

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 4
November 2016

ARIZONA HB 2114
(CH 231)

ENACTED May 12, 2016
EFFECTIVE August 6, 2016

Coverage

Establishes provisions concerning a declaration of independent business status which prescribes the employment relationship between an employing unit and an independent contractor. Compliance with these provisions and the execution of a declaration of independent business status in compliance with these provisions are not mandatory in order to establish the existence of an independent contractor relationship between an employing unit and an independent contractor. The failure of a party to execute a declaration does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

Provides that any employing unit contracting with an independent contractor may prove the existence of an independent contractor relationship by the independent contractor executing a declaration of independent business status, and by the employing unit acting in a manner substantially consistent with the declaration. Compliance creates a rebuttable presumption of an independent contractor relationship between the independent contractor and the employing unit with whom the independent contractor contracts.

Provides that any declaration of independent business status shall be signed by the independent contractor, be dated, and substantially comply with the form provided in the established provisions.

Provides that this declaration of independent business status is made by the contractor in relation to services performed by the contractor for or in connection with the contracting party. The contractor must state, declare, and acknowledge those specifics contained in the established provisions.

Provides that the execution of a declaration of independent business status and substantial compliance with the declaration pursuant to the established provisions does not operate to the same effect as or otherwise act as a substitute for a written agreement.

COLORADO SB 179
(CH 275)

ENACTED June 10, 2016
EFFECTIVE August 10, 2016

Coverage

Provides that to improve the process of determining the classification of an individual for Federal Unemployment Insurance Tax purposes, including any audits performed, the state Department of Labor and Employment will:

(a) develop guidance to enhance employer education and outreach with regard to worker classification and continue to improve its audit processes with compliance in mind;

(b) clarify the process by which an employer or individual may submit further information in response to a determination by the Department and prior to an appeal;

(c) establish an individual to serve as a resource for employers by providing guidance on: (1) the proper classification of workers; (2) audit findings; and (3) options for curing or appealing an audit;

(d) establish internal methods to improve the consistency among auditors; and

(e) establish an independent review of a portion of audit and appeal results at least twice a year to monitor trends and make improvements to the audit process.

Financing

Appropriates \$36,750 to the state Department of Labor and Employment for the 2016-17 state fiscal year for use by the Division of Unemployment Insurance. This appropriation is from the general fund and is based on an assumption that the Division will require an additional 0.5 full-time equivalent (FTE). To implement the classification provisions, the Division may use this appropriation for program costs.

CONNECTICUT SB 220
(P. A. No. 16-169)

ENACTED May 23, 2016
EFFECTIVE October 1, 2016,
or as otherwise noted

Administration

Deletes the language providing that an individual filing a new claim for unemployment compensation shall be permitted to change a previously elected withholding status one time in a benefit year.

Provides that claims for benefits shall be made in a manner prescribed by the administrator (previously, in accordance with such regulations as the administrator may prescribe, at the public employment bureau or branch most easily accessible either from the individual's place of residence or from the place of his most recent employment, as designated by the administrator).

Replaces the term "Workforce Investment Act of 1998, P.L. 105-220" with the term "Workforce Innovation and Opportunity Act of 2014, P.L. 113-128."

Provides that the state Labor Department, upon the request of the Secretary of the Office of Policy and Management, shall furnish unemployment compensation records maintained by the Labor Commissioner. Nothing in this paragraph shall be construed as limiting the secretary's authority to request or receive information from the state Labor Department. (Previously, the Secretary of the Office of Policy and Management shall be an authorized representative of the Labor Commissioner or administrator of unemployment compensation under chapter 567 and shall receive upon request by the secretary any information in the Labor Commissioner's possession relating to employment records that may include, but need not be limited to: employee name, Social Security number, current residential address, name and address of the employer, employer North American Industry Classification System code and wages. In addition, the state Labor Department, upon the request of the Secretary of the Office of Policy and Management, shall furnish unemployment compensation wage records contained in the quarterly returns required and maintained by the Labor Commissioner.)

Repeals, effective June 6, 2016, section 31-3hh concerning the adoption of regulations setting forth standard contract provisions that shall be included in each contract entered into by a regional workforce development board with any public or private entity and funded by state or federal moneys allocated to a regional workforce development board.

Repeals, effective June 6, 2016, section 31-11x that: (a) defines the terms "underemployed," "unemployed," "economically disadvantaged," and "comprehensive job training and related services;" (b) establishes a program of grants for: (1) job training and related services or job opportunities programs for economically disadvantaged, unemployed and underemployed individuals, including persons of limited English-speaking ability, through opportunities industrialization centers and other community-based organizations; and (2) the establishment and operation in the state of these centers and organizations; and (c) adopts regulations establishing criteria and requirements for the distribution of funds.

Repeals, effective June 6, 2016, section 31-40t that defines the terms "person," "employer," "employee," and "hazardous condition," and provides provisions concerning working in or exposure to a hazardous condition in the workplace.

Appeals

Defines the term "records" to mean the official records, files, and data maintained by the Employment Security Division.

Provides that, in addition to making an inquiry for records through oral testimony or written and printed, an inquiry for records may be made electronically.

Provides that, in addition to an in-person hearing, the administrator or an examiner may prescribe a hearing by telephone at his or her discretion.

Provides that the time limit for filing an appeal to the Administrator of the state Labor Department and to the Board of Review is within 21 calendar days after such notice was provided (previously, after such notice was mailed to his last known address).

Provides that the time limit for filing an appeal to the superior court for the judicial district of Hartford or for the judicial district wherein the appellant resides is 30 calendar days after the date on which a copy of the decision is provided (previously, is mailed) to the party.

Provides that, in addition to filing appeals by mail, appeals may be filed electronically, and if an appeal is filled electronically, such appeal shall be considered timely if it was received within the given time period.

Provides that every decision of a referee or the board shall be issued in a manner prescribed by the appeals division, which may include, but need not be limited to, in writing, in-person delivery, by mail or electronically, to the parties concerned immediately following its rendition. (Previously, every decision of a referee, or the board, shall be in writing and delivered in person or by mail to the parties concerned immediately following its rendition.)

Extensions and Special Programs

Amends the definition of “additional benefits” to mean benefits payable to exhaustees by reason of conditions of high unemployment (previously, benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of section 31-232a).

Repeals, effective June 6, 2016, section 31-232a concerning additional benefits payable during periods of substantial unemployment.

Financing

Repeals, effective June 6, 2016, section 31-268 providing for the adoption of regulations concerning the adjustment of contributions without interest if made through error and without fraudulent intent.

Monetary Entitlement

Deletes the language providing that dependency allowances shall be counted in the amount of maximum benefits provided in section 31-232a.

Nonmonetary Eligibility

Provides that no employer may require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employee’s job performance. (Deletes the following sentence from this paragraph: The Labor Commissioner shall adopt regulations in accordance with chapter 54 to specify circumstances which shall be presumed to give rise to an employer having such a reasonable suspicion, provided nothing in such regulations shall preclude an employer from citing other circumstances as giving rise to such a reasonable suspicion.)

Overpayments

Provides that any person who, through error, has received any sum as benefits while any condition for the receipt of benefits was not fulfilled in his or her case, or has received a greater amount of benefits than was due him or her shall be charged with an overpayment of a sum equal to the amount so overpaid to him or her, provided such error has been discovered and brought to such person's attention within one year of the date of receipt of such benefits. A person whose receipt of such a sum was not due to fraud, wilful misrepresentation, or wilful nondisclosure by himself or herself or another shall be entitled to a determination of eligibility (previously, to a hearing before an examiner) that shall be based upon evidence or testimony presented in a manner prescribed by the administrator, including in writing, by telephone, or by other electronic means. The examiner may prescribe a hearing by telephone or in person at his or her discretion, provided, if an in-person hearing is requested, the request may not be unreasonably denied by the examiner. Notice of the time and place of such hearing, and the reasons for such hearing, shall be given to the person not less than 5 days prior to the date appointed for such hearing. The determination of overpayment shall be final unless the claimant, within 21 days after notice of such determination was provided to the claimant (previously, was mailed to him) at his or her last-known address, files an appeal from such determination to a referee.

Provides that any person charged with the fraudulent receipt of benefits or the making of a fraudulent claim shall be entitled to a determination of eligibility (previously, to a hearing before the administrator, or a deputy or representative) that shall be based upon evidence or testimony presented in a manner prescribed by the administrator, including in writing, by telephone, or by other electronic means. The administrator may prescribe a hearing by telephone or in person at his or her discretion, provided, if an in-person hearing is requested, the request may not be unreasonably denied by the administrator. Any person determined by the administrator to have, on the basis of facts, committed fraud shall be liable for repayment for any benefits collected fraudulently, as well as any other penalties assessed. Until such liabilities have been met, such person shall forfeit any right to receive benefits. Notification of such decision and penalty shall be provided to such person (previously, mailed to such person's last known address) and shall be final unless such person files an appeal not later than 21 days after the date such notification was provided to such person.

DISTRICT OF COLUMBIA B 812
(Act No. 463)

ENACTED July 20, 2016
EFFECTIVE October 1, 2016

Administration

Provides that the Unemployment Benefits Modernization Emergency Amendment Act of 2016 amends, on an emergency basis, provisions of law necessary to support the Fiscal Year 2017 budget, and expires October 20, 2016.

Deletes the following sentence from the unemployment compensation law: All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

Provides that all payments of benefits shall be made by the Chief Financial Officer and shall be subject to a subsequent, but not a prior, audit by the Office of the Inspector General. (Previously, all payments of benefits shall be made by checks drawn by the Director, or the Director's duly authorized agent, shall be made through the employment offices designated by the Director, and shall be subject to a post, but not a prior, audit by the Office of the Inspector General.)

Monetary Entitlement

Increases the maximum weekly benefit amount from \$359 to \$425, effective October 1, 2016.

Amends Section 51-101(5) of the Official Code providing that an individual shall be deemed "unemployed" with respect to any week during which he performs no service and with respect to which no earnings are payable to him or with respect to any week of less than full-time work if 66 percent (previously, 80 percent) of the earnings payable to him with respect to such week are less than his weekly benefit amount plus \$50 (previously, \$20).

Provides that:

- A. Effective January 1, 2018, and for each calendar year thereafter, the maximum weekly benefit amount shall be determined by the Director of the Department of Employment Services, subject to subparagraph D. of this paragraph, by using the Department of Labor State Benefit Financing Model.
- B. The Director shall consider increasing the maximum weekly benefit amount in proportion to any increase in the Consumer Price Index for Urban Consumers in the Washington Metropolitan Statistical Area, published by the United States Department of Labor's Bureau of Labor Statistics, in making a determination, but may increase the maximum weekly benefit amount by a lesser amount, or may not increase it, when necessary to preserve an adequate balance in the District Unemployment Compensation Trust Fund through the Financial Plan.
- C. (1) By September 30, 2017, and by September 30 of each subsequent year, the Director shall recommend to the Mayor the maximum weekly benefit amount, which shall become the maximum weekly benefit amount for the next calendar year, unless the Council passes a resolution disapproving the Director's recommendation pursuant to sub-subparagraph (2) of this subparagraph.
(2) The Mayor shall promptly submit the recommendation, with a proposed resolution, to the Council for a 45-day period of review. If the Council does not approve or disapprove the recommendation, by resolution, within the 45-day period of review, the recommendation shall be deemed approved.
- D. If the Council passes a resolution of disapproval, the maximum weekly benefit amount then in effect shall continue in effect for the next calendar year.

Provides that any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 26 times his weekly benefit amount (previously, equal to 26 times his weekly benefit amount or 50 percent of the wages for employment paid to such individual by employers during his base period whichever is the lesser).

Amends subsection (e) of Section 51-107 of the Official Code providing that any individual who is unemployed in any week and who meets the conditions of eligibility for benefits and is not disqualified shall be paid with respect to such week an amount equal to the individual's weekly benefit amount less any earnings payable to the individual with respect to such week deductible in accordance with the following formula: \$50 (previously \$20) will be added to the weekly benefit amount; from the resulting sum will be subtracted 66 percent (previously, 80 percent) of any earnings payable to the individual for such week. The resulting benefits, if not a multiple of \$1, shall be computed to the next lower multiple of \$1. In no event shall the amount paid for any week exceed the individual's established weekly benefit amount.

MARYLAND

SB 84
(CH 337)

ENACTED May 10, 2016
EFFECTIVE July 1, 2016

Financing

Adds subsection (f), which provides that, for any calendar year beginning on or after January 1, 2017, the table of rates in effect for the immediately preceding calendar year shall continue to apply if: (1) the unemployment insurance fund balance on September 30 of the immediately preceding calendar year was at a level that would result in a table of rates that had lower rates being applied under subsection (d), and (2) the federal funding goals requirement in 20 C.F.R. section 606.32 were not met as of December 31 of the second immediately preceding calendar year.

Makes subsection (f) applicable to all rate tables.

MARYLAND

SB 90
(CH 342)

ENACTED May 10, 2016
EFFECTIVE October 1, 2016

Coverage

Moves the definition of "knowingly" from section 8-201.1 regarding failure to properly classify employee to section 8-101. Removing this term changes the numbering of Section 8-201, and amends the text to correspond to the renumbering.

Overpayments

Renumbers section(s) 8-101(t) through (aa), respectively, of the Labor and Employment Annotated Code of Maryland to be section(s) 8-101(u) through (bb), respectively.

Redefines the term "knowingly" to mean: Except as otherwise provided in this title, having actual knowledge, deliberate ignorance, or reckless disregard for the truth. (Previously, in this section, "knowingly" meant having actual knowledge, deliberate ignorance, or reckless disregard for the truth.)

Provides that the Secretary, Department of Labor, Licensing and Regulation, may recover benefits paid to a claimant who was not entitled to the benefits:

- (1) by deduction from benefits payable to the claimant in the future;
- (2) in the manner for the collection of past due contributions; or
- (3) through other reasonable means of collection, including those permitted under:
 - (i) state law for the collection of debts owed to the state; or
 - (ii) federal law.

Provides that the Secretary may recover benefits paid to a claimant who knowingly made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase a benefit or other payment, in addition to disqualification of the claimant:

- (1) in the manner for the collection of past due contributions;
- (2) through other reasonable means of collection, including those permitted under:
 - (i) state law for the collection of debts owed to the state; or
 - (ii) federal law; or

(3) if the deduction is made by another jurisdiction under an intergovernmental agreement providing for the recovery of overpaid benefits, by deduction from benefits for which the claimant is eligible in the future under the law of the jurisdiction that made the deduction, excluding the monetary penalty of 15 percent of all benefits paid and interest of 1.5 percent per month on the amount of all benefits paid to the claimant.

Provides that, if any of the amounts mentioned above that may be or are required to be recovered have not been recovered within 5 years after the date of the decision to recover the amount, the Secretary may consider the amount uncollectible.

Provides that, if the best interests of the state will be served, the Secretary may adjust, compromise, or settle interest due under subsection (b) of section 8-809 or under section 8-1305.

Provides under section 8-1305 that:

(a) Unless another penalty is provided by statute, a person who willfully violates a provision of the state unemployment compensation law or a regulation adopted under the law is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both.

(b) In addition to the penalty under subsection (a) of section 8-1305, a person who violates section 8-1301:

(1) shall make full restitution of the benefit unlawfully received and pay a monetary penalty of 15 percent of the benefit unlawfully received, including interest at a rate of 1.5 percent

a month on the total amount of restitution plus the monetary penalty from the date the Secretary notifies the person of the amount to be recovered;

(2) shall be disqualified from receiving benefits for any week of unemployment, including the week in which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact, until:

(i) the Secretary determines that:

1. the benefit unlawfully received has been repaid in full; and

2. the monetary penalty of 15 percent and interest at a rate of 1.5 percent a month on the total amount of benefit unlawfully received plus the monetary penalty have been paid in full; or

(ii) the Secretary determines that:

1. in the Secretary's sole discretion under section 8-809(f)(3), the benefit unlawfully received and interest are uncollectible; and

2. the claimant has paid the 15 percent monetary penalty in full; and

(3) shall be disqualified from receiving benefits:

(i) if there were no other previous determinations made that the individual violated section 8-1301 of this subtitle during the immediately preceding 4 benefit years, for 1 year from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact;

(ii) if there were previous determinations made that the individual violated section 8-1301 in only 1 of the immediately preceding 4 benefit years, for 2 years from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact; and

(iii) if there were previous determinations made that the individual violated section 8-1301 in more than 1 of the immediately preceding 4 benefit years, for 3 years from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact.

Provides that the foregoing overpayment provisions apply to fraud determinations made on or after October 3, 2016. Only a fraud determination made on or after October 3, 2016, may count as a previous determination for the purpose of applying section 8-1305(b)(3) of the Labor and Employment Article.

MISSOURI

HB 1530

ENACTED June 6, 2016

EFFECTIVE August 28, 2016

Overpayments

Provides that, if the individual or employer fails to repay the unemployment benefits and penalty assessed as a result of a determination that the individual or employer obtained or denied unemployment benefits by fraud, such sum shall be collectible in the manner provided in subsection 14 for the recovery of overpaid unemployment compensation benefits (previously, provided in sections 288.160 and 288.170 for the collection of past due contributions). If the individual or employer fails to repay the unemployment benefits that the individual or employer denied or obtained by fraud, the Division of Employment Security may offset from any future unemployment benefits otherwise payable the amount of the overpayment, or may take such

steps as are necessary to effect payment from the individual or employer. Future benefits may not be used to offset the penalty due. Money received in repayment of fraudulently obtained or denied unemployment benefits and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty amount due. Regarding payments made toward the penalty, an amount equal to 15 percent of the total amount of benefits fraudulently obtained shall be immediately deposited into the state's unemployment compensation fund upon receipt and the remaining penalty amount shall be credited to the special employment security fund. (Previously, payments made toward the penalty amount due shall be credited to the special employment security fund.)

Provides that any sum of benefits received by any person by reason of the nondisclosure or misrepresentation by such person or by another of a material fact may be recovered in accordance with the provisions of subsection 14.

Provides that any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the Division, has received any sum of benefits while any conditions for the receipt of benefits were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190, in the discretion of the Division, either be liable to have such sums deducted from any further benefits payable to such person or shall be liable to repay to the Division for the unemployment compensation fund a sum equal to the amounts so received by him or her. The Division may recover such sums in accordance with the provisions of subsection 14 below. However, the Division may elect not to process such possible overpayments where the amount of same is not over twenty percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered. (Previously, provided that any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the Division, has received any sum of benefits while any conditions for the receipt of benefits were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person provided that the Division may elect not to process such possible overpayments where the amount of same is not over 20 percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered.)

Subsection 14 provides that recovering overpaid unemployment compensation benefits shall be pursued by the Division against any person receiving such overpaid unemployment compensation benefits through billing, setoffs against state and federal tax refunds to the extent permitted by federal law, intercepts of lottery winnings under section 313.321, and collection efforts as provided for in sections 288.160, 288.170, and 288.175.

MISSOURI

SB 702

ENACTED July 14, 2016

EFFECTIVE August 28, 2016

Coverage

Excludes from the definition of “employee” a taxicab driver of the company that leases the taxicab to the driver or that provides dispatching or similar rider referral services unless the driver is shown to be an employee of that company by application of the Internal Revenue Service twenty-factor right-to-control test.

Overpayments

Provides that, if the individual or employer fails to repay the unemployment benefits and penalty assessed as a result of a determination that the individual or employer obtained or denied unemployment benefits by fraud, such sum shall be collectible in the manner provided in subsection 14 for the recovery of overpaid unemployment compensation benefits (previously, provided in sections 288.160 and 288.170 for the collection of past due contributions). If the individual or employer fails to repay the unemployment benefits that the individual or employer denied or obtained by fraud, the Division of Employment Security may offset from any future unemployment benefits otherwise payable the amount of the overpayment, or may take such steps as are necessary to effect payment from the individual or employer. Future benefits may not be used to offset the penalty due. Money received in repayment of fraudulently obtained or denied unemployment benefits and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty amount due. Regarding payments made toward the penalty, an amount equal to 15 percent of the total amount of benefits fraudulently obtained shall be immediately deposited into the state’s unemployment compensation fund upon receipt and the remaining penalty amount shall be credited to the special employment security fund. (Previously, payments made toward the penalty amount due shall be credited to the special employment security fund.)

Provides that any sum of benefits received by any person by reason of the nondisclosure or misrepresentation by such person or by another of a material fact may be recovered in accordance with the provisions of subsection 14.

Provides that any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the Division, has received any sum of benefits while any conditions for the receipt of benefits were not fulfilled in such person’s case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190, in the discretion of the Division, either be liable to have such sums deducted from any further benefits payable to such person or shall be liable to repay to the Division for the unemployment compensation fund a sum equal to the amounts so received by him or her. The Division may recover such sums in accordance with the provisions of subsection 14 below. However, the Division may elect not to process such possible overpayments where the amount of same is not over 20 percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered. (Previously, provided that any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the Division, has received any sum of benefits while any conditions for the receipt of benefits were not fulfilled in such person’s case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to subsection 2 of section 288.190 have such sums deducted from any further benefits payable to such person provided that the Division may elect not to process such possible overpayments

Creates provisions for seasonal employers and seasonal workers. Unemployment benefits based on services by a seasonal worker performed in seasonal employment are payable only for weeks of unemployment that occur during the normal seasonal work period. Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment that begins during the period between 2 successive normal seasonal work periods to any individual if that individual performs the service in the first of the normal seasonal work periods and if there is a reasonable assurance that the individual will perform the service for a seasonal employer in the second of the normal seasonal work periods. A notice of reasonable assurance shall be given by the employer to the employee in writing on or before the last day of work in the season. If benefits are denied to an individual for any week solely as a result of these provisions and the individual is not offered an opportunity to perform in the second normal seasonal work period for which reasonable assurance of employment had been given, the individual is entitled to a retroactive payment of benefits each week that the individual previously filed a timely claim for benefits.

Provides that not less than 20 days before the estimated beginning date of a normal seasonal work period, an employer may apply in writing for designation as a seasonal employer. Within 90 days after receipt of the application, the Commission shall determine if the employer is a seasonal employer. The employer may appeal this decision. If the employer is determined to be a seasonal employer, the employer shall give notice to each employee of the employer's status as a seasonal employer and the beginning and ending dates of the employer's normal seasonal work periods, and this notice shall be given to the employee within the first 7 days of employment. On or before the last day of work in the season, if the employer intends to issue a notice of reasonable assurance of employment for the next season, the employer shall also give notice to each employee advising that the employee shall timely file an initial application for unemployment benefits at the end of the current seasonal work period and file timely weekly continued claims thereafter to preserve his or her right to receive retroactive unemployment benefits if he or she is not reemployed by the seasonal employer in the subsequent normal seasonal work period. Failure of the employer to give adequate notice as required will result in the termination of the employer as a seasonal employer.

Permits the issuance of an appealable determination terminating an employer's status as a seasonal employer for good cause, or upon the written request of the employer. An employer whose status as a seasonal employer is terminated shall not reapply for a seasonal employer status determination until after a regularly recurring normal seasonal work period has begun and ended.

Provides that, if a seasonal employer informs an employee who received assurance of being rehired that, despite the assurance, the employee will not be rehired at the beginning of the employer's next normal seasonal work period, the employee is not prevented from receiving unemployment benefits in the same manner and to the same extent he or she would receive benefits from an employer who has not been determined to be a seasonal employer.

Provides that a successor of a seasonal employer is considered to be a seasonal employer unless the successor provides the Commission, within 120 days after the transfer, with a written request for termination of its status as a seasonal employer.

Provides that, at the time an employee is hired by a seasonal employer, the employer shall notify the employee in writing if the employee will be a seasonal worker. The employer shall provide the worker with written notice of any subsequent change in the employee's status as a seasonal worker. If an employee of a seasonal employer is denied benefits because that employee is a seasonal worker, the employee may contest that designation by filing an appeal.

Defines the phrase "normal seasonal work period" to mean that period, or those periods, of time during which an individual is employed in seasonal employment.

Defines the phrase "seasonal employment" to mean the employment of one or more individuals primarily hired to perform services during regularly recurring periods of 26 weeks or less in any 52-week period other than services in the construction industry.

Defines the phrase "seasonal employer" to mean an employer, other than an employer in the construction industry, who applies for designation as a seasonal employer and is determined to be an employer whose operations and business require employees engaged in seasonal employment.

Defines the phrase "seasonal worker" to mean a worker who has been paid wages by a seasonal employer for work performed only during the normal seasonal work period.

OKLAHOMA

HB 2253
(CH 287)

ENACTED May 11, 2016
EFFECTIVE November 1, 2016

Appeals

Adds the following language to the section entitled "the rules and procedures in appeals:" The Oklahoma Employment Security Commission shall create and maintain a precedent manual to reflect current statutes and statutory changes along with current case law that is applicable to questions of law which may arise during hearings or appeals. The precedent manual shall be updated by the Commission within 30 days of the effective date of any statutory changes and shall be available at the offices of the Commission and on any Internet website maintained by the Commission.

Amends the following provision in the section entitled "the rule of decision:" A final decision of the Board of Review and the principles of law declared in arriving at such decision, unless expressly or impliedly overruled by the passage of a more recent statute, by a later decision of the Board of Review, or by a court of competent jurisdiction, shall be binding upon the Commission and Appeal Tribunal referees in subsequent proceedings which involve the same questions of law or fact. In no event shall a decision of the Board of Review, or by a court of competent jurisdiction, decided prior to a change in law by the Legislature supersede or be binding upon the Commission, Appeal Tribunal referees, Board of Review, or any court of competent jurisdiction in proceedings subsequent to the passage of statutory changes (previously, a final decision of the Board of Review, or of an Appeal Tribunal referee, and the principles of law declared in arriving at such decision, unless expressly or impliedly overruled by a later decision of the Board of Review, or by a court of competent jurisdiction, shall be binding upon

the Commission and Appeal Tribunal referees in subsequent proceedings which involve the same questions of law).

Financing

Amends the section of the law entitled “benefit wage ratio” by changing “contribution rate” to “tax rate.”

Changes the section entitled “minimum contributions” to “unemployment tax rate,” and provides that each employer, unless otherwise prescribed in Section 3-111.1, 3-701 or 3-801, shall pay unemployment tax as follows:

1. All employers shall have an assigned tax rate of 1.5 percent until sufficient experience history exists in the employer’s account to meet the At-Risk Rule set out in paragraph 3. If the account meets the At-Risk Rule, the employer will qualify for an earned tax rate calculated pursuant to the provisions of Part 1 of Article III of the Employment Security Act of 1980 (previously, all employers shall have a rate of 1.5 percent until the calendar year following the eighth consecutive calendar quarter in which the employer employed at least one individual in covered employment, at which time the employer shall qualify for an earned rate calculated pursuant to the provisions of Part 1 of Article III of the Employment Security Act of 1980);

2. If an employer qualified for an earned tax rate under paragraph 1, or under a prior law, and at the time the employer’s tax rate is being determined for a subsequent year the employer account lacks sufficient experience history to meet the At-Risk Rule of paragraph 3, the employer shall revert to the assigned tax rate of 1.5 percent. The employer shall pay at the assigned tax rate until the provisions of paragraph 1 are met (previously, if an employer qualifies for an earned rate under subsection A of this section and subsequently ceases to employ at least one person, the employer shall revert to the minimum contribution rate of 1.5 percent if, throughout the one calendar year immediately preceding the calculation of the employer’s contribution rate, there was no individual who could have filed a claim in each quarter of that year establishing a base period, as defined by Section 1-202 of Title 40 of the Oklahoma Statutes, which would include wages from that employer. The employer shall pay at the minimum contribution rate until the provisions of subsection A of this section are met); and

3. “At-Risk Rule” means an employer is required to be at-risk for a claim of unemployment benefits before an earned tax rate is calculated. An employer shall meet the At-Risk Rule and be eligible for an earned tax rate if, throughout the calendar year immediately preceding the year for which the employer’s tax rate is being determined, there was an individual who could have filed a claim for unemployment benefits in each quarter of that year establishing a base period, which would include wages from that employer.

Amends the section entitled “successor and predecessor employers - special rules on transfer of rates and experience” by providing: notwithstanding any other provision of law, the following shall apply regarding assignments of rates and transfers of experience:

1. If an employer transfers its trade or business, or a separate and distinct establishment, or unit thereof, to another employer or an entity that does not meet the definition of an employer at the time of the transfer and there is substantially common ownership, management, or control of the two employers or entities at the time of the transfer, then the experience rating account attributable to the transferred trade or business shall be combined with the experience rating account of the employer to whom such business is so transferred. The employer transferring its trade or business shall be the predecessor employer and the employer or entity acquiring the transferred trade or business shall be the successor employer. The successor employer shall acquire the experience rating account of the predecessor employer, including the predecessor's actual tax and benefit experience, annual payrolls and tax rate. The successor employer shall also become jointly and severally liable with the predecessor employer for all current or delinquent taxes, interest, penalties and fees owed to the Oklahoma Employment Security Commission by the predecessor employer. In the case of the transfer of a separate and distinct establishment or unit within the predecessor employer, the successor employer shall acquire that portion of the items identified above that relate to the establishment or unit acquired or its pro-rata share (previously, if an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the experience rating account attributable to the transferred trade or business shall be combined with the experience rating account of the employer to whom such business is so transferred); and

2. Whenever a person who is not an employer under the Employment Security Act of 1980 at the time it acquires the trade or business of an employer, the experience rating account of the acquired business shall not be transferred to that person if the Commission finds that the person acquired the business solely or primarily for the purpose of obtaining a lower tax rate. Instead, the person shall be assigned a tax rate under Section 3-110. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower tax rate, the Commission shall examine objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition (previously, whenever a person who is not an employer under the Employment Security Act of 1980 at the time it acquires the trade or business of an employer, the experience rating account of the acquired business shall not be transferred to such person if the Commission finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the person shall be assigned the minimum contribution rate under Section 3-110 of Title 40 of the Oklahoma Statutes. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commission shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition).

Amends the section entitled "required filings by professional employer organizations - payment of contributions - change of election" by providing that a professional employer organization may choose one of two options under which it will report and pay all contributions. Option two

now consists of subparagraphs a. through e. (previously a. through d.). Subparagraph e. of option two provides that the professional employer organization shall file quarterly tax returns to report the wages of all covered employees under the direction and control of each client and pay all contributions due on those wages under the account assigned to that client by the Oklahoma Employment Security Commission provided a professional employer organization choosing this option shall produce all documentation and information necessary for the Oklahoma Employment Security Commission to create the client account within 60 days of choosing this option. If the information needed by the Commission is not produced within this 60-day period, the professional employer organization shall revert to reporting under option one.

Adds a new section to the law entitled “professional employer organizations - transfer of experience history” which provides that, if a professional employer organization chooses the option to file quarterly tax returns under the account assigned to its client as outlined in option two, and if the client has an experience history from a previous account assigned to that client that can be used in calculating an earned tax rate, then that experience history shall be transferred to the account assigned to that client as a co-employer of that professional employer organization.

Repeals, from the Oklahoma Unemployment Insurance Reporter Regulation, section 3-103 entitled “computation—percentage of wages payable” which provides that, beginning January 1, 2016, each employer, unless otherwise prescribed in Sections 3-111, 3-111.1, 3-701 or 3-801 of this title or Section 14 of this act, shall pay contributions equal to 1.5 percent of taxable wages paid by the employer with respect to employment.

Repeals, from the Oklahoma Unemployment Insurance Reporter Regulation, A through D of section 3-111, entitled “successor and predecessor employers” which provides:

A. Language that determines when an employing unit shall become a successor employer and acquire the experience rating account, actual contribution and benefit experience, annual payrolls, and contribution rate of the predecessor employer and that the successor employer shall also become jointly and severally liable with the predecessor employer for all current or delinquent contributions, interest, penalties, and fees owed to the Commission by the predecessor employer.

B. Language concerning an employing unit acquiring or transferring substantially all of the trade, employees, organization, business, or assets of an employer and whether the employing unit shall acquire or not acquire that portion of the experience rating account, including the taxable payrolls and benefit wages, of the predecessor employer that is applicable to the establishment or establishments.

C. Language that, if the Commission finds that any report required to complete a determination of contribution rate that has not been filed or was filed incorrectly or insufficiently and any such fact or information has not already been established or found in connection with some other proceeding, an estimate may be made of the information required on the basis of the best evidence reasonably available to it at the time.

D. Language providing that determinations made under this section may be appealed.

Nonmonetary Eligibility

Provides that the Administrator, Division of Employment Security shall verify whether claimants are complying with the requirement of contacting at least three employers per week or accessing services at a career center. The Administrator shall disqualify any claimant receiving benefits whom the Administrator finds has provided false work search information. (Previously, required the Administrator to (1) conduct random verification audits of 1,500 claimants weekly to determine if claimants are complying with the requirement of contacting at least three employers per week or accessing services at a career center, and (2) disqualify any claimant receiving benefits who the Administrator finds, as the result of a random audit or on information provided to the Administrator, has provided false work search information for a period of not less than 8 benefit weeks.)

Modifies the disqualification for benefits provisions in Tennessee Code Annotated, Section 50-7-303(a)(1)(A)(i) as follows: A claimant shall be disqualified for benefits:

If the Administrator finds that the claimant has left the claimant's most recent work voluntarily without good cause connected with the claimant's work. Except as otherwise provided in subdivision (a)(1)(A)(ii)(b), the disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by the unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment 10 times the claimant's weekly benefit amount. (Added the language: except as otherwise provided in subdivision (a)(1)(A)(ii)(b).) This disqualification shall not apply to a claimant who left the claimant's work in good faith to join the armed forces of the United States.