

SHORT TITLE: Unemployment; amending Employment Security Act of 1980; repealers; codification; effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 793

By: Long of the Senate

and

Fields of the House

AS INTRODUCED

An Act relating to unemployment; amending Section 5, Chapter 30, O.S.L. 1997, 40 O.S. 1991, Sections 2-105, as last amended by Section 2, Chapter 349, O.S.L. 1994, 2-106, 2-303, as amended by Section 7, Chapter 30, O.S.L. 1997, 2-402, 2-405, as amended by Section 8, Chapter 30, O.S.L. 1997, 2-607, 3-106, as last amended by Section 13, Chapter 30, O.S.L. 1997, Section 14, Chapter 30, O.S.L. 1997, and 3-403 (40 O.S. Supp. 1997, Sections 1-224, 2-105, 2-303, 2-405, 3-106 and 3-109.1), which relate to definitions, subtraction of wages from benefit amount, maximum benefit amount, assignments, fraud, determination of good cause, appeals, charging of benefit wages and relief therefrom, rate reduction, and petitions for review; modifying definitions and providing additional definition; adding reporting requirement; changing benefit calculation basis; making benefits subject to certain tax levies under certain circumstances; establishing certain penalties; stating additional good cause for leaving work; clarifying requirement relating to certain hearings and appeals; excluding wages of certain persons from benefit wage calculations; providing for certain rate reduction; modifying

filing requirements; establishing certain transcription, service and filing requirements; restricting use of monies in certain fund; revising certain mandate language; eliminating certain gender distinctions; repealing 40 O.S. 1991, Sections 1-222 and 3-402, which relate to filing of notices, protests, or appeals and to notice of intention to appeal; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 5, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 1-224), is amended to read as follows:
Section 1-224. FILE.

For the purposes of Sections 2-503, 2-505, 2-603, 2-606, 3-102, 3-106, 3-111, 3-202, 3-203, 3-301, 3-305, 3-310, ~~3-402~~, 3-805, 3-806, and 3-809 of ~~Title 40 of the Oklahoma Statutes~~ this title, the term "file", "files", or "filed" ~~will~~ shall be defined as follows:

1. Hand-delivered to an office of the Oklahoma Employment Security Commission by the close of business on or before the date due;
2. Telefaxed to an office of the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing ~~will~~ shall be determined by the date and time printed by the Commission's telefax machine on the document received or the date and time on the sender's transmittal sheet; ~~or~~
3. Mailed with sufficient postage and properly addressed to an office of the Oklahoma Employment Security Commission on or before

the date due. Timely mailing ~~will~~ shall be determined by the postmark; or

4. Electronically mailed via computer terminal to a Commission e-mail address by midnight on or before the date due. Timely e-mailing shall be determined by the Commission's e-mail log file.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 2-105, as last amended by Section 2, Chapter 349, O.S.L. 1994 (40 O.S. Supp. 1997, Section 2-105), is amended to read as follows:

Section 2-105. WAGES SUBTRACTED FROM BENEFIT AMOUNT.

Each eligible individual who is unemployed with respect to any week ending after July 1, 1994, shall be paid with respect to such week a benefit in an amount equal to ~~his~~ the individual's weekly benefit amount less that part of the wages, if any, payable to ~~him~~ the individual with respect to such week which is in excess of One Hundred Dollars (\$100.00). Each individual claiming benefits shall report all wages that the individual has been or will be paid for work performed during any week in which the individual claims unemployment benefits, regardless of the source or amount.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 2-106, is amended to read as follows:

Section 2-106. MAXIMUM BENEFIT AMOUNT.

An otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of: twenty-six (26) times his the individual's weekly benefit amount; or ~~forty percent (40%)~~ the applicable percentage of the taxable wage~~r~~; or ~~forty percent (40%)~~ of his the individual's wages for insured work paid during ~~his~~ the individual's base period. The applicable percentage is determined by the conditional factor in place during the calendar year in which the individual files for benefits. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages are as follows:

1. Fifty percent (50%) during any calendar year in which the balance in the unemployment compensation fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title;

2. Forty-seven and one-half percent (47.5%) during calendar years in which condition "a" exists;

3. Forty-five percent (45%) during calendar years in which condition "b" exists;

4. Forty-two and one-half percent (42.5%) during calendar years in which condition "c" exists; and

5. Forty percent (40%) during calendar years in which condition "d" exists.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 2-303, as amended by Section 7, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 2-303), is amended to read as follows:

Section 2-303. ASSIGNMENTS VOID, EXEMPTION FROM PROCESS.

No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the Employment Security Act of 1980 shall be valid. All such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts during the time the individual was unemployed, except those debts incurred for necessities furnished to the individual or his or her spouse, or dependents, including child support obligations pursuant to Section 2-801 of this title, and debts created due to food stamp overissuances for which the individual is liable pursuant to ~~Section 10 of this act~~ Section 2-803 of this title. Benefits shall be subject to tax levies issued by the Internal Revenue Service in accordance with 26 U.S.C., § 6331(h) provided an agreement is entered into between the Internal

Revenue Service and the Oklahoma Employment Security Commission, and approved by the United States Department of Labor, that provides for the payment of all administrative costs associated with processing the tax levies. No waiver of any exemption provided for in this section shall be valid.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 2-402, is amended to read as follows:

Section 2-402. FRAUD.

~~(1)~~ A. If the Oklahoma Employment Security Commission determines that any individual has made a false statement or representation or has failed to disclose a material fact in violation of Section 5-102 of this title, such the individual shall be ineligible to receive unemployment compensation for the week in which ~~it is so determined~~ that determination is made by the Commission and for the next following fifty-one (51) weeks, and no benefit or base year shall be established during such period of ineligibility.

B. If the Commission makes a determination as described in subsection A of this section, the individual shall be disqualified from receiving any unemployment benefits for each week benefits were paid to the individual as a result of a false statement or representation or a failure to disclose a material fact, and the individual shall be deemed overpaid for the entire amount of benefits paid as a result of claimant fraud.

~~(2)~~ C. ~~Such~~ The ineligibility is and disqualification set forth in subsections A and B of this section are in addition to the penalty provided by Section 5-102 of this title, and shall be invoked irrespective of whether such individual is prosecuted for violation of Section 5-102 of this title, when the Commission makes such a determination of ineligibility or disqualification. This section shall not apply to a determination made more than two (2) years after such violation occurred.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 2-405, as amended by Section 8, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 2-405), is amended to read as follows:

Section 2-405. DETERMINING GOOD CAUSE.

Good cause for voluntarily leaving work under Section 2-404 of this title may include, among other factors, a the following:

1. A job working condition that had changed to such a degree it was so harmful, detrimental, or adverse to the individual's health, safety, or morals, that leaving such work was justified ~~or if~~;

2. If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated and the employer has consented thereto; or

3. If the claimant was separated from employment with the employer because a physician diagnosed or treated a medically verifiable illness or medical condition of the claimant or the minor child of the claimant, and the physician found that it was medically necessary for the claimant to stop working or change occupations.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 2-607, is amended to read as follows:

Section 2-607. RULES AND PROCEDURES IN APPEALS.

The Board of Review and appeal referees shall ~~not be bound by common law or statutory rules of evidence or by technical rules of procedure, but~~ conduct any hearing or appeal ~~before either shall be conducted~~ in such manner as to ascertain the substantial rights of the parties. The Board of Review shall adopt reasonable rules governing the manner of filing appeals and the conduct of hearings and appeals before the Board of Review, consistent with the provisions of the Employment Security Act of 1980, ~~Section 1-101 et seq. of this title.~~ The Oklahoma Employment Security Commission shall adopt and, from time to time, may modify and amend rules

governing appeals before the Appeals Tribunal of the Commission and its referees, which rules shall provide for one hearing before a referee near the place of the last employment involved in an intrastate appeal. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two (2) or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others, provided that in the judgment of the appeal tribunal referee having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person shall participate as an appeal tribunal referee or member of the Board of Review on any case in which ~~he~~ the person has a personal interest. A record shall be kept of all testimony and proceedings before an appeal tribunal referee or the Board of Review in connection with an appeal, but the testimony need not be transcribed unless judicial review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commission, and fees of witnesses subpoenaed on behalf of the Commission or any claimant, or the Board of Review, shall be deemed part of the expense of administering the Employment Security Act of 1980.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 3-106, as last amended by Section 13, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 3-106), is amended to read as follows:

Section 3-106. BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

A. The Oklahoma Employment Security Commission shall give notice to each base period employer of a claimant promptly after the claimant is paid his or her fifth week of benefits by the Commission or promptly after the Commission receives notice of the amounts paid

as benefits by another state under a reciprocal arrangement. Notice shall be deemed given under this subsection when the Commission deposits the same ~~in~~ with the United States Postal Service ~~mail~~ addressed to the employer at an address designated by the employer to receive such notice or at the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. This notice shall give the name and Social Security Number of the claimant, the date the claim was filed, and the amount of benefit wages charged to the employer in each quarter of the base period.

B. Within fourteen (14) days from the date stated upon the notice provided for in subsection A of this section, the employer may file with the Commission written objections to being charged with such benefit wages upon one or more of the grounds for objection set forth in subsection G of this section. The employer's written objection must set forth specifically:

1. The date on which the employment was terminated;
2. Full particulars as to the circumstances of the termination including the reason given by the individual for voluntarily leaving the employment, or the nature of the misconduct for which discharged, as the case may be;
3. Full particulars as to the regular scheduled part-time or full-time employment of the employee including the starting date, and ending date, if any, of the continuous period of such part-time or full-time employment; and
4. Such other information as called for by the notice.

C. Upon receipt of the employer's written objections, the Commission shall make a determination as to whether or not the employer is entitled to be relieved from the charging of benefit wages. The Commission shall promptly notify the employer of that determination. Provided further, the fourteen-day time period for

filing written objections with the Commission as provided for in subsection B of this section may be waived for good cause shown.

D. Within twenty (20) days after the mailing of the determination provided for in subsection C of this section, the employer may file with the Commission or its representative a written protest to the determination and request an oral hearing de novo 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 mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission or its representative appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law, and shall send it to the employer.

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

F. The employer or the Commission may appeal the order of the Commission or its representative to the district court by filing a petition for review with the clerk of that court within thirty (30) days after the date the order was mailed to all parties. The mailing date shall be specifically stated in the order.

G. The benefit wages charged to an employer for a given calendar year shall be the total of the benefit wages stated in the notices given to the employer by the Commission. Provided, that an employer's benefit wages shall not include wages paid by the employer to any employee or former employee, who:

1. Left employment with that employer, or with his or her last employer, voluntarily without good cause connected to the work;

2. Was discharged from such employment for misconduct connected with his or her work;

3. Was a regular scheduled employee of that employer prior to the week the employee separated from other employment, and continued to work for said employer through the fifth compensable week of unemployment in his or her established benefit year;

4. Was separated from his or her employment as a direct result of a major natural disaster, declared as such by the President pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such employee would have been entitled to disaster unemployment assistance if he or she had not received unemployment insurance benefits; ~~or~~

5. Was separated from employment with that employer due to a medically verifiable illness or medical condition of the employee or the minor child of the employee; or

6. Was discharged from employment within ninety (90) days of the original hiring date of the employee by the employer.

H. If an employer recalls a laid-off or separated employee and said employee continues to be employed or said employee voluntarily terminates employment or is discharged for misconduct within the benefit year, the employer shall be entitled to have the benefit wage charged against the employer's experience rating for said employee reduced by the ratio of the number of weeks of remaining eligibility of said employee to the total number of weeks of entitlement.

I. An employer shall not be charged with benefit wages of a laid-off employee if the employer lists as an objection in a statement filed in accordance with subsection B of this section that said employee collecting benefits was hired to replace a United States serviceman or servicewoman called into active duty and ~~laid-off~~ laid off upon the return to work by that serviceman or

servicewoman. The Unemployment Compensation Fund shall be charged with the benefit wages of the laid-off employee.

SECTION 9. AMENDATORY Section 14, Chapter 30, O.S.L. 1997 (40 O.S. Supp. 1997, Section 3-109.1), is amended to read as follows:

Section 3-109.1 RATE REDUCTION.

Notwithstanding the provisions of Sections 3-103, 3-109, 3-110 and 3-113 of ~~Title 40 of the Oklahoma Statutes~~ this title, for the time period beginning July 1, ~~1997~~ 1998, and ending December 31, 1999, the contribution rate assigned to an employer shall be reduced by ~~twenty-five percent (25%)~~ fifty percent (50%). Provided, the tax rate of employers assigned a tax rate pursuant to Sections 3-103 and 3-110 of ~~Title 40 of the Oklahoma Statutes~~ this title shall not be reduced to less than one percent (1%). Provided further, employers who qualify for an earned rate calculated pursuant to Section 3-109 of ~~Title 40 of the Oklahoma Statutes~~ this title, and are given a rate of five and one-half percent (5.5%) shall ~~not be eligible for the rate reduction provided in this section~~ be reduced to no less than five and four-tenths percent (5.4%). Provided further, employers who qualify for an earned rate calculated pursuant to Section 3-109 of this title and are given a rate of one tenth of one percent (0.1%) shall be reduced to a rate of zero percent (0.0%).

SECTION 10. AMENDATORY 40 O.S. 1991, Section 3-403, is amended to read as follows:

Section 3-403. ~~TRANSCRIPT OF~~ PETITION FOR REVIEW AND TRANSCRIPT OF COMMISSION PROCEEDINGS TO BE FILED WITH COURT.

Within thirty (30) days after the date of mailing ~~to the employer~~ of the order, ruling, or finding complained of, the ~~employer~~ party desiring to appeal shall file in the office of the clerk of the district court of ~~such~~ the county that has the proper jurisdiction, a petition for review specifying the grounds upon which such appeal is based. ~~At the same time the employer shall~~

~~file with the district court a true copy of the proceedings before the Commission certified to by the Commission and consisting of any citations, findings, judgments, actions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings and evidence as the appealing party and the Commission may agree to be sufficient to present fully to the court questions involved. The appealing party shall serve a file-stamped copy of the Petition for Review on the opposing party or its attorney and the Commission's designated hearing officer before whom the original hearing was held. The Commission's hearing officer shall then cause a certified transcript of the hearing to be made which shall consist of all testimony of the parties, all documentary evidence and other evidence introduced at the hearing, and all decisions, judgments, or orders rendered as a result of the hearing. The hearing officer shall then cause the certified transcript to be filed in the appropriate district court within sixty (60) days of receipt of the Petition for Review. Copies of the transcript shall be mailed by the hearing officer to the Commission's attorney and the employer or the employer's attorney.~~

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-608 of Title 40, unless there is created a duplication in numbering, reads as follows:

REED ACT DISTRIBUTIONS.

Monies credited to the account of this state in the Unemployment Trust Fund, described in Section 3-605 of Title 40 of the Oklahoma Statutes, by the Secretary of the Treasury of the United States pursuant to 42 U.S.C., § 1103, with respect to federal fiscal years 1999, 2000, and 2001, shall be used solely for the administration of the Unemployment Compensation Program in this state and shall not be subject to appropriation by the Legislature.

SECTION 12. REPEALER 40 O.S. 1991, Sections 1-222 and 3-402, are hereby repealed.

SECTION 13. This act shall become effective July 1, 1998.

SECTION 14. 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.

46-2-1849 WHT