

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2505

By: McDaniel (Randy)

COMMITTEE SUBSTITUTE

An Act relating to labor; providing conditions for back pay to be subtracted from benefit amount; providing for redetermination of back pay during furlough or work stoppage; amending 40 O.S. 2011, Sections 2-210, 2-503, as last amended by Section 6, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2013, Section 2-503), 2-506, 2-609, 3-105 and 4-508, as last amended by Section 132, Chapter 304, O.S.L. 2012 (40 O.S. Supp. 2013, Section 4-508), which relate to Employment Security Act of 1980; modifying definitions; providing for untimely employer objection; modifying reconsideration of determinations; removing obsolete language; modifying benefit wage charges; requiring certain administrative records be presented within certain time; repealing 40 O.S. 2011, Sections 2-900, 2-901, 2-902, 2-903, 2-904, 2-905, 2-906, 2-907, 2-908, 2-909 and 2-910, which relate to the Shared Work Unemployment Compensation Program; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-105.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

1 A. Reimbursed pay or back pay received by a claimant shall be
2 subtracted from the benefit amount drawn by a claimant in each week
3 in which:

4 1. The claimant is placed on furlough or work stoppage by his
5 or her employer;

6 2. The claimant is not paid wages or salary during the pendency
7 of the furlough or work stoppage;

8 3. The furlough or work stoppage is due to a lapse in
9 appropriations, funding or budget shortfall affecting the employer;

10 4. After the furlough or work stoppage concludes, the claimant
11 is reimbursed his or her full pay for the period during which the
12 furlough or work stoppage occurred; and

13 5. The employer considers the employee as having been in a pay
14 status during the furlough or work stoppage.

15 B. If reimbursed pay or back pay is required to be subtracted
16 from the claimant's benefit amount pursuant to subsection A of this
17 section, the eligibility for benefits of each week in question shall
18 be redetermined pursuant to Section 2-506 of Title 40 of the
19 Oklahoma Statutes and the amount of reimbursed pay or back pay
20 received by the claimant shall be deducted from any unemployment
21 benefits drawn during the pendency of the furlough or work stoppage.
22 Any party to the redetermination may appeal pursuant to Section 2-
23 603 of Title 40 of the Oklahoma Statutes. Any overpayment of
24 benefits established under this section shall be collected in the

1 same manner as an overpayment established under paragraph 2 of
2 Section 2-613 of Title 40 of the Oklahoma Statutes.

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

5 Section 2-210. In addition to the eligibility provisions
6 provided by this act, an individual shall be eligible to receive
7 unemployment benefits, if monetarily and otherwise eligible, if the
8 claimant was separated from work due to compelling family
9 circumstances. For purposes of this section:

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

15 3. "Disability" means a verified disability which necessitates
16 the care of the disabled person for a period of time longer than the
17 employer is willing to grant paid or unpaid leave. Disability
18 encompasses all types of disability, including:

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

22 4. "Compelling family circumstances" means:

- 23 a. if the claimant was separated from employment with the
24 employer because of the illness or disability of the

1 claimant and, based on available information, the
2 Oklahoma Employment Security Commission finds that it
3 was medically necessary for the claimant to stop
4 working or change occupations,

5 b. the claimant was separated from work due to the
6 illness or disability of an immediate family member,

7 c. if the spouse of the claimant was transferred or
8 obtained employment in another city or state, and the
9 family is required to move to the location of that job
10 that is outside of commuting distance from the prior
11 employment of the claimant, and the claimant separates
12 from employment in order to move to the new employment
13 location of the spouse,

14 d. if the claimant separated from employment due to
15 domestic violence or abuse, verified by any reasonable
16 ~~or confidential documentation~~ evidence, which causes
17 the individual to reasonably believe that the
18 individual's continued employment would jeopardize the
19 safety of the individual or of any member of the
20 individual's immediate family, or

21 e. if the claimant separated from employment to move with
22 the claimant's spouse to a new location, and if the
23 spouse of the claimant:
24

- (1) was a member of the U.S. Military, the U.S. Military Reserve, or the National Guard,
- (2) was on active duty within ninety (90) days of the date of discharge,
- (3) has a service-connected disability,
- (4) was discharged under honorable conditions from the military service, and
- (5) takes up residence at a location more than fifty (50) miles away from the claimant's former employer for the purpose of reentering civilian life.

SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-503, as last amended by Section 6, Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2013, Section 2-503), is amended to read as follows:

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

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

B. Promptly after an initial claim or an additional initial claim is filed, the Commission shall give written notice of the claim to the last employer of the claimant for whom he or she worked at least fifteen (15) working days. The required fifteen (15) working days are not required to be consecutive. Provided, that promptly after the Commission is notified of the claimant's

1 separation from an employment obtained by a claimant during a
2 continued claim series, the Commission shall give written notice of
3 the claim to the last separating employer. Notices to separating
4 employers during a continued claim series will be given to the last
5 employer in the claim week without regard to length of employment.

6 C. Promptly after the claim is paid for the fifth week of
7 benefits the Commission shall give written notice of the claim to
8 all other employers of the claimant during the claimant's base
9 period. The notice will be given pursuant to Section 3-106 of this
10 title.

11 D. Notices shall be deemed given when the Commission deposits
12 the same in the United States mail addressed to the employer's last-
13 known address. Notice shall be presumed prima facie to have been
14 given to the employer to whom addressed on the date stated in the
15 written notice. If the employer has elected to be notified by
16 electronic means according to procedures set out in Oklahoma
17 Employment Security Commission rules, notice shall be deemed to be
18 given when the Commission transmits the notification by electronic
19 means.

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

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

3 2. Disqualify the claimant from benefits under Sections 2-401
4 through 2-419 of this title; or

5 3. Relieve such employer from being charged for the benefits
6 wages of such claimant.

7 F. An untimely employer objection to a claim for unemployment
8 benefits made pursuant to subsection E of this section may be
9 allowed for good cause shown.

10 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-506, is
11 amended to read as follows:

12 Section 2-506. REDETERMINATIONS.

13 The Oklahoma Employment Security Commission may reconsider a
14 determination only when it finds that an error in computation or
15 identity has occurred in connection therewith, or that wages of the
16 claimant pertinent to such determination, but not considered in
17 connection therewith, have been newly determined, or that reimbursed
18 pay or back pay was received by a claimant under circumstances that
19 would reduce the amount of benefits drawn, or that benefits have
20 been allowed or denied or the amount of benefits fixed on the basis
21 of misrepresentation or mistake of material facts, but no such
22 redetermination shall be made after the expiration of the benefit
23 year established by the initial determination, except that a
24 determination made because of a false statement or representation or

1 failure to disclose a material fact in violation of Section 5-102 or
2 5-103 of this title may be redetermined within two (2) years from
3 the date of such false statement or representation or failure to
4 disclose. Notice of any such redetermination shall be promptly
5 given to the parties entitled to notice of the original
6 determination, in the manner prescribed in the Employment Security
7 Act of 1980 with respect to notice of an original determination. If
8 the amount of benefits is increased upon such redetermination, an
9 appeal therefrom solely with respect to the matters involved in such
10 increase may be filed in the manner and subject to the limitations
11 provided in Part 5 of Article 2 of the Employment Security Act of
12 1980. If the amount of benefits is decreased upon such
13 redetermination, the matters involved in such decrease shall be
14 subject to review in connection with an appeal by claimant from any
15 determination upon a subsequent claim for benefits which may be
16 affected in amount or duration by such redetermination. Subject to
17 the same limitations and for the same reasons, the Commission may
18 reconsider the determination in any case in which the final decision
19 has been rendered by an appeal tribunal, the Board of Review or a
20 court, and may apply to the body or court which rendered such final
21 decision to issue a revised decision. In the event that an appeal
22 involving an original determination is pending as of the date a
23 redetermination thereof is issued, such appeal, unless withdrawn,
24 shall be treated as an appeal from such redetermination.

1 SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-609, is
2 amended to read as follows:

3 Section 2-609. RULE OF DECISION.

4 A final decision of the Board of Review, or of an Appeal
5 Tribunal referee, and the principles of law declared in arriving at
6 such decision, unless expressly or impliedly overruled by a later
7 decision of the Board of Review or by a court of competent
8 jurisdiction, shall be binding upon the Commission and Appeal
9 Tribunal referees in subsequent proceedings which involve the same
10 questions of law; ~~provided, if in connection with any subsequent~~
11 ~~proceeding an Appeal Tribunal referee has serious doubt as to the~~
12 ~~correctness of any principle so declared he or she may certify his~~
13 ~~or her findings of fact in the case, together with the question of~~
14 ~~law involved, to the Board of Review, which, after giving notice and~~
15 ~~reasonable opportunity for briefing to all parties to the~~
16 ~~proceeding, shall return to the Commission adjudicator, the Appeal~~
17 ~~Tribunal referee and the parties its answer to the question~~
18 ~~submitted by written decision. Any decision made by the Board of~~
19 ~~Review on a certified question shall be subject to judicial review~~
20 ~~pursuant to Section 2-610 of this title.~~

21 SECTION 6. AMENDATORY 40 O.S. 2011, Section 3-105, is
22 amended to read as follows:

23 Section 3-105. BENEFIT WAGES - ~~YEAR~~ QUARTER CHARGED. When in
24 any benefit year a claimant is paid benefits for his or her fifth

1 compensable week of unemployment or is paid benefits as defined in
2 paragraph ~~(3)~~ of Section 4-702 of this title, his or her taxable
3 wages during his or her base period shall be treated, for the
4 purpose of this part, as though they had been paid in the calendar
5 ~~year~~ quarter in which ~~such~~ the fifth compensable week of
6 unemployment benefits are paid.

7 SECTION 7. AMENDATORY 40 O.S. 2011, Section 4-508, as
8 last amended by Section 132, Chapter 304, O.S.L. 2012 (40 O.S. Supp.
9 2013, Section 4-508), is amended to read as follows:

10 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
11 DISCLOSURE.

12 A. Except as otherwise provided by law, information obtained
13 from any employing unit or individual pursuant to the administration
14 of the Employment Security Act of 1980, the Workforce Investment Act
15 of 1998, and determinations as to the benefit rights of any
16 individual shall be kept confidential and shall not be disclosed or
17 be open to public inspection in any manner revealing the
18 individual's or employing unit's identity. Any claimant or employer
19 or agent of such person as authorized in writing shall be supplied
20 with information from the records of the Oklahoma Employment
21 Security Commission, to the extent necessary for the proper
22 presentation of the claim or complaint in any proceeding under the
23 Employment Security Act of 1980, with respect thereto.

1 B. Upon receipt of written request by any employer who
2 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
3 Commission or its designated representative may release to such
4 employer information regarding weekly benefit amounts paid its
5 workers during a specified temporary layoff period, provided such
6 Supplemental Unemployment Benefit (SUB) Plan requires benefit
7 payment information before Supplemental Unemployment Benefits can be
8 paid to such workers. Any information disclosed under this
9 provision shall be utilized solely for the purpose outlined herein
10 and shall be held strictly confidential by the employer.

11 C. The provisions of this section shall not prevent the
12 Commission from disclosing the following information and no
13 liability whatsoever, civil or criminal, shall attach to any member
14 of the Commission or any employee thereof for any error or omission
15 in the disclosure of such information:

16 1. The delivery to taxpayer or claimant a copy of any report or
17 other paper filed by the taxpayer or claimant pursuant to the
18 Employment Security Act of 1980;

19 2. The disclosure of information to any person for a purpose as
20 authorized by the taxpayer or claimant pursuant to a waiver of
21 confidentiality. The waiver shall be in writing and shall be
22 notarized;

23 3. The Oklahoma Department of Commerce may have access to data
24 obtained pursuant to the Employment Security Act of 1980 pursuant to

1 rules promulgated by the Commission. The information obtained shall
2 be held confidential by the Department and any of its agents and
3 shall not be disclosed or be open to public inspection. The
4 Oklahoma Department of Commerce, however, may release aggregated
5 data, either by industry or county, provided that such aggregation
6 meets disclosure requirements of the Commission;

7 4. The publication of statistics so classified as to prevent
8 the identification of a particular report and the items thereof;

9 5. The disclosing of information or evidence to the Attorney
10 General or any district attorney when the information or evidence is
11 to be used by the officials or other parties to the proceedings to
12 prosecute or defend allegations of violations of the Employment
13 Security Act of 1980. The information disclosed to the Attorney
14 General or any district attorney shall be kept confidential by them
15 and not be disclosed except when presented to a court in a
16 prosecution of a violation of Section 1-101 et seq. of this title,
17 and a violation by the Attorney General or district attorney by
18 otherwise releasing the information shall be a felony;

19 6. The furnishing, at the discretion of the Commission, of any
20 information disclosed by the records or files to any official person
21 or body of this state, any other state or of the United States who
22 is concerned with the administration of assessment of any similar
23 tax in this state, any other state or the United States;

1 7. The furnishing of information to other state agencies for
2 the limited purpose of aiding in the collection of debts owed by
3 individuals to the requesting agencies or the Oklahoma Employment
4 Security Commission;

5 8. The release to employees of the Department of Transportation
6 or any Metropolitan Planning Organization as defined in 23 U.S.C.,
7 Section 134 and 49 U.S.C., Section 5303 of information required for
8 use in federally mandated regional transportation planning, which is
9 performed as a part of its official duties;

10 9. The release to employees of the State Treasurer's office of
11 information required to verify or evaluate the effectiveness of the
12 Oklahoma Small Business Linked Deposit Program on job creation;

13 10. The release to employees of the Attorney General, the State
14 Insurance Fund, the Department of Labor, the Workers' Compensation
15 ~~Court~~ Commission, and the Insurance Department for use in
16 investigation of workers' compensation fraud;

17 11. The release to employees of the Oklahoma State Bureau of
18 Investigation or release to employees of the Oklahoma State Bureau
19 of Narcotics and Dangerous Drugs Control for use in criminal
20 investigations and the location of missing persons or fugitives from
21 justice;

22 12. The release to employees of the Center of International
23 Trade, Oklahoma State University, of information required for the
24

1 development of International Trade for employers doing business in
2 the State of Oklahoma;

3 13. The release to employees of the Oklahoma State Regents for
4 Higher Education of information required for use in the default
5 prevention efforts and/or collection of defaulted student loans
6 guaranteed by the Oklahoma Guaranteed Student Loan Program. Any
7 information disclosed under this provision shall be utilized solely
8 for the purpose outlined herein and shall be held strictly
9 confidential by the Oklahoma State Regents for Higher Education;

10 14. The release to employees of the Center for Economic and
11 Management Research of the University of Oklahoma, the Center for
12 Economic and Business Development at Southwestern Oklahoma State
13 University, or a center of economic and business research or
14 development at a comprehensive or regional higher education
15 institution within the Oklahoma State System of Higher Education of
16 information required to identify economic trends. The information
17 obtained shall be kept confidential by the higher education
18 institution and shall not be disclosed or be open to public
19 inspection. The higher education institution may release aggregated
20 data, provided that such aggregation meets disclosure requirements
21 of the Commission;

22 15. The release to employees of the Office of Management and
23 Enterprise Services of information required to identify economic
24 trends. The information obtained shall be kept confidential by the

1 Office of Management and Enterprise Services and shall not be
2 disclosed or be open to public inspection. The Office of Management
3 and Enterprise Services may release aggregate data, provided that
4 such aggregation meets disclosure requirements of the Commission;

5 16. The release to employees of the Department of Mental Health
6 and Substance Abuse Services of information required to evaluate the
7 effectiveness of mental health and substance abuse treatment and
8 state or local programs utilized to divert persons from inpatient
9 treatment. The information obtained shall be kept confidential by
10 the Department and shall not be disclosed or be open to public
11 inspection. The Department of Mental Health and Substance Abuse
12 Services, however, may release aggregated data, either by treatment
13 facility, program or larger aggregate units, provided that such
14 aggregation meets disclosure requirements of the Oklahoma Employment
15 Security Commission;

16 17. The release to employees of the Attorney General, the
17 Oklahoma State Bureau of Investigation, and the Insurance Department
18 for use in the investigation of insurance fraud and health care
19 fraud;

20 18. The release to employees of public housing agencies for
21 purposes of determining eligibility pursuant to 42 U.S.C., Section
22 503(i);

23 19. The release of wage and benefit claim information, at the
24 discretion of the Commission, to an agency of this state or its

1 political subdivisions, or any nonprofit corporation that operates a
2 program or activity designated as a partner in the Workforce
3 Investment Act One-Stop delivery system pursuant to 29 U.S.C.A.,
4 Section 2481 (b), based on a showing of need made to the Commission
5 and after an agreement concerning the release of information is
6 entered into with the entity receiving the information;

7 20. The release of information to the wage record interchange
8 system, at the discretion of the Commission;

9 21. The release of information to the Bureau of the Census of
10 the U.S. Department of Commerce for the purpose of economic and
11 statistical research;

12 22. The release of employer tax information and benefit claim
13 information to the Oklahoma Health Care Authority for use in
14 determining eligibility for a program that will provide subsidies
15 for health insurance premiums for qualified employers, employees,
16 self-employed persons, and unemployed persons;

17 23. The release of employer tax information and benefit claim
18 information to the State Department of Rehabilitation Services for
19 use in assessing results and outcomes of clients served;

20 24. The release of information to any state or federal law
21 enforcement authority when necessary in the investigation of any
22 crime in which the Commission is a victim. Information that is
23 confidential under this section shall be held confidential by the
24

1 law enforcement authority unless and until it is required for use in
2 court in the prosecution of a defendant in a criminal prosecution;

3 25. The release of information to vendors that contract with
4 the Oklahoma Employment Security Commission to provide for the
5 issuance of debit cards, to conduct electronic fund transfers, to
6 perform computer programming operations, or to perform computer
7 maintenance or replacement operations; provided the vendor agrees to
8 protect and safeguard the information it receives and to destroy the
9 information when no longer needed for the purposes set out in the
10 contract;

11 26. The release to employees of the Office of Juvenile Affairs
12 of information for use in assessing results and outcomes of clients
13 served as well as the effectiveness of state and local juvenile and
14 justice programs including prevention and treatment programs. The
15 information obtained shall be kept confidential by the Office of
16 Juvenile Affairs and shall not be disclosed or be open to public
17 inspection. The Office of Juvenile Affairs may release aggregated
18 data for programs or larger aggregate units, provided that the
19 aggregation meets disclosure requirements of the Oklahoma Employment
20 Security Commission; or

21 27. The release of information to vendors that contract with
22 the State of Oklahoma for the purpose of providing a public
23 electronic labor exchange system that will support the Oklahoma
24 Employment Security Commission's operation of an employment service

1 system to connect employers with job seekers and military veterans.
2 This labor exchange system would enhance the stability and security
3 of Oklahoma's economy as well as support the provision of veterans'
4 priority of service. The vendors may perform computer programming
5 operations, perform computer maintenance or replacement operations,
6 or host the electronic solution; provided each vendor agrees to
7 protect and safeguard all information received, that no information
8 shall be disclosed to any third party, that the use of the
9 information shall be restricted to the scope of the contract, and
10 that the vendor shall properly dispose of all information when no
11 longer needed for the purposes set out in the contract.

12 D. Subpoenas to compel disclosure of information made
13 confidential by this statute shall not be valid, except for
14 administrative subpoenas issued by federal, state, or local
15 governmental agencies that have been granted subpoena power by
16 statute or ordinance. Confidential information maintained by the
17 Commission can be obtained by order of a court of record that
18 authorizes the release of the records in writing. All
19 administrative subpoenas or court orders for production of documents
20 must provide a minimum of twenty (20) days from the date it is
21 served for the Commission to produce the documents. If the date on
22 which production of the documents is required is less than twenty
23 (20) days from the date of service, the subpoena or order shall be
24 considered void on its face as an undue burden or hardship on the

1 Commission. All administrative subpoenas, court orders or notarized
2 waivers of confidentiality authorized by paragraph 2 of subsection C
3 of this section shall be presented with a request for records within
4 ninety (90) days of the date the document is issued or signed and
5 the document can only be used one time to obtain records.

6 E. Should any of the disclosures provided for in this section
7 require more than casual or incidental staff time, the Commission
8 shall charge the cost of such staff time to the party requesting the
9 information.

10 F. It is further provided that the provisions of this section
11 shall be strictly interpreted and shall not be construed as
12 permitting the disclosure of any other information contained in the
13 records and files of the Commission.

14 SECTION 8. REPEALER 40 O.S. 2011, Sections 2-900, 2-901,
15 2-902, 2-903, 2-904, 2-905, 2-906, 2-907, 2-908, 2-909 and 2-910,
16 are hereby repealed.

17 SECTION 9. This act shall become effective November 1, 2014.

18
19 54-2-10040 EK 02/13/14
20
21
22
23
24