STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

SUBCOMMITTEE RECOMMENDATION
FOR ENGROSSED
SENATE BILL NO. 1531 By: Leftwich of the Senate

and

McDaniel (Randy) of the House

SUBCOMMITTEE RECOMMENDATION

An Act relating to labor; amending Section 1, Chapter 452, O.S.L. 2002 and 40 O.S. 2001, Sections 1-208, as last amended by Section 1, Chapter 176, O.S.L. 2006, 1-210, as last amended by Section 2, Chapter 176, O.S.L. 2006, 1-224, as last amended by Section 2, Chapter 354, O.S.L. 2007, Section 2, Chapter 102, O.S.L. 2004, 2-209, as amended by Section 3, Chapter 102, O.S.L. 2004, 2-404, 2-503, as amended by Section 4, Chapter 102, O.S.L. 2004, 2-610, as amended by Section 10, Chapter 176, O.S.L. 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 that an employing unit which has become an employer under certain circumstances has not ceased to be an employer; modifying exemption to certain definition; modifying definition; adding definitions; changing the word disqualification to denial in relation to certain between-term period for certain employees; making language gender neutral; modifying and adding procedures relating to disqualification of an

employee for certain benefits when the employee leaves work voluntarily without good cause connected to the work; providing for written notice of certain claims; modifying requirement relating to judicial review; modifying procedures for claims for exemptions and any other matter relating to certain levy; providing for certain order of exemption; removing certain compensation from consideration of restrictions of certain drug or alcohol testing by employers; providing for codification; and providing an effective date.

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

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

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

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

2. An Indian tribe or tribal unit electing to make payments in lieu of contributions shall so notify the Oklahoma Employment Security Commission in writing~~. After making the election~~ <u>before the last day of January of the calendar year in which the tribe wishes to begin making reimbursement payments. If the Commission</u>

determines the Indian tribe is eligible to exercise its option, the Indian tribe shall be liable for reimbursement payments in lieu of contributions in the same manner and subject to the same provisions that apply to reimbursing nonprofit organizations as provided in Part 8 of Article 3 of the Employment Security Act of 1980, including formation of group accounts, and the proportionate allocation of benefit costs, except that one hundred percent (100%) of the extended benefits attributable to the Indian tribe shall be reimbursed. Indian tribes shall determine whether reimbursement for benefits paid shall be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. If any provision contained in Part 8 of Article 3 of the Employment Security Act of 1980, including the administrative rules implementing that Part, contradicts a provision of this section, the provision of this section shall control.

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

F. 1. a. If an Indian tribe or tribal unit thereof fails to file the required reports and pay all late filing penalties or fails to make required payments under the Employment Security Act of 1980, including payment of all interest, penalties, surcharges, or fees, a notice

of reporting or payment delinquency shall be mailed to the Indian tribe at its last-known address. If the delinquency is not corrected within ninety (90) days of the date of mailing of the notice of delinquency, the account of the Indian tribe shall be terminated and notice of termination shall be mailed to the tribe at its last-known address, together with a statement of protest rights available pursuant to Section 3-115 of this title. If the account of an Indian tribe is terminated pursuant to this subparagraph, the Indian tribe shall not be considered an "employer" for purposes of subsection A of this section, and services performed for the Indian tribe shall not be considered "employment" for purposes of subsection B of this section.

b. The Oklahoma Employment Security Commission may reinstate the account of any Indian tribe that loses coverage under subparagraph a of this subsection if the tribe pays all contributions, payments in lieu of contributions, interest, penalties, surcharges, and fees that are due and owing. Upon reinstatement, the tribe shall again be considered an "employer" for purposes of subsection A of this section and services performed for the tribe shall again be considered

"employment" for purposes of subsection B of this section.

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

b. Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subparagraph a of this paragraph, shall have the option reinstated if, after a period of one (1) year, all contribution payments have been timely made, provided no contributions, payments in lieu of contributions for benefits paid, interest, penalties, surcharges, or fees remain outstanding.

G. The notice of payment or reporting delinquency to Indian tribes or their tribal units, referred to in subparagraph a of paragraph 1 of subsection F of this section, shall include

information that failure to make full payment and file required reports within the prescribed time frame shall cause:

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

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

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

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

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

I. If an Indian tribe fails to make required payments under the Employment Security Act of 1980, including the payment of all interest, penalties, surcharges, and fees, within ninety (90) days of the mailing of the notice of payment delinquency, the Oklahoma Employment Security Commission shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

J. The provisions of subsections K and L of this section shall provide a transition for the implementation of Section 166 of Public Law ~~106-144~~ 106-554 enacted by the Congress of the United States and

effective December 21, 2000, so that Indian tribes may qualify for federal tax credits and employees of Indian tribes may be eligible for benefits.

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

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

2. To make payments in lieu of contributions. If the tribe elects to make payments in lieu of contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if all reports that are due for that period are filed within twenty (20) days after an account is established for the tribe.

L. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section and does not desire to be covered

for benefits for that period shall be covered by the provisions of subsections A through I of this section. The coverage for any such tribe shall be prospective only and shall not entitle any employee of the tribe to benefits for any period prior to the effective date of this section.

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

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

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

Section 1-208. EMPLOYER.

"Employer" means:

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

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. 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. Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, employees, 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, employees, 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. Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, employees, 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 of this section; or any individual or employing unit which acquired substantially all of the organization, employees, 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. 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)~~ 1 of this section;

5. Any employing unit which, having become an employer under paragraph 1, 2, 3, 4, 6, 8, 10 ~~or~~, 11 or 12 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. 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. 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 and 11 of this section;

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 and 11 of this section;

9. For purposes of paragraphs 1, 8, 10 and 11 of this section, employment shall include service which would constitute employment but for the fact that the 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. 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

paragraph 1, 7, 8 or 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. 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 paragraph 1, 7, 8 or 10 of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account;

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

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

Section 1-210. EMPLOYMENT.

"Employment" means:

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

(a) any officer of a corporation; or

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

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

(i) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products,

beverages other than milk, or laundry or dry cleaning services, for his or her principal; or

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

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

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

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

(iii) the services are not in the nature of a single transaction that is not part of a continuing

relationship with the person for whom the services are performed.

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

(4) Service performed by an individual in the employ of a community chest, fund, foundation or corporation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office; provided that such organization had four or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within

either the calendar year or preceding calendar year, regardless of whether they were employed at the same moment of time.

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

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

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

(ii) for some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the calendar year or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

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

(i) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor

Registration Act of 1963, Public Law 95-562, 29 U.S.C., Sections 1801 through 1872; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

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

(c) for the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subparagraph (b) of this paragraph:

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

(ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on his or her own behalf or on behalf of the other

person, for the service in agricultural labor performed for the other person.

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

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

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

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

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

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

(a) in the employ of:

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

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

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

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

(i) as an elected official;

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

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

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

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

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

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

(i) conducts a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury; or

(ii) conducts a program that provides remunerative work for individuals who, because of their impaired mental or physical capacity cannot be readily absorbed into the competitive labor market;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(f) by an inmate of a custodial or penal institution.

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

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

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

(i) the employer is an individual who is a resident of this state;

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state;

(c) none of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state;

(d) an "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state; and

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

(9) Notwithstanding paragraph (11) of this section, all service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters

within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the service is performed both within and without such state, but the service performed without such state is

incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

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

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

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

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

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

(a) services performed by an individual in agricultural labor, except as provided under paragraph (5) of this section. Services performed by an individual who is a nonresident alien admitted to the United States to

perform agricultural labor, pursuant to 8 U.S.C. Sections 1101(a), 1184(c) and 1188. For purposes of this subparagraph, the term "agricultural labor" means remunerated service performed in agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(k);

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

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

(d) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the Employment Security Act of 1980, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the

provisions of the Employment Security Act of 1980 shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under the Federal Internal Revenue Code, 26 U.S.C., Section 3304(c), the payments required of such instrumentalities with respect to the year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 3-304 of this title with respect to contributions erroneously collected;

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

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

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

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

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

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

(i) service performed as a student nurse in the employ of a hospital or a nurses' training school by an

individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(j) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;

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

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

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

(iii) the services performed by the individual are performed pursuant to a written contract between the person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee with respect to the services;

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

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

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

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

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

(m) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this provision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

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

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

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

(r) barbering services performed by an individual in a barber shop, as defined by Section 61.5 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the barber shop leases or rents facilities for barbering to such individual;

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

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

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

(v) service performed by a person, commonly referred to as "owner-operator", who owns or leases a truck-tractor or truck for hire, provided the owner-operator actually operates the truck-tractor or truck and, further, that the entity contracting with the owner-operator is not the lessor of the truck-tractor or truck;

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

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

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

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

(iii) if the services performed by the individual are performed under a written contract between the individual and the person for whom the services are performed; provided that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

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

Section 1-224. FILE.

A. When any document is required to be filed by the provisions of the Employment Security Act of 1980 or the rules promulgated

under the authority of the Employment Security Act of 1980 with the Oklahoma Employment Security Commission, any of its representatives, or the Board of Review for the Oklahoma Employment Security Commission, the term "file", "files", or "filed" shall be defined as follows:

1. Hand-delivered to ~~an~~ the central administrative 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 telefax number indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing shall be determined by the date and time ~~printed~~ recorded by the Commission's telefax ~~machine on the document received or the date and time on the sender's transmittal sheet~~ equipment;

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

4. Electronically transmitted via data lines to the Oklahoma Employment Security Commission, as directed by the instructions on the determination letter, order or other document issued by the Commission, by midnight on or before the date due. Timely

transmission shall be determined by the Commission's transmission log file.

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

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

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

A. “Initial claim” means a new claim application submitted by a claimant to establish a benefit year for unemployment insurance benefits.

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

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

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

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

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

Benefits based on service in employment defined in paragraphs (2), (3) or (4) of Section 1-210 of this title, including any federally operated educational institutions, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to the Employment Security Act of 1980, except that:

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

any such capacity for any educational institution in the second of such academic years or terms.

(2) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this paragraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

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

perform such services in the period immediately following such vacation period or holiday recess.

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

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

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

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

Section 2-404. LEAVING WORK VOLUNTARILY.

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

B. When adjudicating a separation from employment in an initial claim or additional initial claim, disqualification under this ~~subsection~~ section shall continue for the full period of unemployment next ensuing after ~~he has~~ the individual left ~~his~~ work voluntarily without good cause connected to the work and until ~~such~~ the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.

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

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

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

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

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

B. Promptly after ~~the~~ an initial claim or ~~the~~ an additional initial claim is filed, the Commission shall give written notice of the claim to the last employer of the claimant for whom he or she worked at least fifteen (15) working days. Promptly after the Commission is notified of the claimant's separation from an employment obtained by a claimant during a continued claim series, the Commission shall give written notice of the claim to the last separating employer. Notices to separating employers during a continued claim series will be given to the last employer in the claim week without regard to length of employment.

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

D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to 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.

E. Within ten (10) days after the date on the notice or the date of the postmark on the envelope in which the notice was sent,

whichever is later, an employer may file with the Commission at the address prescribed in the notice written objections to the claim setting forth specifically the facts which:

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

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

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

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

Section 2-610. JUDICIAL REVIEW.

(1) Within the ten (10) days after the day a notice of decision of the Board of Review is mailed to the parties, the Oklahoma Employment Security Commission, or any party to the proceedings before the Board of Review, may obtain judicial review thereof by filing in the district court of the county in which the claimant resides, or if the claimant is not a resident of the State of Oklahoma then in the district court of Oklahoma County, a petition for review of such decision, against the Board of Review. In such petition for review all other parties to the proceeding before the Board of Review and the Commission shall be made codefendants. Such petition for review need not be verified but shall state

specifically the grounds upon which such review is sought. A copy of the petition for review shall be served upon a member of the Board of Review or upon such persons as the Board of Review may designate and the petitioner shall also deliver to the person so served as many copies of the petition as there are defendants. The Board of Review shall forthwith send by mail to each other party to the proceeding a copy of such petition, and such mailing shall be deemed to be service upon all such parties. In any proceeding under this section the findings of the Board of Review as to the facts, if supported by evidence, shall be conclusive and the jurisdiction of the court shall be confined to questions of law. No additional evidence shall be received by the court, but the court may remand the case and order additional evidence to be taken before the Board of Review, and the Board may, after hearing the additional evidence, modify its findings of fact or conclusions, and file the additional or modified findings and conclusions, together with the transcript of the additional record, with the court.

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

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

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

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

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

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

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

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

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

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

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

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

1. The employer shall answer the Notice of Levy on a form provided by the Commission. The employer shall follow the procedure for answering a continuing earnings garnishment as set out in

subsection F of Section 1173.4 of Title 12 of the Oklahoma Statutes; and

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

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

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

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

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

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

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

with respect to such money or rights to money arising from the surrender or payment.

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

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

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

SECTION 11. AMENDATORY 40 O.S. 2001, Section 554, as amended by Section 4, Chapter 1, 1st Extraordinary Session, O.S.L.

2005 (40 O.S. Supp. 2007, Section 554), is amended to read as follows:

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

1. Applicant testing: A public or private employer may request or require a job applicant, upon a conditional offer of employment, to undergo drug or alcohol testing and may use a refusal to undergo testing or a confirmed positive test result as a basis for refusal to hire, provided that such testing does not violate the provisions of the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101 et seq., and provided that such testing is required for all applicants who have received a conditional offer of employment for a particular employment classification;

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

3. Post-accident testing: A public or private employer may require an employee to undergo drug or alcohol testing if the employee or another person has sustained a work-related injury or the employer's property has been damaged, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed Five Hundred Dollars ($500.00). For purposes of

workers' compensation ~~or unemployment compensation~~, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals shall be eligible for such compensation unless the employee proves by a preponderance of the evidence that the substances, alcohol, illegal drugs, or illegally used chemicals were not the proximate cause of the injury or accident;

4. Random testing: A public or private employer may request or require an employee to undergo drug or alcohol testing on a random selection basis, except that a public employer may require random testing only of employees who:

a. are police or peace officers,

b. have drug interdiction responsibilities,

c. are authorized to carry firearms,

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

e. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services;

5. Scheduled, periodic testing: A public or private employer may request or require an employee to undergo drug or alcohol

testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group and which is part of the employer's written policy, except that a public employer may require scheduled, periodic testing only of employees who:

a. are police or peace officers,

b. have drug interdiction responsibilities,

c. are authorized to carry firearms,

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

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

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

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

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

1. A statement of the employer's policy respecting drug or alcohol use by employees;

2. Which applicants and employees are subject to testing;

3. Circumstances under which testing may be requested or required;

4. Substances which may be tested. To comply with the provisions of this paragraph, it shall be sufficient for an employer to state in the written policy that the substances tested shall be for drugs and alcohol as defined in the Standards for Workplace Drug and Alcohol Testing Act, including controlled substances approved for testing by rule by the State Commissioner of Health;

5. Testing methods and collection procedures to be used;

6. Consequences of refusing to undergo testing;

7. Potential adverse personnel action which may be taken as a result of a positive test result;

8. The rights of an applicant and employee to explain, in confidence, the test results;

9. The rights of an applicant and employee to obtain all information and records related to that individual's testing;

10. Confidentiality requirements; and

11. The available appeal procedures, remedies and sanctions.

B. An employer who is implementing a drug or alcohol testing policy for the first time, or is implementing changes to its policy, shall provide at least thirty (30) days' notice to its employees prior to implementation of the policy or changes to the policy.

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

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

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

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

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

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

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

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