

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 HOUSE BILL 1911

By: Shannon

7 AS INTRODUCED

8 An Act relating to labor; amending 40 O.S. 2011,
9 Sections 2-202, 2-203, 2-406, 2-406.1, as amended by
10 Section 3, Chapter 196, O.S.L. 2012, and 2-418 (40
11 O.S. Supp. 2012, Section 2-406.1), which relate to
12 the Employment Security Act of 1980; modifying
13 conditions for eligibility for unemployment;
14 providing for affidavit as part of claim; directing
15 Commission to create affidavit; prohibiting filing of
16 claim until affidavit has been signed by claimant;
17 modifying discharge for misconduct; providing for
18 burden of proof; defining term; prohibiting
19 eligibility for benefits; providing for termination
20 for misconduct; modifying discharge for refusal to
21 take certain test; modifying burden of proof;
22 providing for cessation of benefits upon certain
23 evidence; and providing an effective date.

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

20 SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-202, is
21 amended to read as follows:

22 Section 2-202. CONDITIONS FOR ELIGIBILITY. An unemployed
23 individual shall be eligible to receive benefits with respect to any
24 week only if the Commission finds that he satisfies the provisions

1 of ~~this Part 2~~ Section 2-201 et seq. of this title; provided, an
2 individual from another state shall be employed in this state for
3 three (3) months prior to being eligible for unemployment benefits.

4 SECTION 2. AMENDATORY 40 O.S. 2011, Section 2-203, is
5 amended to read as follows:

6 Section 2-203. CLAIM.

7 A. An unemployed individual must file an initial claim for
8 unemployment benefits by calling an Oklahoma Employment Security
9 Commission claims representative in a Commission Call Center, by
10 completing the required forms through the Internet Claims service
11 provided by the Commission, or by completing all forms necessary to
12 process an initial claim in a local office of the Commission or any
13 alternate site designated by the Commission to take unemployment
14 benefit claims. The Commission may obtain additional information
15 regarding an individual's claim through any form of
16 telecommunication, writing, or interview. An unemployed individual
17 must file a claim in writing or by telecommunication for benefits
18 with respect to each week in accordance with such rule as the
19 Commission may prescribe.

20 B. In addition to all information for an initial claim required
21 in this section, the claimant shall sign an affidavit as part of the
22 initial filing of an unemployment claim. The Oklahoma Employment
23 Security Commission shall create the affidavit and describe in plain
24 language the criteria which would disqualify a claimant from

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 eligibility for benefits. The affidavit shall state that the
2 claimant does not meet any of the criteria which would disqualify
3 the claimant from eligibility for benefits. No initial claim shall
4 be processed until the affidavit has been signed and notarized by
5 the claimant.

6 C. With respect to each week, he or she must provide the
7 Commission with a true and correct statement of all material facts
8 relating to: his or her unemployment; ability to work; availability
9 for work; activities or conditions which could restrict the
10 individual from seeking or accepting full-time employment
11 immediately; applications for or receipt of workers' compensation
12 benefits; employment and earnings; and the reporting of other income
13 from retirement, pension, disability, self-employment, education or
14 training allowances.

15 ~~C.~~ D. No claim will be allowed or paid unless the claimant
16 resides within a state or foreign country with which the State of
17 Oklahoma has entered into a reciprocal or cooperative arrangement
18 pursuant to Part 7 of Article IV of the Employment Security Act of
19 1980.

20 ~~D.~~ E. The Commission may require the individual to produce
21 documents or information relevant to the claim for benefits. If the
22 individual has the ability to produce the documents or information
23 and fails to produce it, the individual's claim for unemployment
24 benefits may be disqualified indefinitely by the Commission until

1 the information is produced. The Commission may require the
2 individual to personally appear at a location for a purpose relevant
3 to the individual's unemployment claim or job search. If the
4 individual fails to appear, the individual's claim for unemployment
5 benefits may be disqualified indefinitely by the Commission until
6 the individual makes a personal appearance as directed. An
7 individual that has been disqualified indefinitely by the provisions
8 of this subsection may receive payment for any week between the
9 initial failure and the compliance with this subsection if the
10 claimant is otherwise eligible and has made a timely filing for each
11 intervening week.

12 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-406, is
13 amended to read as follows:

14 Section 2-406. DISCHARGE FOR MISCONDUCT. A. An individual
15 shall be disqualified for benefits if he or she has been discharged
16 for misconduct connected with his or her last work, ~~if so found by~~
17 ~~the Commission.~~ The individual shall have the burden to prove that
18 he or she did not engage in misconduct. Disqualification under this
19 section shall continue for the full period of unemployment next
20 ensuing after he or she has been discharged for misconduct connected
21 with his or her work and until such individual has become reemployed
22 and has earned wages equal to or in excess of ten (10) times ~~his~~ the
23 weekly benefit amount.

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1 B. "Misconduct" shall include, but not be limited to, the
2 following:

3 1. Excessive or unexplained absenteeism or tardiness;

4 2. Indifference to or neglect of the duties required;

5 3. Breach of any duty required by the employer;

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

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

10 6. Dishonesty;

11 7. Wrongdoing;

12 8. Violation of a law;

13 9. A violation of a policy or rule adopted to ensure orderly
14 work or the safety of self or others; or

15 10. Unsuitability for the required work.

16 C. An employee does not need to have intended to wrong the
17 employer for there to be misconduct connected with the work.

18 Irrespective of whether the misconduct occurs at the workplace or
19 during working hours, an employee may be dismissed for misconduct as
20 defined in subsection B of this section and shall not be eligible
21 for unemployment benefits.

22 D. An employer may properly find an employee unsuitable for the
23 required work, and may properly terminate the employee for
24 misconduct, when:

1 1. The employee does not perform the required work to the
2 expectations of the employer;

3 2. The employer made known its expectations of the employee at
4 the time of hiring;

5 3. The expectations were reasonable; and

6 4. The requirements of the job did not change substantially
7 since the date of the original hiring for that particular position.

8 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-406.1, as
9 amended by Section 3, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2012,
10 Section 2-406.1), is amended to read as follows:

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

18 2. In any challenge to a positive drug or alcohol test, the
19 claimant has the burden to prove ~~a breach in the chain of custody~~
20 that the test was not properly conducted. The employer must provide
21 the chain of custody documentation at the request of any claimant
22 challenging his or her test result.

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

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

12 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-418, is
13 amended to read as follows:

14 Section 2-418.

15 SEEK AND ACCEPT WORK - INDEFINITE DISQUALIFICATION.

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

19 1. Accept an offer of suitable work, as defined by Section 2-
20 408 of this title, from an employer including any former employer;

21 2. Apply for or accept suitable work, as defined by Section 2-
22 408 of this title, when so directed by the Commission; or

23 3. Accept employment pursuant to a hiring hall agreement when
24 so offered.

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

4 B. An employer who provides evidence of an offer of suitable
5 work pursuant to paragraph 1 of subsection A of this section shall
6 be proof of the failure of the individual to meet this requirement
7 and shall result in the immediate cessation of benefits until a
8 determination can be made by the Commission.

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

15 SECTION 6. This act shall become effective November 1, 2013.

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17 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL
18 SERVICES, dated 02/14/2013 - DO PASS.

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