

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 809

By: Leftwich

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5
6 AS INTRODUCED

7 An Act relating to labor and state government;
8 amending 40 O.S. 2001, Sections 1-218, as last
9 amended by Section 2, Chapter 182, O.S.L. 2005, 1-
10 224, as amended by Section 3, Chapter 182, O.S.L.
11 2005, 2-109, 2-416, as amended by Section 8, Chapter
12 176, O.S.L. 2006, 2-417, as amended by Section 9,
13 Chapter 176, O.S.L. 2006, 2-506, 3-106, as last
14 amended by Section 13, Chapter 176, O.S.L. 2006, 3-
15 115, as amended by Section 19, Chapter 176, O.S.L.
16 2006, 3-403, 3-806, 4-504 and 4-508, as last amended
17 by Section 27, Chapter 176, O.S.L. 2006, (40 O.S.
18 Supp. 2006, Sections 1-218, 1-224, 2-416, 2-417, 3-
19 106, 3-115, and 4-508), which relate to the
20 Employment Security Act of 1980; amending 74 O.S.
21 2001, Section 85.29, as amended by Section 5, Chapter
22 50, O.S.L. 2002 (74 O.S. Supp. 2006, Section 85.29),
23 which relates to schedule of amount of certain surety
24 bond required; clarifying date for certain exclusion
relating to retirement plans; modifying and adding
definition; clarifying certain benefit year relating
to employment requirement; making language gender
neutral; clarifying cite; adding certain waiver for
seek and work requirement; allowing certain
redeterminations based on false statements by
employer; providing for the issuance of certain
benefits; providing for certain relief of benefit
wage charges under certain circumstances; providing
for certain protest of determination; stating certain
order shall be final in certain circumstance;
providing basis for certain reconsideration of
determinations; setting time limit for
redetermination; providing notice and appeal of
redetermination; stating certain findings of fact of
law for certain purposes shall be conclusive and
binding; stating certain findings of fact of law for

1 certain purposes shall not be conclusive and binding;
2 prohibiting use of certain findings of fact of law in
3 certain forums; stating certain orders, rulings and
4 findings will become final if certain petition for
5 review is not filed within required time and court
6 will not have certain jurisdiction; providing
7 timeframe for certain assessment or amendments to
8 assessments relating to payment of in-lieu
9 contributions; providing for certain service of
10 process; providing exceptions; providing statute is
11 not to be construed to waive certain immunity;
12 providing certain powers relating to oaths,
13 depositions, certifications and subpoenas will apply
14 to certain program for certain purpose; providing for
15 disclosure of certain information for use in certain
16 investigations; providing certain information is
17 confidential unless required for use in court for
18 certain purposes; increasing amount of certain surety
19 required; repealing 40 O.S. 2001, Sections 4-401, 4-
20 402, 4-403, 4-404 and 4-405, which relate to the
21 Employment Security Act of 1980 and the prohibition
22 of certain disqualification or recoupment relating to
23 receipt of supplemental unemployment benefits and the
24 creation, appointment, duties and compensation of the
State Advisory Council; providing for codification
and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 1-218, as
last amended by Section 2, Chapter 182, O.S.L. 2005 (40 O.S. Supp.
2006, Section 1-218), is amended to read as follows:

Section 1-218. "Wages" means all remuneration for services from
whatever source, including commissions and bonuses and the cash
value of all remuneration in any medium other than cash, and
includes dismissal payments which the employer is required by law or
contract to make. Gratuities customarily received by an individual

1 in the course of work from persons other than the employing unit
2 shall be treated as wages received from the employing unit. The
3 reasonable cash value of remuneration in any medium other than cash,
4 and the reasonable amount of gratuities, shall be estimated and
5 determined in accordance with rules prescribed by the Oklahoma
6 Employment Security Commission. The term wages shall not include:

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

14 a. retirement, other than employee contributions or
15 deferrals after December 31, 2002, under a qualified
16 plan as described in 26 U.S.C. Section 401(k) and,
17 after December 31, 2005, under a qualified plan as
18 described in 26 U.S.C. Sections ~~401(k)~~, 403b, 408(k),
19 457 and 7701(j),

20 b. sickness or accident disability,

21 c. medical and hospitalization expenses in connection
22 with sickness or accident disability,

23 d. death, provided the individual in its employ:
24

1 (1) has not the option to receive, instead of
2 provision for such death benefit, any part of
3 such payment, or if such death benefit is
4 insured, any part of the premium or contributions
5 to premiums paid by the employing unit, and

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

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

16 (1) such payment is conditioned upon a payment of a
17 substantial sum by such individuals in its
18 employ, and

19 (2) that such sum paid by the employing unit cannot
20 under the provisions of such plan be withdrawn by
21 an individual more frequently than once in any
22 twelve-month period, except upon an individual's
23 separation from that employment;

24

1 2. Any payment made to, or on behalf of, an employee or his or
2 her beneficiary under a cafeteria plan of the type described in 26
3 U.S.C., Section 125 and referred to in 26 U.S.C., Section
4 3306(b)(5)(G);

5 3. Any payment made, or benefit furnished, to or for the
6 benefit of an employee if at the time of such payment or such
7 furnishing it is reasonable to believe that the employee will be
8 able to exclude such payment or benefit from income under an
9 educational assistance program as described in 26 U.S.C., Section
10 127 or a dependent care assistance program as described in 26
11 U.S.C., Section 129 and as referred to in 26 U.S.C., Section
12 3306(b)(13);

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

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

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

24

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

3 SECTION 2. AMENDATORY 40 O.S. 2001, Section 1-224, as
4 amended by Section 3, Chapter 182, O.S.L. 2005 (40 O.S. Supp. 2006,
5 Section 1-224), is amended to read as follows:

6 Section 1-224. ~~For the purposes of Sections 2-503, 2-505, 2-~~
7 ~~603, 2-606, 3-102, 3-106, 3-111, 3-202, 3-203, 3-301, 3-305, 3-310,~~
8 ~~3-805, 3-806, and 3-809 of this title, A. When any document is~~
9 required to be filed by the provisions of the Employment Security
10 Act of 1980 or the rules promulgated under the authority of the
11 Employment Security Act of 1980 with the Oklahoma Employment
12 Security Commission, any or its representatives, or the Board of
13 Review for the Oklahoma Employment Security Commission, the term
14 "file", "files", or "filed" shall be defined as follows:

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

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

23 3. Mailed with sufficient postage and properly addressed to an
24 office of the Oklahoma Employment Security Commission on or before

1 the date due. Timely mailing shall be determined by the postmark;
2 or

3 4. Electronically transmitted via data lines to the Commission
4 by midnight on or before the date due. Timely transmission shall be
5 determined by the Commission's transmission log file.

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

11 SECTION 3. AMENDATORY 40 O.S. 2001, Section 2-109, is
12 amended to read as follows:

13 Section 2-109. No individual may receive benefits in a benefit
14 year unless, subsequent to the beginning of the ~~next~~ immediately
15 preceding benefit year during which ~~he~~ the individual received
16 benefits, ~~he~~ the individual performed service and earned
17 remuneration for such service in an amount equal to at least ten
18 (10) times ~~his~~ the individual's weekly benefit amount in his current
19 benefit year.

20 SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-416, as
21 amended by Section 8, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006,
22 Section 2-416), is amended to read as follows:

23 Section 2-416. No individual shall be denied benefits for any
24 week because such individual is in training approved under ~~Section~~

1 ~~236(a)(1)~~ 19 U.S.C. Section 2296 (a)(1) of the Trade Act of 1974.
2 An individual shall not be denied benefits by reason of leaving work
3 to begin or continue such training, provided the work left is not
4 suitable employment, or because of the application, to any such week
5 in training, of the provisions of the Employment Security Act of
6 1980 or any applicable federal unemployment compensation law,
7 relating to availability for work, active search for work, or
8 refusal to accept work. For purposes of this section, the term
9 "suitable employment" means with respect to an individual, work of a
10 substantially equal or higher skill level than the adversely
11 affected past employment of the individual, as defined for purposes
12 of the Trade Act of 1974, and wages for such work at not less than
13 eighty percent (80%) of the average weekly wage of the individual as
14 determined for the purposes of the Trade Act of 1974.

15 SECTION 5. AMENDATORY 40 O.S. 2001, Section 2-417, as
16 amended by Section 9, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006,
17 Section 2-417), is amended to read as follows:

18 Section 2-417. A. An individual shall be disqualified to
19 receive benefits for each week in which the individual shall have
20 failed to do any of the following:

21 1. Diligently search for suitable employment at a pay rate
22 generally available in that area of the state in keeping with his or
23 her prior experience, education and training;

24

1 2. Make application for work with employers who could
2 reasonably be expected to have work available;

3 3. Present oneself as an applicant for employment in a manner
4 designed to encourage favorable employment consideration; or

5 4. Participate in reemployment services, such as job search
6 assistance services, if the individual has been determined likely to
7 exhaust regular benefits and needs reemployment services pursuant to
8 a profiling system established by the Oklahoma Employment Security
9 Commission. An individual will not be disqualified under this
10 paragraph for failure to participate in reemployment services, if:

11 a. the individual has previously completed reemployment
12 services, or

13 b. there is justifiable cause for the individual's
14 failure to participate in reemployment services.

15 B. The requirements of subsection A of this section shall be
16 waived if the individual has been summoned to appear for jury duty
17 before any court of the United States or of any state. The waiver
18 will continue for as long as the individual remains on jury duty
19 pursuant to the original summons.

20 C. The requirements of subsection A of this section shall be
21 waived if the individual is on a temporary layoff of ten (10) weeks
22 or less and the individual remains in contact with the employer.

23 SECTION 6. AMENDATORY 40 O.S. 2001, Section 2-506, is
24 amended to read as follows:

1 Section 2-506. The Oklahoma Employment Security Commission may
2 reconsider a determination only when it finds that an error in
3 computation or identity has occurred in connection therewith, or
4 that wages of the claimant pertinent to such determination, but not
5 considered in connection therewith, have been newly determined, or
6 that benefits have been allowed or denied or the amount of benefits
7 fixed on the basis of misrepresentation or mistake of material
8 facts, but no such redetermination shall be made after the
9 expiration of the benefit year established by the initial
10 determination, except that a determination made because of a false
11 statement or representation or failure to disclose a material fact
12 in violation of Section 5-102 or 5-103 of this title may be
13 redetermined within two (2) years from the date of such false
14 statement or representation or failure to disclose. Notice of any
15 such redetermination shall be promptly given to the parties entitled
16 to notice of the original determination, in the manner prescribed in
17 ~~this act~~ the Employment Security Act of 1980 with respect to notice
18 of an original determination. If the amount of benefits is increased
19 upon such redetermination, an appeal therefrom solely with respect
20 to the matters involved in such increase may be filed in the manner
21 and subject to the limitations provided in ~~this~~ Part 5 of Article 2
22 of the Employment Security Act of 1980. If the amount of benefits
23 is decreased upon such redetermination, the matters involved in such
24 decrease shall be subject to review in connection with an appeal by

1 claimant from any determination upon a subsequent claim for benefits
2 which may be affected in amount or duration by such redetermination.
3 Subject to the same limitations and for the same reasons, the
4 Commission may reconsider the determination in any case in which the
5 final decision has been rendered by an appeal tribunal, the Board of
6 Review or a court, and may apply to the body or court which rendered
7 such final decision to issue a revised decision. In the event that
8 an appeal involving an original determination is pending as of the
9 date a redetermination thereof is issued, such appeal, unless
10 withdrawn, shall be treated as an appeal from such redetermination.

11 SECTION 7. AMENDATORY 40 O.S. 2001, Section 3-106, as
12 last amended by Section 13, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
13 2006, Section 3-106), is amended to read as follows:

14 Section 3-106. A. The Oklahoma Employment Security Commission
15 shall give notice to each base period employer of a claimant
16 promptly after the claimant is ~~paid~~ issued his or her fifth week of
17 benefits by the Commission or promptly after the Commission receives
18 notice of the amounts paid as benefits by another state under a
19 reciprocal arrangement. Notice shall be deemed given under this
20 subsection when the Commission deposits the same with the United
21 States Postal Service addressed to the employer at an address
22 designated by the employer to receive the notice or at the
23 employer's last-known address. Notice shall be presumed prima facie
24 to have been given to the employer to whom addressed on the date

1 | stated in the written notice. This notice shall give the name and
2 | Social Security Number of the claimant, the date the claim was
3 | filed, and the amount of benefit wages charged to the employer in
4 | each quarter of the base period.

5 | B. Within twenty (20) days from the date stated upon the notice
6 | provided for in subsection A of this section, the employer may file
7 | with the Commission written objections to being charged with the
8 | benefit wages upon one or more of the grounds for objection set
9 | forth in subsection G of this section. The employer's written
10 | objection must set forth specifically:

11 | 1. The date on which the employment was terminated;

12 | 2. Full particulars as to the circumstances of the termination
13 | including the reason given by the individual for voluntarily leaving
14 | the employment, or the nature of the misconduct for which
15 | discharged, as the case may be;

16 | 3. Full particulars as to the regular scheduled part-time or
17 | full-time employment of the employee including the starting date,
18 | and ending date if any, of the continuous period of such part-time
19 | or full-time employment; and

20 | 4. Such other information as called for by the notice.

21 | C. Upon receipt of the employer's written objections, the
22 | Commission shall make a determination as to whether or not the
23 | employer is entitled to be relieved from the charging of benefit
24 | wages. The Commission shall promptly notify the employer of that

1 determination. Provided further, the twenty-day time period for
2 filing written objections with the Commission as provided for in
3 subsection B of this section may be waived for good cause shown.

4 D. Within fourteen (14) days after the mailing of the
5 determination provided for in subsection C of this section, the
6 employer may file with the Commission or its representative a
7 written protest to the determination and request an oral hearing de
8 novo to present evidence in support of its protest. The Commission
9 or its representative shall, by written notice, advise the employer
10 of the date of the hearing, which shall not be less than ten (10)
11 days from the date of mailing of the written notice. At the
12 discretion of the Commission, this hearing shall be conducted by the
13 Commission or its representative appointed by the Commission for
14 this purpose. Pursuant to the hearing, the Commission or its
15 representative shall, as soon as practicable, make a written order
16 setting forth its findings of fact and conclusions of law, and shall
17 send it to the employer.

18 E. If any employer fails to file a written protest within the
19 period of fourteen (14) days, as provided by subsection D of this
20 section, then the determination shall be final, and no appeal shall
21 thereafter be allowed.

22 F. The employer or the Commission may appeal the order of the
23 Commission or its representative to the district court by filing a
24 petition for review with the clerk of that court within thirty (30)

1 days after the date the order was mailed to all parties. The
2 mailing date shall be specifically stated in the order.

3 G. The benefit wages charged to an employer for a given
4 calendar year shall be the total of the benefit wages stated in the
5 notices given to the employer by the Commission. Provided, that an
6 employer shall be relieved of a benefit wage charge if the employer
7 proves to the satisfaction of the Commission that the benefit wage
8 charge includes wages paid by the employer to any employee or former
9 employee, who:

10 1. Left employment with that employer, or with his or her last
11 employer, voluntarily without good cause connected to the work;

12 2. Was discharged from such employment for misconduct connected
13 with his or her work;

14 3. Was a regular scheduled employee of that employer prior to
15 the week the employee separated from other employment, and continued
16 to work for the employer through the fifth compensable week of
17 unemployment in his or her established benefit year;

18 4. Was separated from his or her employment as a direct result
19 of a major natural disaster, declared as such by the President
20 pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such
21 employee would have been entitled to disaster unemployment
22 assistance if he or she had not received unemployment insurance
23 benefits;

24

1 5. Was separated from employment with that employer due to a
2 medically verifiable illness or medical condition of the employee or
3 the minor child of the employee;

4 6. Was discharged by an employer for unsatisfactory performance
5 during an initial employment probationary period. As used in this
6 paragraph, "probationary period" means a period of time set forth in
7 an established probationary plan which applies to all employees or a
8 specific group of employees and does not exceed ninety (90) calendar
9 days from the first day a new employee begins work. The employee
10 must be informed of the probationary period within the first seven
11 (7) work days. There must be conclusive evidence to establish that
12 the individual was separated due to unsatisfactory work performance
13 and not separated because of lack of work due to temporary,
14 seasonal, casual, or other similar employment not of regular,
15 permanent, and year-round nature;

16 7. Was separated from employment because the spouse of the
17 employee was transferred or obtained employment in another city or
18 state that required the family of the employee to move, and the
19 employee quit current employment to move with the spouse;

20 8. Left employment with that employer as part of a plan to
21 escape domestic violence or abuse; or

22 9. Left employment to attend training approved under the Trade
23 Act of 1974 and is allowed unemployment benefits pursuant to Section
24 2-416 of this title.

1 H. If an employer recalls an employee deemed unemployed as
2 defined by ~~this act~~ the Employment Security Act of 1980 and the
3 employee continues to be employed or the employee voluntarily
4 terminates employment or is discharged for misconduct within the
5 benefit year, the employer shall be entitled to have the benefit
6 wage charged against the employer's experience rating for the
7 employee reduced by the ratio of the number of weeks of remaining
8 eligibility of the employee to the total number of weeks of
9 entitlement.

10 I. An employer shall not be charged with benefit wages of a
11 laid-off employee if the employer lists as an objection in a
12 statement filed in accordance with subsection B of this section that
13 said employee collecting benefits was hired to replace a United
14 States serviceman or servicewoman called into active duty and laid-
15 off upon the return to work by that serviceman or servicewoman. The
16 Unemployment Compensation Fund shall be charged with the benefit
17 wages of the laid-off employee.

18 J. If the Commission receives a notice of amounts paid as
19 benefits by another state under a reciprocal agreement, and the
20 notice is received after three (3) years from the effective date of
21 the underlying benefit claim, no benefit wage charge will be made
22 against the employer identified in the notice, or if a benefit wage
23 charge is made based on such a notice, the employer will be relieved
24

1 of the charge when the facts are brought to the attention of the
2 Commission.

3 SECTION 8. AMENDATORY 40 O.S. 2001, Section 3-115, as
4 amended by Section 19, Chapter 176, O.S.L. 2006 (40 O.S. Supp. 2006,
5 Section 3-115), is amended to read as follows:

6 Section 3-115. A. If a determination is made by the Oklahoma
7 Employment Security Commission on any aspect of an employer's
8 account, and a method of appeal or protest of the determination is
9 not set out in the statute or rule under which the determination was
10 made, the employer may appeal or protest the determination under the
11 procedure set forth in subsection B of this section.

12 B. 1. All determinations affecting an employer account must be
13 made by the Commission in writing in a Notice of Determination and
14 mailed to the employer at the employer's last-known address with the
15 mailing date and appeal rights set out in the document.

16 2. Within twenty (20) days after the mailing of the Notice of
17 Determination as provided for in paragraph 1 of this subsection, the
18 employer may file with the Commission, or its representative, a
19 written request for a review and redetermination setting forth the
20 employer's reasons therefor. If any employer fails to file a
21 written request for review and redetermination within twenty (20)
22 days, then the initial determination of the Commission shall be
23 final, and no further appeal or protest shall be allowed.

24

1 3. If a written request for review and redetermination is
2 filed, the Commission shall provide for a review and issue a Notice
3 of Redetermination in the matter. The employer may appeal the
4 redetermination by filing a written protest within fourteen (14)
5 days of the date of the mailing of the Notice of Redetermination.
6 If the employer fails to file a written protest within the time
7 allowed, the redetermination of the Commission shall be final and no
8 further appeal or protest shall be allowed.

9 4. Upon the timely filing of a written protest, the Commission
10 shall provide for an oral hearing de novo to allow the employer to
11 present evidence in support of the protest. The Commission or its
12 representatives shall, by written notice, advise the employer of the
13 date of the hearing, which shall not be less than ten (10) days from
14 the date of the mailing of the written notice. At the discretion of
15 the Commission, this hearing shall be conducted by the Commission,
16 or by a representative appointed by the Commission for this purpose.

17 5. Pursuant to the hearing, the Commission or its
18 representative shall, as soon as practicable, make a written order
19 setting forth its findings of fact and conclusions of law, and shall
20 mail it to the employer at the employer's last-known address with
21 the mailing date and appeal rights set out in the document.

22 6. The employer or the Commission may appeal the order to the
23 district court of the county in which the employer has its principal
24 place of business by filing a Petition for Review with the clerk of

1 the court within thirty (30) days after the date the order was
2 mailed to all parties. If the employer does not have a principal
3 place of business in any county in Oklahoma, then the Petition for
4 Review shall be filed with the Oklahoma County District Court. All
5 appeals shall be governed by Part 4 of Article ~~III~~ 3 of the
6 Employment Security Act of 1980. If the employer fails to file an
7 appeal to the district court within the time allowed, the order
8 shall be final and no further appeal shall be allowed.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3-116 of Title 40, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The Oklahoma Employment Security Commission may reconsider a
13 determination of the basis of:

- 14 1. An error in computation;
- 15 2. An error in identity;
- 16 3. Misrepresentation of material facts;
- 17 4. Mistake of material facts;
- 18 5. An error in interpretation or application of the law; or
- 19 6. A timely request made pursuant to paragraph 2 of subsection

20 B of Section 3-115 of this title.

21 B. A redetermination shall be made within three (3) years of
22 the last day of the month following the calendar quarter that is
23 subject to the redetermination.

24

1 C. Notice and appeal of a redetermination shall be governed by
2 the provisions of Section 3-115 of this title.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3-117 of Title 40, unless there
5 is created a duplication in numbering, reads as follows:

6 Any findings of fact or law, judgment, conclusion or final order
7 made by the Oklahoma Employment Security Commission or its
8 representatives under Article ~~III~~ 3 of the Employment Security Act
9 of 1980 shall be conclusive and binding for all purposes concerning
10 this act. The findings of fact or law, judgment, conclusion or
11 final order of the Oklahoma Employment Security Commission or its
12 representatives shall not be conclusive or binding in any separate
13 or subsequent action or proceeding that does not involve the
14 Oklahoma Employment Security Commission and shall not be used as
15 evidence in any separate or subsequent action or proceeding in any
16 other forum regardless of whether or not the prior action was
17 between the same or related parties or involved the same facts.

18 SECTION 11. AMENDATORY 40 O.S. 2001, Section , is
19 amended to read as follows:

20 Section 3-403. Within thirty (30) days after the date of
21 mailing of the order, ruling, or finding complained of, the party
22 desiring to appeal shall file in the office of the clerk of the
23 district court of the county that has the proper jurisdiction, a
24 Petition for Review specifying the grounds upon which ~~such~~ the

1 appeal is based. If a Petition for Review is not filed within the
2 time allowed by this section, the administrative order, ruling or
3 finding will become final and the district court will not have
4 jurisdiction to consider the appeal. The appealing party shall
5 serve a file-stamped copy of the Petition for Review on the opposing
6 party or its attorney and the designated hearing officer of the
7 Oklahoma Employment Security Commission before whom the original
8 hearing was held. The hearing officer of the Commission shall then
9 cause a certified transcript of the hearing to be made which shall
10 consist of all testimony of the parties, all documentary evidence
11 and other evidence introduced at the hearing, and all decisions,
12 judgments, or orders rendered as a result of the hearing. The
13 hearing officer shall then cause the certified transcript to be
14 filed in the appropriate district court within sixty (60) days of
15 receipt of the Petition for Review. Copies of the transcript shall
16 be mailed by the hearing officer to the Commission's attorney and
17 the employer or the employer's attorney.

18 SECTION 12. AMENDATORY 40 O.S. 2001, Section 3-806, is
19 amended to read as follows:

20 Section 3-806. A. At the end of each calendar quarter the
21 Oklahoma Employment Security Commission shall notify in writing each
22 nonprofit organization, or the agent of a group of such
23 organizations, which has elected to make payments in lieu of
24 contributions, the amount, if any, equal to the full amount of

1 regular benefits plus one-half (1/2) of the amount of extended
2 benefits paid by the Commission during such quarter that is
3 attributable to service in the employ of such organization or the
4 members of a group of such organizations. Such full amount shall
5 include all amounts so paid to its former employees as benefits,
6 including amounts paid in error. Such notification shall be deemed
7 and treated as an assessment of contributions and the payment of the
8 amount owing shall be collected as contributions, interest, penalty
9 and fees, if any, are collected, in accordance with the provisions
10 of ~~this act~~ the Employment Security Act of 1980. The employer, or
11 group of employers, shall have the rights and remedies provided by
12 ~~this act~~ the Employment Security Act of 1980 with respect to
13 assessments of contributions, including the right of protest,
14 hearing and appeal. The Commission shall make its assessment or
15 amend its assessment within three (3) years of the ending date of
16 the calendar quarter to which the assessment or amendment applies.
17 If no protest is filed or if filed and confirmed by the Commission
18 or its authorized representatives, said assessment shall be
19 immediately due and payable and shall bear interest after forty-five
20 (45) days at the rate of one percent (1%) per month until paid. If
21 any nonprofit organization or group of organizations fails or
22 refuses to pay said assessment after same has become delinquent
23 within forty-five (45) days after written request has been mailed to
24 such organization or the agent of such group by the Commission or

1 its representative, a penalty of five percent (5%) of the amount due
2 shall be added thereto, collected and paid. In the case of group
3 accounts, assessments and penalty and interest provided in this
4 subsection may be prorated in accordance with Section 3-809 of this
5 title. All collections made shall be deposited in the Unemployment
6 Compensation Fund.

7 B. Such electing organization, or group of organizations, shall
8 file reports of wages paid, in the same time and manner as required
9 of said nongovernmental employers for profit. If any such electing
10 organization, or group of organizations, fails or refuses to file
11 said wage report within fifteen (15) days after written notice a
12 penalty of Ten Dollars (\$10.00) for each day until such report is
13 filed with a maximum of One Hundred Dollars (\$100.00) is hereby
14 imposed against such organization or group and shall be collected
15 and paid.

16 C. Payments made by any nonprofit organization under the
17 provisions of this section shall not be deducted or deductible, in
18 whole or in part, from the remuneration of individuals in the employ
19 of the organization.

20 SECTION 13. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 4-109 of Title 40, unless there
22 is created a duplication in numbering, reads as follows:

23 If the Oklahoma Employment Security Commission is sued, or if
24 its officers or employees are sued in their official capacities, the

1 service of all legal process and of all notices which may be
2 required in writing, whether legal proceedings or otherwise, shall
3 be made on the Executive Director at the official office of the
4 Commission as set out in Administrative Rule 240:1-1-5. This
5 section shall not apply to appeals brought under Article ~~II~~ 2, Part
6 6 and Article ~~III~~ 3, Part 4 of the Employment Security Act of 1980.
7 Service of process in Article ~~II~~ 2, Part 6 and Article ~~III~~ 3, Part
8 4, shall be made pursuant to the procedures set out by the statutes
9 in those parts and the administrative rules implementing those
10 statutes. This section shall not be construed to waive any immunity
11 created by constitution or statute that applies to the Oklahoma
12 Employment Security Commission, its officers or employees or this
13 state.

14 SECTION 14. AMENDATORY 40 O.S. 2001, Section 4-504, is
15 amended to read as follows:

16 Section 4-504. In the discharge of the duties imposed by ~~this~~
17 ~~act~~ the Employment Security Act of 1980, the Oklahoma Employment
18 Security Commission, the chairman of an appeal tribunal, the members
19 of the Board of Review, and any duly authorized representative of
20 any of them shall have power to administer oaths and affirmations,
21 take depositions, certify to official acts, and issue subpoenas to
22 compel the attendance of witnesses and the production of books,
23 papers, correspondence, memoranda, and other records deemed
24 necessary as evidence in connection with a disputed claim or the

1 administration of ~~this act~~ the Employment Security Act of 1980 or
2 for purposes of monitoring a program under the Workforce Investment
3 Act, 29 U.S.C. Section 2934.

4 SECTION 15. AMENDATORY 40 O.S. 2001, Section 4-508, as
5 last amended by Section 27, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
6 2006, Section 4-508), is amended to read as follows:

7 Section 4-508. A. Except as otherwise provided by law,
8 information obtained from any employing unit or individual pursuant
9 to the administration of the Employment Security Act of 1980, and
10 determinations as to the benefit rights of any individual shall be
11 kept confidential and shall not be disclosed or be open to public
12 inspection in any manner revealing the individual's or employing
13 unit's identity. Any claimant or employer or agent of such person
14 as authorized in writing shall be supplied with information from the
15 records of the Oklahoma Employment Security Commission, to the
16 extent necessary for the proper presentation of the claim or
17 complaint in any proceeding under the Employment Security Act of
18 1980, with respect thereto.

19 B. Upon receipt of written request by any employer who
20 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
21 Commission or its designated representative may release to such
22 employer information regarding weekly benefit amounts paid its
23 workers during a specified temporary layoff period, provided such
24 Supplemental Unemployment Benefit (SUB) Plan requires benefit

1 payment information before Supplemental Unemployment Benefits can be
2 paid to such workers. Any information disclosed under this
3 provision shall be utilized solely for the purpose outlined herein
4 and shall be held strictly confidential by the employer.

5 C. The provisions of this section shall not prevent the
6 Commission from disclosing the following information and no
7 liability whatsoever, civil or criminal, shall attach to any member
8 of the Commission or any employee thereof for any error or omission
9 in the disclosure of such information:

10 1. The delivery to taxpayer or claimant a copy of any report or
11 other paper filed by the taxpayer or claimant pursuant to the
12 Employment Security Act of 1980;

13 2. The disclosure of information to any person for a purpose as
14 authorized by the taxpayer or claimant pursuant to a waiver of
15 confidentiality. The waiver shall be in writing and shall be
16 notarized;

17 3. The Oklahoma Department of Commerce may have access to data
18 obtained pursuant to the Employment Security Act of 1980 pursuant to
19 rules promulgated by the Commission. The information obtained shall
20 be held confidential by the Department and any of its agents and
21 shall not be disclosed or be open to public inspection. The
22 Oklahoma Department of Commerce, however, may release aggregated
23 data, either by industry or county, provided that such aggregation
24 meets disclosure requirements of the Commission;

1 4. The publication of statistics so classified as to prevent
2 the identification of a particular report and the items thereof;

3 5. The disclosing of information or evidence to the Attorney
4 General or any district attorney when the information or evidence is
5 to be used by the officials or other parties to the proceedings to
6 prosecute or defend allegations of violations of the Employment
7 Security Act of 1980. The information disclosed to the Attorney
8 General or any district attorney shall be kept confidential by them
9 and not be disclosed except when presented to a court in a
10 prosecution of a violation of Section 1-101 et seq. of this title,
11 and a violation by the Attorney General or district attorney by
12 otherwise releasing the information shall be a felony;

13 6. The furnishing, at the discretion of the Commission, of any
14 information disclosed by the records or files to any official person
15 or body of this state, any other state or of the United States who
16 is concerned with the administration of assessment of any similar
17 tax in this state, any other state or the United States;

18 7. The furnishing of information to other state agencies for
19 the limited purpose of aiding in the collection of debts owed by
20 individuals to the requesting agencies;

21 8. The release to employees of the Department of Transportation
22 of information required for use in federally mandated regional
23 transportation planning, which is performed as a part of its
24 official duties;

1 9. The release to employees of the State Treasurer's office of
2 information required to verify or evaluate the effectiveness of the
3 Oklahoma Small Business Linked Deposit Program on job creation;

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

8 11. The release to employees of the Oklahoma State Bureau of
9 Investigation or release to employees of the Oklahoma State Bureau
10 of Narcotics and Dangerous Drugs Control for use in criminal
11 investigations and the location of missing persons or fugitives from
12 justice;

13 12. The release to employees of the Center of International
14 Trade, Oklahoma State University, of information required for the
15 development of International Trade for employers doing business in
16 the State of Oklahoma;

17 13. The release to employees of the Oklahoma State Regents for
18 Higher Education of information required for use in the default
19 prevention efforts and/or collection of defaulted student loans
20 guaranteed by the Oklahoma Guaranteed Student Loan Program. Any
21 information disclosed under this provision shall be utilized solely
22 for the purpose outlined herein and shall be held strictly
23 confidential by the Oklahoma State Regents for Higher Education;

24

1 14. The release to employees of the Center for Economic and
2 Management Research of the University of Oklahoma, of information
3 required to identify economic trends. The information obtained
4 shall be kept confidential by the University and shall not be
5 disclosed or be open to public inspection. The University of
6 Oklahoma may release aggregated data, provided that such aggregation
7 meets disclosure requirements of the Commission;

8 15. The release to employees of the Office of State Finance of
9 information required to identify economic trends. The information
10 obtained shall be kept confidential by the Office of State Finance
11 and shall not be disclosed or be open to public inspection. The
12 Office of State Finance may release aggregate data, provided that
13 such aggregation meets disclosure requirements of the Commission;

14 16. The release to employees of the Department of Mental Health
15 and Substance Abuse Services of information required to evaluate the
16 effectiveness of mental health and substance abuse treatment and
17 state or local programs utilized to divert persons from inpatient
18 treatment. The information obtained shall be kept confidential by
19 the Department and shall not be disclosed or be open to public
20 inspection. The Department of Mental Health and Substance Abuse
21 Services, however, may release aggregated data, either by treatment
22 facility, program or larger aggregate units, provided that such
23 aggregation meets disclosure requirements of the Oklahoma Employment
24 Security Commission;

1 17. The release to employees of the Attorney General, the
2 Oklahoma State Bureau of Investigation, and the Insurance Department
3 for use in the investigation of insurance fraud and health care
4 fraud;

5 18. The release to employees of public housing agencies for
6 purposes of determining eligibility pursuant to 42 U.S.C. Section
7 503(i);

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

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

18 21. The release of information to the Bureau of the Census of
19 the U.S. Department of Commerce for the purpose of economic and
20 statistical research;

21 22. The release of employer tax information and benefit claim
22 information to the Oklahoma Health Care Authority for use in
23 determining eligibility for a program that will provide subsidies
24

1 for health insurance premiums for qualified employers, employees,
2 self-employed persons, and unemployed persons; ~~or~~

3 23. The release of employer tax information and benefit claim
4 information to the State Department of Rehabilitation Services for
5 use in assessing results and outcomes of clients served; or

6 24. The release of information to any state or federal law
7 enforcement authority when necessary in the investigation of any
8 crime in which the Commission is a victim. Information that is
9 confidential under this section shall be held confidential by the
10 law enforcement authority unless and until it is required for use in
11 court in the prosecution of a defendant in a criminal prosecution.

12 D. Subpoenas to compel disclosure of information made
13 confidential by this statute shall not be valid, except for
14 administrative subpoenas issued by federal, state, or local
15 governmental agencies that have been granted subpoena power by
16 statute or ordinance. Confidential information maintained by the
17 Commission can be obtained by order of a court of record that
18 authorizes the release of the records in writing. All
19 administrative subpoenas or court orders for production of documents
20 must provide a minimum of twenty (20) days from the date it is
21 served for the Commission to produce the documents. If the date on
22 which production of the documents is required is less than twenty
23 (20) days from the date of service, the subpoena or order shall be

24

1 considered void on its face as an undue burden or hardship on the
2 Commission.

3 E. Should any of the disclosures provided for in this section
4 require more than casual or incidental staff time, the Commission
5 may charge the cost of such staff time to the party requesting the
6 information.

7 F. It is further provided that the provisions of this section
8 shall be strictly interpreted and shall not be construed as
9 permitting the disclosure of any other information contained in the
10 records and files of the Commission.

11 SECTION 16. AMENDATORY 74 O.S. 2001, Section 85.29, as
12 amended by Section 5, Chapter 50, O.S.L. 2002 (74 O.S. Supp. 2006,
13 Section 85.29), is amended to read as follows:

14 Section 85.29. The amount of surety required for each state
15 officer or employee pursuant to Sections 85.26 through 85.31 of this
16 title is as follows:

17 DEPARTMENT	AMOUNT OF BOND
18 Office of the State Treasurer	\$300,000.00
19 <u>Oklahoma Employment Security Commission</u>	<u>\$150,000.00</u>
20 Office of Public Affairs	100,000.00
21 Insurance Commission	100,000.00
22 Office of the State Auditor and Inspector	50,000.00
23 Office of State Finance	50,000.00
24 Bank Commissioner	50,000.00

1	CompSource Oklahoma President and	
2	Chief Executive Officer	50,000.00
3	Commissioners of the Land Office	50,000.00
4	Oklahoma Securities Commission	50,000.00
5	Oklahoma Tax Commission	50,000.00
6	Department of Human Services	50,000.00
7	Oklahoma Public Employees Retirement System	50,000.00
8	Oklahoma Corporation Commission	50,000.00
9	State Board of Education	50,000.00
10	Finance Division	150,000.00
11	All Others	25,000.00
12	Department of Transportation	25,000.00
13	Boards of Regents of Oklahoma	
14	Universities and Colleges	50,000.00
15	Office of Attorney General	10,000.00
16	The University Hospitals	50,000.00
17	All Other State Departments, Agencies,	
18	Institutions, Commissions, Authorities,	
19	and other bodies of state government	10,000.00

20 Provided, however, that nothing in the Oklahoma Central
21 Purchasing Act shall prohibit any head of a department, institution,
22 agency, commission, authority or other body of state government from
23 requiring the Central Purchasing Division to purchase increased
24 amounts of blanket bond coverage for his or her employees up to a

1 total maximum coverage of Fifty Thousand Dollars (\$50,000.00) when
2 the listed amount is deemed inadequate. The cost of increased
3 coverage shall be borne by the department, institution, agency,
4 commission, authority or other body of state government requesting
5 the increased coverage.

6 SECTION 17. REPEALER 40 O.S. 2001, Sections 4-401, 4-
7 402, 4-403, 4-404 and 4-405, are hereby repealed.

8 SECTION 18. This act shall become effective November 1, 2007.

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