

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 3164

By: Hickman and McDaniel
(Randy) of the House

7 and

Newberry of the Senate

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11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to labor; creating procedure for
13 seasonal workers; allowing benefits in certain
14 periods; making employer apply for certain
15 designation; setting procedure for determination and
16 appeal; requiring certain notice to employer within
17 certain time; authorizing termination as seasonal
18 employer; defining terms; providing for codification;
19 and providing an effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2-422 of Title 40, unless there
23 is created a duplication in numbering, reads as follows:

24 A. Unemployment benefits based on services by a seasonal worker
performed in seasonal employment are payable only for weeks of
unemployment that occur during the normal seasonal work period.

1 Benefits shall not be paid based on services performed in seasonal
2 employment for any week of unemployment that begins during the
3 period between two (2) successive normal seasonal work periods to
4 any individual if that individual performs the service in the first
5 of the normal seasonal work periods and if there is a reasonable
6 assurance that the individual will perform the service for a
7 seasonal employer in the second of the normal seasonal work periods.
8 The notice of reasonable assurance shall be given by the employer to
9 the employee in writing on or before the last day of work in the
10 season. If benefits are denied to an individual for any week solely
11 as a result of this section and the individual is not offered an
12 opportunity to perform in the second normal seasonal work period for
13 which reasonable assurance of employment had been given, the
14 individual is entitled to a retroactive payment of benefits under
15 this section for each week that the individual previously filed a
16 timely claim for benefits. An individual may apply for any
17 retroactive benefits under this section in accordance with the
18 provisions of Article 2 of the Employment Security Act of 1980.

19 B. Not less than twenty (20) days before the estimated
20 beginning date of a normal seasonal work period, an employer may
21 apply to the Commission in writing for designation as a seasonal
22 employer. At the time of application, the employer shall
23 conspicuously display a copy of the application on the employer's
24 premises. Within ninety (90) days after receipt of the application,

1 the Commission shall determine if the employer is a seasonal
2 employer. The employer may appeal this decision pursuant to the
3 provisions of Section 3-115 of Title 40 of the Oklahoma Statutes. A
4 determination of the Commission concerning the status of an employer
5 as a seasonal employer, or the decision of the Assessment Board or a
6 court of this state through the administrative appeal process, which
7 has become final, may be introduced in any proceeding involving a
8 claim for benefits, and the facts found and decision issued in the
9 determination or decision shall be conclusive unless substantial
10 evidence to the contrary is introduced by or on behalf of the
11 claimant.

12 C. If the employer is determined to be a seasonal employer, the
13 employer shall give notice to each employee of the employer's status
14 as a seasonal employer and the beginning and ending dates of the
15 employer's normal seasonal work periods, and this notice shall be
16 given to the employee within the first seven (7) days of employment.
17 On or before the last day of work in the season, if the employer
18 intends to issue a notice of reasonable assurance of employment for
19 the next season, the employer shall also give notice to each
20 employee advising that the employee shall timely file an initial
21 application for unemployment benefits at the end of the current
22 seasonal work period and file timely weekly continued claims
23 thereafter to preserve his or her right to receive retroactive
24 unemployment benefits if he or she is not reemployed by the seasonal

1 employer in the subsequent normal seasonal work period. The notices
2 must be on a separate document written in clear and concise language
3 that states these provisions. Failure of the employer to give
4 adequate notice as required by this subsection will result in the
5 termination of the employer as a seasonal employer under subsection
6 D of this section.

7 D. The Commission may issue a determination terminating an
8 employer's status as a seasonal employer on the Commission's own
9 motion for good cause, or upon the written request of the employer.
10 The effective date of a termination determination under this
11 subsection shall be set by the Commission. A determination under
12 this subsection may be appealed pursuant to the provisions of
13 Section 3-115 of Title 40 of the Oklahoma Statutes.

14 E. An employer whose status as a seasonal employer is
15 terminated under subsection D of this section shall not reapply for
16 a seasonal employer status determination until after a regularly
17 recurring normal seasonal work period has begun and ended.

18 F. If a seasonal employer informs an employee who received
19 assurance of being rehired that, despite the assurance, the employee
20 will not be rehired at the beginning of the employer's next normal
21 seasonal work period, this section does not prevent the employee
22 from receiving unemployment benefits in the same manner and to the
23 same extent he or she would receive benefits under the Employment
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1 Security Act of 1980 from an employer who has not been determined to
2 be a seasonal employer.

3 G. A successor of a seasonal employer is considered to be a
4 seasonal employer unless the successor provides the Commission,
5 within one hundred twenty (120) days after the transfer, with a
6 written request for termination of its status as a seasonal employer
7 in accordance with subsection D of this section.

8 H. At the time an employee is hired by a seasonal employer, the
9 employer shall notify the employee in writing if the employee will
10 be a seasonal worker. The employer shall provide the worker with
11 written notice of any subsequent change in the employee's status as
12 a seasonal worker. If an employee of a seasonal employer is denied
13 benefits because that employee is a seasonal worker, the employee
14 may contest that designation by filing an appeal pursuant to the
15 provisions of Part 6 of Article 2 of the Employment Security Act of
16 1980.

17 I. As used in this section:

18 1. "Construction industry" means the work activity designated
19 in Sector Group 23 - Construction of the North American Industrial
20 Classification System published by the Executive Office of the
21 President, Office of Management and Budget, 2012 edition;

22 2. "Normal seasonal work period" means that period, or those
23 periods, of time during which an individual is employed in seasonal
24 employment, as determined by the Commission;

1 3. "Seasonal employment" means the employment of one or more
2 individuals primarily hired to perform services during regularly
3 recurring periods of twenty-six (26) weeks or less in any fifty-two-
4 week period other than services in the construction industry;

5 4. "Seasonal employer" means an employer, other than an
6 employer in the construction industry, who applies to the Commission
7 for designation as a seasonal employer and who the Commission
8 determines to be an employer whose operations and business require
9 employees engaged in seasonal employment; and

10 5. "Seasonal worker" means a worker who has been paid wages by
11 a seasonal employer for work performed only during the normal
12 seasonal work period.

13 SECTION 2. This act shall become effective November 1, 2016.

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