

1 ENGROSSED HOUSE
2 BILL NO. 1911

By: Shannon of the House

3 and

4 Johnson (Rob) of the Senate

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6
7 An Act relating to labor; amending 40 O.S. 2011,
8 Sections 2-203, 2-406, 2-406.1, as amended by Section
9 3, Chapter 196, O.S.L. 2012, and 2-418 (40 O.S. Supp.
10 2012, Section 2-406.1), which relate to the
11 Employment Security Act of 1980; requiring claimant
12 for unemployment benefits to make certain
13 certification; modifying discharge for misconduct;
14 providing for burden of proof; defining term;
15 modifying discharge for refusal to take certain test;
16 modifying burden of proof; providing for cessation of
17 benefits upon certain evidence; requiring
18 investigation and verification; and providing an
19 effective date.

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

21 SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-203, is
22 amended to read as follows:

23 Section 2-203. CLAIM.

24 A. An unemployed individual must file an initial claim for
unemployment benefits by calling an Oklahoma Employment Security
Commission claims representative in a Commission Call Center, by
completing the required forms through the Internet Claims service
provided by the Commission, or by completing all forms necessary to

1 process an initial claim in a local office of the Commission or any
2 alternate site designated by the Commission to take unemployment
3 benefit claims. The Commission may obtain additional information
4 regarding an individual's claim through any form of
5 telecommunication, writing, or interview. An unemployed individual
6 must file a claim in writing or by telecommunication for benefits
7 with respect to each week in accordance with such rule as the
8 Commission may prescribe.

9 B. During the process of filing an initial claim for
10 unemployment benefits, the claimant shall be made aware of the
11 definition of misconduct set out in Section 2-406 of this title, and
12 the claimant shall affirmatively certify that the answers given to
13 all questions in the initial claim process are true and correct to
14 the best of the claimant's knowledge and that no information has
15 been intentionally withheld or misrepresented in an attempt by the
16 claimant to receive benefits to which he or she is not entitled.

17 C. With respect to each week, he or she must provide the
18 Commission with a true and correct statement of all material facts
19 relating to: his or her unemployment; ability to work; availability
20 for work; activities or conditions which could restrict the
21 individual from seeking or accepting full-time employment
22 immediately; applications for or receipt of workers' compensation
23 benefits; employment and earnings; and the reporting of other income
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1 from retirement, pension, disability, self-employment, education or
2 training allowances.

3 ~~C.~~ D. No claim will be allowed or paid unless the claimant
4 resides within a state or foreign country with which the State of
5 Oklahoma has entered into a reciprocal or cooperative arrangement
6 pursuant to Part 7 of Article IV of the Employment Security Act of
7 1980.

8 ~~D.~~ E. The Commission may require the individual to produce
9 documents or information relevant to the claim for benefits. If the
10 individual has the ability to produce the documents or information
11 and fails to produce it, the individual's claim for unemployment
12 benefits may be disqualified indefinitely by the Commission until
13 the information is produced. The Commission may require the
14 individual to personally appear at a location for a purpose relevant
15 to the individual's unemployment claim or job search. If the
16 individual fails to appear, the individual's claim for unemployment
17 benefits may be disqualified indefinitely by the Commission until
18 the individual makes a personal appearance as directed. An
19 individual that has been disqualified indefinitely by the provisions
20 of this subsection may receive payment for any week between the
21 initial failure and the compliance with this subsection if the
22 claimant is otherwise eligible and has made a timely filing for each
23 intervening week.

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1 SECTION 2. AMENDATORY 40 O.S. 2011, Section 2-406, is
2 amended to read as follows:

3 Section 2-406. DISCHARGE FOR MISCONDUCT. A. An individual
4 shall be disqualified for benefits if he or she has been discharged
5 for misconduct connected with his or her last work, ~~if so found by~~
6 ~~the Commission.~~ If discharged for misconduct, the employer shall
7 have the burden to prove that the employee engaged in misconduct as
8 defined by this section. Such burden of proof is satisfied by the
9 employer, or its designated representative, providing a signed
10 affidavit, or presenting such other evidence which properly
11 demonstrates the misconduct which resulted in the discharge. Once
12 this burden is met, the burden then shifts to the discharged
13 employee to prove that the facts are inaccurate or that the facts as
14 stated do not constitute misconduct as defined by this section.
15 Disqualification under this section shall continue for the full
16 period of unemployment next ensuing after he or she has been
17 discharged for misconduct connected with his or her work and until
18 such individual has become reemployed and has earned wages equal to
19 or in excess of ten (10) times ~~his~~ the weekly benefit amount.

20 B. "Misconduct" shall include, but not be limited to, the
21 following:

22 1. Unexplained absenteeism or tardiness;

23 2. Willful or wanton indifference to or neglect of the duties
24 required;

1 3. Willful or wanton breach of any duty required by the
2 employer;

3 4. The mismanagement of a position of employment by action or
4 inaction;

5 5. Actions or omissions that place in jeopardy the health,
6 life, or property of self or others;

7 6. Dishonesty;

8 7. Wrongdoing;

9 8. Violation of a law; or

10 9. A violation of a policy or rule adopted to ensure orderly
11 work or the safety of self or others.

12 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-406.1, as
13 amended by Section 3, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2012,
14 Section 2-406.1), is amended to read as follows:

15 Section 2-406.1 A. 1. An employee discharged on the basis of
16 a refusal to undergo drug or alcohol testing or a positive drug or
17 alcohol test conducted in accordance with the provisions of the
18 Standards for Workplace Drug and Alcohol Testing Act shall be
19 considered to have been discharged for misconduct and shall be
20 disqualified for benefits pursuant to the provisions of Section 2-
21 406 of this title.

22 2. In any challenge to a positive drug or alcohol test, the
23 claimant has the burden to prove ~~a breach in the chain of custody~~
24 that the test was not properly conducted. The employer must provide

1 the chain of custody documentation at the request of any claimant
2 challenging his or her test result.

3 3. When the claimant fails to request a confirmation test
4 pursuant to Section 556 of this title, the claimant shall not be
5 eligible for benefits.

6 B. In any claim brought by the discharged employee for
7 compensation, a written report of the drug or alcohol test results
8 shall be accepted as prima facie evidence of the administration and
9 results of the drug or alcohol test. If challenged by the claimant
10 as provided in paragraph 2 of subsection A of this section, the
11 written report of the drug or alcohol test results shall be
12 acceptable for presentation as evidence with the chain of custody of
13 the sample properly documented.

14 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-418, is
15 amended to read as follows:

16 Section 2-418.

17 SEEK AND ACCEPT WORK - INDEFINITE DISQUALIFICATION.

18 A. An individual shall be disqualified to receive benefits for
19 the full period of unemployment next ensuing after the individual
20 shall have failed to do any of the following:

21 1. Accept an offer of suitable work, as defined by Section 2-
22 408 of this title, from an employer including any former employer;

23 2. Apply for or accept suitable work, as defined by Section 2-
24 408 of this title, when so directed by the Commission; or

1 3. Accept employment pursuant to a hiring hall agreement when
2 so offered.

3 Such disqualification shall continue until the individual has become
4 reemployed and has earned wages equal to or in excess of ten (10)
5 times his or her weekly benefit amount.

6 B. An employer who provides evidence of an offer of suitable
7 work pursuant to paragraph 1 of subsection A of this section shall
8 be proof of the failure of the individual to meet this requirement
9 and shall result in the immediate cessation of benefits until a
10 determination can be made by the Commission. The Commission shall
11 conduct a timely investigation of any such claim and verify the
12 offer of suitable work.

13 C. Any individual who shall have failed in any of the
14 requirements of subsection A of this section due to illness, death
15 of a family member or other extenuating circumstance beyond his or
16 her control shall be disqualified for regular benefits under this
17 section only for the week of the occurrence of such circumstance
18 beyond his or her control.

19 SECTION 5. This act shall become effective November 1, 2013.
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1 Passed the House of Representatives the 13th day of March, 2013.

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3 Presiding Officer of the House
4 of Representatives

5 Passed the Senate the ___ day of _____, 2013.

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7 Presiding Officer of the Senate