

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 1110

By: McDaniel of the House

5 and

6 Newberry of the Senate

7
8 AS INTRODUCED

9
10 An Act relating to labor; amending 40 O.S. 2011,
11 Section 1-227, Section 3, Chapter 287, O.S.L. 2016,
12 Sections 2-104 and 2-209, Section 12, Chapter 287,
13 O.S.L. 2016, and Sections 4-508, as last amended by
14 Section 19, Chapter 249, O.S.L. 2015 and 4-509 (40
15 O.S. Supp. 2016, Sections 1-229, 3-121 and 4-508),
16 which relate to the Employment Security Act of 1980;
17 updating language and statutory citations; providing
18 for credit for taxable wages paid for certain
19 employers; repealing 40 O.S. 2011, Section 3-809,
20 which relates to group employer accounts; and
21 providing an effective date.

22
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY 40 O.S. 2011, Section 1-227, is
amended to read as follows:

Section 1-227. EXPERIENCE PERIOD.

"Experience period" means:

1. ~~For any tax year occurring before January 1, 2007, the most~~
~~recent three (3) consecutive completed calendar years occurring~~

1 ~~before the calendar year for which a tax rate is being calculated,~~
2 and

3 ~~2. For any tax year occurring after December 31, 2006,~~ the most
4 recent twelve (12) consecutive completed calendar quarters occurring
5 before July 1 of the year immediately preceding the year for which
6 the employer's contribution rate is being calculated.

7 SECTION 2. AMENDATORY Section 3, Chapter 287, O.S.L.
8 2016 (40 O.S. Supp. 2016, Section 1-229), is amended to read as
9 follows:

10 Section 1-229. ASSIGNED TAX RATE AND EARNED TAX RATE.

11 A. "Assigned tax rate" means the tax rate assigned to an
12 employer pursuant to Section 3-110.1 of ~~Title 40 of the Oklahoma~~
13 ~~Statutes~~ this title when the employer does not have sufficient
14 experience history to meet the At-Risk Rule set out in paragraph 3
15 of Section ~~40~~ 3-110.1 of this ~~act~~ title.

16 B. "Earned tax rate" means the tax rate calculated for an
17 employer with sufficient experience history to meet the At-Risk Rule
18 set out in paragraph 3 of Section ~~40~~ 3-110.1 of this ~~act~~ title, with
19 the tax rate calculated pursuant to the provisions of Part 1 of
20 Article 3 of the Employment Security Act of 1980.

21 SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-104, is
22 amended to read as follows:

23 Section 2-104. COMPUTATION OF BENEFIT AMOUNT.
24

1 A. The weekly benefit amount of an individual shall be an
2 amount equal to one twenty-third (1/23) of the taxable wages paid to
3 the individual during that quarter of his base period in which ~~such~~
4 the taxable wages were highest. If ~~such~~ the amount is more than the
5 maximum weekly benefit amount, it shall be reduced to the maximum
6 weekly benefit amount or if the amount is less than Sixteen Dollars
7 (\$16.00), it shall be increased to Sixteen Dollars (\$16.00).

8 B. The maximum weekly benefit amount shall be:

9 1. ~~Prior to July 1, 1984, One Hundred Eighty-five Dollars~~
10 ~~(\$185.00); and~~

11 2. ~~Beginning July 1, 1984, the greater of:~~

12 a. ~~One Hundred Ninety-seven Dollars (\$197.00), or~~

13 b. ~~(1)~~ sixty Sixty percent (60%) of the average weekly
14 wage of the second preceding calendar year during
15 any calendar year in which the balance in the
16 Unemployment Compensation Fund is in excess of
17 the amount required to initiate conditional
18 contribution rates, pursuant to the provisions of
19 Section 3-113 of this title,

20 ~~(2) fifty-seven;~~

21 2. Fifty-seven and one-half percent (57.5%) of the average
22 weekly wage of the second preceding calendar year during calendar
23 years in which condition "a", as set forth in paragraph (1) of
24 Section 3-113 of this title, exists,

1 ~~(3) fifty-five;~~

2 3. Fifty-five percent (55%) of the average weekly wage of the
3 second preceding calendar year during calendar years in which
4 condition "b", as set forth in paragraph (2) of Section 3-113 of
5 this title, exists~~;~~

6 ~~(4) fifty-two;~~

7 4. Fifty-two and one-half percent (52.5%) of the average weekly
8 wage of the second preceding calendar year during calendar years in
9 which condition "c", as set forth in paragraph (3) of Section 3-113
10 of this title, exists~~;~~ and

11 ~~(5) fifty~~

12 5. Fifty percent (50%) of the average weekly wage of the second
13 preceding calendar year during calendar years in which condition
14 "d", as set forth in paragraph (4) of Section 3-113 of this title,
15 exists.

16 C. Before the last day of June of each year the Commission
17 shall determine the average weekly wage of the preceding calendar
18 year in the following manner:

19 1. The sum of the total monthly employment reported for the
20 calendar year shall be divided by twelve (12) to determine the
21 average monthly employment;

22 2. The sum of the total wages reported for the previous
23 calendar year shall be divided by the average monthly employment to
24 determine the average annual wage; and

1 3. The average annual wage shall be divided by fifty-two (52)
2 to determine the average weekly wage.

3 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-209, is
4 amended to read as follows:

5 Section 2-209. BENEFITS FOR EMPLOYEES OF GOVERNMENTAL OR
6 NONPROFIT EMPLOYERS.

7 Benefits based on service in employment defined in ~~paragraphs~~
8 ~~(2)~~, paragraph (3) or (4) of Section 1-210 of this title, including
9 any federally operated educational institutions, shall be payable in
10 the same amount, on the same terms and subject to the same
11 conditions as benefits payable on the basis of other service subject
12 to the Employment Security Act of 1980, except that:

13 (1) With respect to service performed in an instructional,
14 research or principal administrative capacity for an educational
15 institution, benefits shall not be paid based on ~~such~~ services for
16 any week of unemployment commencing during the period between two
17 (2) successive academic years, or during a similar period between
18 two regular but not successive terms, or during a period of paid
19 sabbatical leave provided for in the individual's contract, to any
20 individual if ~~such~~ the individual performs ~~such~~ services in the
21 first ~~of such~~ academic ~~years~~ year or ~~terms~~ term and if there is a
22 contract or a reasonable assurance that ~~such~~ the individual will
23 perform services in any ~~such~~ capacity for any educational
24 institution in the second ~~of such~~ academic ~~years~~ year or ~~terms~~ term.

1 (2) With respect to services performed in any other capacity
2 for an educational institution, benefits shall not be paid on the
3 basis of ~~such~~ services to any individual for any week which
4 commences during a period between two (2) successive academic years
5 or terms if ~~such~~ the individual performs ~~such~~ services in the first
6 ~~of such~~ academic ~~years~~ year or ~~terms~~ term and there is a reasonable
7 assurance that ~~such~~ the individual will perform ~~such~~ services in the
8 second ~~of such~~ academic ~~years~~ year or ~~terms~~ term, except that if
9 compensation is denied to any individual ~~under~~ pursuant to this
10 paragraph and ~~such~~ the individual was not offered an opportunity to
11 perform ~~such~~ services for the educational institution for the second
12 ~~of such~~ academic ~~years~~ year or ~~terms~~ term, ~~such~~ the individual shall
13 be entitled to a retroactive payment of compensation for each week
14 for which the individual filed a timely claim for compensation and
15 for which compensation was denied solely by reason of this clause-;

16 (3) With respect to any services described in paragraphs (1)
17 and (2) of this section, benefits shall not be payable on the basis
18 of services in any ~~such~~ capacities to any individual for any week
19 which commences during an established and customary vacation period
20 or holiday recess if ~~such~~ the individual performs ~~such~~ services in
21 the period immediately before ~~such~~ the vacation period or holiday
22 recess, and there is a reasonable assurance that ~~such~~ the individual
23 will perform ~~such~~ services in the period immediately following ~~such~~
24 the vacation period or holiday recess-;

1 (4) With respect to any services described in paragraphs (1)
2 and (2) of this section, benefits shall not be payable on the basis
3 of services in any ~~such~~ capacities as specified in paragraphs (1),
4 (2) and (3) of this section to any individual who performed ~~such~~
5 services in an educational institution while in the employ of an
6 educational service agency. For purposes of this paragraph, the
7 term "educational service agency" means a governmental agency or
8 governmental entity which is established and operated exclusively
9 for the purpose of providing ~~such~~ services to one or more
10 educational institutions;

11 (5) With respect to services to which ~~paragraphs (2),~~ paragraph
12 (3) or (4) of Section 1-210 of this title ~~apply~~ applies, if ~~such~~
13 services are provided to or on behalf of an educational institution,
14 benefits shall not be payable under the same circumstances and
15 subject to the same terms and conditions as described in paragraphs
16 (1), (2), (3) and (4) of this section; and

17 (6) If an individual has employment with an educational
18 institution and has employment with a noneducation employer or
19 employers during the base period of the individual's benefit year,
20 the individual may become eligible for benefits during the between-
21 term denial period, based only on the noneducational employment.

22 SECTION 5. AMENDATORY Section 12, Chapter 287, O.S.L.
23 2016 (40 O.S. Supp. 2016, Section 3-121), is amended to read as
24 follows:

1 Section 3-121. PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER
2 OF EXPERIENCE HISTORY.

3 If a Professional Employer Organization, or PEO, chooses the
4 option to file quarterly tax returns under the account assigned to
5 its client pursuant to paragraph 2 of subsection A of Section 3-120
6 of ~~Title 40 of the Oklahoma Statutes~~ this title, and if the client
7 has an experience history from a previous account assigned to that
8 client that can be used in calculating an earned tax rate pursuant
9 to the provisions of Article 3, Part 1, of the Employment Security
10 Act of 1980, then that experience history shall be transferred to
11 the account assigned to that client as a ~~co-employer~~ coemployer of
12 that PEO. In addition, if taxable wages were reported by a client
13 in a previous account of the client within the calendar year in
14 which the PEO coemployer account is set up, then the PEO coemployer
15 account shall be given credit for the taxable wages paid on each
16 employee in the immediately previous account under which client
17 wages were reported.

18 SECTION 6. AMENDATORY 40 O.S. 2011, Section 4-508, as
19 last amended by Section 19, Chapter 249, O.S.L. 2015 (40 O.S. Supp.
20 2016, Section 4-508), is amended to read as follows:

21 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
22 DISCLOSURE.

23 A. Except as otherwise provided by law, information obtained
24 from any employing unit or individual pursuant to the administration

1 of the Employment Security Act of 1980, any workforce system program
2 administered or monitored by the Oklahoma Employment Security
3 Commission, and determinations as to the benefit rights of any
4 individual shall be kept confidential and shall not be disclosed or
5 be open to public inspection in any manner revealing the
6 individual's or employing unit's identity. Any claimant or
7 employer, or agent of ~~such person~~ either as authorized in writing,
8 shall be supplied with information from the records of the Oklahoma
9 Employment Security Commission, to the extent necessary for the
10 proper presentation of the claim or complaint in any proceeding
11 under the Employment Security Act of 1980, with respect thereto.

12 B. Upon receipt of written request by any employer who
13 maintains a Supplemental Unemployment Benefit (SUB) Plan, the
14 Commission or its designated representative may release to ~~such~~ that
15 employer information regarding weekly benefit amounts paid its
16 workers during a specified temporary layoff period, provided ~~such~~
17 the Supplemental Unemployment Benefit (SUB) Plan requires benefit
18 payment information before Supplemental Unemployment Benefits can be
19 paid to ~~such~~ the workers. Any information disclosed under this
20 provision shall be utilized solely for the purpose outlined herein
21 and shall be held strictly confidential by the employer.

22 C. The provisions of this section shall not prevent the
23 Commission from disclosing the following information and no
24 liability whatsoever, civil or criminal, shall attach to any member

1 of the Commission or any employee thereof for any error or omission
2 in the disclosure of ~~such~~ this information:

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

6 2. The disclosure of information to any person for a purpose as
7 authorized by the taxpayer or claimant pursuant to a waiver of
8 confidentiality. The waiver shall be in writing and shall be
9 notarized;

10 3. The Oklahoma Department of Commerce may have access to data
11 obtained pursuant to the Employment Security Act of 1980 pursuant to
12 rules promulgated by the Commission. The information obtained shall
13 be held confidential by the Department and any of its agents and
14 shall not be disclosed or be open to public inspection. The
15 Oklahoma Department of Commerce, however, may release aggregated
16 data, either by industry or county, provided that ~~such~~ the
17 aggregation meets disclosure requirements of the Commission;

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

20 5. The disclosing of information or evidence to the Attorney
21 General or any district attorney when the information or evidence is
22 to be used by the officials or other parties to the proceedings to
23 prosecute or defend allegations of violations of the Employment
24 Security Act of 1980. The information disclosed to the Attorney

1 General or any district attorney shall be kept confidential by them
2 and not be disclosed except when presented to a court in a
3 prosecution of a violation of Section 1-101 et seq. of this title,
4 and a violation by the Attorney General or district attorney by
5 otherwise releasing the information shall be a felony;

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

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

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

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

23 10. The release to employees of the Attorney General, ~~the State~~
24 ~~Insurance Fund,~~ the Department of Labor, the Workers' Compensation

1 Commission, and the Insurance Department for use in investigation of
2 workers' compensation fraud;

3 11. The release to employees of any Oklahoma state, Oklahoma
4 county or Oklahoma municipal law enforcement agency for use in
5 criminal investigations and the location of missing persons or
6 fugitives from justice;

7 12. The release to employees of the Center of International
8 Trade, Oklahoma State University, of information required for the
9 development of International Trade for employers doing business in
10 the State of Oklahoma;

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

18 14. The release to employees of the Center for Economic and
19 Management Research of the University of Oklahoma, the Center for
20 Economic and Business Development at Southwestern Oklahoma State
21 University, or a center of economic and business research or
22 development at a comprehensive or regional higher education
23 institution within The Oklahoma State System of Higher Education of
24 information required to identify economic trends. The information

1 obtained shall be kept confidential by the higher education
2 institution and shall not be disclosed or be open to public
3 inspection. The higher education institution may release aggregated
4 data, provided that ~~such~~ the aggregation meets disclosure
5 requirements of the Commission;

6 15. The release to employees of the Office of Management and
7 Enterprise Services of information required to identify economic
8 trends. The information obtained shall be kept confidential by the
9 Office of Management and Enterprise Services and shall not be
10 disclosed or be open to public inspection. The Office of Management
11 and Enterprise Services may release aggregate data, provided that
12 ~~such~~ the aggregation meets disclosure requirements of the
13 Commission;

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

1 17. The release to employees of the Attorney General, the
2 Oklahoma State Bureau of Investigation, and the Insurance Department
3 for use in the investigation of insurance fraud and health care
4 fraud;

5 18. The release to employees of public housing agencies for
6 purposes of determining eligibility pursuant to 42 U.S.C., Section
7 503(i);

8 19. The release of wage and benefit claim information, at the
9 discretion of the Commission, to an agency of this state or its
10 political subdivisions, ~~or any nonprofit corporation~~ that operates a
11 program or activity designated as a required partner in the
12 Workforce ~~Investment~~ Innovation and Opportunity Act One-Stop
13 delivery system pursuant to 29 U.S.C.A., Section ~~2481(b)~~ 3151(b)(1),
14 based on a showing of need made to the Commission and after an
15 agreement concerning the release of information is entered into with
16 the entity receiving the information;

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

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

22 22. The release of employer tax information and benefit claim
23 information to the Oklahoma Health Care Authority for use in
24 determining eligibility for a program that will provide subsidies

1 for health insurance premiums for qualified employers, employees,
2 self-employed persons, and unemployed persons;

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

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

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

20 26. The release to employees of the Office of Juvenile Affairs
21 of information for use in assessing results and outcomes of clients
22 served as well as the effectiveness of state and local juvenile and
23 justice programs including prevention and treatment programs. The
24 information obtained shall be kept confidential by the Office of

1 Juvenile Affairs and shall not be disclosed or be open to public
2 inspection. The Office of Juvenile Affairs may release aggregated
3 data for programs or larger aggregate units, provided that the
4 aggregation meets disclosure requirements of the Oklahoma Employment
5 Security Commission; or

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

21 D. Subpoenas to compel disclosure of information made
22 confidential by this statute shall not be valid, except for
23 administrative subpoenas issued by federal, state, or local
24 governmental agencies that have been granted subpoena power by

1 statute or ordinance. Confidential information maintained by the
2 Commission can be obtained by order of a court of record that
3 authorizes the release of the records in writing. All
4 administrative subpoenas or court orders for production of documents
5 must provide a minimum of twenty (20) days from the date it is
6 served for the Commission to produce the documents. If the date on
7 which production of the documents is required is less than twenty
8 (20) days from the date of service, the subpoena or order shall be
9 considered void on its face as an undue burden or hardship on the
10 Commission. All administrative subpoenas, court orders or notarized
11 waivers of confidentiality authorized by paragraph 2 of subsection C
12 of this section shall be presented with a request for records within
13 ninety (90) days of the date the document is issued or signed, and
14 the document can only be used one time to obtain records.

15 E. Should any of the disclosures provided for in this section
16 require more than casual or incidental staff time, the Commission
17 shall charge the cost of ~~such~~ the staff time to the party requesting
18 the information.

19 F. It is further provided that the provisions of this section
20 shall be strictly interpreted and shall not be construed as
21 permitting the disclosure of any other information contained in the
22 records and files of the Commission.

23 SECTION 7. AMENDATORY 40 O.S. 2011, Section 4-509, is
24 amended to read as follows:

1 Section 4-509. INFORMATION TO BE FURNISHED TO PUBLIC AGENCIES.

2 A. Subject to such restrictions as the Oklahoma Employment
3 Security Commission may by rule prescribe, information maintained by
4 the Commission may be made available to any agency of this or any
5 other state, or any federal agency, charged with the administration
6 of an unemployment compensation law or the maintenance of a system
7 of public employment offices, or the Internal Revenue Service of the
8 United States Department of the Treasury, the United States Social
9 Security Administration or the Oklahoma Tax Commission. Any
10 information obtained in connection with the administration of the
11 employment service may be made available to:

12 1. Persons or agencies for purposes appropriate to the
13 operation of a public employment service; or

14 2. Any agency of this state or its political subdivisions ~~or~~
15 ~~nonprofit corporation~~ that operates a program or activity designated
16 as a required partner in the Workforce ~~Investment~~ Innovation and
17 Opportunity Act One-Stop delivery system pursuant to 29 U.S.C.,
18 Section ~~2841~~ 3151 (b) (1), in accordance with a written agreement
19 entered into between the partner and the Commission.

20 B. Upon request, the Commission shall furnish to any agency of
21 the United States charged with the administration of public works or
22 assistance through public employment, and may furnish to any state
23 agency similarly charged, the name, address, ordinary occupation,
24 and employment status of each recipient of benefits and such

1 recipient's rights to further benefits pursuant to the provisions of
2 the Employment Security Act of 1980. The Commission shall furnish
3 to public agencies collecting debts created by food stamp
4 overissuances or administering Transitional Assistance to Needy
5 Families (TANF) or child support programs, promptly upon request and
6 in the most economical, effective and timely manner, information as
7 to:

8 1. Whether an individual has applied for, is receiving or has
9 received unemployment insurance and the amount;

10 2. The individual's current address;

11 3. Whether the individual has refused employment and if so a
12 description of the job including the terms, conditions and rate of
13 pay; and

14 4. Any other information that might be useful in locating any
15 individual who may have a food stamp overissuance or an obligation
16 for support.

17 SECTION 8. REPEALER 40 O.S. 2011, Section 3-809, is
18 hereby repealed.

19 SECTION 9. This act shall become effective November 1, 2017.
20

21 COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND
22 PENSIONS, dated 02/08/2017 - DO PASS, As Coauthored.
23
24