

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL HB3164

By: Hickman and McDaniel  
(Randy) of the House

and

Newberry of the Senate

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9 COMMITTEE SUBSTITUTE

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

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

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

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

Benefits shall not be paid based on services performed in seasonal

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

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

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

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

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

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

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

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

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

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

15 I. As used in this section:

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

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

23 3. "Seasonal employment" means the employment of one or more  
24 individuals primarily hired to perform services during regularly

1 recurring periods of twenty-six (26) weeks or less in any fifty-two  
2 -week period other than services in the construction industry;

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

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

11 SECTION 2. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 205 of Title 40, unless there is  
13 created a duplication in numbering, reads as follows:

14 A. For purposes of this act:

15 1. "Franchisor" means any person who grants a franchise and  
16 participates in the franchise relationship. Unless otherwise  
17 stated, it includes subfranchisors. For purposes of this  
18 definition, a "subfranchisor" means a person who functions as a  
19 franchisor by engaging in both pre-sale activities and post-sale  
20 performance.

21 2. "Franchisee" means any person who is granted a franchise.

22 3. "Franchise" means any continuing commercial relationship or  
23 arrangement, whatever it may be called, in which the terms of the  
24

1 offer or contract specify, or the franchise seller promises or  
2 represents, orally or in writing, that:

3 a. the franchisee will obtain the right to operate a  
4 business that is identified or associated with the  
5 franchisor's trademark, or to offer, sell, or  
6 distribute goods, services, or commodities that are  
7 identified or associated with the franchisor's  
8 trademark,

9 b. the franchisor will exert or has authority to exert a  
10 significant degree of control over the franchisee's  
11 method of operation, or provide significant assistance  
12 in the franchisee's method of operation, and

13 c. as a condition of obtaining or commencing operation of  
14 the franchise, the franchisee makes a required payment  
15 or commits to make a required payment to the  
16 franchisor or its affiliate.

17 B. A franchisor shall not be considered the employer of a  
18 franchisee or a franchisee's employees.

19 C. The employees of a franchisee shall not be considered  
20 employees of the franchisor neither shall the employees of a  
21 franchisor be considered employees of a franchisee.

22 SECTION 3. This act shall become effective November 1, 2016.

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