverage upon separation. The employer indicates that, if 250 volunteers are not found, it will lay off, with no benefits, a number of employees equal to the difference between 250 and the number of volunteers, irrespective of seniority. Any employee volunteers after seeking but not receiving assurances from the employer that he would not be laid off. Without other evidence to the contrary, these facts establish the reasonable belief required by subsection (a)(1) above; the employee is not ineligible under Section 601.

6) Example: On January 2, an employer offers an employee an early retirement package. The offer is effective through April 15 of the same year. There is no indication from the employer that the offer is intended to avert layoffs and there are no rumors to that effect within the workplace. The package would provide the employee with a greater pension than would otherwise have been available to her had she immediately retired and would provide the employee with the same medical benefits that are currently provided to her as a full time employee, including full medical insurance for the employee's sick husband. The employer indicates to the employee that, if she does not accept the offer, the employer will, as of April 16, discontinue medical insurance for her husband. These facts establish the reasonable belief required by subsection (a)(2) above; the employee is not ineligible under Section 601.

7) Example: On January 2, an employer offers an employee an early retirement package. The offer is effective through April 15 of the same year. There is no indication from the employer that the offer is intended to avert any layoffs and there are no rumors to that effect within the workplace. The package would provide the employee with a greater pension than would otherwise have been available to her had she immediately retired and would provide full medical insurance for the employee and her sick husband, even though the employer does not currently provide medical insurance for employees, retirees or the families of employees or retirees. There is no indication that the terms and conditions of the employee's employment will change if she does not accept the offer, although by not accepting the offer, she will forego any medical insurance furnished by the employer. The employee accepts the offer. These facts do not establish the reasonable belief required by subsection (a)(2) above; the employee is ineligible under Section 601.

8) Example: An employer who operates a plant with 1,000 employees asks for "volunteers" to be laid off, explaining that each volunteer will receive two months of wages and extended health insurance coverage upon separation. The employer indicates that, if 250 volunteers are not found, it will lay off, with no benefits, a number of employees equal to the difference between 250 and the number of volunteers. An individual who, because of his seniority, knows he will not be laid off, volunteers to be laid off in place of his son, who has little seniority. According to subsection (a)(3) above, the individual is not ineligible under Section 601.

c) An individual who accepts his employer's offer of an early retirement or employment buyout package and leaves work according to the terms and conditions of the offer and is not ineligible under Section 601 of the Act may still be ineligible under other provisions of the Act.

1) Example: An employer announces it intends to downsize by 25 percent and offers an early retirement package which includes a generous pension package financed solely by the employer. Rumors circulate through the plant that, if a sufficient number of employees do not accept the offer by the end of the year, layoffs will follow, with no benefits, although the employer has made no announcement to that effect. The employer is aware of the rumors and does not take any action to dispel them. An employee seeks but does not receive assurances from the employer that he would not be laid off. Without other evidence to the contrary, if the employee accepts the offer, these facts establish the reasonable belief required by subsection (a)(1) above; the employee is not ineligible under Section 601. However, because the individual's retirement pension is financed solely by the employer, it will be 100% disqualifying income for each week for which the individual qualifies for the pension.

2) Example: An employer announces it intends to downsize by 25 percent and offers an early retirement package. Rumors circulate through the plant that, if a sufficient number of employees do not accept the offer by the end of the year, layoffs will follow, with no benefits, although the employer has made no announcement to that effect. The employer is aware of the rumors and does not take any action to dispel them. An employee seeks but does not receive assurances from the employer that he would not be laid off. Without other evidence to the contrary, if the employee accepts the offer, these facts establish the reasonable belief required by subsection (a)(1) above; the employee is not ineligible under Section 601. However, the individual decides that he will retire from the labor force and relocate to Florida. This individual will be ineligible for each week during which he is not able to, available for or actively seeking work.

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