An Act

ENROLLED HOUSE
BILL NO. 1023

By: McDaniel (Randy) of the House

and

Newberry of the Senate

An Act relating to labor; providing for certain study concerning laws and amendments that expand unemployment benefits; amending 40 O.S. 2011, Sections 1-224, 2-203, 2-404, 2-405, 2-503, as amended by Section 4, Chapter 196, O.S.L. 2012, 2-616, 3-103, 3-111, 3-111.1, 3-112, 3-115, as amended by Section 9, Chapter 196, O.S.L. 2012 and 3-403 (40 O.S. Supp. 2012, Sections 2-503 and 3-115), which relate to the Employment Security Act of 1980; modifying production of documents and information; modifying definitions; modifying factors for determining good cause; providing that certain working days need not be consecutive; modifying appeals process; modifying compensation experience years for employers; providing for review and redetermination of certain untimely requests; providing for contents of petition for review; repealing 40 O.S. 2011, Section 3-104, which relates to contribution rates for certain employers; providing for codification; and providing an effective date.

SUBJECT: Employment Security Act of 1980

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-109 of Title 40, unless there is created a duplication in numbering, reads as follows:

If a proposed new law or amendment to an existing law will have the effect of expanding unemployment benefits available to unemployment benefit claimants, the Oklahoma Employment Security Commission shall study the fiscal impact the benefit expansion will have upon Oklahoma's Unemployment Trust Fund established pursuant to 42 U.S.C., Section 1104. The impact study shall be presented to each house of the Legislature before the final vote on the bill containing the provision and shall be sent to the Governor before final approval of the bill containing the provision.

SECTION 2. AMENDATORY 40 O.S. 2011, Section 1-224, is amended to read as follows:

Section 1-224. FILE.

A. When any document is required to be filed by the provisions of the Employment Security Act of 1980 or the rules promulgated under the authority of the Employment Security Act of 1980 with the Oklahoma Employment Security Commission, any of its representatives, or the Board of Review for the Oklahoma Employment Security Commission, the term "file", "files", or "filed" shall be defined as follows:

1. Hand-delivered to the central administrative office of the Oklahoma Employment Security Commission by the close of business on or before the date due;

2. Telefaxed to the telefax number indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing shall be determined by the date and time recorded by the Commission's telefax equipment;

3. Mailed with sufficient postage and properly addressed to the address indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission on or before the date due. Timely mailing shall be determined by the postmark. If there is no proof from the post office of the date of mailing, the date of receipt by the Commission shall constitute the date of filing; or

4. Electronically transmitted via data lines to the Oklahoma Employment Security Commission, as directed by the instructions on the determination letter, order or other document issued by the Commission, by midnight on or before the date due. Timely

transmission shall be determined by the Commission's transmission log file.

B. If the Employment Security Act of 1980 or the rules promulgated under the Employment Security Act of 1980 require that a document be filed with a court or any other agency of this state, the term "file", "files" or "filed" shall be defined by the statutes, rules or practice governing that court or agency.

SECTION 3. AMENDATORY 40 O.S. 2011, Section 2-203, is amended to read as follows:

Section 2-203. CLAIM.

A. An unemployed individual must file an initial claim for unemployment benefits by calling an Oklahoma Employment Security Commission claims representative in a Commission Call Center, by completing the required forms through the Internet Claims service provided by the Commission, or by completing all forms necessary to process an initial claim in a local office of the Commission or any alternate site designated by the Commission to take unemployment benefit claims. The Commission may obtain additional information regarding an individual's claim through any form of telecommunication, writing, or interview. An unemployed individual must file a claim in writing or by telecommunication for benefits with respect to each week in accordance with such rule as the Commission may prescribe.

B. With respect to each week, he or she must provide the Commission with a true and correct statement of all material facts relating to: his or her unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or accepting full-time employment immediately; applications for or receipt of workers' compensation benefits; employment and earnings; and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.

C. No claim will be allowed or paid unless the claimant resides within a state or foreign country with which the State of Oklahoma has entered into a reciprocal or cooperative arrangement pursuant to Part 7 of Article IV of the Employment Security Act of 1980.

D. The Commission may require the individual to produce documents or information relevant to the claim for benefits. If the

individual ~~has the ability to produce the documents or information and~~ fails to produce it, the individual's claim for unemployment benefits may be disqualified indefinitely by the Commission until the information is produced. The Commission may require the individual to personally appear at a location for a purpose relevant to the individual's unemployment claim or job search. If the individual fails to appear, the individual's claim for unemployment benefits may be disqualified indefinitely by the Commission until the individual makes a personal appearance as directed. An individual that has been disqualified indefinitely by the provisions of this subsection may receive payment for any week between the initial failure and the compliance with this subsection if the claimant is otherwise eligible and has made a timely filing for each intervening week.

SECTION 4. AMENDATORY 40 O.S. 2011, Section 2-404, is amended to read as follows:

Section 2-404. LEAVING WORK VOLUNTARILY.

A. An individual shall be disqualified for benefits for leaving his or her last work voluntarily without good cause connected to the work, if so found by the Commission.

B. When adjudicating a separation from employment in an initial claim or additional initial claim, disqualification under this section shall continue for the full period of unemployment next ensuing after the individual left work voluntarily without good cause connected to the work and until the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.

C. When adjudicating a separation from employment during a continued claim series, disqualification under this section shall be for the week of the occurrence of leaving work voluntarily without good cause connected to the work.

~~D. Good cause shall include but not be limited to unfair treatment of the employee or the creating of unusually difficult working conditions by the employer.~~

SECTION 5. AMENDATORY 40 O.S. 2011, Section 2-405, is amended to read as follows:

Section 2-405. DETERMINING GOOD CAUSE.

Good cause for voluntarily leaving work under Section 2-404 of this title may include, among other factors, the following:

1. A job working condition that had changed to such a degree it was so harmful, detrimental, or adverse to the individual's health, safety, or morals, that leaving the work was justified; ~~or~~

2. Substantially unfair treatment of the employee or the creating of substantially difficult working conditions by the employer; or

3. If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated and the employer has consented thereto.

SECTION 6. AMENDATORY 40 O.S. 2011, Section 2-503, as amended by Section 4, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2012, Section 2-503), is amended to read as follows:

Section 2-503. CLAIMS, NOTICES AND OBJECTIONS.

A. Claims for benefits shall be made in accordance with all rules that the Oklahoma Employment Security Commission may prescribe.

B. Promptly after an initial claim or an additional initial claim is filed, the Commission shall give written notice of the claim to the last employer of the claimant for whom he or she worked at least fifteen (15) working days. ~~Promptly~~ The required fifteen (15) working days are not required to be consecutive. Provided, that promptly after the Commission is notified of the claimant's separation from an employment obtained by a claimant during a continued claim series, the Commission shall give written notice of the claim to the last separating employer. Notices to separating employers during a continued claim series will be given to the last employer in the claim week without regard to length of employment.

C. Promptly after the claim is paid for the fifth week of benefits the Commission shall give written notice of the claim to all other employers of the claimant during the claimant's base period. The notice will be given pursuant to Section 3-106 of this title.

D. Notices shall be deemed given when the Commission deposits the same in the United States mail addressed to the employer's last-known address. Notice shall be presumed prima facie to have been given to the employer to whom addressed on the date stated in the written notice. If the employer has elected to be notified by electronic means according to procedures set out in Oklahoma Employment Security Commission rules, notice shall be deemed to be given when the Commission transmits the notification by electronic means.

E. Within ten (10) days after the date on the notice or the date of the postmark on the envelope in which the notice was sent, whichever is later, an employer may file with the Commission at the address prescribed in the notice written objections to the claim setting forth specifically the facts which:

1. Make the claimant ineligible for benefits under Sections 2-201 through 2-210 of this title;

2. Disqualify the claimant from benefits under Sections 2-401 through ~~2-418~~ 2-419 of this title; or

3. Relieve such employer from being charged for the benefits wages of such claimant.

SECTION 7. AMENDATORY 40 O.S. 2011, Section 2-616, is amended to read as follows:

Section 2-616. NOTICE OF OVERPAYMENT DETERMINATION.

If the Oklahoma Employment Security Commission or its representative determines that an individual has been overpaid unemployment benefits pursuant to Section 2-613 of this title, the individual shall be sent a notice of overpayment determination. If the individual disagrees with this determination, the individual may file an appeal of the determination with the Appeal Tribunal within twenty (20) days after the date of the mailing of the notice to the individual's last-known address or, if the notice is not mailed, within twenty (20) days after the date of the delivery of the notice. If the individual fails to appeal the determination within the time provided, without good cause, then the determination will be deemed final and no further appeal shall be allowed.

SECTION 8. AMENDATORY 40 O.S. 2011, Section 3-103, is amended to read as follows:

Section 3-103. COMPUTATION - PERCENTAGE OF WAGES PAYABLE.

Beginning January 1, 1996, each employer, unless otherwise prescribed in Sections ~~3-104,~~ 3-111, 3-111.1, 3-112, 3-701 or 3-801 of this title, shall pay contributions equal to a percent of taxable wages paid by the employer with respect to employment which shall be the greater of one percent (1%) or the average contribution rate paid by all employers during the second year preceding the current calendar year. The average contribution rate shall be calculated by dividing annual net contributions received by total annual taxable wages.

SECTION 9. AMENDATORY 40 O.S. 2011, Section 3-111, is amended to read as follows:

Section 3-111. SUCCESSOR AND PREDECESSOR EMPLOYERS.

A. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, organization, employees, business, or assets of any employer (excepting in such case any assets retained by that employer incident to the liquidation of the employer's obligations) and who continues the operations of the predecessor employer as a going business, shall be determined to be a successor employer. The successor employer shall acquire the ~~merit~~ experience rating account of the predecessor employer, including the predecessor's actual contribution and benefit experience, annual payrolls, and contribution rate. 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 Oklahoma Employment Security Commission by the predecessor employer.

Written notice of all current or delinquent contributions, interest, penalties and fees owed to the Commission by the predecessor employer shall be provided to the successor employer by the predecessor employer prior to the sale of the business. Failure to give such notice may subject the predecessor employer to a penalty as specified by the rules of the Commission.

Any remuneration for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts paid by

the predecessor employer shall be considered as having been paid by the successor employer. The initial determination regarding whether or not an acquiring employer will become a successor to a predecessor account shall be made by the Commission or its duly authorized representative and notice of this determination shall be delivered to the acquiring employer or mailed to his or her last-known address.

B. Any employing unit, whether or not an employing unit at the time of the acquisition, which acquires substantially all of the trade, employees, organization, business, or assets of an employer, at one or more separate and distinct establishments and who continues the acquired operations of the predecessor as a going business, shall acquire that portion of the experience rating account of the predecessor employer that is applicable to the establishment or establishments, if the employing unit, immediately after the acquisition, is an employer; provided, however, that the employing unit shall not acquire a portion of the experience rating account unless written application therefor is received by the Commission within one hundred twenty (120) days after the date of the acquisition together with evidence sufficient for the Commission to determine which portion of the experience rating account of the predecessor is applicable to the acquired operations, and the Commission finds that the transfer will not tend to defeat or obstruct the object and purpose of the Employment Security Act of 1980; and provided further, that the portion of the experience rating account so transferred, including the taxable payrolls and benefit wages, shall not thereafter be used in computing ~~an experience rating~~ a contribution rate for the transferring employer. For the purpose of this subsection a separate and distinct establishment means all operations conducted by an employer at one business location which is readily identifiable as a separate business organization.

C. If the Commission finds that any report required to complete a determination of contribution rate has not been filed or if filed is incorrect or insufficient, and any such fact or information has not already been established or found in connection with some other proceeding pursuant to the provisions of the Employment Security Act of 1980, an estimate may be made of the information required on the basis of the best evidence reasonably available to it at the time. Notice shall be given of the determination as provided for contribution rate in subsection C of Section 3-102 of this title and the employer may appeal therefrom as provided in subsection D of Section 3-102 of this title.

D. A determination made under this section may be appealed pursuant to the provisions of Section 3-115 of this title.

SECTION 10. AMENDATORY 40 O.S. 2011, Section 3-111.1, is amended to read as follows:

Section 3-111.1 SUCCESSOR AND PREDECESSOR EMPLOYERS - SPECIAL RULES ON TRANSFER OF RATES AND EXPERIENCE.

A. 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 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 ~~unemployment~~ experience rating account attributable to the transferred trade or business shall be combined with the ~~unemployment~~ 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 ~~unemployment~~ experience ~~rate~~ 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.

B. 1. If a person knowingly violates or attempts to violate paragraph 1 or 2 of subsection A of this section or any other provision of the Employment Security Act of 1980 related to determining the assignment of the contribution rate, or if a person knowingly advises another person in a way that results in a

violation of such provision, the person shall be subject to the following penalties:

a. if the person is an employer, then the employer shall be assessed a penalty equal to ten percent (10%) of the actual taxes due in the calendar quarter in which the employer violated or attempted to violate the provisions of this section and a penalty equal to ten percent (10%) of the actual taxes due in each of the following three (3) calendar quarters. The funds in payment of this penalty shall be deposited in the Oklahoma Employment Security Commission Revolving Fund established under Section 4-901 of Title 40 of the Oklahoma Statutes,

b. if the person is not an employer, the person shall be subject to a civil money penalty of at least One Hundred Dollars ($100.00) and not more than Five Thousand Dollars ($5,000.00) to be determined by the Assessment Board of the Oklahoma Employment Security Commission. Any fine shall be deposited in the Oklahoma Employment Security Commission Revolving Fund established under Section 4-901 of Title 40 of the Oklahoma Statutes.

2. For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

3. For the purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

4. In addition to the penalty imposed by paragraph 1 of this subsection, any person who violates the provisions of this section shall be guilty of a misdemeanor and may be imprisoned for up to one (1) year.

C. The Commission shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

D. For purposes of this section:

1. "Person" has the meaning given such term by 26 U.S.C. Section 7701(a)(1); and

2. "Trade or business" shall include the employers workforce.

E. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

SECTION 11. AMENDATORY 40 O.S. 2011, Section 3-112, is amended to read as follows:

Section 3-112. EMPLOYERS WITH AT LEAST ONE ~~BUT LESS THAN THREE YEARS'~~ YEAR'S EXPERIENCE.

For each calendar year commencing after December 31, 1954, for those employers who have had ~~less than three (3) but~~ at least one (1) year of compensation experience, the Commission shall determine the contribution rate of each such employer on the basis of his compensation experience as determined by the fund's maximum liability for benefits to their employees who have been paid benefits modified by the state experience as to the average duration of benefit payments as provided by law.

SECTION 12. AMENDATORY 40 O.S. 2011, Section 3-115, as amended by Section 9, Chapter 196, O.S.L. 2012 (40 O.S. Supp. 2012, Section 3-115), is amended to read as follows:

Section 3-115. APPEAL OF DETERMINATIONS.

A. If a determination is made by the Oklahoma Employment Security Commission on any aspect of an employer's account, and a method of appeal or protest of the determination is not set out in the statute or rule under which the determination was made, the employer may appeal or protest the determination under the procedure set forth in subsection B of this section.

B. 1. All determinations affecting an employer account must be made by the Commission in writing in a Notice of Determination and mailed to the employer at the employer's last-known address with the mailing date and appeal rights set out in the document. If the employer has elected to be notified by electronic means according to procedures set out in Oklahoma Employment Security Commission rules, notice shall be deemed to be given when the Commission transmits the notification by electronic means.

2. Within twenty (20) days after the mailing or transmission of the Notice of Determination as provided for in paragraph 1 of this subsection, the employer may file with the Commission, or its representative, a written request for a review and redetermination setting forth the employer's reasons therefor. If any employer fails to file a written request for review and redetermination within twenty (20) days, then the initial determination of the Commission shall be final, and no further appeal or protest shall be allowed.

3. If a written request for review and redetermination is filed, the Commission shall provide for a review and issue a Notice of Redetermination in the matter. The employer may appeal the redetermination by filing a written protest within fourteen (14) days of the date of the mailing of the Notice of Redetermination. If the employer fails to file a written protest within the time allowed, the redetermination of the Commission shall be final and no further appeal or protest shall be allowed.

4. Upon the timely filing of a written protest, the Commission shall provide for an oral hearing de novo to allow the employer to present evidence in support of the protest. The Commission or its representatives shall, by written notice, advise the employer of the date of the hearing, which shall not be less than ten (10) days from the date of the mailing of the written notice. At the discretion of the Commission, this hearing shall be conducted by the Commission, or by a representative appointed by the Commission for this purpose.

5. Pursuant to the hearing, the Commission or its representative shall, as soon as practicable, make a written order setting forth its findings of fact and conclusions of law, and shall mail it to the employer at the employer's last-known address with the mailing date and appeal rights set out in the document.

6. The employer or the Commission may appeal the order to the district court of the county in which the employer has its principal place of business by filing a Petition for Review with the clerk of the court within thirty (30) days after the date the order was mailed to all parties. If the employer does not have a principal place of business in any county in Oklahoma, then the Petition for Review shall be filed with the Oklahoma County District Court. All appeals shall be governed by Part 4 of Article 3 of the Employment Security Act of 1980. If the employer fails to file an appeal to the district court within the time allowed, the order shall be final and no further appeal shall be allowed.

C. Untimely requests for review and redetermination pursuant to paragraph 2 of subsection B of this section and written protests for appeals filed pursuant to paragraph 3 of subsection B of this section may be allowed for good cause shown.

SECTION 13. AMENDATORY 40 O.S. 2011, Section 3-403, is amended to read as follows:

Section 3-403. PETITION FOR REVIEW AND TRANSCRIPT OF COMMISSION PROCEEDINGS.

Within thirty (30) days after the date of mailing of the order, ruling, or finding complained of, the party desiring to appeal shall file in the office of the clerk of the district court of the county that has the proper jurisdiction, a Petition for Review specifying the grounds upon which the appeal is based. The Petition for Review shall set out the names of all parties to the case in the style of the case, which shall include:

1. The petitioner or entity filing the petition;

2. The Assessment Board as a respondent; and

3. All other parties in the proceeding before the Assessment Board as respondents.

If a Petition for Review is not filed within the time allowed by this section, the administrative order, ruling or finding will become final and the district court will not have jurisdiction to consider the appeal. The appealing party shall serve a file-stamped copy of the Petition for Review on ~~the~~ all opposing ~~party~~ parties or ~~its attorney~~ their attorneys and the ~~designated hearing officer~~ Director of the Appellate Division of the Oklahoma Employment Security Commission ~~before whom the original hearing was held~~. The ~~hearing officer of the Commission~~ Director of the Appellate Division shall then cause a certified transcript of the hearing to be made which shall consist of all testimony of the parties, all documentary evidence and other evidence introduced at the hearing, and all decisions, judgments, or orders rendered as a result of the hearing. The ~~hearing officer~~ Director of the Appellate Division shall then cause the certified transcript to be filed in the appropriate district court within sixty (60) days of receipt of the Petition for Review. Copies of the transcript shall be mailed by the ~~hearing officer to the Commission's attorney and the employer or the~~

~~employer's attorney~~ Director of the Appellate Division to all parties named in the style of the case on the Petition for Review.

SECTION 14. REPEALER 40 O.S. 2011, Section 3-104, is hereby repealed.

SECTION 15. This act shall become effective November 1, 2013.

Passed the House of Representatives the 13th day of March, 2013.

Presiding Officer of the House of Representatives

Passed the Senate the 15th day of April, 2013.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 16th day of April, 2013, at 6:00 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 22nd day of April, 2013, at 2:42 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 22nd day of April, 2013, at 4:30 o'clock P M.

By: