

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SENATE BILL 111

By: Newberry

AS INTRODUCED

An Act relating to the Oklahoma Employment Security Commission; amending 40 O.S. 2011, Sections 1-227, Section 3, Chapter 287, O.S.L. 2016, 2-104, 2-209, Section 12, Chapter 287, O.S.L. 2016, 4-508, as last amended by Section 19, Chapter 249, O.S.L. 2015, and 4-509 (40 O.S. Supp. 2016, Sections 1-229, 3-121 and 4-508), which relate to experience period, assigned tax rate, computation of benefit amount, benefits for certain employees, professional employer organizations, and confidential information; modifying language; modifying references; providing certain credit for certain PEO co-employer; updating name of certain federal act; repealing 40 O.S. 2011, Section 3-809; providing an effective date; and declaring an emergency.

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

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

Section 1-227. "Experience period" means:

~~1. For any tax year occurring before January 1, 2007, the most recent three (3) consecutive completed calendar years occurring before the calendar year for which a tax rate is being calculated, and~~

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

5 SECTION 2. AMENDATORY Section 3, Chapter 287, O.S.L.
6 2016 (40 O.S. Supp. 2016, Section 1-229), is amended to read as
7 follows:

8 Section 1-229.

9 ASSIGNED TAX RATE AND EARNED TAX RATE.

10 A. "Assigned tax rate" means the tax rate assigned to an
11 employer pursuant to Section 3-110.1 ~~of Title 40 of the Oklahoma~~
12 ~~Statutes of this title~~ when the employer does not have sufficient
13 experience history to meet the At-Risk Rule set out in paragraph 3
14 of Section ~~10 of this act~~ 3-110.1 of this title.

15 B. "Earned tax rate" means the tax rate calculated for an
16 employer with sufficient experience history to meet the At-Risk Rule
17 set out in paragraph 3 of Section ~~10 of this act~~ 3-110.1 of this
18 title with the tax rate calculated pursuant to the provisions of
19 Part 1 of Article 3 of the Employment Security Act of 1980.

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

22 Section 2-104.

23 COMPUTATION OF BENEFIT AMOUNT.

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 wage
14 of the second preceding calendar year during any calendar year in
15 which the balance in the Unemployment Compensation Fund is in excess
16 of the amount required to initiate conditional contribution rates,
17 pursuant to the provisions of Section 3-113 of this title,

18 ~~(2) fifty-seven~~ 2. Fifty-seven and one-half percent (57.5%)
19 of the average weekly wage of the second preceding calendar year
20 during calendar years in which condition "a" exists,

21 ~~(3) fifty-five~~ 3. Fifty-five percent (55%) of the average
22 weekly wage of the second preceding calendar year during calendar
23 years in which condition "b" exists,

1 ~~(4) — fifty-two~~ 4. Fifty-two and one-half percent (52.5%) of
2 the average weekly wage of the second preceding calendar year during
3 calendar years in which condition "c" exists, and

4 ~~(5) — fifty~~ 5. Fifty percent (50%) of the average weekly wage
5 of the second preceding calendar year during calendar years in which
6 condition "d" exists.

7 C. Before the last day of June of each year the Commission
8 shall determine the average weekly wage of the preceding calendar
9 year in the following manner:

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

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

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

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

20 Section 2-209.

21 BENEFITS FOR EMPLOYEES OF GOVERNMENTAL OR NONPROFIT EMPLOYERS.

22 Benefits based on service in employment defined in ~~paragraphs~~
23 ~~(2),~~ paragraph (3) or (4) of Section 1-210 of this title, including
24 any federally operated educational institutions, shall be payable in

1 the same amount, on the same terms and subject to the same
2 conditions as benefits payable on the basis of other service subject
3 to the Employment Security Act of 1980, except that:

4 (1) With respect to service performed in an instructional,
5 research or principal administrative capacity for an educational
6 institution, benefits shall not be paid based on ~~such~~ services for
7 any week of unemployment commencing during the period between two

8 (2) successive academic years, or during a similar period between
9 two regular but not successive terms, or during a period of paid
10 sabbatical leave provided for in the individual's contract, to any
11 individual if ~~such~~ the individual performs ~~such~~ services in the
12 first ~~of such~~ academic ~~years~~ year or ~~terms~~ term and if there is a
13 contract or a reasonable assurance that ~~such~~ the individual will
14 perform services in any ~~such~~ capacity for any educational
15 institution in the second ~~of such~~ academic ~~years~~ year or ~~terms~~ term.

16 (2) With respect to services performed in any other capacity
17 for an educational institution, benefits shall not be paid on the
18 basis of ~~such~~ services to any individual for any week which
19 commences during a period between two (2) successive academic years
20 or terms if ~~such~~ the individual performs ~~such~~ services in the first
21 ~~of such~~ academic ~~years~~ year or ~~terms~~ term and there is a reasonable
22 assurance that ~~such~~ the individual will perform ~~such~~ services in the
23 second ~~of such~~ academic ~~years~~ year or ~~terms~~ term, except that if
24 compensation is denied to any individual under this paragraph and

1 ~~such~~ the individual was not offered an opportunity to perform ~~such~~
2 services for the educational institution for the second ~~of such~~
3 academic ~~years~~ year or ~~terms~~ term, ~~such~~ the individual shall be
4 entitled to a retroactive payment of compensation for each week for
5 which the individual filed a timely claim for compensation and for
6 which compensation was denied solely by reason of this clause.

7 (3) With respect to any services described in paragraphs (1)
8 and (2) of this section, benefits shall not be payable on the basis
9 of services in any ~~such~~ capacities to any individual for any week
10 which commences during an established and customary vacation period
11 or holiday recess if ~~such~~ the individual performs ~~such~~ services in
12 the period immediately before ~~such~~ the vacation period or holiday
13 recess, and there is a reasonable assurance that ~~such~~ the individual
14 will perform ~~such~~ services in the period immediately following ~~such~~
15 the vacation period or holiday recess.

16 (4) 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 as specified in paragraphs (1),
19 (2) and (3) of this section to any individual who performed ~~such~~
20 services in an educational institution while in the employ of an
21 educational service agency. For purposes of this paragraph, the
22 term "educational service agency" means a governmental agency or
23 governmental entity which is established and operated exclusively
24

1 for the purpose of providing ~~such~~ services to one or more
2 educational institutions.

3 (5) With respect to services to which paragraphs ~~(2),~~ (3) or
4 (4) of Section 1-210 of this title apply, if ~~such~~ services are
5 provided to or on behalf of an educational institution, benefits
6 shall not be payable under the same circumstances and subject to the
7 same terms and conditions as described in paragraphs (1), (2), (3)
8 and (4) of this section.

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

14 SECTION 5. AMENDATORY Section 12, Chapter 287, O.S.L.
15 2016 (40 O.S. Supp. 2016, Section 3-121), is amended to read as
16 follows:

17 Section 3-121.

18 PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER OF EXPERIENCE
19 HISTORY.

20 If a Professional Employer Organization, or PEO, chooses the
21 option to file quarterly tax returns under the account assigned to
22 its client pursuant to paragraph 2 of subsection A of Section 3-120
23 of ~~Title 40 of the Oklahoma Statutes~~ this title, and if the client
24 has an experience history from a previous account assigned to that

1 client that can be used in calculating an earned tax rate pursuant
2 to the provisions of Article 3, Part 1, of the Employment Security
3 Act of 1980, then that experience history shall be transferred to
4 the account assigned to that client as a co-employer of that PEO.
5 Further, if taxable wages were reported by a client in a previous
6 account of the client within the calendar year in which the PEO co-
7 employer account is set up, then the PEO co-employer account shall
8 be given credit for the taxable wages paid on each employee in the
9 immediate previous account under which client wages were reported.

10 SECTION 6. AMENDATORY 40 O.S. 2011, Section 4-508, as
11 last amended by Section 19, Chapter 249, O.S.L. 2015 (40 O.S. Supp.
12 2016, Section 4-508), is amended to read as follows:

13 Section 4-508.

14 INFORMATION TO BE KEPT CONFIDENTIAL - DISCLOSURE.

15 A. Except as otherwise provided by law, information obtained
16 from any employing unit or individual pursuant to the administration
17 of the Employment Security Act of 1980, any workforce system program
18 administered or monitored by the Oklahoma Employment Security
19 Commission, 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
23 employer, or agent of ~~such person~~ either as authorized in writing,
24 shall be supplied with information from the records of the Oklahoma

1 Employment Security Commission, to the extent necessary for the
2 proper presentation of the claim or complaint in any proceeding
3 under the 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~~ that
7 employer information regarding weekly benefit amounts paid its
8 workers during a specified temporary layoff period, provided ~~such~~
9 the Supplemental Unemployment Benefit (SUB) Plan requires benefit
10 payment information before Supplemental Unemployment Benefits can be
11 paid to ~~such~~ the 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~~ this 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~~ the
10 aggregation 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 Commission, and the Insurance Department for use in investigation of
19 workers' compensation fraud;

20 11. The release to employees of any Oklahoma state, Oklahoma
21 county or Oklahoma municipal law enforcement agency for use in
22 criminal investigations and the location of missing persons or
23 fugitives from 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~~ the aggregation meets disclosure
23 requirements 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~~ the aggregation meets disclosure requirements of the
8 Commission;

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

20 17. The release to employees of the Attorney General, the
21 Oklahoma State Bureau of Investigation, and the Insurance Department
22 for use in the investigation of insurance fraud and health care
23 fraud;
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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 required partner in the
8 Workforce ~~Investment~~ Innovation and Opportunity Act One-Stop
9 delivery system pursuant to 29 U.S.C.A., Section ~~2481(b)~~ 3151(b)(1),
10 based on a showing of need made to the Commission and after an
11 agreement concerning the release of information is entered into with
12 the entity receiving the information;

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

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

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

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

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

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

18 26. The release to employees of the Office of Juvenile Affairs
19 of information for use in assessing results and outcomes of clients
20 served as well as the effectiveness of state and local juvenile and
21 justice programs including prevention and treatment programs. The
22 information obtained shall be kept confidential by the Office of
23 Juvenile Affairs and shall not be disclosed or be open to public
24 inspection. The Office of Juvenile Affairs may release aggregated

1 data for programs or larger aggregate units, provided that the
2 aggregation meets disclosure requirements of the Oklahoma Employment
3 Security Commission; or

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

19 D. Subpoenas to compel disclosure of information made
20 confidential by this statute shall not be valid, except for
21 administrative subpoenas issued by federal, state, or local
22 governmental agencies that have been granted subpoena power by
23 statute or ordinance. Confidential information maintained by the
24 Commission can be obtained by order of a court of record that

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

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

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

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

23 Section 4-509.

24 INFORMATION TO BE FURNISHED TO PUBLIC AGENCIES.

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

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

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

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

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

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

9 2. The individual's current address;

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

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

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

18 SECTION 9. This act shall become effective July 1, 2017.

19 SECTION 10. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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