

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 763

By: Leftwich

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 2001, Sections 1-208, 1-218, as amended by Section 6, Chapter 452, O.S.L. 2002, 1-224, 2-405, as amended by Section 3, Chapter 177, O.S.L. 2003, 2-613, as amended by Section 13, Chapter 452, O.S.L. 2002, 3-106, as last amended by Section 6, Chapter 102, O.S.L. 2004, 3-111, as amended by Section 7, Chapter 102, O.S.L. 2004, 3-202, 4-108, as amended by Section 7, Chapter 177, O.S.L. 2003, 4-314 and 5-108 (40 O.S. Supp. 2004, Sections 1-218, 2-405, 2-613, 3-106, 3-111 and 4-108), which relate to the Employment Security Act of 1980; updating outline; authorizing Commission to combine certain entities into one account under certain circumstances; modifying exclusions and wage definition; modifying definition; modifying factor for good cause for voluntarily leaving work; making certain offset of benefits mandatory; allowing certain proof for relief of benefit wage charge; deleting rule requirement relating to domestic violence or abuse; clarifying who is a successor employer in certain circumstances; updating language; deleting requirement for making a certain rate assignment; deleting certain authority to establish a certain computation date and definition; providing for combining of certain unemployment experience; prohibiting the transfer of certain unemployment experience under certain circumstances; providing for assigning a certain minimum contribution rate; providing certain objective factors for determining if a business was acquired for a certain purpose; providing penalties; providing definitions; authorizing Commission to establish certain procedures; providing for certain interpretation and application; updating statutory cites; authorizing certain unclassified positions within the Commission; providing for certain reinstatement upon termination under certain circumstances; clarifying appointment; increasing limit for certain petty cash fund; adding prohibition to certain list of penalties; making an appropriation to the Employment Security Administration Fund; stating the purpose; specifying programs and the amounts; providing lapse date; specifying standards for accountability for expenditures; specifying appropriation be in accordance with certain provisions and requirements; repealing 40 O.S. 2001, Sections 3-407 and 4-315, which relate to bond for appeals from decisions other than those assessing contributions and the petty cash fund for the Job Corps; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-208, is amended to read as follows:

Section 1-208. EMPLOYER.

"Employer" means:

~~(1)~~ 1. Any employing unit, except as provided under paragraphs ~~(10)~~ 10 and ~~(11)~~ 11 of this section, which:

~~(a)~~

a. for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different calendar weeks, whether or not such weeks are or were consecutive, within either the calendar year or the preceding calendar year, and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day~~+~~, or

~~(b)~~

b. in any calendar quarter, in either the calendar year or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or more;

~~(2)~~ 2. Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another which at the time of such acquisition was an employer subject to the Employment Security Act of 1980; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to the Employment Security Act of 1980;

~~(3)~~ 3. Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to the Employment Security act of 1980 under paragraph ~~(1)~~ 1 of this section; or any individual or employing unit which acquired substantially all of the organization, trade, business, or assets of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling One Thousand Five Hundred Dollars (\$1,500.00) or more;

~~(4)~~ 4. Any employing unit which, together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly by the same interest, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this section;

~~(5)~~ 5. Any employing unit which, having become an employer under paragraphs ~~(1)~~ 1, ~~(2)~~ 2, ~~(3)~~ 3, ~~(4)~~ 4, ~~(8)~~ 8, ~~(10)~~ 10 or ~~(11)~~ 11 of this section has not, under Section 3-202 of this title, ceased to be an employer subject to the Employment Security Act of 1980;

~~(6)~~ 6. For the effective period of its election pursuant to Section 3-203 of this title any other employing unit which has elected to become subject to the Employment Security Act of 1980;

~~(7)~~ 7. Any department of this state, any other state, and all instrumentalities thereof, including any political subdivisions and their instrumentalities, for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed, except as provided under paragraphs ~~(10)~~ 10 and ~~(11)~~ 11 of this section;

~~(8)~~ 8. Any employing unit for which service in employment, as defined in paragraph (4) of Section 1-210 of this title, is performed, except as provided under paragraphs ~~(10)~~ 10 and ~~(11)~~ 11 of this section;

~~(9)~~ 9. For purposes of paragraphs ~~(1)~~ 1, ~~(8)~~ 8, ~~(10)~~ 10 and ~~(11)~~ 11 of this section, employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with Section 4-702 of this title by the Oklahoma Employment Security Commission and an agency charged with the administration of any other state or federal unemployment compensation law;

~~(10)~~ 10. Any employing unit for which agricultural labor as defined in paragraph (5) of Section 1-210 of this title is performed. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under ~~paragraphs (1)~~ paragraph 1, ~~(7)~~ 7, ~~(8)~~ 8 or ~~(11)~~ 11 of this section, the wages earned or the employment of an employee performing service in agricultural labor shall not be taken into account;

~~(11)~~ 11. Any employing unit for which domestic service in employment as defined in paragraph (6) of Section 1-210 of this title is performed. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under ~~paragraphs (1)~~ paragraph 1, ~~(7)~~ 7, ~~(8)~~ 8 or ~~(10)~~ 10 of this section, the wages earned or the employment of an

employee performing domestic service shall not be taken into account; ~~or~~

~~(12)~~ 12. Any employing unit which is not an employer by reason of any other provisions of the Employment Security Act of 1980 shall nevertheless be an "employer" if either:

~~(a)~~

a. within the calendar year or preceding calendar year, service is or was performed, with respect to which such employing unit is liable for any federal tax against which credit may be taken by such employing unit for contributions required to be paid by it into a state unemployment fund, or

~~(b)~~

b. such employing unit is required to be an "employer" as a condition for approval of the Employment Security Act of 1980 for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C., Section 3301 et seq.; or

13. If two or more employers share common ownership, management, or control, the Commission may combine their merit rating accounts, including their actual contribution and benefit experience, annual payrolls, and contribution rates into one account.

SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-218, as amended by Section 6, Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2004, 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~~ 2005, under a qualified plan as described in 26 U.S.C. ~~Section~~ Sections 401(k), 403b, 408(k), 457 and 7701(j),
- 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;

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 3. AMENDATORY 40 O.S. 2001, Section 1-224, is amended to read as follows:

Section 1-224. FILE.

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

1. Hand-delivered to an office of the Oklahoma Employment Security Commission by the close of business on or before the date due;

2. Telefaxed to an office of the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing shall be determined by the date and time printed by the Commission's telefax machine on the document received or the date and time on the sender's transmittal sheet;

3. Mailed with sufficient postage and properly addressed to an office of the Oklahoma Employment Security Commission on or before the date due. Timely mailing shall be determined by the postmark; or

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

SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-405, as amended by Section 3, Chapter 177, O.S.L. 2003 (40 O.S. Supp. 2004, 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;

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;

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; or

5. If the claimant separated from employment as part of a plan to escape domestic violence or abuse, ~~provided that agency rules be promulgated to reflect that a victim's protection order has been filed and is effective at the termination date.~~

SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-613, as amended by Section 13, Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2004, Section 2-613), is amended to read as follows:

Section 2-613. 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~~ shall 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~~ shall 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 6. AMENDATORY 40 O.S. 2001, Section 3-106, as last amended by Section 6, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2004, 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~~ employer shall be relieved of a benefit wage charge if the employer proves to the satisfaction of the Commission that the benefit wage charge includes 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 ninety (90) 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;

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; or

8. Left employment with that employer as part of a plan to escape domestic violence or abuse, ~~provided that agency rules be promulgated to reflect that a victim's protection order has been filed and is effective at the termination date.~~

9. Left employment to attend training approved under the Trade Act of 1974 and is allowed unemployment benefits pursuant to Section 2-416 of this title.

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 40 O.S. 2001, Section 3-111, as amended by Section 7, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2004, Section 3-111), is amended to read as follows:

Section 3-111. ~~ACQUIRING~~ SUCCESSOR AND PREDECESSOR EMPLOYERS.

A. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, employees, business, or assets of any employer (excepting in such case any assets retained by that employer incident to the liquidation of the employer's obligations) and who continues the operations of the predecessor employer as a going business, shall be determined to be a successor employer. The successor employer shall acquire the merit rating account of the predecessor employer, including the predecessor's actual contribution and benefit experience, annual payrolls, and contribution rate. The ~~acquiring~~ successor employer shall also become jointly and severally liable with the predecessor employer for all current or delinquent contributions, interest, penalties and fees owed to the Commission by the predecessor employer.

Written notice of all current or delinquent contributions, interest, penalties and fees owed to the Commission by the predecessor employer shall be provided to the ~~acquiring~~ successor employer by the predecessor employer prior to the sale of the

business. Failure to give such notice may subject the predecessor employer to a penalty as specified by the rules of the Commission.

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

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

1. Make an order affirming, modifying or reversing the initial determination;

2. Immediately send to the employer a written notice thereof;

and

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

If any employer fails to file its written protest to the initial determination within the period of twenty (20) days, as provided by

this subsection, then the initial determination shall be final, and no appeal shall thereafter be allowed.

C. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, business, or assets of an employer, at one or more separate and distinct establishments and who continues the acquired operations of the predecessor as a going business, shall acquire that portion of the experience rating account of ~~such~~ the predecessor employer that is applicable to ~~such~~ the establishment or establishments, if ~~such~~ the employing unit, immediately after ~~such~~ the acquisition, is an employer; provided, however, that ~~such~~ the employing unit shall not acquire ~~such~~ a portion of the experience rating account unless written application therefor is received by the Commission within one hundred twenty (120) days after the date of ~~such~~ the acquisition together with evidence sufficient for the Commission to determine which portion of the experience rating account of the predecessor is applicable to the acquired operations, and the Commission finds that ~~such~~ the transfer will not tend to defeat or obstruct the object and purpose of the Employment Security Act of 1980; and provided further, that the portion of the experience rating account so transferred, including the taxable payrolls and benefit wages, shall not thereafter be used in computing an experience rating contribution rate for the transferring employer. For the purpose of this subsection a separate and distinct establishment means all operations conducted by an employer at one business location which is readily segregable and identifiable as a separate business organization.

~~D. No rate shall be assigned an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with regulations prescribed by the Commission, which regulations shall be consistent with federal requirements for additional credit~~

~~allowance in Section 1602 of the Internal Revenue Code, and the Employment Security Act of 1980.~~

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

~~F. If the Commission finds that any report required to complete a determination of contribution rate has not been filed or if filed is incorrect or insufficient, and any such fact or information has not already been established or found in connection with some other proceeding pursuant to the provisions of the Employment Security Act of 1980, an estimate may be made of the information required on the basis of the best evidence reasonably available to it at the time. Notice shall be given of such determination as provided for contribution rate in subsection C of Section 3-102 of this title and the employer may appeal therefrom as provided in subsection D of Section 3-102 of this title.~~

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-111.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL RULES ON TRANSFER OF RATES AND EXPERIENCE.

A. Notwithstanding any other provision of law, the following shall apply regarding assignments of rates and transfers of experience:

1. If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be combined with the

unemployment experience of the employer to whom such business is so transferred; and

2. Whenever a person who is not an employer under the Employment Security Act of 1980 at the time it acquires the trade or business of an employer, the unemployment experience rate of the acquired business shall not be transferred to such person if the Commission finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the person shall be assigned the minimum contribution rate under Section 3-110 of Title 40 of the Oklahoma Statutes. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commission shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

B. 1. If a person knowingly violates or attempts to violate paragraph 1 or 2 of subsection A of this section or any other provision of the Employment Security Act of 1980 related to determining the assignment of the contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

- a. if the person is an employer, then the employer shall be assessed a penalty equal to ten percent (10%) of the actual taxes due in the calendar quarter in which the employer violated or attempted to violate the provisions of this section and a penalty equal to ten percent (10%) of the actual taxes due in each of the following three (3) calendar quarters. The funds in

payment of this penalty shall be deposited in the Oklahoma Employment Security Commission revolving fund established under section 4-901 of Title 40 of the Oklahoma Statutes,

- b. if the person is not an employer, the person shall be subject to a civil money penalty of at least One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) to be determined by the Assessment Board of the Oklahoma Employment Security Commission. Any fine shall be deposited in the Oklahoma Employment Security Commission Revolving Fund established under Section 4-901 of Title 40 of the Oklahoma Statutes.

2. For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

3. For the purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

4. In addition to the penalty imposed by paragraph 1 of this subsection, any person who violates the provisions of this section shall be guilty of a misdemeanor and may be imprisoned for up to one (1) year.

C. The Commission shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

D. For purposes of this section:

1. "Person" has the meaning given such term by 26 U.S.C. Section 7701(a)(1); and

2. "Trade or business" shall include the employers workforce.

E. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

SECTION 9. AMENDATORY 40 O.S. 2001, Section 3-202, is amended to read as follows:

Section 3-202. TERMINATION OF COVERAGE.

Termination of coverage with respect to 1977 or prior years shall be determined in accordance with provisions applicable to those years. Except as otherwise provided in Section 3-203 of this title, an employing unit shall cease to be an employer subject to this act only as of the first day of any calendar year and only if it files with the Commission, during January of such year, a written application for termination of coverage, and the Commission finds that there were (1) no calendar quarter within the preceding calendar year in which such employing unit paid for service in employment wages of One Thousand Five Hundred Dollars (\$1,500.00) or more or (2) no twenty (20) different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this act; provided further that religious, charitable, educational or other organizations covered under paragraph 8 of Section ~~1-208(9)~~ 1-208 of this title shall be so terminated if the Commission finds that there were no twenty (20) different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit employed four or more individuals in employment subject to this act. Provided further that agricultural labor as covered under paragraph 10 of Section ~~1-208(12)~~ 1-208 of this title shall be so terminated if the Commission finds that there were (1) no calendar quarter within the preceding calendar year in which such employing unit paid wages of Twenty Thousand Dollars (\$20,000.00) or more, or (2) no twenty (20) different days, each day being in a different calendar week within the preceding calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this act; provided further that domestic service as covered under

paragraph 11 of Section ~~1-208(13)~~ 1-208 of this title shall be terminated if the Commission finds that there were no calendar quarters within the preceding calendar year in which such employing unit paid wages of One Thousand Dollars (\$1,000.00) or more. Provided, however, that if the Federal Congress shall, by amendment to the Federal Unemployment Tax Act, redefine the term employer to include employing units not qualified as employers under this section, all of the provisions of this act shall be applicable to such employing units. For the purposes of this section, the two or more employing units mentioned in ~~subsections (2), (3) or (4)~~ paragraph 2, 3 or 4 of Section 1-208 of this title shall be treated as a single employing unit.

SECTION 10. AMENDATORY 40 O.S. 2001, Section 4-108, as amended by Section 7, Chapter 177, O.S.L. 2003 (40 O.S. Supp. 2004, Section 4-108), is amended to read as follows:

Section 4-108. EXECUTIVE DIRECTOR.

A. The chief executive officer of the Commission shall be the Executive Director who shall be appointed by and serve at the pleasure of the Commission. The Executive Director shall have such compensation and further duties as the Commission may establish. The Executive Director may appoint in the unclassified service a Deputy Director and an Associate Director, and shall fix the qualifications and duties of such position. The Executive Director may also appoint in the unclassified service secretaries to the Executive Director ~~and,~~ Deputy Director, and Associate Director.

B. If a person has acquired grade, rank and career status under the merit system of personnel administration within the Oklahoma Employment Security Commission before being appointed as Executive Director, Deputy Director, Associate Director, or unclassified secretary, that person shall:

1. ~~Have~~ Upon termination from the unclassified position, have the right to be reinstated to the position within the Oklahoma

Employment Security Commission which was held prior to such appointment, or to an equivalent position, unless the person was terminated for a reason that would justify termination of a classified employee or disqualify the person for reinstatement under the Oklahoma Personnel Act or the rules implementing it; and

2. Be entitled during the unclassified appointment to continue to participate without interruption in any fringe benefit programs available to career employees including, but not limited to, retirement and insurance programs.

SECTION 11. AMENDATORY 40 O.S. 2001, Section 4-314, is amended to read as follows:

Section 4-314. PETTY CASH FUND.

There is hereby authorized to be created a petty cash fund for the Oklahoma Employment Security Commission in an amount not to exceed ~~Two Hundred Fifty Dollars (\$250.00)~~ Six Hundred Dollars (\$600.00). ~~Said~~ This fund may be established from any administrative funds available to the Oklahoma Employment Security Commission for general operating expenses and shall be administered under such rules as prescribed by the Director of State Finance.

SECTION 12. AMENDATORY 40 O.S. 2001, Section 5-108, is amended to read as follows:

Section 5-108. OTHER PENALTIES IN THIS ACT.

Other penalties are provided in the following sections:

Employer violations of employee rights - Section 2-301

Impermissible charges to claimants - Section 2-302

Disqualification of benefit claims for fraud - Section 2-402

Recovery of benefits paid upon false statement - Section 2-613

SUTA dumping prohibition - Section 3-111.1

SECTION 13. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

There is hereby appropriated to the Employment Security Administration Fund, out of funds made available to this state by

the federal Reed Act Distribution made on March 13, 2002, pursuant to Section 903(d) of the Social Security Act, 42, U.S.C., Section 1103(d), as amended, the amount of Nine Million Two Hundred Sixty-nine Thousand Forty-three Dollars and twenty-three cents (\$9,269,043.23) to be used by the Oklahoma Employment Security Commission for the purpose of paying the administration expenses of the following programs in the following amounts:

1. The Employment Service program in the amount of Six Million Four Hundred Ninety-nine Thousand Five Hundred Twenty-six Dollars and seventy-seven cents (\$6,499,526.77);

2. The One-Stop Career Center expenses attributable to the Employment Service and the Unemployment Insurance program in the amount of Three Hundred Thousand Dollars (\$300,00.00); and

3. The Unemployment Insurance program in the amount of Two Million Four Hundred Sixty-nine Thousand Five Hundred Sixteen Dollars and forty-six cents (\$2,469,516.46).

The funds appropriated by this section shall be expended on or before December 31, 2006. Expenditures from this appropriation shall be accounted for in accordance with standards established by the United States Secretary of Labor. The Oklahoma Employment Security Commission shall utilize the appropriation made by this section in accordance with the provisions and requirements contained in the Social Security Act, Title 42, of the United States Code.

SECTION 14. REPEALER 40 O.S. 2001, Sections 3-407 and 4-315, are hereby repealed.

SECTION 15. This act shall become effective November 1, 2005.

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LKS

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