

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1023

By: McDaniel (Randy)

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5
6 AS INTRODUCED

7 An Act relating to labor; providing for certain study
8 for laws and amendments that expand unemployment
9 benefits; amending 40 O.S. 2011, Sections 1-224, 2-
10 203, 2-210, 2-404, 2-405, 2-406, 2-503, as amended by
11 Section 4, Chapter 196, O.S.L. 2012 (40 O.S. Supp.
12 2012, Section 2-503), 2-616, 3-103, 3-111, 3-111.1,
13 3-112, 3-115, as amended by Section 9, Chapter 196,
14 O.S.L. 2012 (40 O.S. Supp. 2012, Section 3-115), 3-
15 403, which relate to the Employment Security Act of
16 1980; modifying definition; modifying production of
17 documents and information; modifying definitions;
18 modifying disqualification for leaving work
19 voluntarily; modifying factors for determining good
20 cause; modifying discharge for misconduct; providing
21 that certain working days need not be consecutive;
22 modifying appeals process; modifying compensation
23 experience years for employers; providing for review
24 and redetermination of certain untimely requests;
providing for contents of petition for review;
repealing 40 O.S. 2011, Section 3-104, which relates
to contribution rates for certain employers;
providing for codification; and providing an
effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-109 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 If a proposed new law or amendment to an existing law will have
5 the effect of expanding unemployment benefits available to
6 unemployment benefit claimants, the Oklahoma Employment Security
7 Commission shall study the fiscal impact the benefit expansion will
8 have upon Oklahoma's Unemployment Trust Fund established pursuant to
9 42 U.S.C., Section 1104. The impact study shall be presented to
10 each house of the Legislature before the final vote on the bill
11 containing the provision and shall be sent to the Governor before
12 final approval of the bill containing the provision.

13 SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-224, is
14 amended to read as follows:

15 Section 1-224. FILE.

16 A. When any document is required to be filed by the provisions
17 of the Employment Security Act of 1980 or the rules promulgated
18 under the authority of the Employment Security Act of 1980 with the
19 Oklahoma Employment Security Commission, any of its representatives,
20 or the Board of Review for the Oklahoma Employment Security
21 Commission, the term "file", "files", or "filed" shall be defined as
22 follows:
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1 1. Hand-delivered to the central administrative office of the
2 Oklahoma Employment Security Commission by the close of business on
3 or before the date due;

4 2. Telefaxed to the telefax number indicated on the
5 determination letter, order or other document issued by the Oklahoma
6 Employment Security Commission by midnight on or before the date
7 due. Timely telefaxing shall be determined by the date and time
8 recorded by the Commission's telefax equipment;

9 3. Mailed with sufficient postage and properly addressed to the
10 address indicated on the determination letter, order or other
11 document issued by the Oklahoma Employment Security Commission on or
12 before the date due. Timely mailing shall be determined by the
13 postmark. If there is no proof from the post office of the date of
14 mailing, the date of receipt by the Commission shall constitute the
15 date of filing; or

16 4. Electronically transmitted via data lines to the Oklahoma
17 Employment Security Commission, as directed by the instructions on
18 the determination letter, order or other document issued by the
19 Commission, by midnight on or before the date due. Timely
20 transmission shall be determined by the Commission's transmission
21 log file.

22 B. If the Employment Security Act of 1980 or the rules
23 promulgated under the Employment Security Act of 1980 require that a
24 document be filed with a court or any other agency of this state,

1 the term "file", "files" or "filed" shall be defined by the
2 statutes, rules or practice governing that court or agency.

3 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-203, is
4 amended to read as follows:

5 Section 2-203. CLAIM.

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

19 B. With respect to each week, he or she must provide the
20 Commission with a true and correct statement of all material facts
21 relating to: his or her unemployment; ability to work; availability
22 for work; activities or conditions which could restrict the
23 individual from seeking or accepting full-time employment
24 immediately; applications for or receipt of workers' compensation

1 benefits; employment and earnings; and the reporting of other income
2 from retirement, pension, disability, self-employment, education or
3 training allowances.

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

8 D. 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 4. AMENDATORY 40 O.S. 2011, Section 2-210, is
2 amended to read as follows:

3 Section 2-210. SEPARATION FROM WORK DUE TO COMPELLING FAMILY
4 CIRCUMSTANCES.

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

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

12 2. "Illness" means a verified illness which necessitates the
13 care of the ill person for a period of time longer than the employer
14 is willing to grant paid ~~or unpaid~~ leave or leave granted under the
15 Family Medical Leave Act, 29 U.S.C., Sections 2611 to 2654;

16 3. "Disability" means a verified disability which necessitates
17 the care of the disabled person for a period of time longer than the
18 employer is willing to grant paid ~~or unpaid~~ leave or leave granted
19 under the Family Medical Leave Act, 29 U.S.C., Sections 2611 to
20 2654. Disability encompasses all types of disability, including:

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

24 4. "Compelling family circumstances" means:

- 1 a. if the claimant was separated from employment with the
2 employer because of the illness or disability of the
3 claimant and, based on available information, the
4 Oklahoma Employment Security Commission finds that it
5 was medically necessary for the claimant to stop
6 working or change occupations,
- 7 b. the claimant was separated from work due to the
8 illness or disability of an immediate family member,
- 9 c. if the spouse of the claimant was transferred or
10 obtained employment in another city or state, and the
11 family is required to move to the location of that job
12 that is outside of commuting distance from the prior
13 employment of the claimant, and the claimant separates
14 from employment in order to move to the new employment
15 location of the spouse,
- 16 d. if the claimant separated from employment due to
17 domestic violence or abuse, verified by any reasonable
18 or confidential documentation, which causes the
19 individual to reasonably believe that the individual's
20 continued employment would jeopardize the safety of
21 the individual or of any member of the individual's
22 immediate family, or
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1 e. if the claimant separated from employment to move with
2 the claimant's spouse to a new location, and if the
3 spouse of the claimant:

4 (1) was a member of the U.S. Military, the U.S.
5 Military Reserve, or the National Guard,

6 (2) was on active duty within ninety (90) days of the
7 date of discharge,

8 (3) has a service-connected disability,

9 (4) was discharged under honorable conditions from
10 the military service, and

11 (5) takes up residence at a location more than fifty
12 (50) miles away from the claimant's former
13 employer for the purpose of reentering civilian
14 life.

15 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-404, is
16 amended to read as follows:

17 Section 2-404. LEAVING WORK VOLUNTARILY.

18 A. An individual shall be disqualified for benefits for leaving
19 his or her last work voluntarily without good cause connected to the
20 work, if so found by the Commission. Any determinations made
21 pursuant to this section shall be based on the facts of the incident
22 that occurred at the time of the final separation from employment
23 from the separating employer as identified in subsection B of
24 Section 2-503 of this title.

1 B. When adjudicating a separation from employment in an initial
2 claim or additional initial claim, disqualification under this
3 section shall continue for the full period of unemployment next
4 ensuing after the individual left work voluntarily without good
5 cause connected to the work and until the individual has become
6 reemployed and has earned wages equal to or in excess of ten (10)
7 times his or her weekly benefit amount.

8 C. When adjudicating a separation from employment during a
9 continued claim series, disqualification under this section shall be
10 for the week of the occurrence of leaving work voluntarily without
11 good cause connected to the work.

12 ~~D. Good cause shall include but not be limited to unfair~~
13 ~~treatment of the employee or the creating of unusually difficult~~
14 ~~working conditions by the employer.~~

15 SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-405, is
16 amended to read as follows:

17 Section 2-405. DETERMINING GOOD CAUSE.

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

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

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1 2. Substantially unfair treatment of the employee or the
2 creating of unusually difficult working conditions by the employer;
3 or

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

9 SECTION 7. AMENDATORY 40 O.S. 2011, Section 2-406, is
10 amended to read as follows:

11 Section 2-406. DISCHARGE FOR MISCONDUCT.

12 An individual shall be disqualified for benefits if he has been
13 discharged for misconduct connected with his last work, if so found
14 by the Commission. Any determinations made pursuant to this section
15 shall be based on the facts of the incident that occurred at the
16 time of the final separation from employment from the separating
17 employer as identified in subsection B of Section 2-503 of this
18 title. Disqualification under this section shall continue for the
19 full period of unemployment next ensuing after he has been
20 discharged for misconduct connected with his work and until such
21 individual has become reemployed and has earned wages equal to or in
22 excess of ten (10) times his weekly benefit amount.

1 SECTION 8. AMENDATORY 40 O.S. 2011, Section 2-503, as
2 amended by Section 4, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2012,
3 Section 2-503), is amended to read as follows:

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

5 A. Claims for benefits shall be made in accordance with all
6 rules that the Oklahoma Employment Security Commission may
7 prescribe.

8 B. Promptly after an initial claim or an additional initial
9 claim is filed, the Commission shall give written notice of the
10 claim to the last employer of the claimant for whom he or she worked
11 at least fifteen (15) working days. ~~Promptly~~ The required fifteen
12 (15) working days are not required to be consecutive. Provided
13 that, promptly after the Commission is notified of the claimant's
14 separation from an employment obtained by a claimant during a
15 continued claim series, the Commission shall give written notice of
16 the claim to the last separating employer. Notices to separating
17 employers during a continued claim series will be given to the last
18 employer in the claim week without regard to length of employment.

19 C. Promptly after the claim is paid for the fifth week of
20 benefits the Commission shall give written notice of the claim to
21 all other employers of the claimant during the claimant's base
22 period. The notice will be given pursuant to Section 3-106 of this
23 title.

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

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

15 1. Make the claimant ineligible for benefits under Sections 2-
16 201 through 2-210 of this title;

17 2. Disqualify the claimant from benefits under Sections 2-401
18 through ~~2-418~~ 2-419 of this title; or

19 3. Relieve such employer from being charged for the benefits
20 wages of such claimant.

21 SECTION 9. AMENDATORY 40 O.S. 2011, Section 2-616, is
22 amended to read as follows:

23 Section 2-616. NOTICE OF OVERPAYMENT DETERMINATION.
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1 If the Oklahoma Employment Security Commission or its
2 representative determines that an individual has been overpaid
3 unemployment benefits pursuant to Section 2-613 of this title, the
4 individual shall be sent a notice of overpayment determination. If
5 the individual disagrees with this determination, the individual may
6 file an appeal of the determination with the Appeal Tribunal within
7 twenty (20) days after the date of the mailing of the notice to the
8 individual's last-known address or, if the notice is not mailed,
9 within twenty (20) days after the date of the delivery of the
10 notice. If the individual fails to appeal the determination within
11 the time provided, without good cause, then the determination will
12 be deemed final and no further appeal shall be allowed.

13 SECTION 10. AMENDATORY 40 O.S. 2011, Section 3-103, is
14 amended to read as follows:

15 Section 3-103. COMPUTATION - PERCENTAGE OF WAGES PAYABLE.

16 Beginning January 1, 1996, each employer, unless otherwise
17 prescribed in Sections ~~3-104~~, 3-111, 3-111.1, 3-112, 3-701 or 3-801
18 of this title, shall pay contributions equal to a percent of taxable
19 wages paid by the employer with respect to employment which shall be
20 the greater of one percent (1%) or the average contribution rate
21 paid by all employers during the second year preceding the current
22 calendar year. The average contribution rate shall be calculated by
23 dividing annual net contributions received by total annual taxable
24 wages.

1 SECTION 11. AMENDATORY 40 O.S. 2011, Section 3-111, is
2 amended to read as follows:

3 Section 3-111. SUCCESSOR AND PREDECESSOR EMPLOYERS.

4 A. Any employing unit, whether or not an employing unit at the
5 time of the acquisition, which acquires substantially all of the
6 trade, organization, employees, business, or assets of any employer
7 (excepting in such case any assets retained by that employer
8 incident to the liquidation of the employer's obligations) and who
9 continues the operations of the predecessor employer as a going
10 business, shall be determined to be a successor employer. The
11 successor employer shall acquire the ~~merit~~ experience rating account
12 of the predecessor employer, including the predecessor's actual
13 contribution and benefit experience, annual payrolls, and
14 contribution rate. The successor employer shall also become jointly
15 and severally liable with the predecessor employer for all current
16 or delinquent contributions, interest, penalties and fees owed to
17 the Oklahoma Employment Security Commission by the predecessor
18 employer.

19 Written notice of all current or delinquent contributions,
20 interest, penalties and fees owed to the Commission by the
21 predecessor employer shall be provided to the successor employer by
22 the predecessor employer prior to the sale of the business. Failure
23 to give such notice may subject the predecessor employer to a
24 penalty as specified by the rules of the Commission.

1 Any remuneration for services covered by the Employment Security
2 Act of 1980 or other state unemployment compensation acts paid by
3 the predecessor employer shall be considered as having been paid by
4 the successor employer. The initial determination regarding whether
5 or not an acquiring employer will become a successor to a
6 predecessor account shall be made by the Commission or its duly
7 authorized representative and notice of this determination shall be
8 delivered to the acquiring employer or mailed to his or her last-
9 known address.

10 B. Any employing unit, whether or not an employing unit at the
11 time of the acquisition, which acquires substantially all of the
12 trade, employees, organization, business, or assets of an employer,
13 at one or more separate and distinct establishments and who
14 continues the acquired operations of the predecessor as a going
15 business, shall acquire that portion of the experience rating
16 account of the predecessor employer that is applicable to the
17 establishment or establishments, if the employing unit, immediately
18 after the acquisition, is an employer; provided, however, that the
19 employing unit shall not acquire a portion of the experience rating
20 account unless written application therefor is received by the
21 Commission within one hundred twenty (120) days after the date of
22 the acquisition together with evidence sufficient for the Commission
23 to determine which portion of the experience rating account of the
24 predecessor is applicable to the acquired operations, and the

1 Commission finds that the transfer will not tend to defeat or
2 obstruct the object and purpose of the Employment Security Act of
3 1980; and provided further, that the portion of the experience
4 rating account so transferred, including the taxable payrolls and
5 benefit wages, shall not thereafter be used in computing ~~an~~
6 ~~experience rating~~ a contribution rate for the transferring employer.
7 For the purpose of this subsection a separate and distinct
8 establishment means all operations conducted by an employer at one
9 business location which is readily identifiable as a separate
10 business organization.

11 C. If the Commission finds that any report required to complete
12 a determination of contribution rate has not been filed or if filed
13 is incorrect or insufficient, and any such fact or information has
14 not already been established or found in connection with some other
15 proceeding pursuant to the provisions of the Employment Security Act
16 of 1980, an estimate may be made of the information required on the
17 basis of the best evidence reasonably available to it at the time.
18 Notice shall be given of the determination as provided for
19 contribution rate in subsection C of Section 3-102 of this title and
20 the employer may appeal therefrom as provided in subsection D of
21 Section 3-102 of this title.

22 D. A determination made under this section may be appealed
23 pursuant to the provisions of Section 3-115 of this title.
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1 SECTION 12. AMENDATORY 40 O.S. 2011, Section 3-111.1, is
2 amended to read as follows:

3 Section 3-111.1 SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL
4 RULES ON TRANSFER OF RATES AND EXPERIENCE.

5 A. Notwithstanding any other provision of law, the following
6 shall apply regarding assignments of rates and transfers of
7 experience:

8 1. If an employer transfers its trade or business, or a portion
9 thereof, to another employer and, at the time of the transfer, there
10 is substantially common ownership, management or control of the two
11 employers, then the ~~unemployment~~ experience rating account
12 attributable to the transferred trade or business shall be combined
13 with the ~~unemployment~~ experience rating account of the employer to
14 whom such business is so transferred; and

15 2. Whenever a person who is not an employer under the
16 Employment Security Act of 1980 at the time it acquires the trade or
17 business of an employer, the ~~unemployment~~ experience rate rating
18 account of the acquired business shall not be transferred to such
19 person if the Commission finds that the person acquired the business
20 solely or primarily for the purpose of obtaining a lower rate of
21 contributions. Instead, the person shall be assigned the minimum
22 contribution rate under Section 3-110 of Title 40 of the Oklahoma
23 Statutes. In determining whether the business was acquired solely
24 or primarily for the purpose of obtaining a lower rate of

1 contributions, the Commission shall use objective factors which may
2 include the cost of acquiring the business, whether the person
3 continued the business enterprise of the acquired business, how long
4 such business enterprise was continued, or whether a substantial
5 number of new employees were hired for performance of duties
6 unrelated to the business activity conducted prior to acquisition.

7 B. 1. If a person knowingly violates or attempts to violate
8 paragraph 1 or 2 of subsection A of this section or any other
9 provision of the Employment Security Act of 1980 related to
10 determining the assignment of the contribution rate, or if a person
11 knowingly advises another person in a way that results in a
12 violation of such provision, the person shall be subject to the
13 following penalties:

14 a. if the person is an employer, then the employer shall
15 be assessed a penalty equal to ten percent (10%) of
16 the actual taxes due in the calendar quarter in which
17 the employer violated or attempted to violate the
18 provisions of this section and a penalty equal to ten
19 percent (10%) of the actual taxes due in each of the
20 following three (3) calendar quarters. The funds in
21 payment of this penalty shall be deposited in the
22 Oklahoma Employment Security Commission Revolving Fund
23 established under Section 4-901 of Title 40 of the
24 Oklahoma Statutes,

1 b. if the person is not an employer, the person shall be
2 subject to a civil money penalty of at least One
3 Hundred Dollars (\$100.00) and not more than Five
4 Thousand Dollars (\$5,000.00) to be determined by the
5 Assessment Board of the Oklahoma Employment Security
6 Commission. Any fine shall be deposited in the
7 Oklahoma Employment Security Commission Revolving Fund
8 established under Section 4-901 of Title 40 of the
9 Oklahoma Statutes.

10 2. For purposes of this section, the term "knowingly" means
11 having actual knowledge of or acting with deliberate ignorance or
12 reckless disregard for the prohibition involved.

13 3. For the purposes of this section, the term "violates or
14 attempts to violate" includes, but is not limited to, intent to
15 evade, misrepresentation or willful nondisclosure.

16 4. In addition to the penalty imposed by paragraph 1 of this
17 subsection, any person who violates the provisions of this section
18 shall be guilty of a misdemeanor and may be imprisoned for up to one
19 (1) year.

20 C. The Commission shall establish procedures to identify the
21 transfer or acquisition of a business for purposes of this section.

22 D. For purposes of this section:

23 1. "Person" has the meaning given such term by 26 U.S.C.
24 Section 7701(a)(1); and

1 2. "Trade or business" shall include the employers workforce.

2 E. This section shall be interpreted and applied in such a
3 manner as to meet the minimum requirements contained in any guidance
4 or regulations issued by the United States Department of Labor.

5 SECTION 13. AMENDATORY 40 O.S. 2011, Section 3-112, is
6 amended to read as follows:

7 Section 3-112. EMPLOYERS WITH AT LEAST ONE BUT LESS THAN THREE
8 YEARS' EXPERIENCE.

9 For each calendar year commencing after December 31, 1954, for
10 those employers who have had ~~less than three (3) but~~ at least one
11 (1) year of compensation experience, the Commission shall determine
12 the contribution rate of each such employer on the basis of his
13 compensation experience as determined by the fund's maximum
14 liability for benefits to their employees who have been paid
15 benefits modified by the state experience as to the average duration
16 of benefit payments as provided by law.

17 SECTION 14. AMENDATORY 40 O.S. 2011, Section 3-115, as
18 amended by Section 9, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2012,
19 Section 3-115), is amended to read as follows:

20 Section 3-115. APPEAL OF DETERMINATIONS.

21 A. If a determination is made by the Oklahoma Employment
22 Security Commission on any aspect of an employer's account, and a
23 method of appeal or protest of the determination is not set out in
24 the statute or rule under which the determination was made, the

1 employer may appeal or protest the determination under the procedure
2 set forth in subsection B of this section.

3 B. 1. All determinations affecting an employer account must be
4 made by the Commission in writing in a Notice of Determination and
5 mailed to the employer at the employer's last-known address with the
6 mailing date and appeal rights set out in the document. If the
7 employer has elected to be notified by electronic means according to
8 procedures set out in Oklahoma Employment Security Commission rules,
9 notice shall be deemed to be given when the Commission transmits the
10 notification by electronic means.

11 2. Within twenty (20) days after the mailing or transmission of
12 the Notice of Determination as provided for in paragraph 1 of this
13 subsection, the employer may file with the Commission, or its
14 representative, a written request for a review and redetermination
15 setting forth the employer's reasons therefor. If any employer
16 fails to file a written request for review and redetermination
17 within twenty (20) days, then the initial determination of the
18 Commission shall be final, and no further appeal or protest shall be
19 allowed.

20 3. If a written request for review and redetermination is
21 filed, the Commission shall provide for a review and issue a Notice
22 of Redetermination in the matter. The employer may appeal the
23 redetermination by filing a written protest within fourteen (14)
24 days of the date of the mailing of the Notice of Redetermination.

1 If the employer fails to file a written protest within the time
2 allowed, the redetermination of the Commission shall be final and no
3 further appeal or protest shall be allowed.

4 4. Upon the timely filing of a written protest, the Commission
5 shall provide for an oral hearing de novo to allow the employer to
6 present evidence in support of the protest. The Commission or its
7 representatives shall, by written notice, advise the employer of the
8 date of the hearing, which shall not be less than ten (10) days from
9 the date of the mailing of the written notice. At the discretion of
10 the Commission, this hearing shall be conducted by the Commission,
11 or by a representative appointed by the Commission for this purpose.

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

17 6. The employer or the Commission may appeal the order to the
18 district court of the county in which the employer has its principal
19 place of business by filing a Petition for Review with the clerk of
20 the court within thirty (30) days after the date the order was
21 mailed to all parties. If the employer does not have a principal
22 place of business in any county in Oklahoma, then the Petition for
23 Review shall be filed with the Oklahoma County District Court. All
24 appeals shall be governed by Part 4 of Article 3 of the Employment

1 Security Act of 1980. If the employer fails to file an appeal to
2 the district court within the time allowed, the order shall be final
3 and no further appeal shall be allowed.

4 C. Untimely requests for review and redetermination pursuant to
5 paragraph 2 of subsection B of this section and written protests for
6 appeals filed pursuant to paragraph 3 of subsection B of this
7 section may be allowed for good cause shown.

8 SECTION 15. AMENDATORY 40 O.S. 2011, Section 3-403, is
9 amended to read as follows:

10 Section 3-403. PETITION FOR REVIEW AND TRANSCRIPT OF COMMISSION
11 PROCEEDINGS.

12 Within thirty (30) days after the date of mailing of the order,
13 ruling, or finding complained of, the party desiring to appeal shall
14 file in the office of the clerk of the district court of the county
15 that has the proper jurisdiction, a Petition for Review specifying
16 the grounds upon which the appeal is based. The Petition for Review
17 shall set out the names of all parties to the case in the style of
18 the case, which shall include:

- 19 1. The petitioner or entity filing the petition;
- 20 2. The Assessment Board as a respondent; and
- 21 3. All other parties in the proceeding before the Assessment
22 Board as respondents.

23 If a Petition for Review is not filed within the time allowed by
24 this section, the administrative order, ruling or finding will

1 become final and the district court will not have jurisdiction to
2 consider the appeal. The appealing party shall serve a file-stamped
3 copy of the Petition for Review on ~~the~~ all opposing ~~party~~ parties or
4 ~~its attorney~~ their attorneys and the ~~designated hearing officer~~
5 Director of the Appellate Division of the Oklahoma Employment
6 Security Commission ~~before whom the original hearing was held.~~ The
7 ~~hearing officer of the Commission~~ Director of the Appellate Division
8 shall then cause a certified transcript of the hearing to be made
9 which shall consist of all testimony of the parties, all documentary
10 evidence and other evidence introduced at the hearing, and all
11 decisions, judgments, or orders rendered as a result of the hearing.
12 The ~~hearing officer~~ Director of the Appellate Division shall then
13 cause the certified transcript to be filed in the appropriate
14 district court within sixty (60) days of receipt of the Petition for
15 Review. Copies of the transcript shall be mailed by the ~~hearing~~
16 ~~officer to the Commission's attorney and the employer or the~~
17 ~~employer's attorney~~ Director of the Appellate Division to all
18 parties named in the style of the case on the Petition for Review.

19 SECTION 16. REPEALER 40 O.S. 2011, Section 3-104, is
20 hereby repealed.

21 SECTION 17. This act shall become effective November 1, 2013.

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23 54-1-5272 LRB 01/09/13
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