

ARKANSAS

SB 1116
(Act No. 1191)

ENACTED and EFFECTIVE April 12, 2013

Financing

Adds language concerning an employer's additional contribution assessments as follows:

- Furthermore, for calendar years beginning January 1, 2014, and thereafter, after 2 consecutive years of being assessed an additional contribution of 4 percent under the language in the law preceding this language, the additional contribution assessment shall increase to 6 percent.
- Furthermore, for calendar years beginning January 1, 2014, and thereafter, after 2 consecutive years of being assessed an additional contribution of 6 percent as set out in the above dot point, the additional contribution assessment shall increase to 8 percent.

COLORADO

HB 1123
(CH 148)

ENACTED and EFFECTIVE April 26, 2013

Administration

Provides that notwithstanding the confidentiality requirements, the Division of Employment and Training may offer veterans and other persons seeking employment the opportunity to waive the confidentiality of certain information including the person's name, address, telephone number, and e-mail address so that the division may make available the waived information to bona fide employers seeking employees.

HAWAII

SB 888
(Act No. 69)

ENACTED and EFFECTIVE April 30, 2013

Administration

Defines "new hire" to mean an employee who has not previously been employed by the employer or who was previously employed by the employer but has been separated for at least 60 consecutive days.

KENTUCKY

HB 102
(CH 45)

ENACTED and EFFECTIVE March 21, 2013

Financing

Provides that sums collected from the 15 percent penalty assessed as a result of fraud shall be paid into the State's unemployment trust fund.

Provides that notwithstanding any other provisions of law, no contributing employer's reserve account shall be relieved of any charges for benefits relating to an improper benefit payment to a worker established after October 21, 2013, if: (a) the improper benefit payment was made

because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request for information relating to a claim for benefits; and (b) the employer, or an agent of the employer, has a pattern of failing to respond timely or adequately to requests. A “pattern of failing” means at least 6 failures occur in a calendar year or the failure to respond to 2 percent of such requests in a calendar year, whichever is greater.

Overpayments

Provides that any person who has received any sum as benefits under this State’s or any other State’s unemployment insurance statutes or any U.S. Department of Labor unemployment insurance benefit program, providing a reciprocal agreement has been signed with such other State or the U.S. Department of Labor, while any condition for the receipt of such benefits was not fulfilled in the person’s case, or while the person was disqualified from receiving benefits, or if the person has received benefits in weeks for which the person later receives a back pay award, shall either have such sum deducted from any future benefits payable to the person or repay the Office of Employment and Training, Department of Workforce Investment, for the fund, a sum equal to the amount so received by the person. If, after due notice, the recipient of such sum fails to remit or arrange for remittance of the sum, the sum may be collected by civil action, and any sums so collected shall be credited to the pooled account or the appropriate reimbursing employer account. The appropriate reimbursing employer account shall not receive credit for sums collected under this paragraph or other specific provisions of the unemployment compensation law if a determination has been made that an improper benefit payment established after October 21, 2013, was due to the reimbursing employer, or an agent of the employer, failing to respond timely or adequately to the request for information relating to a claim for benefits, and there has been a pattern of failing to respond timely or adequately to requests for information relating to a claim for benefits. The sums collected shall be credited to the pooled account. If any benefit was paid as a result of office error as defined by administrative regulation, there shall be no recoupment or recovery of an improperly paid benefit except by deduction from any future benefits payable the person. For purposes of this paragraph, overpayments as a result of a reversal of entitlement to benefits in the appeal or review process shall not be construed to be the result of office error.

Provides that a recipient of benefits paid as a result of a false statement, misrepresentation, or concealment of material information by the recipient shall be assessed a 15 percent penalty of the amount of improperly paid benefits. The penalty shall be collected by deduction from any future benefits payable, repayment, or civil action.

MARYLAND

HB 583
(CH 121)

ENACTED April 9, 2013
EFFECTIVE October 1, 2013

Financing

Prohibits removal of a benefit charge related to a claim for benefits if the employing unit or the employing unit’s agent fails to respond timely or adequately to a request for information and the employing unit or agent has not shown good cause for failing to provide timely or adequate

information. The employing unit or the employing unit's agent must provide written notification of good cause and bears the burden of proof to establish good cause.

Provides that benefit charges may be removed from the account of a not for profit organization or governmental entity for benefits recovered. Benefit charges shall not be removed if benefits were paid as a result of the not for profit organization or governmental entity failing to provide timely or adequate information in response to a request for information related to the claim for benefits or if the not for profit organization or governmental entity has not demonstrated good cause for failing to provide timely and adequate information. The not for profit organization or governmental entity must raise the issue of good cause in writing and has the burden of proving good cause.

MONTANA

**HB 127
(CH 203)**

ENACTED and EFFECTIVE April 15, 2013

Financing

Provides that an employing unit or its representative shall waive its rights, and the Department of Labor and Industry shall consider the employing unit to be no longer eligible as an interested party with respect to the claim and deny credit to the employing unit for any erroneous payment to the claimant for: (1) untimely filing wage, employment, separation, and eligibility information requested by the Department without good cause; and (2) failing to provide complete answers in response to the Department's request for information. An employing unit that elects to make payments in lieu of contributions is also subject to this provision.

Provides that of the money collected from the penalties assessed on fraudulent benefits, 70 percent must be deposited in the unemployment compensation administration account and the remaining 30 percent (15 percent of the collected penalties) must be deposited in the State's unemployment insurance fund. (Previously, the law required that all money accruing from the penalty to be deposited in the federal special revenue account.)

Nonmonetary Eligibility

Provides that "rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations of less than 60 days from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.

Overpayments

Modifies the repayment provision when a person makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this State or under an employment security law of any other state or territory or the federal government, either for the individual or for any other person, by requiring the individual to repay a sum equal to the amount wrongfully received by the individual, plus a department-assessed penalty equal to 50 percent of the fraudulently obtained

benefits. The department-assessed penalty incorporates the 15 percent fraudulent penalty required by federal law. (Previously, the law provided that the department may assess a penalty not to exceed 100 percent.)

Provides that benefits may not be used to offset the penalty due. (Previously, the law provided that future benefits may not be used to offset the penalty due.)

MONTANA

**SB 127
(CH 287)**

ENACTED and EFFECTIVE April 24, 2013

Nonmonetary Eligibility

Adds to the definition of “misconduct” the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer including:

(A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions, processes, or instructions of the employer;

(B) repeated inexcusable tardiness following warnings by the employer;

(C) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(D) false statements made as part of a job application process, including but not limited to deliberate falsification of the individual’s criminal history, work record, or educational or licensure achievements;

(E) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective bargaining agreement by which the employee is covered. However, an employee who engages in lawful union activity may not be disqualified because of misconduct under this definition.

(G) violations of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(H) actions by the claimant who, while acting within the scope of employment, commits violations of law that significantly affect the claimant’s job performance or that significantly harm the employer’s ability to do business; and

(ii) deliberate violations or disregard of established employer standards or of standards of behavior that the employer has the right to expect of an employee.

NORTH DAKOTA

**HB 1112
(CH 393)**

ENACTED and EFFECTIVE April 26, 2013

Financing

Provides that to preserve the automatic lien against an employer for contributions, interest, or penalty, and costs that accrue, against subsequent mortgages, purchasers for value and without notice of the lien, judgment creditors, and lienholders, the Job Service North Dakota shall file a notice of lien either (1) in the central indexing system or (2) with the recorder. In either method, the attorney general, upon request of Job Service North Dakota, may bring suit without bond to foreclose the lien.

Nonmonetary Eligibility

Modifies the provisions relating to labor disputes by disqualifying an individual for benefits for any week that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or lockout; provided, that this disqualification does not apply if: (a) the individual is not participating in or directly interested in the labor dispute; and (b) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the labor dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must be deemed to be a separate factory, establishment, or other premises. (Previous law provided for a disqualification for benefits for any week the individual's unemployment is due to a strike, sympathy strike, or a claimant's work stoppage dispute of any kind which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed; provided, that this disqualification does not apply if: (a) the individual is not participating in or directly interested in the labor dispute which caused the strike, sympathy strike, or a claimant's work stoppage dispute of any kind; and (b) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the strike, sympathy strike, or a claimant's work stoppage dispute of any kind occurs, any of whom are participating in or directly interested in the dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must be deemed to be a separate factory, establishment, or other premises.)

TEXAS

**SB 1286
(CH 117)**

**ENACTED May 18, 2013
EFFECTIVE September 1, 2013**

Administration

Modifies the provisions of the Labor Code relating to professional employer organizations. Changes the name of "staff leasing services companies" to the name "professional employer organizations." (Under previous law, the term staff leasing services company included a

professional employer organization.) “Professional employer organization” means a business entity that offers professional employer (previously, staff leasing) services. “Professional employer services” means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. “Client” (previously client company) means any person who enters into a professional employer services agreement with a license holder. “Coemployer” means a professional employer organization or a client that is a party to a coemployment relationship. “Coemployment” relationship means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and the Texas unemployment compensation law. “Covered employee” means an individual having a coemployment relationship with a professional employer organization and a client. Also modifies the Tax Code to reflect the changes made to the Labor Code modifying the professional employer organization provisions.

Nonmonetary Eligibility

Modifies the disqualification for voluntarily leaving work provisions under the unemployment compensation law to reflect the modification to the Labor Code relating to the professional employer organization provisions by replacing the term “staff leasing services company” with the term “professional employer organization” and the term “assigned employee” with the term “covered employee”.

UTAH **HB 21**
 (CH 315)

ENACTED and EFFECTIVE April 1, 2013

Financing

Provides that beginning October 1, 2013, 15 percent of a civil penalty for fraud collected on a fraud overpayment shall be deposited into the State’s Unemployment Compensation Fund.

Nonmonetary Eligibility

Establishes that an individual located in a foreign country for 3 or more days of a week and who is otherwise eligible for benefits is only eligible to receive benefits for that week if: (a) the individual is legally authorized to work in the foreign country; and (b) the state and the foreign country have entered into a reciprocal agreement concerning the payment of unemployment benefits.

Overpayments

Provides that an individual is ineligible for benefits for each week benefits are obtained by willfully making a false statement or representation or by knowingly failing to report a material fact, and a penalty of no more than 49 additional weeks as follows: (i) 13 weeks for the first week the false statement or representation was made or fact withheld to receive a benefit; and (ii) 6 weeks for each additional week the false statement or representation was made or fact withheld

to receive a benefit. The additional penalty weeks shall begin on the Sunday of the week the determination finding the claimant in violation is issued. (Previously, an individual is ineligible for benefits for each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and 6 weeks for each week thereafter; the additional weeks not to exceed 49 weeks. The additional period shall commence on the Sunday following the issuance of a determination finding the claimant in violation of this provision.) Provides that each claimant found in violation of this provision shall repay the overpayment and, as a civil penalty for fraud, an amount equal to the overpayment. The civil penalty for fraud amount shall be treated as any other penalty, and the repayment of an overpayment and a civil penalty for fraud shall be collectible by civil action or warrant.

VIRGINIA SB 775
(CH 771)

ENACTED and EFFECTIVE April 3, 2013

Financing

Provides that a contributing employer's account will not be relieved of charges relating to an erroneous payment of benefits if the erroneous payment was made because the employer failed to respond timely or adequately to a written request for information relating to the claim, and the employer has established a pattern of failing to respond timely or adequately to written requests for information relating to claims.

Assesses a \$75 civil penalty upon a third determination within the applicable review period that an employer failed to respond timely or adequately to a written request for information relating to a claim. Requires the payment of the penalties into the Special Unemployment Compensation Administration Fund.

Provides that the cost of benefits charged to any governmental entity, Indian tribe, or nonprofit entity that is a reimbursable employing unit shall not include any credits of benefit overpayments actually collected if the overpayment was made because the entity or its agent was at fault for failing to respond timely or adequately to a written request for information relating to a claim, and the entity or agent has established a pattern of failing to respond timely or adequately to such requests.

Provides that if the erroneous payment results from a combined-wage claim, the determination of noncharging for such claim shall be made by the paying State. If the response from the employer does not meet the criteria established by the paying State for an adequate or timely response, the paying state shall promptly notify the transferring State of its determination, and the employer shall be appropriately charged.

(The above provisions are applicable to erroneous payments established on or after July 7, 2013.)

Provides that the 15 percent penalties collected due to fraud overpayments shall be paid into the State Treasury and credited to the clearing account of the State's Fund.

Overpayments

Disqualifies an individual for benefits for 52 weeks beginning with the date of the determination or decision, if such individual within 36 calendar months immediately preceding such determination or decision has knowingly made a false statement or representation or has knowingly failed to disclose a material fact, to obtain or increase any benefit or payment, under this state or any other unemployment compensation of any other state or Federal government program either for himself or any other person. Fraudulently obtained overpayments and the amount of the 15 percent penalty assessed shall be recoverable as follows: the individual shall be liable to repay such sum, and if not refunded, the amount shall be deducted from any future benefits under an unemployment program of the United States or of any other State; if an overpayment of benefits under the State's law, but not under any other State's law or the United States is due to administrative errors, the Virginia Employment Commission shall have authority to negotiate the terms of the repayment, including (i) deducting up to 50 percent of the payable amount for any future week of benefits claimed until the overpayment is satisfied; (ii) forgoing collection of the payable amount until the recipient has found employment, or (iii) determining and instituting an individualized repayment plan. The Commission shall collect an overpayment of benefits under the State's law caused by administrative error only by offset against future benefits or a negotiated repayment plan; however, the Commission may institute any other method of collection if the individual fails to enter into or comply with the terms of the repayment plan. In addition, the overpayment may be collectable by civil action, and civil action collections may be subject to an interest charge from the date of judgment and may be subject to fees and costs. Collection activities for overpayments of \$5.00 or less may be suspended. Any benefit overpayment which remains unpaid after the expiration of 7 years from the date such overpayment was determined, or immediately upon the individual's death, or due to bankruptcy, may for good cause be determined as uncollectible and discharged from the record. (Previously, in addition to the 52 week disqualification, the individual was ineligible for benefits until the sum was repaid.)

Assesses a 15 percent penalty on any person of the amount of overpayment to which not entitled if disqualified for benefits for knowingly making a false statement or representation or knowingly failing to disclose a material fact to obtain or increase any benefit or payment. The penalty applies to an erroneous payment made under any State program and any Federal program providing for the payment of unemployment compensation.

Provides that when a recovery with respect to an erroneous payment is made, any recovery shall be applied first to the principal of the erroneous payment, then to the penalty amount, and finally to any other amounts due.

