

ENGROSSED SENATE
BILL NO. 47

By: Long of the Senate
and
Roach of the House

[labor - amending 40 O.S., Sections 1-209, 1-223, 2-
106, 2-613, and 4-508 - repealer - effective date -
emergency]

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

SECTION 1. AMENDATORY 40 O.S. 1991, Section 1-209, is amended to read as follows:

Section 1-209. EMPLOYING UNIT. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state.

All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act, except as provided under paragraph (10) and (11) of Section 1-208 ~~(12) and (13)~~ of this title.

Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment, which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 1-208 or Section 3-203 of this

title, the employing unit shall for all the purposes of ~~this act~~ the Employment Security Act of 1980 be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of Section 1-208 or Section 3-203 shall alone be liable for the contributions measured by wages paid to individuals in his employ, and except that any employing unit which shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of Section 1-208 or Section 3-203 may recover the same from such contractor or subcontractor.

Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of ~~this act~~ the Employment Security Act of 1980, whether such individual was hired or paid directly by such employing unit or by such agent or employee of an employing unit, provided the employing unit had actual or constructive knowledge of the employment.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 1-223, as last amended by Section 2, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 1998, Section 1-223), is amended to read as follows:

Section 1-223. TAXABLE WAGES.

A. Prior to January 1, ~~2000~~ 2002, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal fifty percent (50%) of the state's average annual wage for the second preceding calendar year as determined by the Oklahoma Employment Security Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00).

B. Beginning January 1, ~~2000~~ 2002, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal the applicable percentage of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00). The applicable percentage is determined by the conditional factor in place during the calendar year for which the taxable wage is being calculated. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages are as follows:

1. Forty percent (40%) 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-two and one-half percent (42.5%) during calendar years in which condition "a" exists;

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

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

5. Fifty percent (50%) during calendar years in which condition "d" exists.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 2-106, as last amended by Section 6, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 1998, 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:

1. Twenty-six (26) times the weekly benefit amount of the individual;

2. ~~The applicable percentage~~ Twenty-two and one-half percent (22.5%) of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars (\$100.00). ~~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 for this paragraph are as follows:~~

- a. ~~twenty-five percent (25%) 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,~~
- b. ~~twenty-three and three-fourths percent (23.75%) during calendar years in which condition "a" exists,~~
- c. ~~twenty-two and one-half percent (22.5%) during calendar years in which condition "b" exists,~~
- d. ~~twenty-one and one-fourth percent (21.25%) during calendar years in which condition "c" exists, and~~
- e. ~~twenty percent (20%) during calendar years in which condition "d" exists; or~~

3. ~~The applicable percentage of the individual's wages for insured work paid during the base period of the individual. 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 for this paragraph are as follows:~~

- a. ~~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,~~
- b. ~~forty-seven and one-half percent (47.5%) during calendar years in which condition "a" exists,~~
- c. ~~forty-five percent (45%) during calendar years in which condition "b" exists,~~
- d. ~~forty-two and one-half percent (42.5%) during calendar years in which condition "c" exists, and~~
- e. ~~forty percent (40%) during calendar years in which condition "d" exists~~ Forty-five percent (45%) of the individual's taxable wages paid during the individual's base period.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 2-613, as amended by Section 1, Chapter 318, O.S.L. 1992 (40 O.S. Supp. 1998, Section 2-613), is amended to read as follows:

Section 2-613. RECOVERY AND RECOUPMENT.

A. Any individual who, by reason of a false statement or representation or failure to disclose a material fact, has received any sum as benefits to which he or she was not entitled shall be liable to repay such sum to the Oklahoma Employment Security Commission for the ~~fund~~ Unemployment Compensation Fund plus interest at the rate of one percent (1%) per month or fraction thereof until repaid. The interest will cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is amended, the interest will cease to accrue when the total accrued interest equals the amount of the amended overpayment. Provided, the Commission may deduct such principal sum from any future benefits payable to said individual. If any individual, for any other reason, has received any sum as benefits under this act to

which, under a redetermination or decision pursuant to this act, the individual has been found not entitled, he or she shall not be liable to repay such sum but shall be liable to have such sum deducted from any future benefits payable to the individual with respect to the benefit year current at the time of such receipt and the next subsequent benefit year that begins within one (1) year after the expiration of the benefit year current at the time of such receipt.

B. Any interest, or any portion thereof, that accrues pursuant to the provisions of subsection A of this section may be waived by the Commission provided the failure of the claimant to remit payment:

1. Is satisfactorily explained to the Commission;
2. Resulted from a mistake by the claimant of either the law or the facts concerning the repayment of overpayment benefits;
3. Was caused by undue hardship; or
4. Was caused by insolvency of the claimant.

No waiver of interest shall be granted unless the request for a waiver is filed with the Commission within a three-year period from the date the interest accrued. No waiver of interest shall be granted to a claimant if the Commission or its representative determined that the claimant received an overpayment of benefits through fraud.

SECTION 5. AMENDATORY Section 14, Chapter 30, O.S.L. 1997, as amended by Section 11, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 1998, 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 this title, for the time period beginning July 1, 1998, and ending December 31, ~~1999~~ 2001, the contribution rate assigned to an employer shall be reduced by fifty percent (50%). ~~Provided,;~~ provided: the tax rate of employers assigned a tax rate pursuant to

Sections 3-103 and 3-110 of this title shall not be reduced to less than one percent (1%). ~~Employers;~~ employers who qualify for an earned rate calculated pursuant to Section 3-109 of this title, and are given a rate of five and one-half percent (5.5%) shall be reduced to no less than five and four-tenths percent (5.4%). ~~Employers;~~ and 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%). ~~This section shall become ineffective for any calendar year in which a conditional factor exists as specified in Section 3-113 of this title.~~

SECTION 6. AMENDATORY 40 O.S. 1991, Section 4-508, as last amended by Section 15, Chapter 359, O.S.L. 1997 (40 O.S. Supp. 1998, Section 4-508), is amended to read as follows:

Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL - DISCLOSURE.

A. ~~Except as otherwise provided by law, information~~ Information obtained from any employing unit or individual pursuant to the administration of the Employment Security Act of 1980, and determinations as to the benefit rights of any individual shall be kept confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. The information shall not be subject to the subpoena power of the courts. Any claimant or employer or agent of such person as authorized in writing shall be supplied with information from the records of the Commission, to the extent necessary for the proper presentation of the claim or complaint in any proceeding under the Employment Security Act of 1980, Section 1-101 et seq. of this title, with respect thereto.

B. Upon receipt of written request by any employer who maintains a Supplemental Unemployment Benefit (SUB) Plan, the Commission or its designated representative may release to such

employer information regarding weekly benefit amounts paid its workers during a specified temporary layoff period, provided such Supplemental Unemployment Benefit (SUB) Plan requires benefit payment information before Supplemental Unemployment Benefits can be paid to such workers. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the employer.

C. The provisions of this section shall not prevent the Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to taxpayer or claimant a copy of any report or other paper filed by the taxpayer or claimant pursuant to the Employment Security Act of 1980;

2. The disclosure of information to any person for a purpose as authorized by the taxpayer or claimant pursuant to a waiver of confidentiality. The waiver shall be in writing ~~and shall be~~ notarized;

3. The disclosure of information pursuant to a subpoena issued by a public official employed by a unit of any local, county, state, or federal government entity to which subpoena power has been granted;

4. The Oklahoma Department of Commerce may have access to data obtained pursuant to the Oklahoma Employment Security Act of 1980 pursuant to rules promulgated by the Oklahoma Employment Security Commission. The information obtained shall be held confidential by the Department and any of its agents and shall not be disclosed or be open to public inspection. The Oklahoma Department of Commerce, however, may release aggregated data, either by industry or county, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission;

~~4.~~ 5. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

~~5.~~ 6. The disclosing of information or evidence to the Attorney General or any district attorney when the information or evidence is to be used by the officials or other parties to the proceedings to prosecute or defend allegations of violations of the Employment Security Act of 1980. The information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution of a violation of Section 1-101 et seq. of this title, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

~~6.~~ 7. The furnishing, at the discretion of the Commission, of any information disclosed by the records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration of assessment of any similar tax in this state, any other state or the United States;

~~7.~~ 8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to the requesting agencies;

~~8.~~ 9. The release to officials, employees, and agents of the Oklahoma Department of Transportation of information required for use in federally mandated regional transportation planning, which is performed as a part of their official duties;

~~9.~~ 10. The release to officials, employees and agents of the State Treasurer's office of information required to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;

~~10.~~ 11. The release to officials, employees, and agents of the Attorney General, the State Insurance Fund, the Department of Labor, and the Workers' Compensation Court for use in investigation of workers' compensation fraud;

~~11.~~ 12. The ~~release to employees~~ disclosure of information pursuant to a subpoena or court order issued at the request of a public official in the employ of the Oklahoma State Bureau of Investigation or ~~release to employees of~~ the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in criminal investigations and the location of missing persons or fugitives from justice;

~~12.~~ 13. The release to officials, employees, and agents of the Center of International Trade, Oklahoma State University, of information required for the development of International Trade for employers doing business in the State of Oklahoma;

~~13.~~ 14. The release to officials, employees, and agents of the Oklahoma State Regents for Higher Education of information required for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program. Any information disclosed under this provision shall be utilized solely for the purpose outlined herein and shall be held strictly confidential by the Oklahoma State Regents for Higher Education;

~~14.~~ 15. The release to officials, employees, and agents of the Center for Economic and Management Research of the University of Oklahoma, of information required to identify economic trends. The information obtained shall be kept confidential by the University and any of its agents and shall not be disclosed or be open to public inspection. The University of Oklahoma may release aggregated data, provided that such aggregation meets disclosure requirements of the Commission;

~~15.~~ 16. The release to officials, employees, and agents of the Office of State Finance of information required to identify economic trends. The information obtained shall be kept confidential by the Office of State Finance and any of its agents and shall not be disclosed or be open to public inspection. The Office of State

Finance may release aggregate data, provided that such aggregation meets disclosure requirements of the Commission; or

~~16.~~ 17. The release to officials, employees, and agents of the Department of Mental Health and Substance Abuse Services of information required to evaluate the effectiveness of mental health and substance abuse treatment. The information obtained shall be kept confidential by the Department, its employees and any of its agents and shall not be disclosed or be open to public inspection. The Department of Mental Health and Substance Abuse Services, however, may release aggregated data, either by treatment facility or larger aggregate units, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission.

D. All subpoenas issued or requested by public officials or court orders for production of documents must provide a minimum of twenty (20) days from the date it is served for the Commission to produce the documents. If the date on which production of the documents is required is less than twenty (20) days from the date of service, the subpoena or order shall be considered void on its face as an undue burden or hardship on the Commission.

E. Should any of the disclosures provided for in this section require more than casual or incidental staff time, the Commission may charge the cost of such staff time to the party requesting the information.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Commission.

SECTION 7. REPEALER 40 O.S. 1991, Section 4-508, as last amended by Section 453, Chapter 133, O.S.L. 1997 (40 O.S. Supp. 1998, Section 4-508), is hereby repealed.

SECTION 8. This act shall become effective July 1, 1999.

SECTION 9. 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.

Passed the Senate the 2nd day of March, 1999.

President of the Senate

Passed the House of Representatives the ____ day of _____ ,
1999.

Speaker of the House of
Representatives