

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2505

By: McDaniel (Randy) of the
House

and

Newberry of the Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to labor; providing conditions for
13 back pay to be subtracted from benefit amount;
14 providing for redetermination of back pay during
15 furlough or work stoppage; amending 40 O.S. 2011,
16 Sections 2-210, 2-503, as last amended by Section 6,
17 Chapter 71, O.S.L. 2013 (40 O.S. Supp. 2013, Section
18 2-503), 2-506, 2-609, 3-105 and 4-508, as last
19 amended by Section 132, Chapter 304, O.S.L. 2012 (40
20 O.S. Supp. 2013, Section 4-508), which relate to
21 Employment Security Act of 1980; modifying
22 definitions; providing for untimely employer
23 objection; modifying reconsideration of
24 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:

1 SECTION 1. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 2-105.1 of Title 40, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Reimbursed pay or back pay received by a claimant shall be
5 subtracted from the benefit amount drawn by a claimant in each week
6 in which:

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

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

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

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

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

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

1 Any party to the redetermination may appeal pursuant to Section 2-
2 603 of Title 40 of the Oklahoma Statutes. Any overpayment of
3 benefits established under this section shall be collected in the
4 same manner as an overpayment established under paragraph 2 of
5 Section 2-613 of Title 40 of the Oklahoma Statutes.

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

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

13 1. "Immediate family member" means the claimant's spouse,
14 parents and ~~minor~~ dependent children;

15 2. "Illness" means a verified illness which necessitates the
16 care of the ill person for a period of time longer than the employer
17 is willing to grant paid or unpaid leave;

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

- 22 a. mental and physical disabilities,
- 23 b. permanent and temporary disabilities, and
- 24 c. partial and total disabilities; and

1 4. "Compelling family circumstances" means:

- 2 a. if the claimant was separated from employment with the
3 employer because of the illness or disability of the
4 claimant and, based on available information, the
5 Oklahoma Employment Security Commission finds that it
6 was medically necessary for the claimant to stop
7 working or change occupations,
- 8 b. the claimant was separated from work due to the
9 illness or disability of an immediate family member,
- 10 c. if the spouse of the claimant was transferred or
11 obtained employment in another city or state, and the
12 family is required to move to the location of that job
13 that is outside of commuting distance from the prior
14 employment of the claimant, and the claimant separates
15 from employment in order to move to the new employment
16 location of the spouse,
- 17 d. if the claimant separated from employment due to
18 domestic violence or abuse, verified by any reasonable
19 ~~or confidential documentation~~ evidence, which causes
20 the individual to reasonably believe that the
21 individual's continued employment would jeopardize the
22 safety of the individual or of any member of the
23 individual's immediate family, or
- 24

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

(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

1 at least fifteen (15) working days. The required fifteen (15)
2 working days are not required to be consecutive. Provided, that
3 promptly after the Commission is notified of the claimant's
4 separation from an employment obtained by a claimant during a
5 continued claim series, the Commission shall give written notice of
6 the claim to the last separating employer. Notices to separating
7 employers during a continued claim series will be given to the last
8 employer in the claim week without regard to length of employment.

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

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

23 E. Within ten (10) days after the date on the notice or the
24 date of the postmark on the envelope in which the notice was sent,

1 whichever is later, an employer may file with the Commission at the
2 address prescribed in the notice written objections to the claim
3 setting forth specifically the facts which:

4 1. Make the claimant ineligible for benefits under Sections 2-
5 201 through 2-210 of this title;

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

8 3. Relieve such employer from being charged for the benefits
9 wages of such claimant.

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

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

15 Section 2-506. REDETERMINATIONS.

16 The Oklahoma Employment Security Commission may reconsider a
17 determination only when it finds that an error in computation or
18 identity has occurred in connection therewith, or that wages of the
19 claimant pertinent to such determination, but not considered in
20 connection therewith, have been newly determined, or that reimbursed
21 pay or back pay was received by a claimant under circumstances that
22 would reduce the amount of benefits drawn, or that benefits have
23 been allowed or denied or the amount of benefits fixed on the basis
24 of misrepresentation or mistake of material facts, but no such

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

1 involving an original determination is pending as of the date a
2 redetermination thereof is issued, such appeal, unless withdrawn,
3 shall be treated as an appeal from such redetermination.

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

6 Section 2-609. RULE OF DECISION.

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

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

3 Section 3-105. BENEFIT WAGES - ~~YEAR~~ QUARTER CHARGED. When in
4 any benefit year a claimant is paid benefits for his or her fifth
5 compensable week of unemployment or is paid benefits as defined in
6 paragraph ~~(3)~~ of Section 4-702 of this title, his or her taxable
7 wages during his or her base period shall be treated, for the
8 purpose of this part, as though they had been paid in the calendar
9 ~~year~~ quarter in which ~~such~~ the fifth compensable week of
10 unemployment benefits are paid.

11 SECTION 7. AMENDATORY 40 O.S. 2011, Section 4-508, as
12 last amended by Section 132, Chapter 304, O.S.L. 2012 (40 O.S. Supp.
13 2013, Section 4-508), is amended to read as follows:

14 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
15 DISCLOSURE.

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

1 Security Commission, to the extent necessary for the proper
2 presentation of the claim or complaint in any proceeding under the
3 Employment Security Act of 1980, with respect thereto.

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

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

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

22 2. The disclosure of information to any person for a purpose as
23 authorized by the taxpayer or claimant pursuant to a waiver of
24

1 confidentiality. The waiver shall be in writing and shall be
2 notarized;

3 3. The Oklahoma Department of Commerce may have access to data
4 obtained pursuant to the Employment Security Act of 1980 pursuant to
5 rules promulgated by the Commission. The information obtained shall
6 be held confidential by the Department and any of its agents and
7 shall not be disclosed or be open to public inspection. The
8 Oklahoma Department of Commerce, however, may release aggregated
9 data, either by industry or county, provided that such aggregation
10 meets disclosure requirements of the Commission;

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

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

23 6. The furnishing, at the discretion of the Commission, of any
24 information disclosed by the records or files to any official person

1 or body of this state, any other state or of the United States who
2 is concerned with the administration of assessment of any similar
3 tax in this state, any other state or the United States;

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

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

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

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

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

1 12. The release to employees of the Center of International
2 Trade, Oklahoma State University, of information required for the
3 development of International Trade for employers doing business in
4 the State of Oklahoma;

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

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

1 15. The release to employees of the Office of Management and
2 Enterprise Services of information required to identify economic
3 trends. The information obtained shall be kept confidential by the
4 Office of Management and Enterprise Services and shall not be
5 disclosed or be open to public inspection. The Office of Management
6 and Enterprise Services may release aggregate data, provided that
7 such aggregation meets disclosure requirements of the Commission;

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

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

1 18. The release to employees of public housing agencies for
2 purposes of determining eligibility pursuant to 42 U.S.C., Section
3 503(i);

4 19. The release of wage and benefit claim information, at the
5 discretion of the Commission, to an agency of this state or its
6 political subdivisions, or any nonprofit corporation that operates a
7 program or activity designated as a partner in the Workforce
8 Investment Act One-Stop delivery system pursuant to 29 U.S.C.A.,
9 Section 2481 (b), based on a showing of need made to the Commission
10 and after an agreement concerning the release of information is
11 entered into with the entity receiving the information;

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

14 21. The release of information to the Bureau of the Census of
15 the U.S. Department of Commerce for the purpose of economic and
16 statistical research;

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

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

1 24. The release of information to any state or federal law
2 enforcement authority when necessary in the investigation of any
3 crime in which the Commission is a victim. Information that is
4 confidential under this section shall be held confidential by the
5 law enforcement authority unless and until it is required for use in
6 court in the prosecution of a defendant in a criminal prosecution;

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

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

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

16 D. Subpoenas to compel disclosure of information made
17 confidential by this statute shall not be valid, except for
18 administrative subpoenas issued by federal, state, or local
19 governmental agencies that have been granted subpoena power by
20 statute or ordinance. Confidential information maintained by the
21 Commission can be obtained by order of a court of record that
22 authorizes the release of the records in writing. All
23 administrative subpoenas or court orders for production of documents
24 must provide a minimum of twenty (20) days from the date it is

1 served for the Commission to produce the documents. If the date on
2 which production of the documents is required is less than twenty
3 (20) days from the date of service, the subpoena or order shall be
4 considered void on its face as an undue burden or hardship on the
5 Commission. All administrative subpoenas, court orders or notarized
6 waivers of confidentiality authorized by paragraph 2 of subsection C
7 of this section shall be presented with a request for records within
8 ninety (90) days of the date the document is issued or signed and
9 the document can only be used one time to obtain records.

10 E. Should any of the disclosures provided for in this section
11 require more than casual or incidental staff time, the Commission
12 shall charge the cost of such staff time to the party requesting the
13 information.

14 F. It is further provided that the provisions of this section
15 shall be strictly interpreted and shall not be construed as
16 permitting the disclosure of any other information contained in the
17 records and files of the Commission.

18 SECTION 8. REPEALER 40 O.S. 2011, Sections 2-900, 2-901,
19 2-902, 2-903, 2-904, 2-905, 2-906, 2-907, 2-908, 2-909 and 2-910,
20 are hereby repealed.

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

22
23 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL
24 SERVICES, dated 02/13/2014 - DO PASS, As Amended and Coauthored.