

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1531

By: Leftwich of the Senate

3 and

4 McDaniel (Randy) of the  
5 House

6  
7 ( labor - which relate to the Employment Security Act  
8 of 1980 - codification -  
9 effective date )

10

11

12 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
13 entire bill and insert

13

14 "An Act relating to labor; amending Section 1,  
15 Chapter 452, O.S.L. 2002 and 40 O.S. 2001, Sections  
16 1-208, as last amended by Section 1, Chapter 176,  
17 O.S.L. 2006, 1-210, as last amended by Section 2,  
18 Chapter 176, O.S.L. 2006, 1-224, as last amended by  
19 Section 2, Chapter 354, O.S.L. 2007, Section 2,  
20 Chapter 102, O.S.L. 2004, 2-209, as amended by  
21 Section 3, Chapter 102, O.S.L. 2004, 2-404, 2-503,  
22 as amended by Section 4, Chapter 102, O.S.L. 2004,  
23 2-610, as amended by Section 10, Chapter 176, O.S.L.  
24 2006, Section 17, Chapter 452, O.S.L. 2002, as  
amended by Section 5, Chapter 177, O.S.L. 2003, 554,  
as amended by Section 4, Chapter 1, 1st  
Extraordinary Session, O.S.L. 2005 and 555, as  
amended by Section 2, Chapter 78, O.S.L. 2007 (40  
O.S. Supp. 2007, Sections 1-108, 1-208, 1-210, 1-  
224, 1-226, 2-209, 2-503, 2-610, 2-618, 554 and  
555), which relate to the Employment Security Act of  
1980 and the Standards for Workplace Drug and  
Alcohol Testing Act; providing for certain deadline  
for Indian tribes to make certain election; stating

1 that an employing unit which has become an employer  
2 under certain circumstances has not ceased to be an  
3 employer; modifying exemption to certain definition;  
4 modifying definition; adding definitions; changing  
5 the word disqualification to denial in relation to  
6 certain between-term period for certain employees;  
7 making language gender neutral; modifying and adding  
8 procedures relating to disqualification of an  
9 employee for certain benefits when the employee  
10 leaves work voluntarily without good cause connected  
11 to the work; providing for written notice of certain  
12 claims; modifying requirement relating to judicial  
13 review; modifying procedures for claims for  
14 exemptions and any other matter relating to certain  
15 levy; providing for certain order of exemption;  
16 removing certain compensation from consideration of  
17 restrictions of certain drug or alcohol testing by  
18 employers; providing for codification; and providing  
19 an effective date.

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

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

SECTION 1. AMENDATORY Section 1, Chapter 452, O.S.L.  
2002 (40 O.S. Supp. 2007, Section 1-108), is amended to read as  
follows:

Section 1-108. A. The term "employer" shall include any Indian  
tribe for which service in employment is performed, as defined in  
the Employment Security Act of 1980.

B. The term "employment" shall include service performed in the  
employ of an Indian tribe, as defined in the Federal Unemployment  
Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is  
excluded from "employment" as defined in FUTA solely by reason of  
26 U.S.C., Section 3306(c)(7), and is not otherwise excluded from

1 employment under the Employment Security Act of 1980. For purposes  
2 of this section, the exclusions from employment in subparagraphs (c)  
3 and (e) of paragraph (7) of Section 1-210 of this title shall be  
4 applicable to services performed in the employ of an Indian tribe.

5 C. The terms "Indian tribe" and "tribal unit" shall have the  
6 meanings ascribed to them in federal law. "Tribal unit" includes  
7 subdivisions, subsidiaries, and business enterprises wholly owned by  
8 an Indian tribe.

9 D. Benefits based on service in employment defined in this  
10 section shall be payable in the same amount, on the same terms, and  
11 subject to the same conditions as benefits payable on the basis of  
12 other service subject to the Employment Security Act of 1980,  
13 provided wages used to establish the claim were paid during a time  
14 in which the account of the Indian tribe for which services were  
15 rendered was not terminated pursuant to subparagraph a of paragraph  
16 1 of subsection F of this section.

17 E. 1. An Indian tribe or tribal unit subject to the Employment  
18 Security Act of 1980 shall pay contributions under the same terms  
19 and conditions as required of nongovernmental employers for profit  
20 subject to the Employment Security Act of 1980 unless the tribe  
21 elects to pay into the State Unemployment Compensation Fund amounts  
22 equal to the amount of benefits attributable to service in the  
23 employ of the Indian tribe.

24

1           2. An Indian tribe or tribal unit electing to make payments in  
2 lieu of contributions shall so notify the Oklahoma Employment  
3 Security Commission in writing. ~~After making the election~~ before  
4 the last day of January of the calendar year in which the tribe  
5 wishes to begin making reimbursement payments. If the Commission  
6 determines the Indian tribe is eligible to exercise its option, the  
7 Indian tribe shall be liable for reimbursement payments in lieu of  
8 contributions in the same manner and subject to the same provisions  
9 that apply to reimbursing nonprofit organizations as provided in  
10 Part 8 of Article 3 of the Employment Security Act of 1980,  
11 including formation of group accounts, and the proportionate  
12 allocation of benefit costs, except that one hundred percent (100%)  
13 of the extended benefits attributable to the Indian tribe shall be  
14 reimbursed. Indian tribes shall determine whether reimbursement for  
15 benefits paid shall be elected by the tribe as a whole, by  
16 individual tribal units, or by combinations of individual tribal  
17 units. If any provision contained in Part 8 of Article 3 of the  
18 Employment Security Act of 1980, including the administrative rules  
19 implementing that Part, contradicts a provision of this section, the  
20 provision of this section shall control.

21           3. An Indian tribe or tribal unit shall be billed for the full  
22 amount of benefits attributable to service in the employ of the  
23 Indian tribe or tribal unit on the same schedule as other employing  
24 units that have elected to make payments in lieu of contributions.

1 F. 1. a. If an Indian tribe or tribal unit thereof fails to  
2 file the required reports and pay all late filing  
3 penalties or fails to make required payments under the  
4 Employment Security Act of 1980, including payment of  
5 all interest, penalties, surcharges, or fees, a notice  
6 of reporting or payment delinquency shall be mailed to  
7 the Indian tribe at its last-known address. If the  
8 delinquency is not corrected within ninety (90) days  
9 of the date of mailing of the notice of delinquency,  
10 the account of the Indian tribe shall be terminated  
11 and notice of termination shall be mailed to the tribe  
12 at its last-known address, together with a statement  
13 of protest rights available pursuant to Section 3-115  
14 of this title. If the account of an Indian tribe is  
15 terminated pursuant to this subparagraph, the Indian  
16 tribe shall not be considered an "employer" for  
17 purposes of subsection A of this section, and services  
18 performed for the Indian tribe shall not be considered  
19 "employment" for purposes of subsection B of this  
20 section.

21 b. The Oklahoma Employment Security Commission may  
22 reinstate the account of any Indian tribe that loses  
23 coverage under subparagraph a of this subsection if  
24 the tribe pays all contributions, payments in lieu of

1 contributions, interest, penalties, surcharges, and  
2 fees that are due and owing. Upon reinstatement, the  
3 tribe shall again be considered an "employer" for  
4 purposes of subsection A of this section and services  
5 performed for the tribe shall again be considered  
6 "employment" for purposes of subsection B of this  
7 section.

8 2. a. Failure of an Indian tribe or tribal unit to make  
9 required payments, including assessments of interest,  
10 penalties, surcharges, and fees within ninety (90)  
11 days of the due date for payment shall cause the  
12 Indian tribe to lose the option to make payments in  
13 lieu of contributions, as described in subsection E of  
14 this section, for the following tax year unless  
15 payment in full is received before January 31 of the  
16 next tax year.

17 b. Any Indian tribe that loses the option to make  
18 payments in lieu of contributions due to late payment  
19 or nonpayment, as described in subparagraph a of this  
20 paragraph, shall have the option reinstated if, after  
21 a period of one (1) year, all contribution payments  
22 have been timely made, provided no contributions,  
23 payments in lieu of contributions for benefits paid,  
24

1 interest, penalties, surcharges, or fees remain  
2 outstanding.

3 G. The notice of payment or reporting delinquency to Indian  
4 tribes or their tribal units, referred to in subparagraph a of  
5 paragraph 1 of subsection F of this section, shall include  
6 information that failure to make full payment and file required  
7 reports within the prescribed time frame shall cause:

8 1. The Indian tribe to be liable for taxes under FUTA;

9 2. The Indian tribe to lose the option to make payments in lieu  
10 of contributions;

11 3. The Indian tribe to be excepted from the definition of  
12 "employer", as provided in subsection A of this section; and

13 4. Services performed in the employ of the Indian tribe to be  
14 excepted from the definition of "employment", as provided in  
15 subsection B of this section.

16 H. Extended benefits paid that are attributable to service in  
17 the employ of an Indian tribe and not reimbursed by the United  
18 States government shall be financed in their entirety by the Indian  
19 tribe.

20 I. If an Indian tribe fails to make required payments under the  
21 Employment Security Act of 1980, including the payment of all  
22 interest, penalties, surcharges, and fees, within ninety (90) days  
23 of the mailing of the notice of payment delinquency, the Oklahoma  
24 Employment Security Commission shall immediately notify the United

1 States Internal Revenue Service and the United States Department of  
2 Labor.

3 J. The provisions of subsections K and L of this section shall  
4 provide a transition for the implementation of Section 166 of Public  
5 Law ~~106-144~~ 106-554 enacted by the Congress of the United States and  
6 effective December 21, 2000, so that Indian tribes may qualify for  
7 federal tax credits and employees of Indian tribes may be eligible  
8 for benefits.

9 K. Any Indian tribe which did not have an active account with  
10 the Oklahoma Employment Security Commission from January 1, 2001, to  
11 the effective date of this section, but which desires to be covered  
12 for benefits for that period of time, may elect to be subject to one  
13 of the following, if the tribe notifies the Commission of the  
14 election in writing:

15 1. To pay contributions. If the tribe elects to make payments  
16 for contributions, interest or penalties shall not be assessed  
17 against such tribe for the period from January 1, 2001, to the  
18 effective date of this section if full payment for all contributions  
19 due is made within twenty (20) days after an account is established  
20 for the tribe; or

21 2. To make payments in lieu of contributions. If the tribe  
22 elects to make payments in lieu of contributions, interest or  
23 penalties shall not be assessed against such tribe for the period  
24 from January 1, 2001, to the effective date of this section if all

1 reports that are due for that period are filed within twenty (20)  
2 days after an account is established for the tribe.

3 L. Any Indian tribe which did not have an active account with  
4 the Oklahoma Employment Security Commission from January 1, 2001, to  
5 the effective date of this section and does not desire to be covered  
6 for benefits for that period shall be covered by the provisions of  
7 subsections A through I of this section. The coverage for any such  
8 tribe shall be prospective only and shall not entitle any employee  
9 of the tribe to benefits for any period prior to the effective date  
10 of this section.

11 M. Indian tribes paying contributions prior to the date of this  
12 section shall not be able to make an election to make payments in  
13 lieu of contributions for the period from January 1, 2001, to the  
14 effective date of this section. Any change in election shall be  
15 prospective only.

16 N. Participation by any Indian tribe in the state unemployment  
17 insurance system shall not operate as a waiver of the sovereign  
18 immunity of the tribe.

19 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-208, as  
20 last amended by Section 1, Chapter 176, O.S.L. 2006 (40 O.S. Supp.  
21 2007, Section 1-208), is amended to read as follows:

22 Section 1-208. EMPLOYER.

23 "Employer" means:  
24

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

3 a. for some portion of a day, but not necessarily  
4 simultaneously, in each of twenty (20) different  
5 calendar weeks, whether or not such weeks are or were  
6 consecutive, within either the calendar year or the  
7 preceding calendar year, and for the purpose of this  
8 definition if any week includes both December 31 and  
9 January 1, the days up to January 1 shall be deemed  
10 one (1) calendar week and the days beginning January 1  
11 another such week, has or had in employment one or  
12 more individuals, irrespective of whether the same  
13 individuals are or were employed in each such day, or  
14 b. in any calendar quarter, in either the calendar year  
15 or preceding calendar year paid for service in  
16 employment wages of One Thousand Five Hundred Dollars  
17 (\$1,500.00) or more;

18 2. Any individual or employing unit, whether or not an  
19 employing unit at the time of the acquisition, which acquired  
20 substantially all of the organization, employees, trade, business,  
21 or assets thereof, of another which at the time of such acquisition  
22 was an employer subject to the Employment Security Act of 1980; or  
23 which acquired a part of the organization, employees, trade, or  
24 business of another employing unit which at the time of such

1 acquisition was an employer subject to the Employment Security Act  
2 of 1980;

3 3. Any individual or employing unit, whether or not an  
4 employing unit at the time of acquisition, which acquired  
5 substantially all of the organization, employees, trade, business,  
6 or assets thereof, of another employing unit, if the employment  
7 record of such individual or employing unit subsequent to such  
8 acquisition, together with the employment record of the acquired  
9 unit prior to such acquisition, both within the same calendar year,  
10 would be sufficient to constitute an employing unit and employer  
11 subject to the Employment Security Act of 1980 under paragraph 1 of  
12 this section; or any individual or employing unit which acquired  
13 substantially all of the organization, employees, trade, business,  
14 or assets of another employing unit if such employing unit  
15 subsequent to such acquisition, and such acquired unit prior to such  
16 acquisition, both within the same calendar quarter, together paid  
17 for service in employment wages totaling One Thousand Five Hundred  
18 Dollars (\$1,500.00) or more;

19 4. Any employing unit which, together with one or more other  
20 employing units, is owned or controlled, by legally enforceable  
21 means or otherwise, directly by the same interest, or which owns or  
22 controls one or more other employing units, by legally enforceable  
23 means or otherwise, and which, if treated as a single unit with such  
24

1 other employing unit, would be an employer under paragraph ~~(1)~~ 1 of  
2 this section;

3 5. Any employing unit which, having become an employer under  
4 paragraph 1, 2, 3, 4, 6, 8, 10 ~~or~~, 11 or 12 of this section has not,  
5 under Section 3-202 of this title, ceased to be an employer subject  
6 to the Employment Security Act of 1980;

7 6. For the effective period of its election pursuant to Section  
8 3-203 of this title any other employing unit which has elected to  
9 become subject to the Employment Security Act of 1980;

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

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

19 9. For purposes of paragraphs 1, 8, 10 and 11 of this section,  
20 employment shall include service which would constitute employment  
21 but for the fact that the service is deemed to be performed entirely  
22 within another state pursuant to an election under an arrangement  
23 entered into in accordance with Section 4-702 of this title by the  
24 Oklahoma Employment Security Commission and an agency charged with

1 the administration of any other state or federal unemployment  
2 compensation law;

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

10 11. Any employing unit for which domestic service in employment  
11 as defined in paragraph (6) of Section 1-210 of this title is  
12 performed. In determining whether or not an employing unit for  
13 which service other than domestic service is also performed is an  
14 employer under paragraph 1, 7, 8 or 10 of this section, the wages  
15 earned or the employment of an employee performing domestic service  
16 shall not be taken into account;

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

20 a. within the calendar year or preceding calendar year,  
21 service is or was performed, with respect to which the  
22 employing unit is liable for any federal tax against  
23 which credit may be taken by the employing unit for  
24

1 contributions required to be paid by it into a state  
2 unemployment fund, or

3 b. the employing unit is required to be an "employer" as  
4 a condition for approval of the Employment Security  
5 Act of 1980 for full tax credit to be allowed against  
6 the tax imposed by the Federal Unemployment Tax Act,  
7 26 U.S.C., Section 3301 et seq.; or

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

13 SECTION 3. AMENDATORY 40 O.S. 2001, Section 1-210, as  
14 last amended by Section 2, Chapter 176, O.S.L. 2006 (40 O.S. Supp.  
15 2007, Section 1-210), is amended to read as follows:

16 Section 1-210. EMPLOYMENT.

17 "Employment" means:

18 (1) Any service, including service in interstate commerce,  
19 performed by:

20 (a) any officer of a corporation; or

21 (b) any individual who, under the usual common-law rules  
22 applicable in determining the employer-employee  
23 relationship, has the status of an employee.

24

1 (2) (a) any service, including service in interstate commerce,  
2 performed by any individual other than an individual  
3 who is an employee under paragraph (1) of this section  
4 who performs services for remuneration for any person:

5 (i) as an agent-driver or commission-driver engaged  
6 in distributing meat products, vegetable  
7 products, fruit products, bakery products,  
8 beverages other than milk, or laundry or dry  
9 cleaning services, for his or her principal; or

10 (ii) as a traveling or city salesperson, other than as  
11 an agent-driver or commission-driver, engaged  
12 upon a full-time basis in the solicitation on  
13 behalf of, and the transmission to, his or her  
14 principal, except for sideline sales activities  
15 on behalf of some other person, of orders from  
16 wholesalers, retailers, contractors, or operators  
17 of hotels, restaurants or other similar  
18 establishments for merchandise for resale or  
19 supplies for use in their business operations;

20 (b) provided, the term "employment" shall include services  
21 described in divisions (i) and (ii) of subparagraph  
22 (a) of this paragraph if:  
23  
24

1 (i) the contract of service contemplates that  
2 substantially all of the services are to be  
3 performed personally by such individual;

4 (ii) the individual does not have a substantial  
5 investment in facilities used in connection with  
6 the performance of the services, other than in  
7 facilities for transportation; and

8 (iii) the services are not in the nature of a single  
9 transaction that is not part of a continuing  
10 relationship with the person for whom the  
11 services are performed.

12 (3) Service performed in the employ of this state or any of its  
13 instrumentalities or any political subdivision thereof or any of its  
14 instrumentalities or any instrumentality of more than one of the  
15 foregoing or any instrumentality of any of the foregoing and one or  
16 more other states or political subdivisions; provided, that such  
17 service is excluded from "employment" as defined in the Federal  
18 Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not  
19 excluded from "employment" under paragraph (7) of this section.

20 (4) Service performed by an individual in the employ of a  
21 community chest, fund, foundation or corporation, organized and  
22 operated exclusively for religious, charitable, scientific, testing  
23 for public safety, literary or educational purposes, or for the  
24 prevention of cruelty to children or animals, no part of the net

1 earnings of which inures to the benefit of any private shareholder  
2 or individual, no substantial part of the activities of which is  
3 carrying on propaganda, or otherwise attempting to influence  
4 legislation and which does not participate in, or intervene in,  
5 including the publishing or distributing of statements, any  
6 political campaign on behalf of any candidate for public office;  
7 provided that such organization had four or more individuals in  
8 employment for some portion of a day in each of twenty (20)  
9 different weeks, whether or not such weeks were consecutive, within  
10 either the calendar year or preceding calendar year, regardless of  
11 whether they were employed at the same moment of time.

12 (5) Service performed by an individual in agricultural labor as  
13 defined in subparagraph (a) of paragraph (15) of this section when:

14 (a) the service is performed for a person who:

15 (i) during any calendar quarter in either the  
16 calendar year or the preceding calendar year,  
17 paid remuneration in cash of Twenty Thousand  
18 Dollars (\$20,000.00) or more to individuals  
19 employed in agricultural labor; or

20 (ii) for some portion of a day in each of twenty (20)  
21 different calendar weeks, whether or not the  
22 weeks were consecutive, in either the calendar  
23 year or the preceding calendar year, employed in  
24 agricultural labor ten or more individuals,

1                   regardless of whether they were employed at the  
2                   same moment of time.

3           (b) for the purposes of this paragraph any individual who  
4           is a member of a crew furnished by a crew leader to  
5           perform service in agricultural labor for any other  
6           person shall be treated as an employee of the crew  
7           leader:

8           (i) if the crew leader holds a valid certificate of  
9           registration under the Farm Labor Contractor  
10           Registration Act of 1963, Public Law 95-562, 29  
11           U.S.C., Sections 1801 through 1872; or  
12           substantially all the members of the crew operate  
13           or maintain tractors, mechanized harvesting or  
14           crop-dusting equipment, or any other mechanized  
15           equipment, which is provided by the crew leader;  
16           and

17           (ii) if the individual is not an employee of the other  
18           person within the meaning of paragraph (1) of  
19           this section or subparagraph (d) of this  
20           paragraph.

21           (c) for the purposes of this paragraph, in the case of any  
22           individual who is furnished by a crew leader to  
23           perform service in agricultural labor for any other  
24

1 person and who is not treated as an employee of the  
2 crew leader under subparagraph (b) of this paragraph:

3 (i) the other person and not the crew leader shall be  
4 treated as the employer of the individual; and

5 (ii) the other person shall be treated as having paid  
6 cash remuneration to the individual in an amount  
7 equal to the amount of cash remuneration paid to  
8 the individual by the crew leader, either on his  
9 or her own behalf or on behalf of the other  
10 person, for the service in agricultural labor  
11 performed for the other person.

12 (d) for the purposes of this paragraph, the term "crew  
13 leader" means an individual who:

14 (i) furnishes individuals to perform service in  
15 agricultural labor for any other person;

16 (ii) pays, either on his or her own behalf or on  
17 behalf of another person, the individuals so  
18 furnished by the crew leader for the service in  
19 agricultural labor performed by them; and

20 (iii) has not entered into a written agreement with the  
21 other person (farm operator) under which the  
22 individual is designated as an employee of the  
23 other person.  
24

1 (6) The term "employment" shall include domestic service in a  
2 private home, local college club or local chapter of a college  
3 fraternity or sorority performed for a person who paid cash  
4 remuneration of One Thousand Dollars (\$1,000.00) or more in the  
5 calendar year or the preceding calendar year to individuals employed  
6 in such domestic service in any calendar quarter.

7 (7) For the purposes of paragraphs (3) and (4) of this section  
8 the term "employment" does not apply to service performed:

9 (a) in the employ of:

10 (i) a church or convention or association of  
11 churches; or

12 (ii) an organization which is operated primarily for  
13 religious purposes and which is operated,  
14 supervised, controlled, or principally supported  
15 by a church or convention or association of  
16 churches;

17 (b) by a duly ordained, commissioned or licensed minister  
18 of a church in the exercise of his or her ministry or  
19 by a member of a religious order in the exercise of  
20 duties required by the order;

21 (c) in the employ of a governmental entity referred to in  
22 paragraph (3) of this section if the service is  
23 performed by an individual in the exercise of duties:

24 (i) as an elected official;

1 (ii) as a member of a legislative body, or a member of  
2 the judiciary of a state or political  
3 subdivision;

4 (iii) as a member of the State National Guard or Air  
5 National Guard;

6 (iv) as an employee serving on a temporary basis in  
7 case of fire, storm, snow, earthquake, flood or  
8 similar emergency;

9 (v) in a position which, under or pursuant to the  
10 laws of this state, is designated as a major  
11 nontenured policymaking or advisory position, or  
12 a policymaking or advisory position the  
13 performance of the duties of which ordinarily  
14 does not require more than eight (8) hours per  
15 week;

16 (vi) as an election official or election worker if the  
17 amount of remuneration received by the individual  
18 during the calendar year for services as an  
19 election official or election worker is less than  
20 One Thousand Dollars (\$1,000.00);

21 (d) by an individual receiving rehabilitation or  
22 remunerative work while participating or enrolled in a  
23 program in a facility that:

24

1 (i) conducts a program of rehabilitation for  
2 individuals whose earning capacity is impaired by  
3 age, physical or mental deficiency, or injury; or  
4 (ii) conducts a program that provides remunerative  
5 work for individuals who, because of their  
6 impaired mental or physical capacity cannot be  
7 readily absorbed into the competitive labor  
8 market;

9 (e) as part of an unemployment work-relief or work-  
10 training program assisted or financed in whole or in  
11 part by any federal agency or an agency of a state or  
12 political subdivision thereof, by an individual  
13 receiving such work-relief or work-training; or  
14 (f) by an inmate of a custodial or penal institution.

15 (8) The term "employment" shall include the service of an  
16 individual who is a citizen of the United States, performed outside  
17 the United States, except in Canada, in the employ of an American  
18 employer other than service which is deemed "employment" under the  
19 provisions of paragraphs (11) or (12) of this section or the  
20 parallel provisions of another state's law, if:

21 (a) the employer's principal place of business in the  
22 United States is located in this state;

23 (b) the employer has no place of business in the United  
24 States, but:

- 1 (i) the employer is an individual who is a resident  
2 of this state;
- 3 (ii) the employer is a corporation which is organized  
4 under the laws of this state; or
- 5 (iii) the employer is a partnership or a trust and the  
6 number of the partners or trustees who are  
7 residents of this state is greater than the  
8 number who are residents of any one other state;
- 9 (c) none of the criteria of subparagraphs (a) and (b) of  
10 this paragraph are met but the employer has elected  
11 coverage in this state or, the employer having failed  
12 to elect coverage in any state, the individual has  
13 filed a claim for benefits, based on such service,  
14 under the law of this state;
- 15 (d) an "American employer", for purposes of this  
16 subsection, means a person who is:
- 17 (i) an individual who is a resident of the United  
18 States;
- 19 (ii) a partnership if two-thirds or more of the  
20 partners are residents of the United States;
- 21 (iii) a trust, if all of the trustees are residents of  
22 the United States; or
- 23 (iv) a corporation organized under the laws of the  
24 United States or of any state; and

1 (e) the term "United States", for the purposes of this  
2 subsection, includes the states, the District of  
3 Columbia, the Commonwealth of Puerto Rico and the  
4 Virgin Islands.

5 (9) Notwithstanding paragraph (11) of this section, all service  
6 performed by an officer or member of the crew of an American vessel  
7 on or in connection with the vessel, if the operating office, from  
8 which the operations of the vessel operating on navigable waters  
9 within, or within and without, the United States are ordinarily and  
10 regularly supervised, managed, directed and controlled is within  
11 this state.

12 (10) Notwithstanding any other provisions of the Employment  
13 Security Act of 1980, "employment":

14 (a) includes any service with respect to which a tax is  
15 required to be paid under any federal law imposing a  
16 tax against which credit may be taken for  
17 contributions required to be paid into a state  
18 unemployment fund; and

19 (b) includes any service which is required to be  
20 "employment" for full tax credit to be allowed against  
21 the tax imposed by the Federal Unemployment Tax Act of  
22 1954, Public Law 591, Chapter 736, as amended, 26  
23 U.S.C., Section 3301 et seq.

1 (11) The term "employment" shall include an individual's entire  
2 service, performed within or both within and without this state if:

3 (a) the service is localized in this state; or

4 (b) the service is not localized in any state but some of  
5 the service is performed in this state and:

6 (i) the individual's base of operations, or, if there  
7 is no base of operations, then the place from  
8 which the individual's employment is directed or  
9 controlled is in this state; or

10 (ii) the individual's base of operations or place from  
11 which the service is directed or controlled is  
12 not in any state in which some part of the  
13 service is performed but the individual's  
14 residence is in this state.

15 (12) (a) Services covered by an election pursuant to Section 3-  
16 203 of this title; and

17 (b) services covered by an arrangement pursuant to Section  
18 4-701 et seq. of this title between the Oklahoma  
19 Employment Security Commission and the agency charged  
20 with the administration of any other state or federal  
21 unemployment compensation law, pursuant to which all  
22 services performed by an individual for an employing  
23 unit are deemed to be performed entirely within this  
24 state,

1 shall be deemed to be employment if the Commission has approved an  
2 election of the employing unit for whom such services are performed,  
3 pursuant to which the entire service of such individual during the  
4 period covered by such election is deemed to be insured work.

5 (13) Service shall be deemed to be localized within a state if:

6 (a) the service is performed entirely within such state;

7 or

8 (b) the service is performed both within and without such  
9 state, but the service performed without such state is  
10 incidental to the individual's service within the  
11 state; for example, is temporary or transitory in  
12 nature or consists of isolated transactions.

13 (14) Notwithstanding any other provision of this subsection,  
14 services performed by an individual for wages or under any contract  
15 of hire shall be deemed to be employment subject to the Employment  
16 Security Act of 1980 unless and until it is shown to the  
17 satisfaction of the Commission that:

18 (a) such individual has been and will continue to be free  
19 from control or direction over the performance of the  
20 services, both under the contract of hire and in fact;  
21 and

22 (b) such individual is customarily engaged in an  
23 independently established business; or

24

1 (c) such service is outside the usual course of the  
2 business for which the service is performed and that  
3 the service is performed outside of all the places of  
4 business of the enterprise for which the service is  
5 performed.

6 (15) The term "employment" shall not include:

7 (a) services performed by an individual in agricultural  
8 labor, except as provided under paragraph (5) of this  
9 section. Services performed by an individual who is a  
10 nonresident alien admitted to the United States to  
11 perform agricultural labor, pursuant to 8 U.S.C.  
12 Sections 1101(a), 1184(c) and 1188. For purposes of  
13 this subparagraph, the term "agricultural labor" means  
14 remunerated service performed in agricultural labor as  
15 defined in the Federal Unemployment Tax Act, 26  
16 U.S.C., Section 3306(k);

17 (b) domestic service, except as provided under paragraph  
18 (6) of this section, in a private home, local college  
19 club, or local chapter of a college fraternity or  
20 sorority;

21 (c) service performed by an individual in the employ of  
22 his or her son, daughter, or spouse, and service  
23 performed by a child under the age of twenty-one (21)

24

1 in the employ of his or her father or mother, or both  
2 father and mother;

3 (d) service performed in the employ of the United States  
4 government or an instrumentality of the United States  
5 exempt under the Constitution of the United States  
6 from the contributions imposed by the Employment  
7 Security Act of 1980, except that to the extent that  
8 the Congress of the United States shall permit states  
9 to require any instrumentalities of the United States  
10 to make payments into an unemployment fund under a  
11 state unemployment compensation law, all of the  
12 provisions of the Employment Security Act of 1980  
13 shall be applicable to such instrumentalities, and to  
14 services performed for such instrumentalities, in the  
15 same manner, to the same extent, and on the same terms  
16 as to all other employers, employing units,  
17 individuals and services; provided that if this state  
18 shall not be certified for any year by the Secretary  
19 of Labor of the United States under the Federal  
20 Internal Revenue Code, 26 U.S.C., Section 3304(c), the  
21 payments required of such instrumentalities with  
22 respect to the year shall be refunded by the  
23 Commission from the fund in the same manner and within  
24 the same period as is provided in Section 3-304 of

1 this title with respect to contributions erroneously  
2 collected;

3 (e) service with respect to which unemployment  
4 compensation is payable under an unemployment  
5 compensation system established by an act of Congress;

6 (f) service performed in the employ of a foreign  
7 government, including service as a consul or other  
8 officer or employee or a nondiplomatic representative;

9 (g) service performed in the employ of an instrumentality  
10 wholly owned by a foreign government:

11 (i) if the service is of a character similar to that  
12 performed in foreign countries by employees of  
13 the United States government or of an  
14 instrumentality thereof, and

15 (ii) if the Commission finds that the United States  
16 Secretary of State has certified to the United  
17 States Secretary of the Treasury that the foreign  
18 government, with respect to whose instrumentality  
19 exemption is claimed, grants an equivalent  
20 exemption with respect to similar service  
21 performed in the foreign country by employees of  
22 the United States government and of  
23 instrumentalities thereof;

24

1 (h) service covered by an arrangement between the  
2 Commission and the agency charged with the  
3 administration of any other state or federal  
4 unemployment compensation law pursuant to which all  
5 services performed by an individual for an employing  
6 unit during the period covered by such employing  
7 unit's duly approved election, are deemed to be  
8 performed entirely within the jurisdiction of such  
9 other state or federal agency;

10 (i) service performed as a student nurse in the employ of  
11 a hospital or a nurses' training school by an  
12 individual who is enrolled and is regularly attending  
13 classes in a nurses' training school chartered or  
14 approved pursuant to state law; and service performed  
15 as an intern in the employ of a hospital by an  
16 individual who has completed a four-year course in a  
17 medical school chartered or approved pursuant to state  
18 law;

19 (j) service performed by an individual for a person, firm,  
20 association, trust, partnership or corporation as an  
21 insurance agent, or as an insurance solicitor or as a  
22 licensed real estate agent, if all such service  
23 performed by such individual for such person is  
24

1 performed for remuneration solely by way of  
2 commissions or fees;

3 (k) service performed by an individual under the age of  
4 eighteen (18) in the delivery and distribution of  
5 newspapers or shopping news, not including delivery or  
6 distribution to any point for subsequent delivery or  
7 distribution, and services performed by an individual  
8 eighteen (18) years of age or older who meets the  
9 definition of a "direct seller" as defined in 26  
10 U.S.C., Section 3508(b)(2), that states in pertinent  
11 part:

12 (i) the individual must be engaged in the delivery or  
13 distribution of newspapers or shopping news,  
14 including any services directly related to such  
15 trade or business,

16 (ii) substantially all the remuneration, whether or  
17 not paid in cash, for the performance of the  
18 services described in clause (i) of this  
19 subdivision is directly related to sales or other  
20 output, including the performance of services,  
21 rather than the number of hours worked, and

22 (iii) the services performed by the individual are  
23 performed pursuant to a written contract between  
24 the person and the person for whom the services

1 are performed and the contract provides that the  
2 person will not be treated as an employee with  
3 respect to the services;

4 (l) service performed in the employ of a school, college  
5 or university, if the service is performed:

6 (i) by a student who is enrolled and is regularly  
7 attending classes at the school, college, or  
8 university, or

9 (ii) by the spouse of the student, if the spouse is  
10 advised, at the time the spouse commences to  
11 perform the service, that:

12 (I) the employment of the spouse to perform the  
13 service is provided under a program to  
14 provide financial assistance to the student  
15 by the school, college, or university, and

16 (II) the employment will not be covered by any  
17 program of unemployment insurance;

18 (m) service performed by an individual who is enrolled at  
19 a nonprofit or public educational institution which  
20 normally maintains a regular faculty and curriculum  
21 and normally has a regularly organized body of  
22 students in attendance at the place where its  
23 educational activities are carried on as a student in  
24 a full-time program, taken for credit at the

1 institution, which combines academic instruction with  
2 work experience, if the service is an integral part of  
3 the program, and the institution has so certified to  
4 the employer, except that this provision shall not  
5 apply to service performed in a program established  
6 for or on behalf of an employer or group of employers;

7 (n) service performed in the employ of a hospital, if the  
8 service is performed by a patient of the hospital;

9 (o) services performed by cooperative extension personnel  
10 holding federal appointments employed by state  
11 institutions of higher learning;

12 (p) earnings of employees being paid by state warrants who  
13 are presently covered by the Federal Unemployment  
14 Compensation Act, 5 U.S.C., Section 8501 et seq., by  
15 virtue of their federal status;

16 (q) cosmetology services performed by an individual in a  
17 beauty shop, as defined by Section 199.1 of Title 59  
18 of the Oklahoma Statutes, pursuant to an agreement  
19 whereby the owner of the beauty shop leases or rents  
20 facilities for cosmetology to such individual;

21 (r) barbering services performed by an individual in a  
22 barber shop, as defined by Section 61.5 of Title 59 of  
23 the Oklahoma Statutes, pursuant to an agreement  
24

1           whereby the owner of the barber shop leases or rents  
2           facilities for barbering to such individual;

3           (s) in-home services performed in a medical care program  
4           such as the ~~nontechnical-medical~~ personal care  
5           services program, or social services program, as  
6           certified and approved by the Department of Human  
7           Services or the ~~Federal Health Care Financing~~  
8           ~~Administration~~ Center for Medicare and Medicaid  
9           Services or as a participant in a work or training  
10          program administered by the Department of Human  
11          Services;

12          (t) riding services performed by a jockey and services  
13          performed by a trainer of race horses in an approved  
14          race licensed by the Oklahoma Horse Racing Commission;

15          (u) service performed by an individual whose remuneration  
16          consists solely of commissions, overrides, bonuses,  
17          and differentials related to sales or other output  
18          derived from in-person sales to, or solicitation of  
19          orders from, ultimate consumers primarily in the home,  
20          or otherwise than in a permanent retail establishment;

21          (v) service performed by a person, commonly referred to as  
22          "owner-operator", who owns or leases a truck-tractor  
23          or truck for hire, provided the owner-operator  
24          actually operates the truck-tractor or truck and,

1 further, that the entity contracting with the owner-  
2 operator is not the lessor of the truck-tractor or  
3 truck;

4 (w) services performed as a chopper of cotton who weeds or  
5 thins cotton crops by hand or hoe. This subsection  
6 shall be interpreted and applied consistently with the  
7 Federal Unemployment Tax Act, 26 U.S.C., Sections  
8 3304(a)(6)(A) and 3306(k); or

9 (x) services performed for a private for-profit person or  
10 entity by an individual as a landman:

11 (i) if the individual is engaged primarily in  
12 negotiating for the acquisition or divestiture of  
13 mineral rights or negotiating business agreements  
14 that provide for the exploration for or  
15 development of minerals,

16 (ii) if substantially all remuneration paid in cash or  
17 otherwise for the performance of the services is  
18 directly related to the completion by the  
19 individual of the specific tasks contracted for  
20 rather than to the number of hours worked by the  
21 individual, and

22 (iii) if the services performed by the individual are  
23 performed under a written contract between the  
24 individual and the person for whom the services

1 are performed; provided that the individual is to  
2 be treated as an independent contractor and not  
3 as an employee with respect to the services  
4 provided under the contract.

5 SECTION 4. AMENDATORY 40 O.S. 2001, Section 1-224, as  
6 last amended by Section 2, Chapter 354, O.S.L. 2007 (40 O.S. Supp.  
7 2007, Section 1-224), is amended to read as follows:

8 Section 1-224. FILE.

9 A. When any document is required to be filed by the provisions  
10 of the Employment Security Act of 1980 or the rules promulgated  
11 under the authority of the Employment Security Act of 1980 with the  
12 Oklahoma Employment Security Commission, any of its representatives,  
13 or the Board of Review for the Oklahoma Employment Security  
14 Commission, the term "file", "files", or "filed" shall be defined as  
15 follows:

16 1. Hand-delivered to ~~an~~ the central administrative office of  
17 the Oklahoma Employment Security Commission by the close of business  
18 on or before the date due;

19 2. Telefaxed to ~~an office of~~ the telefax number indicated on  
20 the determination letter, order or other document issued by the  
21 Oklahoma Employment Security Commission by midnight on or before the  
22 date due. Timely telefaxing shall be determined by the date and  
23 time ~~printed~~ recorded by the Commission's telefax ~~machine on the~~

1 ~~document received or the date and time on the sender's transmittal~~  
2 ~~sheet~~ equipment;

3 3. Mailed with sufficient postage and properly addressed to ~~an~~  
4 ~~office of~~ the address indicated on the determination letter, order  
5 or other document issued by the Oklahoma Employment Security  
6 Commission on or before the date due. Timely mailing shall be  
7 determined by the postmark; or

8 4. Electronically transmitted via data lines to the Oklahoma  
9 Employment Security Commission, as directed by the instructions on  
10 the determination letter, order or other document issued by the  
11 Commission, by midnight on or before the date due. Timely  
12 transmission shall be determined by the Commission's transmission  
13 log file.

14 B. If the Employment Security Act of 1980 or the rules  
15 promulgated under the Employment Security Act of 1980 require that a  
16 document be filed with a court or any other agency of this state,  
17 the term "file", "files" or "filed" shall be defined by the  
18 statutes, rules or practice governing that court or agency.

19 SECTION 5. AMENDATORY Section 2, Chapter 102, O.S.L.  
20 2004 (40 O.S. Supp. 2007, Section 1-226), is amended to read as  
21 follows:

22 Section 1-226. INITIAL CLAIM - ADDITIONAL INITIAL CLAIM -  
23 REOPENED CLAIM - CONTINUED CLAIM SERIES.

24

1 A. "Initial claim" means a new claim application submitted by a  
2 claimant to establish a benefit year for unemployment insurance  
3 benefits.

4 B. "Additional initial claim" means a claim application which  
5 reactivates a claim during an existing benefit year and certifies to  
6 a period of employment which occurred subsequent to the date of the  
7 filing of the last initial, additional or reopened claim.

8 C. "Reopened claim" means a claim application which reactivates  
9 a claim during an existing benefit year when a claimant stopped  
10 filing for benefits before his or her claim was exhausted, but in  
11 which there occurred no intervening employment from the date of the  
12 filing of the last initial, additional or reopened claim.

13 D. "Continued claim series" means an uninterrupted series of  
14 weekly claims filed by a claimant during the benefit year.

15 SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-209, as  
16 amended by Section 3, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2007,  
17 Section 2-209), is amended to read as follows:

18 Section 2-209. BENEFITS FOR EMPLOYEES OF GOVERNMENTAL OR  
19 NONPROFIT EMPLOYERS.

20 Benefits based on service in employment defined in paragraphs  
21 (2), (3) or (4) of Section 1-210 of this title, including any  
22 federally operated educational institutions, shall be payable in the  
23 same amount, on the same terms and subject to the same conditions as  
24

1 benefits payable on the basis of other service subject to the  
2 Employment Security Act of 1980, except that:

3 (1) With respect to service performed in an instructional,  
4 research or principal administrative capacity for an educational  
5 institution, benefits shall not be paid based on such services for  
6 any week of unemployment commencing during the period between two  
7 (2) successive academic years, or during a similar period between  
8 two regular but not successive terms, or during a period of paid  
9 sabbatical leave provided for in the individual's contract, to any  
10 individual if such individual performs such services in the first of  
11 such academic years or terms and if there is a contract or a  
12 reasonable assurance that such individual will perform services in  
13 any such capacity for any educational institution in the second of  
14 such academic years or terms.

15 (2) With respect to services performed in any other capacity  
16 for an educational institution, benefits shall not be paid on the  
17 basis of such services to any individual for any week which  
18 commences during a period between two (2) successive academic years  
19 or terms if such individual performs such services in the first of  
20 such academic years or terms and there is a reasonable assurance  
21 that such individual will perform such services in the second of  
22 such academic years or terms, except that if compensation is denied  
23 to any individual under this paragraph and such individual was not  
24 offered an opportunity to perform such services for the educational

1 institution for the second of such academic years or terms, such  
2 individual shall be entitled to a retroactive payment of  
3 compensation for each week for which the individual filed a timely  
4 claim for compensation and for which compensation was denied solely  
5 by reason of this clause.

6 (3) With respect to any services described in paragraphs (1)  
7 and (2) of this section, benefits shall not be payable on the basis  
8 of services in any such capacities to any individual for any week  
9 which commences during an established and customary vacation period  
10 or holiday recess if such individual performs such services in the  
11 period immediately before such vacation period or holiday recess,  
12 and there is a reasonable assurance that such individual will  
13 perform such services in the period immediately following such  
14 vacation period or holiday recess.

15 (4) With respect to any services described in paragraphs (1)  
16 and (2) of this section, benefits shall not be payable on the basis  
17 of services in any such capacities as specified in paragraphs (1),  
18 (2) and (3) of this section to any individual who performed such  
19 services in an educational institution while in the employ of an  
20 educational service agency. For purposes of this paragraph, the  
21 term "educational service agency" means a governmental agency or  
22 governmental entity which is established and operated exclusively  
23 for the purpose of providing such services to one or more  
24 educational institutions.

1 (5) With respect to services to which paragraphs (2), (3) or  
2 (4) of Section 1-210 of this title apply, if such services are  
3 provided to or on behalf of an educational institution, benefits  
4 shall not be payable under the same circumstances and subject to the  
5 same terms and conditions as described in paragraphs (1), (2), (3)  
6 and (4) of this section.

7 (6) If an individual has employment with an educational  
8 institution and has employment with a noneducation employer or  
9 employers during the base period of the individual's benefit year,  
10 the individual may become eligible for benefits during the between-  
11 term ~~disqualification~~ denial period, based only on the  
12 noneducational employment.

13 SECTION 7. AMENDATORY 40 O.S. 2001, Section 2-404, is  
14 amended to read as follows:

15 Section 2-404. LEAVING WORK VOLUNTARILY.

16 A. An individual shall be disqualified for benefits for leaving  
17 his or her last work voluntarily without good cause connected to the  
18 work, if so found by the Commission. ~~Disqualification~~

19 B. When adjudicating a separation from employment in an initial  
20 claim or additional initial claim, disqualification under this  
21 ~~subsection~~ section shall continue for the full period of  
22 unemployment next ensuing after ~~he has~~ the individual left ~~his~~ work  
23 voluntarily without good cause connected to the work and until ~~such~~

24

1 the individual has become reemployed and has earned wages equal to  
2 or in excess of ten (10) times his or her weekly benefit amount.

3 C. When adjudicating a separation from employment during a  
4 continued claim series, disqualification under this section shall be  
5 for the week of the occurrence of leaving work voluntarily without  
6 good cause connected to the work.

7 D. Good cause shall include but not be limited to unfair  
8 treatment of the employee or the creating of unusually difficult  
9 working conditions by the employer.

10 SECTION 8. AMENDATORY 40 O.S. 2001, Section 2-503, as  
11 amended by Section 4, Chapter 102, O.S.L. 2004 (40 O.S. Supp. 2007,  
12 Section 2-503), is amended to read as follows:

13 Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

14 A. Claims for benefits shall be made in accordance with such  
15 rule as the Oklahoma Employment Security Commission may prescribe.

16 B. Promptly after ~~the~~ an initial claim or ~~the~~ an additional  
17 initial claim is filed, the Commission shall give written notice of  
18 the claim to the last employer of the claimant for whom he or she  
19 worked at least fifteen (15) working days. Promptly after the  
20 Commission is notified of the claimant's separation from an  
21 employment obtained by a claimant during a continued claim series,  
22 the Commission shall give written notice of the claim to the last  
23 separating employer. Notices to separating employers during a

24

1 continued claim series will be given to the last employer in the  
2 claim week without regard to length of employment.

3 C. Promptly after the claim is paid for the fifth week of  
4 benefits the Commission shall give written notice of the claim to  
5 all other employers of the claimant during the claimant's base  
6 period. The notice will be given pursuant to Section 3-106 of this  
7 title.

8 D. Notices shall be deemed given when the Commission deposits  
9 the same in the United States mail addressed to the employer's last-  
10 known address. Notice shall be presumed prima facie to have been  
11 given to the employer to whom addressed on the date stated in the  
12 written notice.

13 E. Within ten (10) days after the date on the notice or the  
14 date of the postmark on the envelope in which the notice was sent,  
15 whichever is later, an employer may file with the Commission at the  
16 address prescribed in the notice written objections to the claim  
17 setting forth specifically the facts which:

18 1. Make the claimant ineligible for benefits under Sections 2-  
19 201 through 2-209 of this title;

20 2. Disqualify the claimant from benefits under Sections 2-401  
21 through 2-418 of this title; or

22 3. Relieve such employer from being charged for the benefits  
23 wages of such claimant.

24

1 SECTION 9. AMENDATORY 40 O.S. 2001, Section 2-610, as  
2 amended by Section 10, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2007,  
3 Section 2-610), is amended to read as follows:

4 Section 2-610. JUDICIAL REVIEW.

5 (1) Within the ten (10) days after the day a notice of decision  
6 of the Board of Review is mailed to the parties, the Oklahoma  
7 Employment Security Commission, or any party to the proceedings  
8 before the Board of Review, may obtain judicial review thereof by  
9 filing in the district court of the county in which the claimant  
10 resides, or if the claimant is not a resident of the State of  
11 Oklahoma then in the district court of Oklahoma County, a petition  
12 for review of such decision, against the Board of Review. In such  
13 petition for review all other parties to the proceeding before the  
14 Board of Review and the Commission shall be made codefendants. Such  
15 petition for review need not be verified but shall state  
16 specifically the grounds upon which such review is sought. A copy  
17 of the petition for review shall be served upon a member of the  
18 Board of Review or upon such persons as the Board of Review may  
19 designate and the petitioner shall also deliver to the person so  
20 served as many copies of the petition as there are defendants. The  
21 Board of Review shall forthwith send by mail to each other party to  
22 the proceeding a copy of such petition, and such mailing shall be  
23 deemed to be service upon all such parties. In any proceeding under  
24 this section the findings of the Board of Review as to the facts, if

1 supported by evidence, shall be conclusive and the jurisdiction of  
2 the court shall be confined to questions of law. No additional  
3 evidence shall be received by the court, but the court may remand  
4 the case and order additional evidence to be taken before the Board  
5 of Review, and the Board may, after hearing the additional evidence,  
6 modify its findings of fact or conclusions, and file the additional  
7 or modified findings and conclusions, together with the transcript  
8 of the additional record, with the court.

9 (2) Within sixty (60) days of the ~~filing~~ date of service of the  
10 petition on the Board of Review, the Board of Review shall certify  
11 and file with the court a certified copy of the record of the case,  
12 including all documents and papers and a transcript of all testimony  
13 taken in the matter, together with the Board of Review's findings,  
14 conclusions, and decision therein.

15 (3) Such proceedings shall be heard in a summary manner and  
16 shall be given precedence over all other civil cases. An appeal may  
17 be taken from the decision of the district court to the Supreme  
18 Court of this state in the same manner as is provided in other civil  
19 cases. It shall not be necessary as a condition precedent to  
20 judicial review of any decision of the Board of Review to enter  
21 exceptions to the rulings of such Board, and no bond shall be  
22 required as a condition of initiating a proceeding for judicial  
23 review or entering an appeal from the decision of the court upon  
24 such review. Upon the final termination of such judicial

1 proceeding, the Board of Review shall enter an order in accordance  
2 with the mandate of the court.

3 SECTION 10. AMENDATORY Section 17, Chapter 452, O.S.L.  
4 2002, as amended by Section 5, Chapter 177, O.S.L. 2003 (40 O.S.  
5 Supp. 2007, Section 2-618), is amended to read as follows:

6 Section 2-618. LEVY ON INCOME AND MONETARY ASSETS.

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

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

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

14 3. "Debtor" means any person that is the subject of a warrant  
15 of levy and lien issued pursuant to Section 2-617 of this title;

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

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

21 B. If any debtor shall fail to pay his or her indebtedness to  
22 the Oklahoma Employment Security Commission and after the debtor has  
23 been notified of the amount due and demand for payment has been  
24 made, it shall be lawful for the Commission to collect the amount

1 owed by levy upon the debtor's employer or any bank account of the  
2 debtor.

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

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

16 2. The Notice of Levy shall be a lien on the debtor's property  
17 in the same manner as provided for in subsection G of Section 1173.4  
18 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also  
19 be subject to the procedures and time limits set out in subsections  
20 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma  
21 Statutes, except that when a document is required to be filed with  
22 the clerk of the court, the document will instead be filed with the  
23 Commission as directed on the forms provided.

24

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

6 1. Upon receiving the Notice of Levy and the warrant of levy  
7 and lien issued against the debtor, the bank shall deliver all of  
8 the debtor's interest in the money in the debtor's bank account at  
9 the time of service of the levy, subject to the banker's lien or  
10 right of set off or any other priority claim of the bank, up to the  
11 amount of indebtedness indicated on the warrant of levy and lien  
12 plus accrued interest pursuant to Section 2-613 of this title and  
13 any fees for service of process, to the Commission office indicated  
14 in the Notice of Levy;

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

17 3. If there is no money in the debtor's bank account at the  
18 time the Notice of Levy is served, or if the bank account has been  
19 closed, an officer of the bank on which the Notice of Levy is served  
20 shall make a statement to that effect on the Notice of Levy. The  
21 statement shall be notarized and returned to the office of the  
22 Commission that is indicated in the Notice of Levy;

23 4. Any bank that fails or refuses to surrender money or rights  
24 to money in a bank account subject to levy, upon being served with a

1 Notice of Levy and supporting warrant of levy and lien of the  
2 Commission, shall be liable to the Commission in a sum equal to the  
3 amount of money or rights to money not so surrendered, but not  
4 exceeding the amount of the debtor's indebtedness for the collection  
5 of which the levy has been made, together with accrued interest  
6 pursuant to Section 2-613 of this title, and the cost of service of  
7 the Notice of Levy. Any amount recovered in this manner shall be  
8 credited against the liability of the debtor for the benefit  
9 overpayment indebtedness, for which the levy was made; and

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

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

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

24

1 G. Claims for exemptions and any other matter relating to the  
2 levy shall be filed ~~within ten (10) days of the date of service of~~  
3 ~~the levy. The claim shall be filed~~ with the Appeal Tribunal of the  
4 Oklahoma Employment Security Commission. An order of exemption may  
5 relate back no more than thirty (30) days before the filing of the  
6 claim for exemption and shall extend no further than the expiration  
7 date or termination of the levy. Appeal from the Appeal Tribunal  
8 decision shall be governed by the appeal procedures set out in Part  
9 6 of Article 2 of the Employment Security Act of 1980, and the  
10 Administrative Rules of the Oklahoma Employment Security Commission  
11 pertaining thereto.

12 SECTION 11. AMENDATORY 40 O.S. 2001, Section 554, as  
13 amended by Section 4, Chapter 1, 1st Extraordinary Session, O.S.L.  
14 2005 (40 O.S. Supp. 2007, Section 554), is amended to read as  
15 follows:

16 Section 554. Employers who choose to conduct drug or alcohol  
17 testing may only request or require an applicant or employee to  
18 undergo testing under the following circumstances:

19 1. Applicant testing: A public or private employer may request  
20 or require a job applicant, upon a conditional offer of employment,  
21 to undergo drug or alcohol testing and may use a refusal to undergo  
22 testing or a confirmed positive test result as a basis for refusal  
23 to hire, provided that such testing does not violate the provisions  
24 of the Americans with Disabilities Act of 1990, 42 U.S.C., Section

1 12101 et seq., and provided that such testing is required for all  
2 applicants who have received a conditional offer of employment for a  
3 particular employment classification;

4 2. Reasonable suspicion testing: A public or private employer  
5 may request or require an employee to undergo drug or alcohol  
6 testing if the employer has a reasonable suspicion that the employee  
7 has violated the employer's written policy;

8 3. Post-accident testing: A public or private employer may  
9 require an employee to undergo drug or alcohol testing if the  
10 employee or another person has sustained a work-related injury or  
11 the employer's property has been damaged, including damage to  
12 equipment, in an amount reasonably estimated at the time of the  
13 accident to exceed Five Hundred Dollars (\$500.00). For purposes of  
14 workers' compensation ~~or unemployment compensation~~, no employee who  
15 tests positive for the presence of substances defined and consumed  
16 pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes,  
17 alcohol, illegal drugs, or illegally used chemicals shall be  
18 eligible for such compensation unless the employee proves by a  
19 preponderance of the evidence that the substances, alcohol, illegal  
20 drugs, or illegally used chemicals were not the proximate cause of  
21 the injury or accident;

22 4. Random testing: A public or private employer may request or  
23 require an employee to undergo drug or alcohol testing on a random  
24

1 selection basis, except that a public employer may require random  
2 testing only of employees who:

- 3 a. are police or peace officers,
- 4 b. have drug interdiction responsibilities,
- 5 c. are authorized to carry firearms,
- 6 d. are engaged in activities which directly affect the  
7 safety of others, or
- 8 e. work in direct contact with inmates in the custody of  
9 the Department of Corrections or work in direct  
10 contact with juvenile delinquents or children in need  
11 of supervision in the custody of the Department of  
12 Human Services;

13 5. Scheduled, periodic testing: A public or private employer  
14 may request or require an employee to undergo drug or alcohol  
15 testing if the test is conducted as a routine part of a routinely  
16 scheduled employee fitness-for-duty medical examination or is  
17 scheduled routinely for all members of an employment classification  
18 or group and which is part of the employer's written policy, except  
19 that a public employer may require scheduled, periodic testing only  
20 of employees who:

- 21 a. are police or peace officers,
- 22 b. have drug interdiction responsibilities,
- 23 c. are authorized to carry firearms,

24

1 d. are engaged in activities which directly affect the  
2 safety of others, or

3 e. work in direct contact with inmates in the custody of  
4 the Department of Corrections or work in direct  
5 contact with juvenile delinquents or children in need  
6 of supervision in the custody of the Department of  
7 Human Services; and

8 6. Post-rehabilitation testing: A public or private employer  
9 may request or require an employee to undergo drug or alcohol  
10 testing without prior notice for a period of up to two (2) years  
11 commencing with the employee's return to work, following a confirmed  
12 positive test or following participation in a drug or alcohol  
13 dependency treatment program under an employee benefit plan or at  
14 the request of the employer.

15 SECTION 12. AMENDATORY 40 O.S. 2001, Section 555, as  
16 amended by Section 2, Chapter 78, O.S.L. 2007 (40 O.S. Supp. 2007,  
17 Section 555), is amended to read as follows:

18 Section 555. A. No employer may request or require an  
19 applicant or employee to undergo drug or alcohol testing unless the  
20 employer has first adopted a written, detailed policy setting forth  
21 the specifics of its drug or alcohol testing program. The written  
22 policy shall be uniformly applied to those covered by the policy and  
23 shall include, but not be limited to, the following information:  
24

- 1 1. A statement of the employer's policy respecting drug or  
2 alcohol use by employees;
- 3 2. Which applicants and employees are subject to testing;
- 4 3. Circumstances under which testing may be requested or  
5 required;
- 6 4. Substances which may be tested. To comply with the  
7 provisions of this paragraph, it shall be sufficient for an employer  
8 to state in the written policy that the substances tested shall be  
9 for drugs and alcohol as defined in the Standards for Workplace Drug  
10 and Alcohol Testing Act, including controlled substances approved  
11 for testing by rule by the State Commissioner of Health;
- 12 5. Testing methods and collection procedures to be used;
- 13 6. Consequences of refusing to undergo testing;
- 14 7. Potential adverse personnel action which may be taken as a  
15 result of a positive test result;
- 16 8. The rights of an applicant and employee to explain, in  
17 confidence, the test results;
- 18 9. The rights of an applicant and employee to obtain all  
19 information and records related to that individual's testing;
- 20 10. Confidentiality requirements; and
- 21 11. The available appeal procedures, remedies and sanctions.
- 22 B. An employer who is implementing a drug or alcohol testing  
23 policy for the first time, or is implementing changes to its policy,  
24

1 shall provide at least thirty (30) days' notice to its employees  
2 prior to implementation of the policy or changes to the policy.

3 C. An employer shall post a copy of the drug or alcohol testing  
4 policy, and any changes to the policy, in a prominent employee  
5 access area in the place of employment and shall ~~give~~ deliver a copy  
6 of the policy, and any changes to the policy, to each employee and  
7 to each applicant upon his or her receipt of a conditional offer of  
8 employment. Delivery to employees and persons who are offered  
9 employment may be accomplished by:

10 1. Hand-delivery of a paper copy of the policy or changes to  
11 the policy;

12 2. Mailing a paper copy of the policy or changes to the policy  
13 through the U.S. Postal Service or a parcel delivery service to the  
14 last address given by the employee or prospective employee to the  
15 employer; or

16 3. Electronically transmitting a copy of the policy through an  
17 e-mail server or the Internet to an electronic mail address assigned  
18 by the employer to the employee or prospective employee with  
19 documented receipt capability, or to an electronic mail address  
20 provided by the employee or prospective employee to the employer for  
21 the purpose of receiving employment-related e-mails with documented  
22 receipt capability.

23

24

1 SECTION 13. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3-118 of Title 40, unless there  
3 is created a duplication in numbering, reads as follows:

4 On or before December 31, 2008, the Oklahoma Employment Security  
5 Commission shall provide a method for employers to file the  
6 Employer's Quarterly Contributions and Wage Report for Oklahoma  
7 state unemployment taxes through the Internet. As of the same date,  
8 the Commission shall provide a method for employers to pay Oklahoma  
9 state unemployment taxes through an electronic payment system  
10 utilizing the Internet.

11 SECTION 14. This act shall become effective November 1, 2008."

12 Passed the House of Representatives the 22nd day of April, 2008.

13

14

15 \_\_\_\_\_  
16 Presiding Officer of the House of  
Representatives

17 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2008.

18

19

20 \_\_\_\_\_  
Presiding Officer of the Senate

21

22

23

24