STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1911 By: Shannon

AS INTRODUCED

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

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

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

Section 2-202. CONDITIONS FOR ELIGIBILITY. An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he satisfies the provisions of ~~this Part 2~~ Section 2-201 et seq. of this title; provided, an

individual from another state shall be employed in this state for three (3) months prior to being eligible for unemployment benefits.

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

Section 2-203. CLAIM.

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

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

claimant does not meet any of the criteria which would disqualify the claimant from eligibility for benefits. No initial claim shall be processed until the affidavit has been signed and notarized by the claimant.

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

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

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

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

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

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

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

1. Excessive or unexplained absenteeism or tardiness;

2. Indifference to or neglect of the duties required;

3. Breach of any duty required by the employer;

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

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

6. Dishonesty;

7. Wrongdoing;

8. Violation of a law;

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

10. Unsuitability for the required work.

C. An employee does not need to have intended to wrong the employer for there to be misconduct connected with the work. Irrespective of whether the misconduct occurs at the workplace or during working hours, an employee may be dismissed for misconduct as defined in subsection B of this section and shall not be eligible for unemployment benefits.

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

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

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

3. The expectations were reasonable; and

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

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

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

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

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

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

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

Section 2-418.

SEEK AND ACCEPT WORK - INDEFINITE DISQUALIFICATION.

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

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

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

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

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

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

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

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

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