

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1531

By: Leftwich

4
5
6 AS INTRODUCED

7 An Act relating to labor; amending Section 1, Chapter
8 452, O.S.L. 2002, 40 O.S. 2001, Sections 1-208, as
9 last amended by Section 1, Chapter 176, O.S.L. 2006,
10 1-210, as last amended by Section 2, Chapter 176,
11 O.S.L. 2006, 1-224, as last amended by Section 2,
12 Chapter 254, O.S.L. 2007, Section 2, Chapter 102,
13 O.S.L. 2004, 2-209, as amended by Section 3, Chapter
14 102, O.S.L. 2004, 2-404, 2-503, as amended by Section
15 4, Chapter 102, O.S.L. 2004, 2-610, as amended by
16 Section 10, Chapter 176, O.S.L. 2006, Section 17,
17 Chapter 452, O.S.L. 2002, as amended by Section 5,
18 Chapter 177, O.S.L. 2003, and 554, as amended by
19 Section 4, Chapter 1, 1st Extraordinary Session,
20 O.S.L. 2005 (40 O.S. Supp. 2007, Sections 1-108, 1-
21 208, 1-210, 1-224, 1-226, 2-209, 2-503, 2-610, 2-618
22 and 554), which relate to the Employment Security Act
23 of 1980 and the Standards for Workplace Drug and
24 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

1 restrictions of certain drug or alcohol testing by
2 employers; and providing an effective date.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY Section 1, Chapter 452, O.S.L.
6 2002 (40 O.S. Supp. 2007, Section 1-108), is amended to read as
7 follows:

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

11 B. The term "employment" shall include service performed in the
12 employ of an Indian tribe, as defined in the Federal Unemployment
13 Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is
14 excluded from "employment" as defined in FUTA solely by reason of 26
15 U.S.C., Section 3306(c)(7), and is not otherwise excluded from
16 employment under the Employment Security Act of 1980. For purposes
17 of this section, the exclusions from employment in subparagraphs (c)
18 and (e) of paragraph (7) of Section 1-210 of this title shall be
19 applicable to services performed in the employ of an Indian tribe.

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

1 D. Benefits based on service in employment defined in this
2 section shall be payable in the same amount, on the same terms, and
3 subject to the same conditions as benefits payable on the basis of
4 other service subject to the Employment Security Act of 1980,
5 provided wages used to establish the claim were paid during a time
6 in which the account of the Indian tribe for which services were
7 rendered was not terminated pursuant to subparagraph a of paragraph
8 1 of subsection F of this section.

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

16 2. An Indian tribe or tribal unit electing to make payments in
17 lieu of contributions shall so notify the Oklahoma Employment
18 Security Commission in writing. ~~After making the election~~ before
19 the last day of January of the calendar year in which the tribe
20 wishes to begin making reimbursement payments. If the Commission
21 determines the Indian tribe is eligible to exercise its option, the
22 Indian tribe shall be liable for reimbursement payments in lieu of
23 contributions in the same manner and subject to the same provisions
24 that apply to reimbursing nonprofit organizations as provided in

1 Part 8 of Article 3 of the Employment Security Act of 1980,
2 including formation of group accounts, and the proportionate
3 allocation of benefit costs, except that one hundred percent (100%)
4 of the extended benefits attributable to the Indian tribe shall be
5 reimbursed. Indian tribes shall determine whether reimbursement for
6 benefits paid shall be elected by the tribe as a whole, by
7 individual tribal units, or by combinations of individual tribal
8 units. If any provision contained in Part 8 of Article 3 of the
9 Employment Security Act of 1980, including the administrative rules
10 implementing that Part, contradicts a provision of this section, the
11 provision of this section shall control.

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

16 F. 1. a. If an Indian tribe or tribal unit thereof fails to
17 file the required reports and pay all late filing
18 penalties or fails to make required payments under the
19 Employment Security Act of 1980, including payment of
20 all interest, penalties, surcharges, or fees, a notice
21 of reporting or payment delinquency shall be mailed to
22 the Indian tribe at its last-known address. If the
23 delinquency is not corrected within ninety (90) days
24 of the date of mailing of the notice of delinquency,

1 the account of the Indian tribe shall be terminated
2 and notice of termination shall be mailed to the tribe
3 at its last-known address, together with a statement
4 of protest rights available pursuant to Section 3-115
5 of this title. If the account of an Indian tribe is
6 terminated pursuant to this subparagraph, the Indian
7 tribe shall not be considered an "employer" for
8 purposes of subsection A of this section, and services
9 performed for the Indian tribe shall not be considered
10 "employment" for purposes of subsection B of this
11 section.

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

23 2. a. Failure of an Indian tribe or tribal unit to make
24 required payments, including assessments of interest,

1 penalties, surcharges, and fees within ninety (90)
2 days of the due date for payment shall cause the
3 Indian tribe to lose the option to make payments in
4 lieu of contributions, as described in subsection E of
5 this section, for the following tax year unless
6 payment in full is received before January 31 of the
7 next tax year.

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

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

- 22 1. The Indian tribe to be liable for taxes under FUTA;
- 23 2. The Indian tribe to lose the option to make payments in lieu
24 of contributions;

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

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

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

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

17 J. The provisions of subsections K and L of this section shall
18 provide a transition for the implementation of Section 166 of Public
19 Law 106-144 enacted by the Congress of the United States and
20 effective December 21, 2000, so that Indian tribes may qualify for
21 federal tax credits and employees of Indian tribes may be eligible
22 for benefits.

23 K. Any Indian tribe which did not have an active account with
24 the Oklahoma Employment Security Commission from January 1, 2001, to

1 the effective date of this section, but which desires to be covered
2 for benefits for that period of time, may elect to be subject to one
3 of the following, if the tribe notifies the Commission of the
4 election in writing:

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

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

17 L. Any Indian tribe which did not have an active account with
18 the Oklahoma Employment Security Commission from January 1, 2001, to
19 the effective date of this section and does not desire to be covered
20 for benefits for that period shall be covered by the provisions of
21 subsections A through I of this section. The coverage for any such
22 tribe shall be prospective only and shall not entitle any employee
23 of the tribe to benefits for any period prior to the effective date
24 of this section.

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

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

9 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-208, as
10 last amended by Section 1, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
11 2007, Section 1-208), is amended to read as follows:

12 Section 1-208.

13 EMPLOYER.

14 "Employer" means:

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

17 a. for some portion of a day, but not necessarily
18 simultaneously, in each of twenty (20) different
19 calendar weeks, whether or not such weeks are or were
20 consecutive, within either the calendar year or the
21 preceding calendar year, and for the purpose of this
22 definition if any week includes both December 31 and
23 January 1, the days up to January 1 shall be deemed
24 one (1) calendar week and the days beginning January 1

1 another such week, has or had in employment one or
2 more individuals, irrespective of whether the same
3 individuals are or were employed in each such day, or

4 b. in any calendar quarter, in either the calendar year
5 or preceding calendar year paid for service in
6 employment wages of One Thousand Five Hundred Dollars
7 (\$1,500.00) or more;

8 2. Any individual or employing unit, whether or not an
9 employing unit at the time of the acquisition, which acquired
10 substantially all of the organization, employees, trade, business,
11 or assets thereof, of another which at the time of such acquisition
12 was an employer subject to the Employment Security Act of 1980; or
13 which acquired a part of the organization, employees, trade, or
14 business of another employing unit which at the time of such
15 acquisition was an employer subject to the Employment Security Act
16 of 1980;

17 3. Any individual or employing unit, whether or not an
18 employing unit at the time of acquisition, which acquired
19 substantially all of the organization, employees, trade, business,
20 or assets thereof, of another employing unit, if the employment
21 record of such individual or employing unit subsequent to such
22 acquisition, together with the employment record of the acquired
23 unit prior to such acquisition, both within the same calendar year,
24 would be sufficient to constitute an employing unit and employer

1 subject to the Employment Security Act of 1980 under paragraph 1 of
2 this section; or any individual or employing unit which acquired
3 substantially all of the organization, employees, trade, business,
4 or assets of another employing unit if such employing unit
5 subsequent to such acquisition, and such acquired unit prior to such
6 acquisition, both within the same calendar quarter, together paid
7 for service in employment wages totaling One Thousand Five Hundred
8 Dollars (\$1,500.00) or more;

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

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

20 6. For the effective period of its election pursuant to Section
21 3-203 of this title any other employing unit which has elected to
22 become subject to the Employment Security Act of 1980;

23 7. Any department of this state, any other state, and all
24 instrumentalities thereof, including any political subdivisions and

1 their instrumentalities, for which service in employment, as defined
2 in paragraph (3) of Section 1-210 of this title, is performed,
3 except as provided under paragraphs 10 and 11 of this section;

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

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

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

23 11. Any employing unit for which domestic service in employment
24 as defined in paragraph (6) of Section 1-210 of this title is

1 performed. In determining whether or not an employing unit for
2 which service other than domestic service is also performed is an
3 employer under paragraph 1, 7, 8 or 10 of this section, the wages
4 earned or the employment of an employee performing domestic service
5 shall not be taken into account;

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

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

15 b. the employing unit is required to be an "employer" as
16 a condition for approval of the Employment Security
17 Act of 1980 for full tax credit to be allowed against
18 the tax imposed by the Federal Unemployment Tax Act,
19 26 U.S.C., Section 3301 et seq.; or

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

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

4 Section 1-210.

5 EMPLOYMENT.

6 "Employment" means:

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

9 (a) any officer of a corporation; or

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

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

17 (i) as an agent-driver or commission-driver engaged
18 in distributing meat products, vegetable
19 products, fruit products, bakery products,
20 beverages other than milk, or laundry or dry
21 cleaning services, for his or her principal; or

22 (ii) as a traveling or city salesperson, other than as
23 an agent-driver or commission-driver, engaged
24 upon a full-time basis in the solicitation on

1 behalf of, and the transmission to, his or her
2 principal, except for sideline sales activities
3 on behalf of some other person, of orders from
4 wholesalers, retailers, contractors, or operators
5 of hotels, restaurants or other similar
6 establishments for merchandise for resale or
7 supplies for use in their business operations;

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

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

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

18 (iii) the services are not in the nature of a single
19 transaction that is not part of a continuing
20 relationship with the person for whom the
21 services are performed.

22 (3) Service performed in the employ of this state or any of its
23 instrumentalities or any political subdivision thereof or any of its
24 instrumentalities or any instrumentality of more than one of the

1 foregoing or any instrumentality of any of the foregoing and one or
2 more other states or political subdivisions; provided, that such
3 service is excluded from "employment" as defined in the Federal
4 Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not
5 excluded from "employment" under paragraph (7) of this section.

6 (4) Service performed by an individual in the employ of a
7 community chest, fund, foundation or corporation, organized and
8 operated exclusively for religious, charitable, scientific, testing
9 for public safety, literary or educational purposes, or for the
10 prevention of cruelty to children or animals, no part of the net
11 earnings of which inures to the benefit of any private shareholder
12 or individual, no substantial part of the activities of which is
13 carrying on propaganda, or otherwise attempting to influence
14 legislation and which does not participate in, or intervene in,
15 including the publishing or distributing of statements, any
16 political campaign on behalf of any candidate for public office;
17 provided that such organization had four or more individuals in
18 employment for some portion of a day in each of twenty (20)
19 different weeks, whether or not such weeks were consecutive, within
20 either the calendar year or preceding calendar year, regardless of
21 whether they were employed at the same moment of time.

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

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

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

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

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

18 (i) if the crew leader holds a valid certificate of
19 registration under the Farm Labor Contractor
20 Registration Act of 1963, Public Law 95-562, 29
21 U.S.C., Sections 1801 through 1872; or
22 substantially all the members of the crew operate
23 or maintain tractors, mechanized harvesting or
24 crop-dusting equipment, or any other mechanized

1 equipment, which is provided by the crew leader;
2 and

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

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

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

14 (ii) the other person shall be treated as having paid
15 cash remuneration to the individual in an amount
16 equal to the amount of cash remuneration paid to
17 the individual by the crew leader, either on his
18 or her own behalf or on behalf of the other
19 person, for the service in agricultural labor
20 performed for the other person.

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

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

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

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

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

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

17 (a) in the employ of:

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

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

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

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

8 (i) as an elected official;

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

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

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

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

24

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

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

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

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

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

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

23 (8) The term "employment" shall include the service of an
24 individual who is a citizen of the United States, performed outside

1 the United States, except in Canada, in the employ of an American
2 employer other than service which is deemed "employment" under the
3 provisions of paragraphs (11) or (12) of this section or the
4 parallel provisions of another state's law, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (a) includes any service with respect to which a tax is
23 required to be paid under any federal law imposing a
24 tax against which credit may be taken for

1 contributions required to be paid into a state
2 unemployment fund; and

3 (b) includes any service which is required to be
4 "employment" for full tax credit to be allowed against
5 the tax imposed by the Federal Unemployment Tax Act of
6 1954, Public Law 591, Chapter 736, as amended, 26
7 U.S.C., Section 3301 et seq.

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

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

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

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

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

22 (12) (a) Services covered by an election pursuant to Section 3-
23 203 of this title; and
24

1 (b) services covered by an arrangement pursuant to Section
2 4-701 et seq. of this title between the Oklahoma
3 Employment Security Commission and the agency charged
4 with the administration of any other state or federal
5 unemployment compensation law, pursuant to which all
6 services performed by an individual for an employing
7 unit are deemed to be performed entirely within this
8 state, shall be deemed to be employment if the
9 Commission has approved an election of the employing
10 unit for whom such services are performed, pursuant to
11 which the entire service of such individual during the
12 period covered by such election is deemed to be
13 insured work.

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

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

17 (b) the service is performed both within and without such
18 state, but the service performed without such state is
19 incidental to the individual's service within the
20 state; for example, is temporary or transitory in
21 nature or consists of isolated transactions.

22 (14) Notwithstanding any other provision of this subsection,
23 services performed by an individual for wages or under any contract
24 of hire shall be deemed to be employment subject to the Employment

1 Security Act of 1980 unless and until it is shown to the
2 satisfaction of the Commission that:

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

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

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

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

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

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

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

10 (d) service performed in the employ of the United States
11 government or an instrumentality of the United States
12 exempt under the Constitution of the United States
13 from the contributions imposed by the Employment
14 Security Act of 1980, except that to the extent that
15 the Congress of the United States shall permit states
16 to require any instrumentalities of the United States
17 to make payments into an unemployment fund under a
18 state unemployment compensation law, all of the
19 provisions of the Employment Security Act of 1980
20 shall be applicable to such instrumentalities, and to
21 services performed for such instrumentalities, in the
22 same manner, to the same extent, and on the same terms
23 as to all other employers, employing units,
24 individuals and services; provided that if this state

1 shall not be certified for any year by the Secretary
2 of Labor of the United States under the Federal
3 Internal Revenue Code, 26 U.S.C., Section 3304(c), the
4 payments required of such instrumentalities with
5 respect to the year shall be refunded by the
6 Commission from the fund in the same manner and within
7 the same period as is provided in Section 3-304 of
8 this title with respect to contributions erroneously
9 collected;

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

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

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

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

22 (ii) if the Commission finds that the United States
23 Secretary of State has certified to the United
24 States Secretary of the Treasury that the foreign

1 government, with respect to whose instrumentality
2 exemption is claimed, grants an equivalent
3 exemption with respect to similar service
4 performed in the foreign country by employees of
5 the United States government and of
6 instrumentalities thereof;

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

16 (i) service performed as a student nurse in the employ of
17 a hospital or a nurses' training school by an
18 individual who is enrolled and is regularly attending
19 classes in a nurses' training school chartered or
20 approved pursuant to state law; and service performed
21 as an intern in the employ of a hospital by an
22 individual who has completed a four-year course in a
23 medical school chartered or approved pursuant to state
24 law;

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

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

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

21 (ii) substantially all the remuneration, whether or
22 not paid in cash, for the performance of the
23 services described in clause (i) of this
24 subdivision is directly related to sales or other

1 output, including the performance of services,
2 rather than the number of hours worked, and
3 (iii) the services performed by the individual are
4 performed pursuant to a written contract between
5 the person and the person for whom the services
6 are performed and the contract provides that the
7 person will not be treated as an employee with
8 respect to the services;

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

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

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

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

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

23 (m) service performed by an individual who is enrolled at
24 a nonprofit or public educational institution which

1 normally maintains a regular faculty and curriculum
2 and normally has a regularly organized body of
3 students in attendance at the place where its
4 educational activities are carried on as a student in
5 a full-time program, taken for credit at the
6 institution, which combines academic instruction with
7 work experience, if the service is an integral part of
8 the program, and the institution has so certified to
9 the employer, except that this provision shall not
10 apply to service performed in a program established
11 for or on behalf of an employer or group of employers;

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

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

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

21 (q) cosmetology services performed by an individual in a
22 beauty shop, as defined by Section 199.1 of Title 59
23 of the Oklahoma Statutes, pursuant to an agreement
24

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

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

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

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

20 (u) service performed by an individual whose remuneration
21 consists solely of commissions, overrides, bonuses,
22 and differentials related to sales or other output
23 derived from in-person sales to, or solicitation of
24

1 orders from, ultimate consumers primarily in the home,
2 or otherwise than in a permanent retail establishment;

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

10 (w) services performed as a chopper of cotton who weeds or
11 thins cotton crops by hand or hoe. This subsection
12 shall be interpreted and applied consistently with the
13 Federal Unemployment Tax Act, 26 U.S.C., Sections
14 3304(a)(6)(A) and 3306(k); or

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

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

22 (ii) if substantially all remuneration paid in cash or
23 otherwise for the performance of the services is
24 directly related to the completion by the

1 individual of the specific tasks contracted for
2 rather than to the number of hours worked by the
3 individual, and

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

11 SECTION 4. AMENDATORY 40 O.S. 2001, Section 1-224, as
12 last amended by Section 2, Chapter 254, O.S.L. 2007 (40 O.S. Supp.
13 2007, Section 1-224), is amended to read as follows:

14 Section 1-224.

15 FILE.

16 A. When any document is required to be filed by the provisions
17 of the Employment Security Act of 1980 or the rules promulgated
18 under the authority of the Employment Security Act of 1980 with the
19 Oklahoma Employment Security Commission, any of its representatives,
20 or the Board of Review for the Oklahoma Employment Security
21 Commission, the term "file", "files", or "filed" shall be defined as
22 follows:
23
24

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

4 2. Telefaxed to ~~an office of~~ the telefax number indicated on
5 the determination letter, order or other document issued by the
6 Oklahoma Employment Security Commission by midnight on or before the
7 date due. Timely telefaxing shall be determined by the date and
8 time printed by the Commission's telefax machine on the document
9 received or ~~the date and time on the sender's transmittal sheet;~~

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

15 4. Electronically transmitted via data lines to the Oklahoma
16 Security Commission, as directed by the instructions on the
17 determination letter, order or other document issued by the
18 Commission, by midnight on or before the date due. Timely
19 transmission shall be determined by the Commission's transmission
20 log file.

21 B. If the Employment Security Act of 1980 or the rules
22 promulgated under the Employment Security Act of 1980 require that a
23 document be filed with a court or any other agency of this state,
24

1 the term "file", "files" or "filed" shall be defined by the
2 statutes, rules or practice governing that court or agency.

3 SECTION 5. AMENDATORY Section 2, Chapter 102, O.S.L.
4 2004 (40 O.S. Supp. 2007, Section 1-226), is amended to read as
5 follows:

6 Section 1-226. A. "Initial Claim" means a new claim
7 application submitted by a claimant to establish a benefit year for
8 unemployment insurance benefits.

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

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

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

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

23 Section 2-209. Benefits based on service in employment defined
24 in paragraphs (2), (3) or (4) of Section 1-210 of this title,

1 including any federally operated educational institutions, shall be
2 payable in the same amount, on the same terms and subject to the
3 same conditions as benefits payable on the basis of other service
4 subject to the Employment Security Act of 1980, except that:

5 (1) With respect to service performed in an instructional,
6 research or principal administrative capacity for an educational
7 institution, benefits shall not be paid based on such services for
8 any week of unemployment commencing during the period between two

9 (2) successive academic years, or during a similar period between
10 two regular but not successive terms, or during a period of paid
11 sabbatical leave provided for in the individual's contract, to any
12 individual if such individual performs such services in the first of
13 such academic years or terms and if there is a contract or a
14 reasonable assurance that such individual will perform services in
15 any such capacity for any educational institution in the second of
16 such academic years or terms.

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

1 to any individual under this paragraph and such individual was not
2 offered an opportunity to perform such services for the educational
3 institution for the second of such academic years or terms, such
4 individual shall be entitled to a retroactive payment of
5 compensation for each week for which the individual filed a timely
6 claim for compensation and for which compensation was denied solely
7 by reason of this clause.

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

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

1 for the purpose of providing such services to one or more
2 educational institutions.

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

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

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

17 Section 2-404.

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

22 B. When adjudicating a separation from employment in an initial
23 claim or additional initial claim, disqualification under this
24 subsection shall continue for the full period of unemployment next

1 ensuing after ~~he has~~ the individual left ~~his~~ work voluntarily
2 without good cause connected to the work and until ~~such~~ the
3 individual has become reemployed and has earned wages equal to or in
4 excess of ten (10) times his or her weekly benefit amount.

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

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

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

15 Section 2-503.

16 CLAIMS, NOTICES AND OBJECTIONS.

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

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

1 the Commission shall give written notice of the claim to the last
2 separating employer. Notices to separating employers during a
3 continued claim series will be given to the last employer in the
4 claim week without regard to length of employment.

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

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

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

20 1. Make the claimant ineligible for benefits under Sections 2-
21 201 through 2-209 of this title;

22 2. Disqualify the claimant from benefits under Sections 2-401
23 through 2-418 of this title; or
24

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

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

6 Section 2-610.

7 JUDICIAL REVIEW.

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

1 the proceeding a copy of such petition, and such mailing shall be
2 deemed to be service upon all such parties. In any proceeding under
3 this section the findings of the Board of Review as to the facts, if
4 supported by evidence, shall be conclusive and the jurisdiction of
5 the court shall be confined to questions of law. No additional
6 evidence shall be received by the court, but the court may remand
7 the case and order additional evidence to be taken before the Board
8 of Review, and the Board may, after hearing the additional evidence,
9 modify its findings of fact or conclusions, and file the additional
10 or modified findings and conclusions, together with the transcript
11 of the additional record, with the court.

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

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

1 required as a condition of initiating a proceeding for judicial
2 review or entering an appeal from the decision of the court upon
3 such review. Upon the final termination of such judicial
4 proceeding, the Board of Review shall enter an order in accordance
5 with the mandate of the court.

6 SECTION 10. AMENDATORY Section 17, Chapter 452, O.S.L.
7 2002, as amended by Section 5, Chapter 177, O.S.L. 2003 (40 O.S.
8 Supp. 2007, Section 2-618), is amended to read as follows:

9 Section 2-618.

10 LEVY ON INCOME AND MONETARY ASSETS.

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

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

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

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

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

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

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

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

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

20 2. The Notice of Levy shall be a lien on the debtor's property
21 in the same manner as provided for in subsection G of Section 1173.4
22 of Title 12 of the Oklahoma Statutes. The Notice of Levy shall also
23 be subject to the procedures and time limits set out in subsections
24 H, I, J and K of Section 1173.4 of Title 12 of the Oklahoma

1 Statutes, except that when a document is required to be filed with
2 the clerk of the court, the document will instead be filed with the
3 Commission as directed on the forms provided.

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

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

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

20 3. If there is no money in the debtor's bank account at the
21 time the Notice of Levy is served, or if the bank account has been
22 closed, an officer of the bank on which the Notice of Levy is served
23 shall make a statement to that effect on the Notice of Levy. The
24

1 statement shall be notarized and returned to the office of the
2 Commission that is indicated in the Notice of Levy;

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

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

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

24

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

5 G. Claims for exemptions and any other matter relating to the
6 levy shall be filed within ten (10) days of the date of service of
7 the levy. The claim shall be filed with the Appeal Tribunal of the
8 Oklahoma Employment Security Commission. An order of exemption may
9 relate back no more than thirty (30) days before the filing of the
10 claim for exemption and shall extend no further than the expiration
11 date or termination of the levy. Appeal from the Appeal Tribunal
12 decision shall be governed by the appeal procedures set out in Part
13 6 of Article 2 of the Employment Security Act of 1980, and the
14 Administrative Rules of the Oklahoma Employment Security Commission
15 pertaining thereto.

16 SECTION 11. AMENDATORY 40 O.S. 2001, Section 554, as
17 amended by Section 4, Chapter 1, 1st Extraordinary Session, O.S.L.
18 2005 (40 O.S. Supp. 2007, Section 554), is amended to read as
19 follows:

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

23 1. Applicant testing: A public or private employer may request
24 or require a job applicant, upon a conditional offer of employment,

1 to undergo drug or alcohol testing and may use a refusal to undergo
2 testing or a confirmed positive test result as a basis for refusal
3 to hire, provided that such testing does not violate the provisions
4 of the Americans with Disabilities Act of 1990, 42 U.S.C., Section
5 12101 et seq., and provided that such testing is required for all
6 applicants who have received a conditional offer of employment for a
7 particular employment classification;

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

12 3. Post-accident testing: A public or private employer may
13 require an employee to undergo drug or alcohol testing if the
14 employee or another person has sustained a work-related injury or
15 the employer's property has been damaged, including damage to
16 equipment, in an amount reasonably estimated at the time of the
17 accident to exceed Five Hundred Dollars (\$500.00). For purposes of
18 workers' compensation ~~or unemployment compensation~~, no employee who
19 tests positive for the presence of substances defined and consumed
20 pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes,
21 alcohol, illegal drugs, or illegally used chemicals shall be
22 eligible for such compensation unless the employee proves by a
23 preponderance of the evidence that the substances, alcohol, illegal
24

1 | drugs, or illegally used chemicals were not the proximate cause of
2 | the injury or accident;

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

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

17 | 5. Scheduled, periodic testing: A public or private employer
18 | may request or require an employee to undergo drug or alcohol
19 | testing if the test is conducted as a routine part of a routinely
20 | scheduled employee fitness-for-duty medical examination or is
21 | scheduled routinely for all members of an employment classification
22 | or group and which is part of the employer's written policy, except
23 | that a public employer may require scheduled, periodic testing only
24 | 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. This act shall become effective November 1, 2008.

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