

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1110

By: McDaniel

AS INTRODUCED

An Act relating to labor; amending 40 O.S. 2011, Section 1-227, Section 3, Chapter 287, O.S.L. 2016, Sections 2-104 and 2-209, Section 12, Chapter 287, O.S.L. 2016, and Sections 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 the Employment Security Act of 1980; updating language and statutory citations; providing for credit for taxable wages paid for certain employers; repealing 40 O.S. 2011, Section 3-809, which relates to group employer accounts; and providing an effective date.

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.

"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~~

~~2. For any tax year occurring after December 31, 2006, the most recent twelve (12) consecutive completed calendar quarters occurring~~

1 before July 1 of the year immediately preceding the year for which
2 the employer's contribution rate is being calculated.

3 SECTION 2. AMENDATORY Section 3, Chapter 287, O.S.L.
4 2016 (40 O.S. Supp. 2016, Section 1-229), is amended to read as
5 follows:

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

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

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

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

19 Section 2-104. COMPUTATION OF BENEFIT AMOUNT.

20 A. The weekly benefit amount of an individual shall be an
21 amount equal to one twenty-third (1/23) of the taxable wages paid to
22 the individual during that quarter of his base period in which ~~such~~
23 the taxable wages were highest. If ~~such~~ the amount is more than the
24 maximum weekly benefit amount, it shall be reduced to the maximum

1 weekly benefit amount or if the amount is less than Sixteen Dollars
2 (\$16.00), it shall be increased to Sixteen Dollars (\$16.00).

3 B. The maximum weekly benefit amount shall be:

4 1. ~~Prior to July 1, 1984, One Hundred Eighty-five Dollars~~
5 ~~(\$185.00); and~~

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

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

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

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

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

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

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

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

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

6 ~~(5) fifty~~

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

11 C. Before the last day of June of each year the Commission
12 shall determine the average weekly wage of the preceding calendar
13 year in the following manner:

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

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

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

22 SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-209, is
23 amended to read as follows:
24

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

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

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

21 (2) With respect to services performed in any other capacity
22 for an educational institution, benefits shall not be paid on the
23 basis of ~~such~~ services to any individual for any week which
24 commences during a period between two (2) successive academic years

1 or terms if ~~such~~ the individual performs ~~such~~ services in the first
2 ~~of such~~ academic ~~years~~ year or ~~terms~~ term and there is a reasonable
3 assurance that ~~such~~ the individual will perform ~~such~~ services in the
4 second ~~of such~~ academic ~~years~~ year or ~~terms~~ term, except that if
5 compensation is denied to any individual ~~under~~ pursuant to this
6 paragraph and ~~such~~ the individual was not offered an opportunity to
7 perform ~~such~~ services for the educational institution for the second
8 ~~of such~~ academic ~~years~~ year or ~~terms~~ term, ~~such~~ the individual shall
9 be entitled to a retroactive payment of compensation for each week
10 for which the individual filed a timely claim for compensation and
11 for which compensation was denied solely by reason of this clause-;

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

21 (4) With respect to any services described in paragraphs (1)
22 and (2) of this section, benefits shall not be payable on the basis
23 of services in any ~~such~~ capacities as specified in paragraphs (1),
24 (2) and (3) of this section to any individual who performed ~~such~~

1 services in an educational institution while in the employ of an
2 educational service agency. For purposes of this paragraph, the
3 term "educational service agency" means a governmental agency or
4 governmental entity which is established and operated exclusively
5 for the purpose of providing ~~such~~ services to one or more
6 educational institutions~~;~~;

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

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

18 SECTION 5. AMENDATORY Section 12, Chapter 287, O.S.L.
19 2016 (40 O.S. Supp. 2016, Section 3-121), is amended to read as
20 follows:

21 Section 3-121. PROFESSIONAL EMPLOYER ORGANIZATIONS - TRANSFER
22 OF EXPERIENCE HISTORY.

23 If a Professional Employer Organization, or PEO, chooses the
24 option to file quarterly tax returns under the account assigned to

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

14 SECTION 6. AMENDATORY 40 O.S. 2011, Section 4-508, as
15 last amended by Section 19, Chapter 249, O.S.L. 2015 (40 O.S. Supp.
16 2016, Section 4-508), is amended to read as follows:

17 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -
18 DISCLOSURE.

19 A. Except as otherwise provided by law, information obtained
20 from any employing unit or individual pursuant to the administration
21 of the Employment Security Act of 1980, any workforce system program
22 administered or monitored by the Oklahoma Employment Security
23 Commission, and determinations as to the benefit rights of any
24 individual shall be kept confidential and shall not be disclosed or

1 be open to public inspection in any manner revealing the
2 individual's or employing unit's identity. Any claimant or
3 employer, or agent of ~~such person~~ either as authorized in writing,
4 shall be supplied with information from the records of the Oklahoma
5 Employment Security Commission, to the extent necessary for the
6 proper presentation of the claim or complaint in any proceeding
7 under the Employment Security Act of 1980, with respect thereto.

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

18 C. The provisions of this section shall not prevent the
19 Commission from disclosing the following information and no
20 liability whatsoever, civil or criminal, shall attach to any member
21 of the Commission or any employee thereof for any error or omission
22 in the disclosure of ~~such~~ this information:
23
24

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

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

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

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

18 5. The disclosing of information or evidence to the Attorney
19 General or any district attorney when the information or evidence is
20 to be used by the officials or other parties to the proceedings to
21 prosecute or defend allegations of violations of the Employment
22 Security Act of 1980. The information disclosed to the Attorney
23 General or any district attorney shall be kept confidential by them
24 and not be disclosed except when presented to a court in a

1 prosecution of a violation of Section 1-101 et seq. of this title,
2 and a violation by the Attorney General or district attorney by
3 otherwise releasing the information shall be a felony;

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

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

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

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

21 10. The release to employees of the Attorney General, ~~the State~~
22 ~~Insurance Fund,~~ the Department of Labor, the Workers' Compensation
23 Commission, and the Insurance Department for use in investigation of
24 workers' compensation fraud;

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

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

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

16 14. The release to employees of the Center for Economic and
17 Management Research of the University of Oklahoma, the Center for
18 Economic and Business Development at Southwestern Oklahoma State
19 University, or a center of economic and business research or
20 development at a comprehensive or regional higher education
21 institution within The Oklahoma State System of Higher Education of
22 information required to identify economic trends. The information
23 obtained shall be kept confidential by the higher education
24 institution and shall not be disclosed or be open to public

1 inspection. The higher education institution may release aggregated
2 data, provided that ~~such~~ the aggregation meets disclosure
3 requirements of the Commission;

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

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

23 17. The release to employees of the Attorney General, the
24 Oklahoma State Bureau of Investigation, and the Insurance Department

1 for use in the investigation of insurance fraud and health care
2 fraud;

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

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

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

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

20 22. The release of employer tax information and benefit claim
21 information to the Oklahoma Health Care Authority for use in
22 determining eligibility for a program that will provide subsidies
23 for health insurance premiums for qualified employers, employees,
24 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. INFORMATION TO BE FURNISHED TO PUBLIC AGENCIES.
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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 November 1, 2017.

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20 56-1-5075 LRB 01/10/17
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