

SHORT TITLE: Unemployment; authorizing latitude in fixing merit ratings of certain acquiring employers. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1141

By: Helton

AS INTRODUCED

An Act relating to employment security; amending 40 O.S. 1991, Section 3-111, as last amended by Section 15, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 3-111), which relates to acquiring employers; allowing Oklahoma Employment Security Commission to give consideration to certain merit rating; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 1991, Section 3-111, as last amended by Section 15, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 3-111), is amended to read as follows:

Section 3-111.

ACQUIRING EMPLOYERS.

A. 1. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, business, or assets of any employer (excepting in such case any assets retained by that employer incident to the liquidation of the employer's obligations) and who continues the operations of the predecessor as a going business, shall acquire the merit rating account of the predecessor employer, including the predecessor's actual contribution and benefit experience, annual payrolls, and contribution rate. The acquiring employer shall also

become jointly and severally liable with the predecessor employer for all current or delinquent contributions, interest, penalties and fees owed to the Oklahoma Employment Security Commission by the predecessor employer.

2. Written notice of all current or delinquent contributions, interest, penalties and fees owed to the Commission by the predecessor employer shall be provided to the acquiring employer by the predecessor employer prior to the sale of the business. Failure to give such notice may subject the predecessor employer to a penalty as specified by the rules of the Commission.

3. Any remuneration for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts paid by the predecessor shall be considered as having been paid by the acquiring employer. The initial determination regarding whether or not an acquiring employer will become a successor to a predecessor account shall be made by the Commission or its duly authorized representative and notice of this determination shall be delivered to the acquiring employer or mailed to his or her last-known address.

B. 1. Within twenty (20) days after the mailing of the notice of initial determination provided for in subsection A of this section, the employer may file with the Commission or its representative a written protest to the initial determination and request an oral hearing to present evidence in support of its protest. The Commission or its representative shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, the hearing shall be conducted by the Commission, or by a representative appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable:

~~1.~~ ~~Make~~

a. make an order affirming, modifying, or reversing the initial determination,

~~2.~~ ~~Immediately~~

b. immediately send to the employer a written notice thereof, and

~~3.~~ ~~In~~

c. in accordance with the order, notify the employer of any additional contributions, interest, penalties, or fees then due or owing by the employer and the employer's contribution rate.

2. If any employer fails to file its written protest to the initial determination within the period of twenty (20) days, as provided by this subsection, ~~then~~ the initial determination shall be final, and no appeal shall thereafter be allowed.

C. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, business, or assets of an employer, at one or more separate and distinct establishments and who continues the acquired operations of the predecessor as a going business, shall acquire that portion of the experience rating account of ~~such~~ the employer that is applicable to ~~such~~ the establishment or establishments, if ~~such~~ the employing unit, immediately after ~~such~~ the acquisition, is an employer; provided, however, that ~~such~~ the employing unit shall not acquire ~~such~~ a portion of the experience rating account unless written application therefor is received by the Commission within one hundred twenty (120) days after the date of ~~such~~ the acquisition together with evidence sufficient for the Commission to determine which portion of the experience rating account of the predecessor is applicable to the acquired operations, and the Commission finds that ~~such~~ the transfer will not tend to defeat or obstruct the object and purpose of the Employment Security

Act of 1980; and provided further, that the portion of the experience rating account ~~so~~ transferred, including the taxable payrolls and benefit wages, shall not thereafter be used in computing an experience rating contribution rate for the transferring employer. For the purpose of this subsection a separate and distinct establishment means all operations conducted by an employer at one business location which is readily segregable and identifiable as a separate business organization. The Commission shall, in determining the applicable merit rating for an employing unit acquiring two or more separate and distinct establishments, have the latitude to take into consideration an acquiring employer's merit rating immediately prior to the acquisition and to make an adjustment accordingly.

D. No rate shall be assigned an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to ~~such~~ the succession except in accordance with regulations prescribed by the Commission, which regulations shall be consistent with federal requirements for additional credit allowance in Section 1602 of the Internal Revenue Code, and the Employment Security Act of 1980, Section 1-101 et seq. of this title.

E. By rule the Commission may establish a computation date for any ~~such~~ period different from the computation date generally prescribed by the provisions of the Employment Security Act of 1980, and may define the words "calendar year" as meaning a twelve-consecutive-month period ending on the same day of the year as that on which ~~such~~ the computation date occurs.

F. If the Commission finds that any report required to complete a determination of contribution rate has not been filed or if filed is incorrect or insufficient, and any ~~such~~ fact or information has not already been established or found in connection with some other proceeding pursuant to the provisions of the Employment Security Act

of 1980, an estimate may be made of the information required on the basis of the best evidence reasonably available to it at the time. Notice shall be given of such determination as provided for contribution rate in subsection C of Section 3-102 of this title and the employer may appeal therefrom as provided in subsection D of Section 3-102 of this title.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-1873

WHT