

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 1175

By: Stanislawski and Mazzei of
the Senate

6 and

7 Watson and Morgan of the
8 House

9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to labor; amending 40 O.S. 2001,
12 Sections 2-207, as amended by Section 9, Chapter 452,
13 O.S.L. 2002, 2-405, as last amended by Section 6,
14 Chapter 176, O.S.L. 2006, 2-408 and 3-106, as last
15 amended by Section 7, Chapter 354, O.S.L. 2007 (40
16 O.S. Supp. 2008, Sections 2-207, 2-405 and 3-106),
17 which relate to the Employee Security Act of 1980;
18 modifying wage requirement during base period;
19 providing for compelling family circumstances;
20 defining terms; modifying good cause for voluntarily
21 leaving work; modifying determination of suitable
22 work; modifying relief from benefit wages charged;
23 providing for codification; and providing an
24 effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 2-207, as
amended by Section 9, Chapter 452, O.S.L. 2002 (40 O.S. Supp. 2008,
Section 2-207), is amended to read as follows:

Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD.

1 A. The unemployed individual, during the individual's base
2 period, shall have been paid wages for insured work of not less
3 than:

- 4 1. One Thousand Five Hundred Dollars (\$1,500.00); and
- 5 2. One and one-half (1 1/2) times the amount of wages during
6 that quarter of the individual's base period in which such wages
7 were highest.

8 Notwithstanding the preceding provision, an individual with base
9 period wages equal to or more than the highest annual amount of
10 taxable wages that applies to any calendar year in which the claim
11 for unemployment benefits was filed shall be eligible for benefits.

12 B. 1. If an individual lacks sufficient base period wages
13 under subsection A of this section to establish a claim for
14 benefits, any wages paid in the individual's alternative base period
15 shall be considered as the individual's base period wages.

16 2. If the Commission has not received wage information from the
17 individual's employer for the most recent calendar quarter of the
18 alternative base period, the Commission shall accept an affidavit
19 from the individual supported by wage information such as check
20 stubs, deposit slips, or other supporting documentation to determine
21 wages paid.

22 3. A determination of benefits based on an alternative base
23 period shall be adjusted when the quarterly wage report is received
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1 from the employer, if the wage information in the report differs
2 from that reported by the individual.

3 4. If alternative base period wages are established by
4 affidavit of the individual, the employer to which the wages are
5 attributed will have the right to protest the wages reported. If a
6 protest is made, the employer must provide documentary evidence of
7 wages paid to the individual. The Commission will determine the
8 wages paid based on the preponderance of the evidence presented by
9 each party.

10 5. Provided, no wages used to establish a claim under an
11 alternative base period shall be subsequently used to establish a
12 second benefit year.

13 ~~6. Provided, in any calendar year in which the balance in the~~
14 ~~Unemployment Compensation Fund is below the amount required to~~
15 ~~initiate conditional factors pursuant to the provisions of Section~~
16 ~~3-113 of this title, this subsection shall not apply and no~~
17 ~~alternative base period shall be available.~~

18 SECTION 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2-210 of Title 40, unless there
20 is created a duplication in numbering, reads as follows:

21 In addition to the eligibility provisions provided by this act,
22 an individual shall be eligible to receive unemployment benefits, if
23 monetarily and otherwise eligible, if the claimant was separated
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1 from work due to compelling family circumstances. For purposes of
2 this section:

3 1. "Immediate family member" means the claimant's spouse,
4 parents and minor children;

5 2. "Illness" means a verified illness which necessitates the
6 care of the ill person for a period of time longer than the employer
7 is willing to grant paid or unpaid leave;

8 3. "Disability" means a verified disability which necessitates
9 the care of the disabled person for a period of time longer than the
10 employer is willing to grant paid or unpaid leave. Disability
11 encompasses all types of disability, including:

- 12 a. mental and physical disabilities,
- 13 b. permanent and temporary disabilities, and
- 14 c. partial and total disabilities; and

15 4. "Compelling family circumstances" means:

- 16 a. if the claimant was separated from employment with the
17 employer because of the illness or disability of the
18 claimant and, based on available information, the
19 Oklahoma Employment Security Commission finds that it
20 was medically necessary for the claimant to stop
21 working or change occupations,
- 22 b. the claimant was separated from work due to the
23 illness or disability of an immediate family member,

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- 1 c. if the spouse of the claimant was transferred or
2 obtained employment in another city or state, and the
3 family is required to move to the location of that job
4 that is outside of commuting distance from the prior
5 employment of the claimant, and the claimant separates
6 from employment in order to move to the new employment
7 location of the spouse,
- 8 d. if the claimant separated from employment due to
9 domestic violence or abuse, verified by any reasonable
10 or confidential documentation, which causes the
11 individual to reasonably believe that the individual's
12 continued employment would jeopardize the safety of
13 the individual or of any member of the individual's
14 immediate family, or
- 15 e. if the claimant separated from employment to move with
16 the claimant's spouse to a new location, and if the
17 spouse of the claimant:
- 18 (1) was a member of the U.S. Military, the U.S.
19 Military Reserve, or the National Guard,
- 20 (2) was on active duty within ninety (90) days of the
21 date of discharge,
- 22 (3) has a service-connected disability,
- 23 (4) was discharged under honorable conditions from
24 the military service, and

1 (5) takes up residence at a location more than fifty
2 (50) miles away from the claimant's former
3 employer for the purpose of reentering civilian
4 life.

5 SECTION 3. AMENDATORY 40 O.S. 2001, Section 2-405, as
6 last amended by Section 6, Chapter 176, O.S.L. 2006 (40 O.S. Supp.
7 2008, Section 2-405), is amended to read as follows:

8 Section 2-405. DETERMINING GOOD CAUSE.

9 Good cause for voluntarily leaving work under Section 2-404 of
10 this title may include, among other factors, the following:

11 1. A job working condition that had changed to such a degree it
12 was so harmful, detrimental, or adverse to the individual's health,
13 safety, or morals, that leaving the work was justified; or

14 2. If the claimant, pursuant to an option provided under a
15 collective bargaining agreement or written employer plan which
16 permits waiver of his or her right to retain the employment when
17 there is a layoff, has elected to be separated and the employer has
18 consented thereto;

19 ~~3. If the claimant was separated from employment with the~~
20 ~~employer because a physician diagnosed or treated a medically~~
21 ~~verifiable illness or medical condition of the claimant or the minor~~
22 ~~child of the claimant, and based on available information, the~~
23 ~~Oklahoma Employment Security Commission finds that it was medically~~
24 ~~necessary for the claimant to stop working or change occupations;~~

1 ~~4. If the spouse of the claimant was transferred or obtained~~
2 ~~employment in another city or state, and the family is required to~~
3 ~~move to the location of that job that is outside of commuting~~
4 ~~distance from the prior employment of the claimant, and the claimant~~
5 ~~separates from employment in order to move to the new employment~~
6 ~~location of the spouse. As used in this paragraph, "commuting~~
7 ~~distance" means a radius of fifty (50) miles from the prior work~~
8 ~~location of the claimant; or~~

9 ~~5. If the claimant separated from employment as part of a plan~~
10 ~~to escape domestic violence or abuse.~~

11 SECTION 4. AMENDATORY 40 O.S. 2001, Section 2-408, is
12 amended to read as follows:

13 Section 2-408. SUITABLE WORK. (1) In determining whether or
14 not any work is suitable for an individual, there shall be
15 considered among other factors and in addition to those enumerated
16 in Section 2-409 the length of his unemployment, his prospects for
17 obtaining work in his customary occupation, the distance of
18 available work from his residence and prospects for obtaining local
19 work.

20 (2) Suitable work shall be defined as employment in an
21 occupation in keeping with the individual's prior work experience,
22 education or training, or having no prior work experience, special
23 education or training for occupations available in the general area
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1 then, employment for which the individual would have the physical
2 and mental ability to perform.

3 (3) Upon receipt of fifty percent (50%) of his benefits,
4 suitable work shall not be limited to his customary or registered
5 occupation.

6 (4) If the majority of the weeks of work in an individual's
7 base period include part-time work, the individual shall not be
8 denied unemployment benefits under any provisions of this act
9 relating to availability for work, active search for work, or
10 failure to accept work, solely because the individual is seeking
11 only part-time work. The phrase "seeking only part-time work", as
12 used in this subsection, means the individual claiming unemployment
13 benefits is available for a number of hours per week that are
14 comparable to the individual's part-time work experience in the base
15 period.

16 SECTION 5. AMENDATORY 40 O.S. 2001, Section 3-106, as
17 last amended by Section 7, Chapter 354, O.S.L. 2007 (40 O.S. Supp.
18 2008, Section 3-106), is amended to read as follows:

19 Section 3-106. BENEFIT WAGES CHARGED AND RELIEF THEREFROM.

20 A. The Oklahoma Employment Security Commission shall give
21 notice to each base period employer of a claimant promptly after the
22 claimant is issued his or her fifth week of benefits by the
23 Commission or promptly after the Commission receives notice of the
24 amounts paid as benefits by another state under a reciprocal

1 arrangement. Notice shall be deemed given under this subsection
2 when the Commission deposits the same with the United States Postal
3 Service addressed to the employer at an address designated by the
4 employer to receive the notice or at the employer's last-known
5 address. Notice shall be presumed prima facie to have been given to
6 the employer to whom addressed on the date stated in the written
7 notice. This notice shall give the name and Social Security Number
8 of the claimant, the date the claim was filed, and the amount of
9 benefit wages charged to the employer in each quarter of the base
10 period.

11 B. Within twenty (20) days from the date stated upon the notice
12 provided for in subsection A of this section, the employer may file
13 with the Commission written objections to being charged with the
14 benefit wages upon one or more of the grounds for objection set
15 forth in subsection G of this section. The employer's written
16 objection must set forth specifically:

17 1. The date on which the employment was terminated;

18 2. Full particulars as to the circumstances of the termination
19 including the reason given by the individual for voluntarily leaving
20 the employment, or the nature of the misconduct for which
21 discharged, as the case may be;

22 3. Full particulars as to the regular scheduled part-time or
23 full-time employment of the employee including the starting date,
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1 and ending date if any, of the continuous period of such part-time
2 or full-time employment; and

3 4. Such other information as called for by the notice.

4 C. Upon receipt of the employer's written objections, the
5 Commission shall make a determination as to whether or not the
6 employer is entitled to be relieved from the charging of benefit
7 wages. The Commission shall promptly notify the employer of that
8 determination. Provided further, the twenty-day time period for
9 filing written objections with the Commission as provided for in
10 subsection B of this section may be waived for good cause shown.

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

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

5 F. The employer or the Commission may appeal the order of the
6 Commission or its representative to the district court by filing a
7 petition for review with the clerk of that court within thirty (30)
8 days after the date the order was mailed to all parties. The
9 mailing date shall be specifically stated in the order.

10 G. The benefit wages charged to an employer for a given
11 calendar year shall be the total of the benefit wages stated in the
12 notices given to the employer by the Commission. Provided, that an
13 employer shall be relieved of a benefit wage charge if the employer
14 proves to the satisfaction of the Commission that the benefit wage
15 charge includes wages paid by the employer to any employee or former
16 employee, who:

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

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

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

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

7 ~~5. Was separated from employment with that employer due to a~~
8 ~~medically verifiable illness or medical condition of the employee or~~
9 ~~the minor child of the employee;~~

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

22 ~~7. Was separated from employment because the spouse of the~~
23 ~~employee was transferred or obtained employment in another city or~~
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1 ~~state that required the family of the employee to move, and the~~
2 ~~employee quit current employment to move with the spouse;~~

3 ~~8. Left employment with that employer as part of a plan to~~
4 ~~escape domestic violence or abuse; or~~

5 ~~9.~~ 6. Left employment to attend training approved under the
6 Trade Act of 1974 and is allowed unemployment benefits pursuant to
7 Section 2-416 of this title; or

8 7. Was separated from employment for compelling family
9 circumstances as defined in Section 2 of this act.

10 H. If an employer recalls an employee deemed unemployed as
11 defined by the Employment Security Act of 1980 and the employee
12 continues to be employed or the employee voluntarily terminates
13 employment or is discharged for misconduct within the benefit year,
14 the employer shall be entitled to have the benefit wage charged
15 against the employer's experience rating for the employee reduced by
16 the ratio of the number of weeks of remaining eligibility of the
17 employee to the total number of weeks of entitlement.

18 I. An employer shall not be charged with benefit wages of a
19 laid-off employee if the employer lists as an objection in a
20 statement filed in accordance with subsection B of this section that
21 said employee collecting benefits was hired to replace a United
22 States serviceman or servicewoman called into active duty and laid-
23 off upon the return to work by that serviceman or servicewoman. The
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1 Unemployment Compensation Fund shall be charged with the benefit
2 wages of the laid-off employee.

3 J. If the Commission receives a notice of amounts paid as
4 benefits by another state under a reciprocal agreement, and the
5 notice is received after three (3) years from the effective date of
6 the underlying benefit claim, no benefit wage charge will be made
7 against the employer identified in the notice, or if a benefit wage
8 charge is made based on such a notice, the employer will be relieved
9 of the charge when the facts are brought to the attention of the
10 Commission.

11 SECTION 6. This act shall become effective November 1, 2009.

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