

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. _____

By: Long

AS INTRODUCED

An Act relating to the Employment Security Act of 1980; amending 40 O.S. 1991, Sections 1-209, 1-223, as last amended by Section 2, Chapter 161, O.S.L. 1998, 2-106, as amended by Section 6, Chapter 161, O.S.L. 1998, 2-402, 2-405, as last amended by Section 8, Chapter 161, O.S.L. 1998, 2-613, as amended by Section 1, Chapter 318, O.S.L. 1992, 3-106, as last amended by Section 10, Chapter 161, O.S.L. 1998, and 3-109.1, as last amended by Section 11, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 1998, Sections 1-223, 2-106, 2-402, 2-405, 2-613, 3-106, and 3-109.1), which relate to employing unit, taxable wages, maximum benefit amount, fraud, determining good cause, recovery and recoupment, benefit wages charged and relief therefrom, and unemployment insurance rates; eliminating prospective definition of taxable wages; modifying method of determining maximum benefit amount; describing benefits paid as a result of claimant fraud as overpayment; deleting certain eligibility of spouse for certain benefit; allowing certain waiver of certain interest penalties under certain circumstances; deleting exception to applicability of certain rate reduction; updating references; clarifying references; regularizing punctuation and usage; eliminating gender distinctions; and declaring an emergency.

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

SECTION 47. 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 1. 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, "taxable wages"~~ "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, "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 2. 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 twenty-six (26) times the weekly benefit amount of the individual;~~

~~2. 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 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 or forty-five percent (45%) of the taxable wage or forty-five percent (45%) of the individual's taxable wages paid during the individual's base period.~~

SECTION 3. 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 for each week benefits were paid 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 4. AMENDATORY 40 O.S. 1991, Section 2-405, as last amended by Section 8, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 1998, 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, 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;

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; ~~or~~

~~4. If the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse. As used in this paragraph, "commuting distance" means a radius of fifty (50) miles from the prior work location of the claimant.~~

SECTION 5. 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~~ Oklahoma Employment Security Commission Revolving 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 6. AMENDATORY 40 O.S. 1991, Section 3-106, as last amended by Section 10, Chapter 161, O.S.L. 1998 (40 O.S. Supp. 1998, 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 with the United States Postal Service 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;

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;

6. Was discharged by an employer for unsatisfactory performance during an initial employment probationary period. As used in this paragraph, "probationary period" means a period of time set forth in an established probationary plan which applies to all employees or a specific group of employees and does not exceed forty-five (45) calendar days from the first day a new employee begins work. The employee must be informed of the probationary period within the first seven (7) work days. There must be conclusive evidence to establish that the individual was separated due to unsatisfactory work performance and not separated because of lack of work due to temporary, seasonal, casual, or other similar employment not of regular, permanent, and year-round nature; or

~~7. Was separated from employment because the spouse of the employee was transferred or obtained employment in another city or state that required the family of the employee to move, and the employee quit current employment to move with the spouse.~~

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 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 7. 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, 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 8. 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.

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