

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1403

By: Leftwich of the Senate

and

Fields of the House

COMMITTEE SUBSTITUTE

(Labor - Employment Security Act of 1980 -

effective date)

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-202B of Title 40, unless there is created a duplication in numbering, reads as follows:

ALTERNATIVE BASE PERIOD.

"Alternative Base Period" means the most recent four (4) completed calendar quarters immediately preceding the first day of an individual's benefit year. In the event that an individual's claim uses an alternative base period to meet the wage requirement under Section 2-207 of this title, this "alternative base period" shall be substituted for "base period" for all other purposes under the Employment Security Act of 1980.

SECTION 2. AMENDATORY 40 O.S. 2001, 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~~ the Employment Security Act of 1980, except as provided under paragraphs (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 of this title shall alone be liable for the contributions measured by wages paid to individuals ~~in his employ~~ employed by the contractor or subcontractor, 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 of this title 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 3. AMENDATORY 40 O.S. 2001, Section 1-218, is amended to read as follows:

Section 1-218. WAGES.

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of work from persons other than the employing unit shall be treated as wages received from the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Oklahoma Employment Security Commission. The term wages shall not include:

1. The amount of any payment, with respect to services performed to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of:

- a. retirement, other than employee contributions or deferrals after December 31, 2002, under a qualified plan as described in 26 U.S.C. Section 401(k),
- b. sickness or accident disability,
- c. medical and hospitalization expenses in connection with sickness or accident disability,
- d. death, provided the individual in its employ:
 - (1) has not the option to receive, instead of provision for such death benefit, any part of

such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by the employing unit, and

(2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of the individual's services with such employing unit, or

e. a bona fide thrift or savings fund, providing:

- (1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and
- (2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

2. Any payment made to, or on behalf of, an employee or his or her beneficiary under a cafeteria plan of the type described in 26 U.S.C., Section 125 and referred to in 26 U.S.C., Section 3306(b) (5) (G);

3. Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C., Section 127 or a dependent care assistance program as described in 26

U.S.C., Section 129 and as referred to in 26 U.S.C., Section 3306(b) (13);

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under 26 U.S.C., Section 3101 with respect to domestic services in a private home of the employer or for agricultural labor;

5. Dismissal payments which the employer is not required by law or contract to make; ~~or~~

6. The value of any meals and lodging furnished by or on behalf of an employer to an individual in its employ; provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer; or

7. Payments made under an approved supplemental unemployment benefit plan.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-225 of Title 40, unless there is created a duplication in numbering, reads as follows:

SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN.

A. "Supplemental unemployment benefit plan" means a plan that provides for an employer to make payments to its employees during a temporary layoff that will supplement unemployment benefits received by the employees. The purpose of a supplemental unemployment benefit plan is to allow an employer the opportunity to keep the employer's workforce intact during a temporary layoff.

B. Every supplemental unemployment benefit plan must meet the following requirements:

1. The plan shall provide for a payment from the employer to the employee each week during the temporary layoff to supplement unemployment benefits received by the employee;

2. The employer must be able to give a reasonable assurance that the separated employees will be able to return to work at the end of the temporary layoff; and

3. The overall plan must be in keeping with the statement of purpose set out in subsection A of this section.

C. The amount of supplemental unemployment benefit plan payments will not be deducted from the weekly benefit amount of an unemployment benefit claim.

D. All supplemental unemployment benefit plans must be approved by the Director of the Unemployment Insurance Division of the Oklahoma Employment Security Commission. The Director's determination will be in writing and mailed to the employer's last-known address. If an employer disagrees with the determination, an appeal can be taken pursuant to Section 3-115 of Title 40 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-203, is amended to read as follows:

Section 2-203. CLAIM.

A. An unemployed individual must file an initial claim for unemployment benefits by personally appearing at an office or designated location of the Oklahoma Employment Security Commission and signing, in the presence of an employee or agent of the Commission, all forms necessary to process an initial claim. The Commission may obtain preliminary or additional information regarding an individual's initial claim, through any form of telecommunication, writing, or interview, either before or after the required personal appearance of the individual claiming benefits. An unemployed individual must file a claim in writing or by telecommunication for benefits with respect to each week in accordance with such rule as the Commission may prescribe.

B. With respect to each week, he or she must provide the Commission with a true and correct statement of all material facts

relating to: his or her unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or accepting full-time employment immediately; applications for or receipt of workers' compensation benefits; employment and earnings; and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.

C. No claim will be allowed or paid unless the claimant resides within a state or foreign country with which the State of Oklahoma has entered into a reciprocal or cooperative arrangement pursuant to Part 7 of Article IV of the Employment Security Act of 1980.

SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-207, is amended to read as follows:

Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD.

A. The unemployed individual, during the individual's base period, shall have been paid wages for insured work of not less than:

1. One Thousand Five Hundred Dollars (\$1,500.00); and
2. One and one-half (1 1/2) times the amount of wages during that quarter of the individual's base period in which such wages were highest.

Notwithstanding the preceding provision, an individual with base period wages equal to or more than the highest annual amount of taxable wages that applies to any calendar year in which the claim for unemployment benefits was filed shall be eligible for benefits.

B. If an individual lacks sufficient base period wages under the preceding paragraph to establish a claim for benefits, any wages paid in the individual's alternative base period shall be considered as the individual's base period wages. Employers shall comply with all requests for wage information made by the Commission to implement the provisions of this section. Employers shall produce the wage data within ten (10) days of the date the request is mailed

to the employer's last-known address. If necessary to determine the sufficiency of wages earned under this section, the Commission shall accept an affidavit from the individual supported by wage information such as check stubs, deposit slips, or other supporting documentation. Provided, that no wages used to establish a claim under an alternative base period shall be subsequently used to establish a second benefit year.

SECTION 7. AMENDATORY 40 O.S. 2001, 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. After a determination has been made that an individual has violated Section 5-102 of this title in a particular benefit year, if the Commission determines that another violation of that section has occurred in any subsequent benefit year, the individual shall be ineligible to receive unemployment compensation for the week in which the subsequent determination is made by the Commission and for the next following one hundred three (103) weeks, and no benefit 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) Such C. 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.~~

D. A determination of fraud must be made within two (2) years of the date on which the violation occurred.

SECTION 8. AMENDATORY 40 O.S. 2001, Section 2-613, is amended to read as follows:

Section 2-613. ~~RECOVERY AND RECOUPMENT.~~

~~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 Commission for the 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.~~

BENEFIT OVERPAYMENTS.

An overpayment of unemployment benefits shall be classified in one of three ways with recovery and recoupment to be conducted as follows:

1. Fraud overpayment: in which an individual intentionally makes a false statement or representation or fails to disclose a material fact, and has received any sum as benefits to which the individual was not entitled. The individual shall be liable to repay this sum, plus interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Oklahoma Employment Security Commission. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission may deduct the principal sum from any future benefits payable to the individual;

2. Claimant error overpayment: in which an individual, by mistake of law or fact, makes a false statement or representation or fails to disclose a material fact and has received any sum as benefits to which the individual was not entitled. The individual shall be liable to repay this sum, plus interest at the rate of one percent (1%) per month on the unpaid balance of the overpayment, to the Commission. The interest shall cease to accrue when the total accrued interest equals the amount of the overpayment. If an overpayment is modified, the interest shall cease to accrue when the total accrued interest equals the amount of the modified overpayment. The Commission may deduct the principal sum from any future benefits payable to the individual; or

3. Administrative overpayment - in which:

- a. an individual has received any sum as benefits under this act due to an error by the Commission or an employer, or
- b. an individual has received benefits and, under a redetermination or a reversal of a decision on appeal, the individual has been found to be not entitled to benefits.

The individual shall be liable to have this sum deducted from any future benefits payable to the individual with respect to the benefit year current at the time of the 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 the receipt.
No interest shall accrue on administrative overpayments.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-615 of Title 40, unless there is created a duplication in numbering, reads as follows:

Any interest, or any portion thereof, that accrues pursuant to the provisions of Section 2-613 of Title 40 of the Oklahoma Statutes, may be waived by the Oklahoma Employment Security Commission provided the failure of the claimant to remit payment at the time a determination of overpayment was made:

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

No waiver of interest shall be granted unless a request for 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 it is determined that the claimant received an overpayment of benefits through fraud.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-616 of Title 40, unless there is created a duplication in numbering, reads as follows:

If the Oklahoma Employment Security Commission or its representative determines that an individual has been overpaid unemployment benefits pursuant to paragraph 1 or 2 of Section 2-613 of Title 40 of the Oklahoma Statutes, the individual shall be sent a notice of overpayment determination. If the individual disagrees with this determination, the individual may file an appeal of the determination with the Appeal Tribunal within twenty (20) days after the date of the mailing of the notice to the individual's last-known address or, if the notice is not mailed, within twenty (20) days after the date of the delivery of the notice. If the individual fails to appeal the determination within the time provided, then the determination will be deemed final and no further appeal shall be allowed.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-617 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. If the notice of overpayment determination issued pursuant to Section 8 of this act becomes final due to a lack of appeal or if the determination is affirmed on appeal, and if the amount due is not paid within ninety (90) days of the date that the determination becomes final, then the Oklahoma Employment Security Commission may issue a warrant of levy and lien under its official seal, which shall state the name and social security number of the debtor and list the amount of indebtedness with interest. The warrant of levy and lien shall be for all purposes the equivalent of a judgment of a court of record.

B. The Commission may file a copy of the warrant of levy and lien with the county clerk of the county or counties in which the individual has property and thereupon the county clerk shall index

the warrant of levy and lien in the same manner as judgments using the name of the individual named in the warrant of levy and lien, indicating that it is due to an overpayment of unemployment insurance benefits, showing the amount due with interest, the date upon which the warrant of levy and lien was filed, and shall index the warrant of levy and lien against the real property described therein, if any is described. If the county clerk charges a fee for the filing of the warrant of levy and lien, the Commission may add the amount of the fee to the indebtedness owing by the individual named in the warrant of levy and lien.

C. The filing of the notice in the office of the county clerk of the county in which the individual resides shall constitute and be evidence and notice of the state's lien upon the title to any interest in any real or personal property of the individual named in the notice. The lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of any unpaid indebtedness, interest, penalty, fees and costs, and the lien shall be paramount and superior to all other liens of whatsoever kind or character, attaching to any of the property subsequent to the date of the recording and shall be in addition to any other lien provided for in this act. This lien shall be permanent and continuing without any requirement for executions under Section 735 of Title 12 of the Oklahoma Statutes or any other similar statute. This lien shall continue on personal property of the individual until the amount of the indebtedness, interest, fees and costs are paid. This lien shall continue on real property until released by payment or for a maximum of ten (10) years after the date of its filing.

D. The Commission may file a copy of the notice with the court clerk in the county in which the individual is employed or resides, and it shall be filed in the same manner as a judgment of a court of record for the purpose of pursuing any post-judgment collection

procedure that is deemed appropriate. The Commission may send the notice to the sheriff in a county in which the individual owns real or personal property for execution. Upon receiving the notice, the sheriff shall proceed to execute the notice in all respects and with like effect and in same manner prescribed by law in respect to executions against property upon judgment of the court of record; and the sheriff shall execute and deliver to the purchaser a bill of sale or deed, as the case may be. Any purchaser, other than the state, shall be entitled, upon application to the court having jurisdiction of the property, to have confirmation (the procedure for which shall be the same as is now provided for the confirmation of a sale under execution) of the sale prior to the issuance of a bill of sale or deed. The state shall be authorized to make bids at any such sale to the amount of indebtedness, interest, costs, and fees accrued. In the event of the bid of the state is successful, the sheriff shall issue a proper muniment of title to the Commission, and the Commission shall hold the title for the use and benefit of the state. The state may sell any property obtained in this manner through the procedures available for the sale of excess property of the state. Any money received by the Commission through the sale of property in this manner shall be credited against the indebtedness of the individual. The sheriff shall be entitled to the same fee for executing the notice as the sheriff would be entitled to receive if executing an execution issued by the court clerk of the county upon a judgment of a court of record.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-618 of Title 40, unless there is created a duplication in numbering, reads as follows:

LEVY ON INCOME AND MONETARY ASSETS.

A. As used in this section, the following words have the following meanings:

1. "Bank" means any state bank or banking association, national bank or banking association, savings and loan company, credit union, or any other financial institution;

2. "Bank account" means any checking or savings account the debtor has with any bank;

3. "Debtor" means any person that is the subject of a warrant of levy and lien issued pursuant to Section 9 of this act;

4. "Earnings" means any form of payment to an individual including, but not limited to, salary, wages, commission, or other compensation; and

5. "Employer" means any type of business or organization that owes earnings to a debtor.

B. If any debtor shall fail to pay his or her indebtedness to the Oklahoma Employment Security Commission and after the debtor has been notified of the amount due and demand for payment has been made, it shall be lawful for the Commission to collect the amount owed by levy upon the debtor's employer or any bank account of the debtor.

C. To levy upon an employer of the debtor, the Commission must serve a Notice of Levy on the employer along with the warrant of levy and lien that sets out the amount owing on the benefit overpayment of the debtor, with interest. The levy will have the same priority, and be subject to the same exceptions, as a continuing earnings garnishment provided for in Section 1173.4 of Title 12 of the Oklahoma Statutes. The following procedures will apply to a Notice of Levy served on an employer:

1. The employer shall answer the Notice of Levy on a form provided by the Commission. The employer shall follow the procedure for answering a continuing earnings garnishment as set out in subsection F of Section 1173.4 of Title 12 of the Oklahoma Statutes;

2. The Notice of Levy shall be a lien on the debtor's property in the same manner as provided for in subsection G of Section 1173.4

of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also be subject to the procedures and time limits set out in subsections H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma Statutes, except that when a document is required to be filed with the clerk of the court, the document will instead be filed with the Commission as directed on the forms provided; and

3. Claims for exemptions and any other matter relating to the levy shall be filed with the Appeal Tribunal of the Oklahoma Employment Security Commission and all claims and issues shall be decided by that office. Appeal from the Appeal Tribunal decision shall be governed by the appeal procedures set out in Part 6 of Article II of the Oklahoma Employment Security Act of 1980, and the Administrative Rules of the Oklahoma Employment Security Commission pertaining thereto.

D. To levy upon a debtor's bank account, the Commission must serve a Notice of Levy on the bank in which the debtor has an account, along with the warrant of levy and lien issued against the debtor. The following procedures will apply to a Notice of Levy served on a bank:

1. Upon receiving the Notice of Levy and the warrant of levy and lien issued against the debtor, the bank shall deliver all of the debtor's interest in the money in the debtor's bank account at the time of service of the levy, subject to the banker's lien or right of set off or any other priority claim of the bank, up to the amount of indebtedness indicated on the warrant of levy and lien plus accrued interest pursuant to Section 2-613 of Title 40 of the Oklahoma Statutes and any fees for service of process, to the Commission office indicated in the Notice of Levy;

2. The delivery of this money shall occur within ten (10) days of the date of service of the Notice of Levy;

3. If there is no money in the debtor's bank account at the time the Notice of Levy is served, or if the bank account has been

closed, an officer of the bank on which the Notice of Levy is served shall make a statement to that effect on the Notice of Levy. The statement shall be notarized and returned to the office of the Commission that is indicated in the Notice of Levy;

4. Any bank that fails or refuses to surrender money or rights to money in a bank account subject to levy, upon being served with a Notice of Levy and supporting warrant of levy and lien of the Commission, shall be liable to the Commission in a sum equal to the amount of money or rights to money not so surrendered, but not exceeding the amount of the debtor's indebtedness for the collection of which the levy has been made, together with accrued interest pursuant to Section 2-613 of Title 40 of the Oklahoma Statutes, and the cost of service of the Notice of Levy. Any amount recovered in this manner shall be credited against the liability of the debtor for the benefit overpayment indebtedness, for which the levy was made; and

5. Any bank in possession of money or rights to money subject to levy, upon which a levy has been made, that surrenders the money or rights to money to the Commission shall be discharged from any obligation or liability to the debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

E. Service of the Notice of Levy and the warrant of levy and lien shall be made in the same manner as provided in Section 2004 of Title 12 of the Oklahoma Statutes for service of process in civil actions.

F. If a sheriff's department is enlisted to serve the Notice of Levy, that sheriff's department shall be entitled to a service fee of Fifty Dollars (\$50.00) that is to be paid by the Commission and added to the debtor's indebtedness.

SECTION 13. AMENDATORY 40 O.S. 2001, Section 2-706, is amended to read as follows:

Section 2-706. STATE "ON" INDICATOR.

~~A. For weeks beginning prior to September 26, 1982, there is a "state 'on' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted:~~

~~(1) equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, and~~

~~(2) equaled or exceeded four percent (4%), or~~

~~(3) after June 30, 1977, equaled or exceeded five percent (5%).~~

~~Any optional or revised "state 'on' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.~~

B. ~~For weeks beginning after September 25, 1982, there~~ There is a "state 'on' indicator" for this state for a week if the Oklahoma Employment Security Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted:

~~(1) equaled~~ 1. Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, and

~~(2) equaled or exceeded five percent (5%)~~ 7; or

~~(3) equaled~~ 2. Equaled or exceeded six percent (6%).

Any optional or revised "state 'on' indicator" or indicators or optional waiver by a state of any such indicator or part of any such

indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.

SECTION 14. AMENDATORY 40 O.S. 2001, Section 2-707, is amended to read as follows:

Section 2-707. STATE "OFF" INDICATOR.

~~A. For weeks beginning prior to September 26, 1982, there is a "state 'off' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted after June 30, 1977, was either:~~

~~(1) less than five percent (5%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, or~~

~~(2) was less than four percent (4%).~~

~~Any optional or revised "state 'off' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.~~

~~B. For weeks beginning after September 25, 1982, there~~ There is a "state 'off' indicator" for this state for a week if the Commission determines, in accordance with the regulations of the Secretary of Labor of the United States, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment, not seasonally adjusted was either:

~~(1) less~~ 1. Less than six percent (6%) and was less than one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two (2) calendar years, or

~~(2) less~~ 2. Less than five percent (5%).

Any optional or revised "state 'off' indicator" or indicators or optional waiver by a state of any such indicator or part of any such indicator provided for by Congress for any period of time shall be considered to be in effect in Oklahoma for such period of time.

SECTION 15. AMENDATORY 40 O.S. 2001, Section 2-802, is amended to read as follows:

Section 2-802. REPORTS BY EMPLOYERS TO EMPLOYMENT SECURITY COMMISSION - NEW HIRE REGISTRY.

A. Employers doing business in the State of Oklahoma shall report to the Oklahoma Employment Security Commission, the hiring or employment of any person who resides or works in this state to whom the employer anticipates paying earnings.

B. Such report shall contain the employee's name, address, social security number, date of employment, state of employment, along with the employer's name, address, and federal identification number.

C. The report must be made within twenty (20) days of hiring, or twice monthly, not less than twelve (12) nor more than sixteen (16) days apart if reported electronically or magnetically. The report may be made by mailing a copy of the employee's W-4 form, by submitting a fax transmission of the employee's W-4 form, by submitting electronic media in a format that can be used by the ~~Oklahoma Employment Security~~ Commission, or by any other means authorized by the ~~Oklahoma Employment Security~~ Commission.

D. The Child Support Enforcement Division shall be the official New Hire Registry for the State of Oklahoma and will obtain the new hire information from the Oklahoma Employment Security Commission.

E. The Child Support Enforcement Division shall enter into agreements with state agencies administering unemployment, employment services, Workforce Investment Act programs, workers' compensation, public assistance, Medicaid, food stamps, vocational

rehabilitation, and other programs specified by federal law or regulation, to provide such information upon request.

F. Used in this section:

1. "Employee" means an individual who is an employee as defined by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401 et seq. "Employee" does not mean an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting with respect to that employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

2. "Employer" means an individual or other entity who is an employer as defined by the Internal Revenue Code of 1986, 26 U.S.C., Section 3401(d) and includes any governmental entity and any labor organization; and

3. "Labor organization" means an entity as defined by the National Labor Relations Act, 29 U.S.C., Section 152(5) including, but not limited to, any entity known as a "hiring hall" which is used by the organization and an employer to carry out requirements described in Section 8(f)(3) of the National Labor Relations Act, 29 U.S.C., Section 158(f)(3), of an agreement between the organization and the employer.

SECTION 16. AMENDATORY 40 O.S. 2001, Section 3-401, is amended to read as follows:

Section 3-401. APPEALS TO DISTRICT COURT.

~~Any employer aggrieved by~~ After the administrative appeal hearing process provided for in Article III of this title is complete, any order, ruling or finding ~~of the Commission, or its duly authorized representative,~~ that directly affecting such affects an employer or the Oklahoma Employment Security Commission, may ~~appeal therefrom~~ be appealed by the affected entity to the district court of the county of residence, or principal place of business, of ~~such~~ the employer; provided, however, if ~~such~~ the employer is a

nonresident of this state, then to the district court of Oklahoma County.

SECTION 17. AMENDATORY 40 O.S. 2001, Section 3-405, is amended to read as follows:

Section 3-405. DEPOSIT OF ASSESSMENT REQUIRED.

As a condition precedent to the right of ~~the~~ an employer to prosecute ~~such~~ an appeal, and as a jurisdictional prerequisite of the district court to entertain ~~such~~ the appeal, it is specifically provided that, if the appeal be from an order, judgment, finding, or ruling of the Oklahoma Employment Security Commission or its duly authorized representative, ~~assessing a contribution or causing any additional contribution, penalty, interest or fee to become owing,~~ the employer shall pay to the Commission ~~the amounts assessed or owing~~ all amounts owing in the employer's account. Any amounts so paid shall, pending the final determination of the appeal, be reflected by the Commission in ~~a separate~~ the employer's account, and if, upon a final determination of the appeal the order ~~assessing the contributions, or causing the contributions, penalties, interest or fees to become owing~~ of the Commission is reversed or modified and it is determined that the contribution or part thereof was erroneously assessed, or the contributions, penalties, interest or fees should not be owed to the Commission, the amount paid by the employer shall be refunded to the employer by the Commission.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-317 of Title 40, unless there is created a duplication in numbering, reads as follows:

EMPLOYEE RECOGNITION PROGRAM.

In order to establish a public employee benefit program to encourage outstanding performance in the workplace, the Oklahoma Employment Security Commission is hereby directed to establish an on-the-job employee performance recognition program which encourages outstanding job performance and productivity. In order to promote

excellence in job performance and provide recognition for work units with exceptional performance, the Commission is authorized to expend from monies available to it so much thereof as may be necessary for the purchase of recognition awards for presentation to the members of work units or individual employees with exceptional job performance records or for other significant contributions to the operation of the Commission. Recognition awards shall consist of distinctive wearing apparel, service pins, plaques, U.S. Savings Bonds, or other distinguished awards, the value of which shall not exceed One Hundred Dollars (\$100.00) per employee, which recognize the achievement of the work unit or individual employee.

SECTION 19. AMENDATORY 40 O.S. 2001, 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 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. Any claimant or employer or agent of such person as authorized in writing shall be supplied with information from the records of the Oklahoma Employment Security 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 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. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

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

11. The release to employees 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. 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. 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. 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. 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;

16. 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 and state or local programs utilized to divert persons from inpatient 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, program or larger aggregate units, provided that such aggregation meets disclosure requirements of the Oklahoma Employment Security Commission; ~~or~~

17. The release to officials, employees, and agents of the Attorney General, the Oklahoma State Bureau of Investigation, and the Insurance Department for use in the investigation of insurance fraud;

18. The release to officials, employees, and agents of public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C. Section 503(i);

19. The release of wage and benefit claim information, at the discretion of the Commission, to an agency of this state or its political subdivisions, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 2481 (b), based on a showing of need made to the Commission and after an agreement concerning the release of information is entered into with the entity receiving the information; or

20. The release of information to the wage record interchange system, at the discretion of the Commission.

D. All subpoenas 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 20. AMENDATORY 40 O.S. 2001, Section 5-102, is amended to read as follows:

Section 5-102. FALSE STATEMENT FOR BENEFITS, FAILURE TO DISCLOSE MATERIAL FACT.

~~(1)~~ A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for ~~himself~~ the individual or for any other person, shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment for not ~~longer~~ more than ninety (90) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

~~(2)~~ B. If a person is convicted of the crime described in subsection A of this section in a particular benefit year, and in any subsequent benefit year that person again commits the crime described in subsection A of this section, that person shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than one hundred eighty (180) days, or by both fine and imprisonment. Each

such false statement or representation or failure to disclose a material fact shall constitute a separate offense for each week of benefits.

C. Upon conviction sentences may be suspended or upon a plea of guilty judgment and sentencing may be deferred only upon the condition of full restitution to the Commission of all benefits so obtained or the excess of any benefits so increased.

SECTION 21. This act shall become effective November 1, 2002.

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