

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2204

By: McDaniel (Randy)

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5
6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2011,
8 Sections 2-204, 2-207, 2-503, 2-507, 2-613, 3-102, 3-
9 106, 3-115, 3-309, 4-508 and 5-108, which relate to
10 the Employment Security Act of 1980; modifying
11 registration for employment; providing for
12 alternative method to qualify for benefits; allowing
13 certain notices, determinations, and charges be given
14 by electronic means; providing for penalty for
15 fraudulent claims; providing for levy to collect
16 certain penalties and fees; allowing certain award be
17 made to local office, unit or division of the
18 Oklahoma Employment Security Commission; allowing
19 certain organizations to obtain certain employment
20 information; modifying penalties; providing for
21 codification; and providing an effective date.

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

23 SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-204, is
24 amended to read as follows:

25 Section 2-204. REGISTRATION FOR EMPLOYMENT. The unemployed
26 individual must register for work ~~at and thereafter continue to~~
27 ~~report at an employment office~~ within seven (7) days of filing his
28 or her initial claim for unemployment benefits in accordance with
29 such rules as the Commission may prescribe, except that the

1 Commission may, ~~by rule,~~ waive ~~or alter either or both~~ the
2 requirements of this section as to individuals attached to regular
3 jobs ~~and as to such other cases or,~~ situations involving mass
4 layoffs, or individuals in areas not served by an established
5 employment office, with respect to which or Internet service when it
6 finds that compliance with ~~such~~ these requirements would be
7 oppressive, or would be inconsistent with the purpose of this act.

8 SECTION 2. AMENDATORY 40 O.S. 2011, Section 2-207, is
9 amended to read as follows:

10 Section 2-207. WAGE REQUIREMENT DURING BASE PERIOD.

11 A. The unemployed individual, during the individual's base
12 period, shall have been paid:

13 1. Taxable wages of not less than One Thousand Five Hundred
14 Dollars (\$1,500.00); and

15 2. Total wages of not less than one and one-half (1 1/2) times
16 the amount of wages during that quarter of the individual's base
17 period in which the wages were highest.

18 B. Notwithstanding the ~~preceding provision,~~ ~~an individual with~~
19 ~~base period wages equal to or more than the highest annual amount of~~
20 ~~taxable wages that applies to any calendar year in which the claim~~
21 ~~for unemployment benefits was filed~~ provisions in subsection A of
22 this section, an unemployed individual shall be eligible for
23 benefits if, during the individual's base period, he or she shall
24 have been paid:

1 1. Taxable wages of any amount; and

2 2. Total wages equal to or more than the annual amount of
3 taxable wages that applies to any calendar year in which the claim
4 for unemployment benefits was filed.

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

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

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

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

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

6 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-503, is
7 amended to read as follows:

8 Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

9 A. Claims for benefits shall be made in accordance with ~~such~~
10 ~~rule as~~ all rules that the Oklahoma Employment Security Commission
11 may prescribe.

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

22 C. Promptly after the claim is paid for the fifth week of
23 benefits the Commission shall give written notice of the claim to
24 all other employers of the claimant during the claimant's base

1 period. The notice will be given pursuant to Section 3-106 of this
2 title.

3 D. Notices shall be deemed given when the Commission deposits
4 the same in the United States mail addressed to the employer's last-
5 known address. Notice shall be presumed prima facie to have been
6 given to the employer to whom addressed on the date stated in the
7 written notice. If the employer has elected to be notified by
8 electronic means according to procedures set out in Oklahoma
9 Employment Security Commission rules, notice shall be deemed to be
10 given when the Commission transmits the notification by electronic
11 means.

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

17 1. Make the claimant ineligible for benefits under Sections 2-
18 201 through ~~2-209~~ 2-210 of this title;

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

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

23 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-507, is
24 amended to read as follows:

1 Section 2-507. NOTICE OF DETERMINATIONS.

2 Notice of a determination upon a claim shall be given promptly
3 to the claimant by delivery thereof or by mailing ~~such~~ the notice to
4 the claimant's last-known address or by electronic means if the
5 claimant elected this form of notification through procedures set
6 out by Oklahoma Employment Security Commission rules. Notice of a
7 determination shall also be given promptly to the last employer of
8 the claimant, for whom the claimant worked at least fifteen (15)
9 working days, that objected to the claim in accordance with the
10 provisions of subsection E of Section 2-503 of this title and to
11 each other employer who timely filed a written objection to the
12 claim. If the employer has elected to be notified by electronic
13 means according to procedures set out in Oklahoma Employment
14 Security Commission rules, notice shall be deemed to be given when
15 the Commission transmits the notification by electronic means.

16 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-613, is
17 amended to read as follows:

18 Section 2-613. BENEFIT OVERPAYMENTS.

19 An overpayment of unemployment benefits shall be classified in
20 one of three ways with recovery and recoupment to be conducted as
21 follows:

22 1. Fraud overpayment: in which an individual intentionally
23 makes a false statement or representation or fails to disclose a
24 material fact, and has received any sum as benefits to which the

1 individual was not entitled. The individual shall be liable to
2 repay this sum, plus a penalty of twenty-five percent (25%) of the
3 amount of the original overpayment and interest at the rate of one
4 percent (1%) per month on the unpaid balance of the overpayment, to
5 the Oklahoma Employment Security Commission. Three-fifths (3/5) of
6 the penalty amount collected shall be deposited in the Unemployment
7 Trust Fund for the State of Oklahoma and the remaining two-fifths
8 (2/5) shall be deposited in the Oklahoma Employment Security
9 Commission Revolving Fund. The interest shall cease to accrue when
10 the total accrued interest equals the amount of the overpayment. If
11 an overpayment is modified, the interest shall cease to accrue when
12 the total accrued interest equals the amount of the modified
13 overpayment. The Commission shall deduct the principal sum from any
14 future benefits payable to the individual;

15 2. Claimant error overpayment: in which an individual, by
16 mistake of law or fact, makes a false statement or representation or
17 fails to disclose a material fact and has received any sum as
18 benefits to which the individual was not entitled. The individual
19 shall be liable to repay this sum, plus interest at the rate of one
20 percent (1%) per month on the unpaid balance of the overpayment, to
21 the Commission. The interest shall cease to accrue when the total
22 accrued interest equals the amount of the overpayment. If an
23 overpayment is modified, the interest shall cease to accrue when the
24 total accrued interest equals the amount of the modified

1 overpayment. The Commission shall deduct the principal sum from any
2 future benefits payable to the individual; or

3 3. Administrative overpayment - in which:

4 a. an individual has received any sum as benefits under
5 this act due to an error by the Commission or an
6 employer, or

7 b. an individual has received benefits and, under a
8 redetermination or a reversal of a decision on appeal,
9 the individual has been found to be not entitled to
10 benefits.

11 The individual shall be liable to have this sum deducted from any
12 future benefits payable to the individual with respect to the
13 benefit year current at the time of the receipt and the next
14 subsequent benefit year that begins within one (1) year after the
15 expiration of the benefit year current at the time of the receipt.
16 No interest shall accrue on administrative overpayments.

17 SECTION 6. AMENDATORY 40 O.S. 2011, Section 3-102, is
18 amended to read as follows:

19 Section 3-102. CONTRIBUTIONS.

20 A. Contributions shall accrue and become payable by each
21 employer for each calendar year in which the employer is subject to
22 this act, with respect to wages for employment. Such contributions
23 shall become due and be paid by each employer to the Oklahoma
24 Employment Security Commission for the Unemployment Compensation

1 Fund in accordance with such rules as the Commission may prescribe,
2 and shall not be deducted, in whole or in part, from the wages of
3 individuals in the employer's employ.

4 B. In the payment of any contributions, a fractional part of a
5 cent shall be disregarded unless it amounts to one-half cent
6 (\$0.005) or more, in which case it shall be increased to one cent
7 (\$0.01).

8 C. Each employer shall be notified of its contribution rate for
9 a given calendar year on or before September 30 of the previous
10 calendar year. The ~~rate notice shall become conclusive and binding~~
11 ~~upon be mailed to the employer unless within twenty (20) days after~~
12 ~~the mailing of the notice of the contribution rate, to at the~~
13 ~~employer's last-known address,~~ 7. If the employer files a written
14 ~~request for a review and redetermination setting forth the~~
15 ~~employer's reasons for the review~~ has elected to be notified by
16 electronic means according to procedures set out in Oklahoma
17 Employment Security Commission rules, notice shall be deemed to be
18 given when the Commission transmits the notification by electronic
19 means. The employer shall file an appeal to the rate notice within
20 twenty (20) days after the mailing of the notice of the contribution
21 rate, or the date of transmission by electronic means. The Upon the
22 filing of a timely appeal, the Commission shall provide for a review
23 and issue a determination to the employer. If the employer does not
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1 file a timely appeal, the contribution rate of the employer shall
2 become conclusive and binding.

3 D. Within fourteen (14) days after the date of mailing of the
4 notice of the determination, the employer may file with the
5 Commission at the address prescribed in the notice the employer's
6 specific written objections to the contribution rate so determined.
7 The matter will be heard upon those specific written objections by a
8 representative appointed by the Commission. The decision shall be
9 made in writing and notice shall be mailed to the employer. The
10 employer may appeal to the district court by filing a petition for
11 review with the clerk of that court within thirty (30) days after
12 the date of mailing stated upon the notice of decision.

13 SECTION 7. AMENDATORY 40 O.S. 2011, Section 3-106, is
14 amended to read as follows:

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

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

1 address. If the employer has elected to be notified by electronic
2 means according to procedures set out in Oklahoma Employment
3 Security Commission rules, notice shall be deemed to be given when
4 the Commission transmits the notification by electronic means.

5 Notice shall be presumed prima facie to have been given to the
6 employer to whom addressed on the date stated in the written notice.
7 This notice shall give the name and Social Security Number of the
8 claimant, the date the claim was filed, and the amount of benefit
9 wages charged to the employer in each quarter of the base period.

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

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

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

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

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

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

12 1. Was at fault for failing to respond timely or adequately to
13 the request of the Commission for information relating to an
14 unemployment benefit claim that was subsequently overpaid; and

15 2. Has established a pattern of failing to respond timely or
16 adequately to requests from the Commission for information relating
17 to claims for unemployment benefits. A pattern of failure to
18 respond timely or adequately means two or more instances of such
19 behavior by the employer or an agent of the employer.

20 D. Within fourteen (14) days after the mailing of the
21 determination provided for in subsection C of this section, the
22 employer may file with the Commission or its representative a
23 written protest to the determination and request an oral hearing de
24 novo to present evidence in support of its protest. The Commission

1 or its representative shall, by written notice, advise the employer
2 of the date of the hearing, which shall not be less than ten (10)
3 days from the date of mailing of the written notice. At the
4 discretion of the Commission, this hearing shall be conducted by the
5 Commission or its representative appointed by the Commission for
6 this purpose. Pursuant to the hearing, the Commission or its
7 representative shall, as soon as practicable, make a written order
8 setting forth its findings of fact and conclusions of law, and shall
9 send it to the employer.

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

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

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

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

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

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

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

17 5. Was discharged by an employer for unsatisfactory performance
18 during an initial employment probationary period. As used in this
19 paragraph, "probationary period" means a period of time set forth in
20 an established probationary plan which applies to all employees or a
21 specific group of employees and does not exceed ninety (90) calendar
22 days from the first day a new employee begins work. The employee
23 must be informed of the probationary period within the first seven
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1 (7) work days. There must be conclusive evidence to establish that
2 the individual was separated due to unsatisfactory work performance;

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

6 7. Was separated from employment for compelling family
7 circumstances as defined in Section 2-210 of this title.

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

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

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

9 SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-115, is
10 amended to read as follows:

11 Section 3-115. APPEAL OF DETERMINATIONS.

12 A. If a determination is made by the Oklahoma Employment
13 Security Commission on any aspect of an employer's account, and a
14 method of appeal or protest of the determination is not set out in
15 the statute or rule under which the determination was made, the
16 employer may appeal or protest the determination under the procedure
17 set forth in subsection B of this section.

18 B. 1. All determinations affecting an employer account must be
19 made by the Commission in writing in a Notice of Determination and
20 mailed to the employer at the employer's last-known address with the
21 mailing date and appeal rights set out in the document. If the
22 employer has elected to be notified by electronic means according to
23 procedures set out in Oklahoma Employment Security Commission rules,
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1 notice shall be deemed to be given when the Commission transmits the
2 notification by electronic means.

3 2. Within twenty (20) days after the mailing or transmission of
4 the Notice of Determination as provided for in paragraph 1 of this
5 subsection, the employer may file with the Commission, or its
6 representative, a written request for a review and redetermination
7 setting forth the employer's reasons therefor. If any employer
8 fails to file a written request for review and redetermination
9 within twenty (20) days, then the initial determination of the
10 Commission shall be final, and no further appeal or protest shall be
11 allowed.

12 3. If a written request for review and redetermination is
13 filed, the Commission shall provide for a review and issue a Notice
14 of Redetermination in the matter. The employer may appeal the
15 redetermination by filing a written protest within fourteen (14)
16 days of the date of the mailing of the Notice of Redetermination.
17 If the employer fails to file a written protest within the time
18 allowed, the redetermination of the Commission shall be final and no
19 further appeal or protest shall be allowed.

20 4. Upon the timely filing of a written protest, the Commission
21 shall provide for an oral hearing de novo to allow the employer to
22 present evidence in support of the protest. The Commission or its
23 representatives shall, by written notice, advise the employer of the
24 date of the hearing, which shall not be less than ten (10) days from

1 the date of the mailing of the written notice. At the discretion of
2 the Commission, this hearing shall be conducted by the Commission,
3 or by a representative appointed by the Commission for this purpose.

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

9 6. The employer or the Commission may appeal the order to the
10 district court of the county in which the employer has its principal
11 place of business by filing a Petition for Review with the clerk of
12 the court within thirty (30) days after the date the order was
13 mailed to all parties. If the employer does not have a principal
14 place of business in any county in Oklahoma, then the Petition for
15 Review shall be filed with the Oklahoma County District Court. All
16 appeals shall be governed by Part 4 of Article 3 of the Employment
17 Security Act of 1980. If the employer fails to file an appeal to
18 the district court within the time allowed, the order shall be final
19 and no further appeal shall be allowed.

20 SECTION 9. AMENDATORY 40 O.S. 2011, Section 3-309, is
21 amended to read as follows:

22 Section 3-309. COLLECTION OF DELINQUENT CONTRIBUTIONS,
23 PENALTIES ~~OR,~~ INTEREST OR FEES. ~~Upon a hearing with notice~~ When a
24 determination that an employer owes delinquent contributions,

1 penalties, interest or fees becomes final, the Oklahoma Employment
2 Security Commission shall be entitled to proceed by ~~garnishment~~ levy
3 to collect any delinquent contribution and to collect any penalty,
4 interest or fees due and owing as a result of the delinquency.
5 Provided, that upon proper application under the procedures outlined
6 herein, the ~~court~~ Assessment Board of the Oklahoma Employment
7 Security Commission may issue an order continuing or modifying the
8 ~~garnishment~~ levy for the collection of delinquent contributions,
9 penalties, interest or fees.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-511 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 A. As used in the Employment Security Act of 1980, Sections 3-
14 501 through 3-510 of Title 40 of the Oklahoma Statutes:

15 1. "Earnings" means any form of payment to any individual
16 including, but not limited to, salary, wages, commissions, or other
17 compensation;

18 2. "Employer" means any person, partnership, corporation,
19 limited liability company or legal entity of any kind that owes
20 earnings to a tax debtor;

21 3. "Contract proceeds" means any payment or exchange of assets
22 due to a tax debtor from any contract the tax debtor is a party to
23 or a beneficiary of;

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1 4. "Contracting entity" means any person, partnership,
2 corporation, limited liability company or legal entity of any kind
3 that owes money to a tax debtor due to the provisions of a contract
4 the entity is bound by; and

5 5. "Tax debtor" means any person, partnership, corporation,
6 limited liability company or legal entity of any kind that owes the
7 Oklahoma Employment Security Commission any amount for delinquent
8 state unemployment taxes, interest, penalties, fees or surcharge.

9 B. If any tax debtor shall fail to pay his or her indebtedness
10 to the Oklahoma Employment Security Commission after the tax debtor
11 has been notified of the amount due and demand for payment has been
12 made, it shall be lawful for the Oklahoma Employment Security
13 Commission to collect the amount owed by levy upon any earnings or
14 contract proceeds of the tax debtor.

15 C. To levy upon the earnings of a tax debtor or contract
16 proceeds owed to a tax debtor, the Oklahoma Employment Security
17 Commission must serve a Notice of Levy on the employer who employs
18 the tax debtor or the contracting entity that owes money under
19 contract to the tax debtor, along with the tax warrants covering all
20 quarters in which the tax debtor owes unemployment taxes, interest,
21 penalties, fees or surcharge. The levy will have the same priority,
22 and be subject to the same exceptions, as a continuing earnings
23 garnishment provided for in Section 1173.4 of Title 12 of the
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1 Oklahoma Statutes. The following procedures will apply to a Notice
2 of Levy served on an employer or contracting entity:

3 1. The employer or contracting entity shall answer the Notice
4 of Levy on a form provided by the Commission. The employer or
5 contracting entity shall follow the procedure for answering a
6 Continuing Earnings Garnishment as set out in subsection F of
7 Section 1173.4 of Title 12 of the Oklahoma Statutes;

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

16 3. The employer or contracting entity shall deliver all funds
17 subject to the levy up to the amount of indebtedness indicated on
18 the tax warrants plus accrued interest pursuant to subsection A of
19 Section 3-301 of Title 40 of the Oklahoma Statutes and any fees for
20 service of process to the representative of the Commission indicated
21 on the Notice of Levy. The delivery of this money shall occur
22 within ten (10) days of the date the earnings or contract proceeds
23 are due to be paid to the tax debtor.

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1 D. Service of the Notice of Levy and tax warrants shall be made
2 on the employer or contracting entity in the same manner as provided
3 in Section 2004 of Title 12 of the Oklahoma Statutes for service of
4 process in civil actions.

5 E. The sheriff's department that serves the Notice of Levy on
6 the employer or contracting entity shall be entitled to a service
7 fee of Fifty Dollars (\$50.00) that is to be paid by the Oklahoma
8 Employment Security Commission and added to the tax debtor's
9 indebtedness as a fee in the latest calendar quarter for which the
10 tax debtor has any type of indebtedness.

11 F. Claims for Exemption and any other matter related to the
12 levy shall be filed with the Assessment Board of the Oklahoma
13 Employment Security Commission. An Order of Exemption may relate
14 back no more than thirty (30) days before the filing of the Claim
15 for Exemption and shall extend no further than the expiration date
16 or termination of the levy. Appeal from the Assessment Board shall
17 be governed by the appeal procedures set out in Part 4 of Article
18 III of the Employment Security Act of 1980, and the Administrative
19 Rules of the Oklahoma Employment Security Commission pertaining
20 thereto.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 4-319 of Title 40, unless there
23 is created a duplication in numbering, reads as follows:

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1 In order to encourage the improvement and modernization of
2 employment, training, and placement services for veterans, and to
3 recognize local offices, divisions, or units of the Oklahoma
4 Employment Security Commission for excellence in the provision of
5 services to veterans, or for having made demonstrable improvements
6 in the provision of services to veterans, the Veterans Services
7 Division of the Oklahoma Employment Security Commission is directed
8 to establish a recognition program for these entities. The Oklahoma
9 Employment Security Commission is hereby authorized to award funds
10 to a local office, division, or unit meeting criteria established by
11 the Veterans Services Division of the Oklahoma Employment Security
12 Commission, provided funds exist from United States Department of
13 Labor grants for the payment of the awards. The funds awarded under
14 this section shall be held by the Finance and Administrative
15 Services Division on behalf of the local office, division, or unit,
16 and can be utilized to purchase supplies, equipment, furniture, or
17 other goods that would assist the employees of the local office,
18 division, or unit. The money shall be drawn using purchase orders
19 through the normal requisition system at the discretion of the
20 supervisor of the local office, division, or unit.

21 SECTION 12. AMENDATORY 40 O.S. 2011, Section 4-508, is
22 amended to read as follows:

23 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
24 DISCLOSURE.

1 A. Except as otherwise provided by law, information obtained
2 from any employing unit or individual pursuant to the administration
3 of the Employment Security Act of 1980, the Workforce Investment Act
4 of 1998, and determinations as to the benefit rights of any
5 individual shall be kept confidential and shall not be disclosed or
6 be open to public inspection in any manner revealing the
7 individual's or employing unit's identity. Any claimant or employer
8 or agent of such person as authorized in writing shall be supplied
9 with information from the records of the Oklahoma Employment
10 Security Commission, to the extent necessary for the proper
11 presentation of the claim or complaint in any proceeding under the
12 Employment Security Act of 1980, with respect thereto.

13 B. Upon receipt of written request by any employer who
14 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
15 Commission or its designated representative may release to such
16 employer information regarding weekly benefit amounts paid its
17 workers during a specified temporary layoff period, provided such
18 Supplemental Unemployment Benefit (SUB) Plan requires benefit
19 payment information before Supplemental Unemployment Benefits can be
20 paid to such workers. Any information disclosed under this
21 provision shall be utilized solely for the purpose outlined herein
22 and shall be held strictly confidential by the employer.

23 C. The provisions of this section shall not prevent the
24 Commission from disclosing the following information and no

1 liability whatsoever, civil or criminal, shall attach to any member
2 of the Commission or any employee thereof for any error or omission
3 in the disclosure of such information:

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

7 2. The disclosure of information to any person for a purpose as
8 authorized by the taxpayer or claimant pursuant to a waiver of
9 confidentiality. The waiver shall be in writing and shall be
10 notarized;

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

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

21 5. The disclosing of information or evidence to the Attorney
22 General or any district attorney when the information or evidence is
23 to be used by the officials or other parties to the proceedings to
24 prosecute or defend allegations of violations of the Employment

1 Security Act of 1980. The information disclosed to the Attorney
2 General or any district attorney shall be kept confidential by them
3 and not be disclosed except when presented to a court in a
4 prosecution of a violation of Section 1-101 et seq. of this title,
5 and a violation by the Attorney General or district attorney by
6 otherwise releasing the information shall be a felony;

7 6. The furnishing, at the discretion of the Commission, of any
8 information disclosed by the records or files to any official person
9 or body of this state, any other state or of the United States who
10 is concerned with the administration of assessment of any similar
11 tax in this state, any other state or the United States;

12 7. The furnishing of information to other state agencies for
13 the limited purpose of aiding in the collection of debts owed by
14 individuals to the requesting agencies or the Oklahoma Employment
15 Security Commission;

16 8. The release to employees of the Department of Transportation
17 or any Metropolitan Planning Organization as defined in 23 U.S.C.,
18 Section 134 and 49 U.S.C., Section 5303 of information required for
19 use in federally mandated regional transportation planning, which is
20 performed as a part of its official duties;

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

24

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

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

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

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

21 14. The release to employees of the Center for Economic and
22 Management Research of the University of Oklahoma, the Center for
23 Economic and Business Development at Southwestern Oklahoma State
24 University, or a center of economic and business research or

1 development at a comprehensive or regional higher education
2 institution within the Oklahoma State System of Higher Education of
3 information required to identify economic trends. The information
4 obtained shall be kept confidential by the higher education
5 institution and shall not be disclosed or be open to public
6 inspection. The higher education institution may release aggregated
7 data, provided that such aggregation meets disclosure requirements
8 of the Commission;

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

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

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1 aggregation meets disclosure requirements of the Oklahoma Employment
2 Security Commission;

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

7 18. The release to employees of public housing agencies for
8 purposes of determining eligibility pursuant to 42 U.S.C., Section
9 503(i);

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

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

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

23 22. The release of employer tax information and benefit claim
24 information to the Oklahoma Health Care Authority for use in

1 determining eligibility for a program that will provide subsidies
2 for health insurance premiums for qualified employers, employees,
3 self-employed persons, and unemployed persons;

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

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

13 ~~or~~

14 25. The release of information to vendors that contract with
15 the Oklahoma Employment Security Commission to provide for the
16 issuance of debit cards, to conduct electronic fund transfers, to
17 perform computer programming operations, or to perform computer
18 maintenance or replacement operations; provided the vendor agrees to
19 protect and safeguard the information it receives and to destroy the
20 information when no longer needed for the purposes set out in the
21 contract; or

22 26. The release to employees of the Office of Juvenile Affairs
23 of information for use in assessing results and outcomes of clients
24 served as well as the effectiveness of state and local juvenile and

1 justice programs including prevention and treatment programs. The
2 information obtained shall be kept confidential by the Office of
3 Juvenile Affairs and shall not be disclosed or be open to public
4 inspection. The Office of Juvenile Affairs may release aggregated
5 data for programs or larger aggregate units, provided that the
6 aggregation meets disclosure requirements of the Oklahoma Employment
7 Security Commission.

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

22 E. Should any of the disclosures provided for in this section
23 require more than casual or incidental staff time, the Commission
24

1 shall charge the cost of such staff time to the party requesting the
2 information.

3 F. It is further provided that the provisions of this section
4 shall be strictly interpreted and shall not be construed as
5 permitting the disclosure of any other information contained in the
6 records and files of the Commission.

7 SECTION 13. AMENDATORY 40 O.S. 2011, Section 5-108, is
8 amended to read as follows:

9 Section 5-108. OTHER PENALTIES IN THIS ACT.

10 Other penalties are provided in the following sections of this
11 title:

12 Employer violations of employee rights - Section 2-301

13 Impermissible charges to claimants - Section 2-302

14 Disqualification of benefit claims for fraud - Section 2-402

15 Recovery of benefits paid upon false statement - Section 2-613

16 SUTA dumping prohibition - Section 3-111.1

17 Fraud overpayment penalty - Section 2-613

18 SECTION 14. This act shall become effective November 1, 2012.

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20 53-2-8419 LRB 01/05/12

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