

ENROLLED SENATE  
BILL NO. 1175

By: Stanislawski and Mazzei of  
the Senate

and

Watson and Morgan of the  
House

An Act relating to labor; amending 40 O.S. 2001, Sections 2-207, as amended by Section 9, Chapter 452, O.S.L. 2002, 2-405, as last amended by Section 6, Chapter 176, O.S.L. 2006, 2-408 and 3-106, as last amended by Section 7, Chapter 354, O.S.L. 2007 (40 O.S. Supp. 2008, Sections 2-207, 2-405 and 3-106), which relate to the Employment Security Act of 1980; modifying wage requirement during base period; providing for compelling family circumstances; defining terms; modifying good cause for voluntarily leaving work; modifying determination of suitable work; modifying relief from benefit wages charged; 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 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.

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

1. One Thousand Five Hundred Dollars (\$1,500.00); and

2. One and one-half (1 1/2) times the amount of wages during that quarter of the individual's base period in which such wages were highest.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. "Compelling family circumstances" means:

- a. if the claimant was separated from employment with the employer because of the illness or disability of the claimant and, based on available information, the Oklahoma Employment Security Commission finds that it was medically necessary for the claimant to stop working or change occupations,

- b. the claimant was separated from work due to the illness or disability of an immediate family member,
- c. if the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse,
- d. if the claimant separated from employment due to domestic violence or abuse, verified by any reasonable or confidential documentation, which causes the individual to reasonably believe that the individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family, or
- e. if the claimant separated from employment to move with the claimant's spouse to a new location, and if the spouse of the claimant:
  - (1) was a member of the U.S. Military, the U.S. Military Reserve, or the National Guard,
  - (2) was on active duty within ninety (90) days of the date of discharge,
  - (3) has a service-connected disability,
  - (4) was discharged under honorable conditions from the military service, and
  - (5) takes up residence at a location more than fifty (50) miles away from the claimant's former employer for the purpose of reentering civilian life.

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

Section 2-405. DETERMINING GOOD CAUSE.

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The Oklahoma Employment Security Commission shall give notice to each base period employer of a claimant promptly after the claimant is issued his or her fifth week of benefits by the Commission or promptly after the Commission receives notice of the amounts paid as benefits by another state under a reciprocal arrangement. Notice shall be deemed given under this subsection

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

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

1. The date on which the employment was terminated;

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

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

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

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

D. Within fourteen (14) days after the mailing of the determination provided for in subsection C of this section, the employer may file with the Commission or its representative a

written protest to the determination and request an oral hearing de novo to present evidence in support of its protest. The Commission or its representative shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission or its representative appointed by the Commission for this purpose. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law, and shall send it to the employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

H. If an employer recalls an employee deemed unemployed as defined by the Employment Security Act of 1980 and the employee continues to be employed or the employee voluntarily terminates

employment or is discharged for misconduct within the benefit year, the employer shall be entitled to have the benefit wage charged against the employer's experience rating for the employee reduced by the ratio of the number of weeks of remaining eligibility of the employee to the total number of weeks of entitlement.

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

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

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

Passed the Senate the 20th day of May, 2009.

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Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May 2009.

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Presiding Officer of the House  
of Representatives