

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1584

By: Park

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5
6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2011,
8 Section 3-111, as amended by Section 9, Chapter 71,
9 O.S.L. 2013 (40 O.S. Supp. 2014, Section 3-111),
10 which relates to the Employment Security Act of 1980;
11 providing penalty for failure to provide certain
12 notice; authorizing payment of costs and attorney
13 fees; and providing an effective date.

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

15 SECTION 1. AMENDATORY 40 O.S. 2011, Section 3-111, as
16 amended by Section 9, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2014,
17 Section 3-111), is amended to read as follows:

18 Section 3-111. SUCCESSOR AND PREDECESSOR EMPLOYERS.

19 A. Any employing unit, whether or not an employing unit at the
20 time of the acquisition, which acquires substantially all of the
21 trade, organization, employees, business, or assets of any employer
22 (excepting in such case any assets retained by that employer
23 incident to the liquidation of the employer's obligations) and who
24 continues the operations of the predecessor employer as a going
business, shall be determined to be a successor employer. The

1 successor employer shall acquire the experience rating account of
2 the predecessor employer, including the predecessor's actual
3 contribution and benefit experience, annual payrolls, and
4 contribution rate. The successor employer shall also become jointly
5 and severally liable with the predecessor employer for all current
6 or delinquent contributions, interest, penalties and fees owed to
7 the Oklahoma Employment Security Commission by the predecessor
8 employer.

9 Written notice of all current or delinquent contributions,
10 interest, penalties and fees owed to the Commission by the
11 predecessor employer shall be provided to the successor employer by
12 the predecessor employer prior to the sale of the business. Failure
13 to give such notice may subject the predecessor employer to a
14 penalty as specified by the rules of the Commission. In addition,
15 if the predecessor employer fails to provide the successor employer
16 with notice as required by this section or such notice is knowingly
17 false or fraudulent, the successor employer shall be entitled to
18 treble damages from the predecessor employer. The prevailing party
19 shall be entitled to all costs, including a reasonable attorney fee.

20 Any remuneration for services covered by the Employment Security
21 Act of 1980 or other state unemployment compensation acts paid by
22 the predecessor employer shall be considered as having been paid by
23 the successor employer. The initial determination regarding whether
24 or not an acquiring employer will become a successor to a

1 predecessor account shall be made by the Commission or its duly
2 authorized representative and notice of this determination shall be
3 delivered to the acquiring employer or mailed to his or her last-
4 known address.

5 B. Any employing unit, whether or not an employing unit at the
6 time of the acquisition, which acquires substantially all of the
7 trade, employees, organization, business, or assets of an employer,
8 at one or more separate and distinct establishments and who
9 continues the acquired operations of the predecessor as a going
10 business, shall acquire that portion of the experience rating
11 account of the predecessor employer that is applicable to the
12 establishment or establishments, if the employing unit, immediately
13 after the acquisition, is an employer; provided, however, that the
14 employing unit shall not acquire a portion of the experience rating
15 account unless written application therefor is received by the
16 Commission within one hundred twenty (120) days after the date of
17 the acquisition together with evidence sufficient for the Commission
18 to determine which portion of the experience rating account of the
19 predecessor is applicable to the acquired operations, and the
20 Commission finds that the transfer will not tend to defeat or
21 obstruct the object and purpose of the Employment Security Act of
22 1980; and provided further, that the portion of the experience
23 rating account so transferred, including the taxable payrolls and
24 benefit wages, shall not thereafter be used in computing a

1 contribution rate for the transferring employer. For the purpose of
2 this subsection a separate and distinct establishment means all
3 operations conducted by an employer at one business location which
4 is readily identifiable as a separate business organization.

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

16 D. A determination made under this section may be appealed
17 pursuant to the provisions of Section 3-115 of this title.

18 SECTION 2. This act shall become effective November 1, 2015.

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