

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 HOUSE BILL NO. 4413

6 By: Lowe (Dick) of the House

7 and

8 Montgomery of the Senate

9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to the Employment Security Act of  
11 1980; amending 40 O.S. 2021, Section 1-201, which  
12 relates to definitions; adding definitions; amending  
13 40 O.S. 1-202.1, which relates to extended base  
14 period; removing definition; amending 40 O.S. 2021,  
15 Section 1-209, which relates to employing unit;  
16 removing definition; amending 40 O.S. 2021, Section  
17 1-209.1, which relates to lessor employing unit;  
18 removing definitions; updating statutory reference;  
19 amending 40 O.S. 2021, Section 1-209.2, which relates  
20 to professional employer organization; removing  
21 definitions; amending 40 O.S. 2021, Section 1-217,  
22 which relates to unemployed individuals; removing  
23 definition; providing further conditions of  
24 unemployment; specifying conditions for filing during  
a continued claim series; providing for investigating  
even when individual satisfies threshold  
requirements; making language gender neutral;  
amending 40 O.S. 2021, Section 1-223, which relates  
to taxable wages; removing definition; amending 40  
O.S. 2021, Section 1-224, which relates to filing;  
removing definitions related to telefaxing; updating  
definitions to include digital filing through the  
Oklahoma Employment Security Commission's portal;  
amending 40 O.S. 2021, Section 1-225, which relates  
to supplemental unemployment benefit plan; removing  
definition; amending 40 O.S. 2021, Section 1-228,  
which relates to limited liability companies;  
removing definition; specifying methods of notice by

1 the Commission; providing Commission's preferred  
2 method; allowing for option of use; amending 40 O.S.  
3 2021, Section 2-203, which relates to claims;  
4 removing provision for Commission to inform claimants  
5 filing for unemployment benefits and require  
6 certification statement during process; amending 40  
7 O.S. 2021, Section 2-205.1, which relates to ability  
8 to work; removing specification for seeking or  
9 accepting employment; making language gender neutral;  
10 amending 40 O.S. 2021, Section 2-503, which relates  
11 to claims, notices, and objections; allowing for  
12 electronic notice; allowing for option of use;  
13 removing provisions for notice by mail; amending 40  
14 O.S. 2021, Section 2-503.1, which relates to filing  
15 of employer protest; removing optional use of portal;  
16 amending 40 O.S. 2021, Section 2-605, which relates  
17 to notice of decision; providing for notice by  
18 electronic means; allowing for option of use;  
19 removing criteria for mail notice; amending 40 O.S.  
20 2021, Section 2-606, which relates to appeals;  
21 removing condition for notice by mail; amending 40  
22 O.S. 2021, Section 3-106, which relates to benefit  
23 wages charged; removing conditions for method of mail  
24 notice; adding reference for filings and hearings by  
the Assessment Board; removing provision for written  
protest; amending 40 O.S. 2021, Section 3-115, which  
relates to appeal of determination; updating  
statutory language; amending 40 O.S. 2021, Section 3-  
307, which relates to remittances; providing for  
Commission to promulgate rules for payment of  
unemployment taxes; amending 40 O.S. 2021, Section 4-  
205, which relates to temporary members; providing  
for appointment of an additional temporary member by  
the Governor in the event of disqualification of a  
member of the Board of Review; amending 40 O.S. 2021,  
Section 4-508, which relates to information to be  
kept confidential; updating statutory language;  
permitting disclosure of information for additional  
agencies by Commission; repealing 40 O.S. 2021,  
Sections 1-202, 1-202.2, 1-203, 1-204, 1-205, 1-206,  
1-207, 1-211, 1-212, 1-213, 1-215, 1-216, 1-219, 1-  
220, 1-221, 1-226, 1-301, 2-406.2, 2-709, 2-711, 2-  
713, and 3-118, which relate to the Employment  
Security Act of 1980; providing for codification; and  
providing an effective date.

1  
2 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

3 SECTION 1. AMENDATORY 40 O.S. 2021, Section 1-201, is  
4 amended to read as follows:

5 Section 1-201. GENERAL DEFINITIONS. ~~The words and phrases~~ As  
6 ~~used in this act shall, unless the context clearly requires~~  
7 ~~otherwise, have the meanings prescribed in Part 2 of this Article~~  
8 the Employment Security Act of 1980:

9 1. "Additional initial claim" means a claim application which  
10 reactivates a claim during an existing benefit year and certifies to  
11 a period of employment which occurred subsequent to the date of the  
12 filing of the last initial, additional, or reopened claim;

13 2. "Alternative base period" means the most recent four (4)  
14 completed calendar quarters immediately preceding the first day of  
15 an individual's benefit year. In the event that an individual's  
16 claim uses an alternative base period to meet the wage requirement  
17 under Section 2-207 of this title, this "alternative base period"  
18 shall be substituted for "base period" for all other purposes under  
19 the Employment Security Act of 1980;

20 3. "Assigned tax rate" means the tax rate assigned to an  
21 employer pursuant to Section 3-110.1 of this title when the employer  
22 does not have sufficient experience history to meet the At-Risk Rule  
23 set out in paragraph 3 of Section 3-110.1 of this title;

24

1       4. "Base period" means the first four (4) of the last five (5)  
2 completed calendar quarters immediately preceding the first day of  
3 an individual's benefit year;

4       5. "Benefit year" with respect to any individual means the one-  
5 year period beginning with the first day of the first week with  
6 respect to which the individual first files a valid claim for  
7 benefits and thereafter the one-year period beginning with the first  
8 day of the first week with respect to which the individual next  
9 files a valid claim for benefits after the termination of his or her  
10 last preceding benefit year. Any claim for benefits shall be deemed  
11 a valid claim for the purpose of this section if the individual has  
12 been paid the wages for insured work required under the Employment  
13 Security Act of 1980;

14       6. "Benefit wages" means the taxable wages earned by a claimant  
15 during the claimant's base period which are not in excess of the  
16 current maximum weekly benefit amount, as determined under Section  
17 2-104 of this title, multiplied by the maximum number of weeks for  
18 which benefits could be paid to any individual (now twenty-six (26)  
19 weeks) multiplied by three (3); provided, however, no wages shall be  
20 included as "benefit wages" unless and until the claimant has been  
21 paid benefits for five (5) weeks in one (1) benefit year;

22       7. "Benefits" mean the money payments payable to an individual  
23 as provided in the Employment Security Act of 1980 with respect to  
24 his or her unemployment including extended benefits. The federal

1 share of such extended benefits shall not be construed as benefits  
2 for the purposes of computing contribution rates under the  
3 Employment Security Act of 1980;

4 8. "Calendar quarter" means the period of three (3) consecutive  
5 calendar months ending on March 31, June 30, September 30, or  
6 December 31, or the equivalent thereof as the Commission may by  
7 regulation prescribe;

8 9. "Client" shall have the same meaning as provided in  
9 paragraph 1 of Section 600.2 of this title;

10 10. "Coemployer" shall have the same meaning as provided in  
11 paragraph 2 of Section 600.2 of this title;

12 11. "Coemployment relationship" shall have the same meaning as  
13 provided in paragraph 3 of Section 600.2 of this title;

14 12. "Commission" means the Oklahoma Employment Security  
15 Commission;

16 13. "Commissioner" means a member of the Commission;

17 14. "Continued claim series" means an uninterrupted series of  
18 weekly claims filed by a claimant during the benefit year;

19 15. "Contributions" mean the money payments including taxes and  
20 reimbursements, required by the Employment Security Act of 1980 to  
21 be paid into the Unemployment Compensation Fund by an employer;

22 16. "Covered employee" shall have the same meaning as provided  
23 in paragraph 5 of Section 600.2 of this title;

1        17. "Digital portal filing" means electronic communication  
2 through the agency digital portal;

3        18. "Earned tax rate" means the tax rate calculated for an  
4 employer with sufficient experience history to meet the At-Risk Rule  
5 set out in paragraph 3 of Section 3-110.1 of this title, with the  
6 tax rate calculated pursuant to the provisions of Section 3-101 et  
7 seq. of this title;

8        19. "Electronic e-filing" means filing by email or fax to  
9 email;

10        20. "Eligibility period" of an individual for extended benefits  
11 means the period consisting of the weeks in his or her benefit year  
12 as defined by the Employment Security Act of 1980, which begin in an  
13 extended benefit period and, if his or her benefit year ends within  
14 such extended benefit period, any weeks thereafter which begin in  
15 such extended benefit period;

16        21. "Employer" shall have the same meaning as provided in  
17 Section 1-208 of this title;

18        22. "Employing unit" means any individual or type of  
19 organization including any partnership, association, trust, estate,  
20 joint stock company, insurance company, limited liability company or  
21 corporation, whether domestic or foreign, or the receiver, trustee  
22 in bankruptcy, trustee or successor thereof, or the legal  
23 representative of a deceased person, which has or subsequent to  
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1 January 1, 1936, had in its employ one or more individuals  
2 performing services for it within this state;

3 23. "Employment" shall have the same meaning as provided in  
4 Section 1-210 of this title;

5 24. "Employment office" means a free public employment office  
6 or branch thereof operated by this or any other state as a part of a  
7 state-controlled system of public employment offices or by a federal  
8 agency charged with the administration of an unemployment  
9 compensation program or free public employment offices;

10 25. "Employment Security Administration Fund" means the fund  
11 established in Section 4-602 of this title from which administration  
12 expenses under the Employment Security Act of 1980 shall be paid;

13 26. "Exhaustee" shall have the same meaning as provided in  
14 Section 2-712 of this title;

15 27. "Experience period" means the most recent twelve (12)  
16 consecutive completed calendar quarters occurring before July 1 of  
17 the year immediately preceding the year for which the employer's  
18 contribution rate is being calculated;

19 28. "Extended base period" means the four (4) quarters prior to  
20 the claimant's base period. These four (4) quarters may be  
21 substituted for base period quarters on a quarter-by-quarter basis  
22 to establish a valid claim regardless of whether the wages have been  
23 used to establish a prior claim, except any wages earned that would

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1 render the Commission out of compliance with applicable federal law  
2 shall be excluded if used in a prior claim;

3 29. "Extended benefit period" shall have the same meaning as  
4 provided in Section 2-703 of this title;

5 30. "File", "files", or "filed" shall have the same meaning as  
6 provided in Section 1-224 of this title;

7 31. "Mail", "mails", "mailed", or "mailing" means communication  
8 sent by a postal service with sufficient postage;

9 32. "Foreign limited liability company" shall be defined by the  
10 provisions of the Oklahoma Limited Liability Company Act;

11 33. "Fund" means the Unemployment Compensation Fund established  
12 in Section 3-601 of this title;

13 34. "Hospital" means any hospital required to be licensed under  
14 the Oklahoma Public Health Code, Sections 1-101 et seq. of Title 63  
15 of the Oklahoma Statutes, and includes state mental hospitals and  
16 any other mental hospital or institution;

17 35. "Initial claim" means a new claim application submitted by  
18 a claimant to establish a benefit year for unemployment insurance  
19 benefits;

20 36. "Institution of higher education" shall have the same  
21 meaning as provided in Section 1-214 of this title;

22 37. "Insured work" means employment for employers as defined by  
23 the Employment Security Act of 1980;

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1       38. "Lessor employing unit" means any independently established  
2 business entity which engages in the business of providing leased  
3 employees to any other employer, individual, organization,  
4 partnership, corporation, or other legal entity, referred to herein  
5 as a client lessee;

6       39. "Limited liability company" shall be defined by the  
7 provisions of the Oklahoma Limited Liability Company Act;

8       40. "Probationary period" means a period of time set forth in  
9 an established probationary plan, which applies to all employees or  
10 a specific group of employees, and does not exceed ninety (90)  
11 calendar days from the first day a new employee begins work;

12       41. "Professional Employer Organization" or "PEO" means an  
13 organization that is subject to the Oklahoma Professional Employer  
14 Organization Recognition and Registration Act and which meets the  
15 definition set out in paragraph 9 of Section 600.2 of this title;

16       42. "Rate of insured employment" shall have the same meaning as  
17 provided in Section 2-708 of this title;

18       43. "Regular benefits" means benefits payable to an individual  
19 under the Employment Security Act of 1980, or under any other state  
20 law including dependents' allowances and benefits payable to federal  
21 civilian employees;

22       44. "Reopened claim" means a claim application which  
23 reactivates a claim during an existing benefit year when a claimant  
24 stopped filing for benefits before his or her claim was exhausted,

1 but in which there occurred no intervening employment from the date  
2 of the filing of the last initial, additional, or reopened claim;

3 45. "State" includes, in addition to the states of the United  
4 States of America, the District of Columbia, the Commonwealth of  
5 Puerto Rico and the Virgin Islands;

6 46. "State law" means the unemployment insurance law of any  
7 state, approved by the Secretary of Labor of the United States under  
8 Section 3304 of the Internal Revenue Code of 1954;

9 47. "Supplemental unemployment benefit plan" means a plan that  
10 provides for an employer to make payments to its employees during a  
11 permanent or temporary layoff that will supplement unemployment  
12 benefits received by the employees. The purpose of a supplemental  
13 unemployment benefit plan is to allow an employer to sustain the  
14 purchasing power of its employees or former employees during a  
15 layoff;

16 48. "Taxable wages" means the wages paid to an individual with  
17 respect to employment during a calendar year for services covered by  
18 the Employment Security Act of 1980 or other state unemployment  
19 compensation acts which shall equal the applicable percentage of the  
20 state's average annual wage for the second preceding calendar year  
21 as determined by the Commission, rounded to the nearest multiple of  
22 One Hundred Dollars (\$100.00);

23 49. "Wages" shall have the same meaning as provided in Section  
24 1-218 of this title;

1       50. "Wages paid" means wages actually paid to the worker;  
2 provided, however, that in the event of any distribution of an  
3 employer's assets through insolvency, receivership, composition,  
4 assignment for the benefit of creditors, or termination of business,  
5 wages earned but not actually paid shall be considered as paid; and

6       51. "Week" means such period of seven (7) consecutive days, as  
7 the Commission may by regulation prescribe.

8       SECTION 2.       AMENDATORY       40 O.S. 2021, Section 1-202.1, is  
9 amended to read as follows:

10       Section 1-202.1 EXTENDED BASE PERIOD. If an individual lacks  
11 sufficient base period wages because of a job-related injury for  
12 which the individual received total temporary disability payments  
13 awarded by the Workers' Compensation Court, upon written application  
14 by the claimant, an extended base period will be substituted for the  
15 current base period on a quarter-by-quarter basis as needed to  
16 establish a valid claim. ~~"Extended base period" means the four~~  
17 ~~quarters prior to the claimant's base period. These four quarters~~  
18 ~~may be substituted for base period quarters on a quarter-by-quarter~~  
19 ~~basis to establish a valid claim regardless of whether the wages~~  
20 ~~have been used to establish a prior claim, except any wages earned~~  
21 ~~that would render the Commission out of compliance with applicable~~  
22 ~~federal law will be excluded if used in a prior claim. Benefits~~  
23 paid on the basis of an extended base period, which would not  
24 otherwise be payable, shall be noncharged.

1 SECTION 3. AMENDATORY 40 O.S. 2021, Section 1-209, is  
2 amended to read as follows:

3 Section 1-209. EMPLOYING UNIT. ~~"Employing unit" means any~~  
4 ~~individual or type of organization, including any partnership,~~  
5 ~~association, trust, estate, joint stock company, insurance company,~~  
6 ~~limited liability company or corporation, whether domestic or~~  
7 ~~foreign, or the receiver, trustee in bankruptcy, trustee or~~  
8 ~~successor thereof, or the legal representative of a deceased person,~~  
9 ~~which has or subsequent to January 1, 1936, had in its employ one or~~  
10 ~~more individuals performing services for it within this state.~~

11 All individuals performing services within this state for any  
12 employing unit which maintains two or more separate establishments  
13 within this state shall be deemed to be employed by a single  
14 employing unit for all the purposes of the Employment Security Act  
15 of 1980, except as provided under paragraphs 10 and 11 of Section 1-  
16 208 of this title.

17 Whenever any employing unit contracts with or has under it any  
18 contractor or subcontractor for any employment, which is part of its  
19 usual trade, occupation, profession, or business, unless the  
20 employing unit as well as each such contractor or subcontractor is  
21 an employer by reason of Section 1-208 or Section 3-203 of this  
22 title, the employing unit shall for all the purposes of the  
23 Employment Security Act of 1980 be deemed to employ each individual  
24 in the employ of each such contractor or subcontractor for each day

1 during which such individual is engaged in performing such  
2 employment; except that each such contractor or subcontractor who is  
3 an employer by reason of Section 1-208 or Section 3-203 of this  
4 title shall alone be liable for the contributions measured by wages  
5 paid to individuals employed by the contractor or subcontractor, and  
6 except that any employing unit which shall become liable for and pay  
7 contributions with respect to individuals in the employ of any such  
8 contractor or subcontractor who is not an employer by reason of  
9 Section 1-208 or Section 3-203 of this title may recover the same  
10 from such contractor or subcontractor.

11 Each individual employed to perform or to assist in performing  
12 the work of any agent or employee of an employing unit shall be  
13 deemed to be employed by such employing unit for all the purposes of  
14 the Employment Security Act of 1980, whether such individual was  
15 hired or paid directly by such employing unit or by such agent or  
16 employee of an employing unit, provided the employing unit had  
17 actual or constructive knowledge of the employment.

18 SECTION 4. AMENDATORY 40 O.S. 2021, Section 1-209.1, is  
19 amended to read as follows:

20 Section 1-209.1 LESSOR EMPLOYING UNIT. A. ~~"Lessor employing~~  
21 ~~unit" means any independently established business entity which~~  
22 ~~engages in the business of providing leased employees to any other~~  
23 ~~employer, individual, organization, partnership, corporation or~~  
24 ~~other legal entity, referred to herein as a client lessee.~~

1       ~~B.~~ Any employer or any individual, organization, partnership,  
2 corporation or other legal entity which meets the definition of  
3 lessor employing unit shall be liable for contribution on wages paid  
4 by the lessor employing unit to individuals performing services for  
5 client lessees of the lessor employing unit.

6       ~~C.~~ B. Unless the lessor employing unit has timely complied with  
7 the provisions of this section, any employer, individual,  
8 organization, partnership, corporation or other legal entity leasing  
9 employees from any lessor employing unit shall be jointly and  
10 severally liable for any unpaid contributions, interest, penalties  
11 and fees due under this section from any lessor employing unit  
12 attributable to wages for services performed for the client lessee  
13 entity by the employees leased to the client lessee entity.

14       ~~D.~~ C. In order to relieve client lessees from joint and several  
15 liability imposed under this section, any lessor employing unit as  
16 defined herein may post and maintain a surety bond issued by a  
17 corporate surety authorized to do business in this state in an  
18 amount equivalent to the contributions for which the lessor  
19 employing unit was liable in the last calendar year in which it  
20 accrued contributions, or One Hundred Thousand Dollars  
21 (\$100,000.00), whichever amount is the greater, to ensure prompt  
22 payment of contributions, interest, penalties and fees for which the  
23 lessor employing unit may be or may become liable under this  
24 section.

1        ~~E.~~ D. Any lessor employing unit as defined herein which is  
2 currently engaged in the business of leasing employees to client  
3 lessees shall comply with the provisions of this section by January  
4 1, 1991.

5        ~~F.~~ E. Any lessor employing unit not engaged in the business of  
6 leasing employees to client lessees on or before ~~the effective date~~  
7 ~~of this act~~ May 31, 1990, shall comply with the requirements herein  
8 before entering into lease agreements with client lessees.

9        SECTION 5.        AMENDATORY        40 O.S. 2021, Section 1-209.2, is  
10 amended to read as follows:

11        Section 1-209.2 A. 1. ~~A "Professional Employer Organization"~~  
12 ~~or "PEO" is an organization that is subject to the Oklahoma~~  
13 ~~Professional Employer Organization Recognition and Registration Act~~  
14 ~~and which meets the definition set out in paragraph 9 of Section~~  
15 ~~600.2 of Title 40 of the Oklahoma Statutes.~~

16        2. ~~"Client" shall have the same meaning as provided by~~  
17 ~~paragraph 1 of Section 600.2 of Title 40 of the Oklahoma Statutes.~~

18        3. ~~"Coemployer" shall have the same meaning as provided by~~  
19 ~~paragraph 2 of Section 600.2 of Title 40 of the Oklahoma Statutes.~~

20        4. ~~"Coemployment relationship" shall have the same meaning as~~  
21 ~~provided by paragraph 3 of Section 600.2 of Title 40 of the Oklahoma~~  
22 ~~Statutes.~~

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1       ~~5. "Covered employee" shall have the same meaning as provided~~  
2 ~~by paragraph 5 of Section 600.2 of Title 40 of the Oklahoma~~  
3 ~~Statutes.~~

4       ~~B.~~ For purposes of the Employment Security Act of 1980, the ~~PEO~~  
5 professional employee organization (PEO) and its client shall be  
6 considered coemployers of the covered employees that are under the  
7 direction and control of the client.

8       ~~C.~~ B. If a PEO fails to become or remain registered under the  
9 Oklahoma Professional Employer Organization Recognition and  
10 Registration Act, the entity shall be considered a third-party  
11 administrator of the client account. As a third-party  
12 administrator, a power of attorney will be required to obtain  
13 information from the client's account.

14       SECTION 6.       AMENDATORY       40 O.S. 2021, Section 1-217, is  
15 amended to read as follows:

16       Section 1-217.   UNEMPLOYED.   ~~An individual shall be deemed~~  
17 ~~"unemployed" with respect to any week during which he performed no~~  
18 ~~services and with respect to which no wages are payable to him, or~~  
19 ~~with respect to any week of less than full-time work if the wages~~  
20 ~~payable to him with respect to such week are less than his weekly~~  
21 ~~benefit amount plus One Hundred Dollars (\$100.00); provided that for~~

22       A. An individual shall be deemed unemployed with respect to any  
23 week during which:

24       1. The individual performed no services; and



1       2. No wages are payable to the individual.

2       B. For an initial or additional initial claim filing, an  
3 individual shall be deemed unemployed:

4       1. With respect to any week of less than full-time work, if the  
5 wages payable to the individual are less than his or her weekly  
6 benefit amount plus One Hundred Dollars (\$100.00); and

7       2. If the individual has incurred a loss of wages or reductions  
8 in hours equal to or greater than fifteen percent (15%) of the  
9 income or hours worked, based on his or her customary work  
10 experience or contract of hire.

11       C. For filing made during a continued claim series, an  
12 individual shall be deemed unemployed with respect to any week of  
13 less than full-time work if the wages payable to the individual are  
14 less than his or her weekly benefit amount plus One Hundred Dollars  
15 (\$100.00).

16       D. For the purpose of this section only, any vacation leave  
17 payments or sick leave payments, which such individual may receive  
18 or be entitled to from his or her employer or former employer,  
19 arising by reason of separation from employment, shall be deemed not  
20 to be wages as the term wages is used in this section.

21       E. A finding that an individual has satisfied the hour and wage  
22 threshold as defined in this section shall not preclude a potential  
23 investigation or disqualification for benefits as provided in

1 Section 2-101 et seq. of this title if the employer files a timely  
2 protest to the initial or additional initial claim.

3 SECTION 7. AMENDATORY 40 O.S. 2021, Section 1-223, is  
4 amended to read as follows:

5 Section 1-223. TAXABLE WAGES - CONDITIONAL FACTORS AND  
6 PERCENTAGES.

7 ~~"Taxable wages" means the wages paid to an individual with~~  
8 ~~respect to employment during a calendar year for services covered by~~  
9 ~~the Employment Security Act of 1980 or other state unemployment~~  
10 ~~compensation acts which shall equal the applicable percentage of the~~  
11 ~~state's average annual wage for the second preceding calendar year~~  
12 ~~as determined by the Commission, rounded to the nearest multiple of~~  
13 ~~One Hundred Dollars (\$100.00). The applicable percentage of the~~  
14 state's average annual wage is determined by the conditional factor  
15 in place during the calendar year for which the taxable wage is  
16 being calculated. The conditional factor is determined pursuant to  
17 the provisions of Section 3-113 of this title. The applicable  
18 percentages are as follows:

19 1. Forty percent (40%) during any calendar year in which the  
20 balance in the Unemployment Compensation Fund is in excess of the  
21 amount required to initiate conditional contribution rates, pursuant  
22 to the provisions of Section 3-113 of this title;

23 2. Forty-two and one-half percent (42.5%) during calendar years  
24 in which condition "a" exists;

1 3. Forty-five percent (45%) during calendar years in which  
2 condition "b" exists;

3 4. Forty-seven and one-half percent (47.5%) during calendar  
4 years in which condition "c" exists; and

5 5. Fifty percent (50%) during calendar years in which condition  
6 "d" exists.

7 SECTION 8. AMENDATORY 40 O.S. 2021, Section 1-224, is  
8 amended to read as follows:

9 Section 1-224. FILE. A. For purposes of this section, "OESC  
10 2020-21 business process transformation" means a change from paper  
11 process to integrated digital technology. Upon completion of the  
12 OESC 2020-21 business process transformation, electronic e-filing  
13 will be the Commission's preferred filing method for tendering and  
14 receiving documents. All claimants and employers tendering  
15 documents to the Commission will be expected to tender the documents  
16 electronically. If the claimant or employer has elected to utilize  
17 other means of transmittal, it will be the responsibility of the  
18 claimant or employer to notify the Commission of this preference.

19 B. ~~When any document is required to be filed by the provisions~~  
20 ~~of the Employment Security Act of 1980 or the rules promulgated~~  
21 ~~under the authority of the Employment Security Act of 1980 with the~~  
22 ~~Oklahoma Employment Security Commission, any of its representatives,~~  
23 ~~or the Board of Review for the Oklahoma Employment Security~~  
24 ~~Commission~~ the provisions of the Employment Security Act of 1980 or

1 the rules promulgated under the authority of the act require any  
2 document to be filed with the Oklahoma Employment Security  
3 Commission or its affiliate entities, the term "file", "files", or  
4 "filed" shall ~~be defined as follows~~ mean:

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

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

13 3. ~~Mailed with sufficient postage and properly addressed to the~~  
14 ~~address indicated on the determination letter, order or other~~  
15 ~~document issued~~ Mailing by means calculated to ensure receipt by the  
16 Oklahoma Employment Security Commission on or before the date due.  
17 Timely mailing shall be determined by the United States Postal  
18 Service postmark. If there is no ~~proof from the post office of the~~  
19 ~~date of mailing~~ such legible postmark, the date of receipt by the  
20 Commission shall constitute the date of filing; ~~or~~

21 4. 3. Electronic e-filing to the Oklahoma Employment Security  
22 Commission, as directed by the instructions on the determination  
23 letter, order or other document issued by the Commission, by  
24

1 midnight on or before the date due. Timely transmission shall be  
2 determined by the Commission's transmission log file; or

3 4. Digital portal filing by midnight on or before the date due.  
4 Timely transmission shall be determined by the Commission's  
5 transmission log file.

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

11 SECTION 9. AMENDATORY 40 O.S. 2021, Section 1-225, is  
12 amended to read as follows:

13 Section 1-225. SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN. A.  
14 ~~"Supplemental unemployment benefit plan" means a plan that provides~~  
15 ~~for an employer to make payments to its employees during a permanent~~  
16 ~~or temporary layoff that will supplement unemployment benefits~~  
17 ~~received by the employees. The purpose of a supplemental~~  
18 ~~unemployment benefit plan is to allow an employer to sustain the~~  
19 ~~purchasing power of its employees or former employees during a~~  
20 ~~layoff.~~

21 ~~B.~~ A supplemental unemployment benefit plan for a temporary  
22 layoff must meet the following requirements:

23

24

1           1. The plan shall provide for a payment from the employer to  
2 the employee each week during the temporary layoff to supplement  
3 unemployment benefits received by the employee;

4           2. The plan must be part of an agreement entered into between  
5 the employer and employee, or between the employer and a collective  
6 bargaining agent on behalf of the employee, before the date the  
7 layoff is effective;

8           3. The employer must be able to give a reasonable assurance  
9 that the separated employees will be able to return to work at the  
10 end of the temporary layoff;

11          4. The employer must inform the Commission of the beginning and  
12 ending dates of the layoff and keep the Commission informed of any  
13 changes in circumstances while any claims for unemployment benefits  
14 are in existence; and

15          5. The plan must provide for equal treatment of all employees  
16 covered by the plan who are included in the layoff.

17 The requirements of Sections 2-417 and 2-418 of this title shall be  
18 waived for any claimant of unemployment benefits who is receiving  
19 supplemental benefits under this subsection.

20          ~~C.~~ B. A supplemental unemployment benefit plan for a permanent  
21 layoff must meet the following requirements:

22           1. The plan shall provide for a payment from the employer to  
23 the former employee during each week unemployment benefits are paid  
24

1 to the former employee, in order to supplement the unemployment  
2 benefits received by the former employee;

3 2. The plan must be part of an agreement entered into between  
4 the employer and former employee, or between the employer and a  
5 collective bargaining agent on behalf of the former employee, before  
6 the date the layoff is effective; and

7 3. The plan must provide for equal treatment of all former  
8 employees covered by the plan who are included in the layoff.

9 The requirements of Sections 2-417 and 2-418 of this title shall  
10 be applicable to any claimant of unemployment benefits who is  
11 receiving supplemental benefits under this subsection.

12 ~~D.~~ C. The amount of supplemental unemployment benefit plan  
13 payments will not be deducted from the weekly benefit amount of an  
14 unemployment benefit claim.

15 ~~E.~~ D. All supplemental unemployment benefit plans must be  
16 approved by the Director of the Unemployment Insurance Division of  
17 the Oklahoma Employment Security Commission. The Director's  
18 determination will be in writing and mailed to the employer and the  
19 collective bargaining agent of the employees, if any exists, at  
20 their last-known addresses, within twenty (20) days of the receipt  
21 of the employer's plan. If an employer or collective bargaining  
22 agent disagrees with the determination, an appeal can be taken  
23 pursuant to Section 3-115 of this title.

24

1 SECTION 10. AMENDATORY 40 O.S. 2021, Section 1-228, is  
2 amended to read as follows:

3 Section 1-228. LIMITED LIABILITY COMPANIES. ~~A. For purposes~~  
4 ~~of the Employment Security Act of 1980, a "limited liability~~  
5 ~~company" and a "foreign limited liability company" shall be defined~~  
6 ~~by the provisions of the Oklahoma Limited Liability Company Act.~~

7 B. For unemployment tax purposes, wages, salaries, or draws  
8 paid to limited liability company members, relatives of the members,  
9 and employees shall be taxed in the same manner as required by the  
10 Federal Unemployment Tax Act, Title 26 U.S.C., Chapter 23, and the  
11 Internal Revenue Code, Title 26 U.S.C., Chapters 1 through 99.

12 SECTION 11. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1-230 of Title 40, unless there  
14 is created a duplication in numbering, reads as follows:

15 NOTICE GIVEN.

16 A. Notice shall be deemed given when the Oklahoma Employment  
17 Security Commission notifies by one of the following means:

- 18 1. Mail;
- 19 2. Email or fax to email; or
- 20 3. Upload to the agency digital portal.

21 There is a rebuttable presumption that notice has been given on  
22 the date stated in the communication.

23 B. The Commission's preferred method of notification shall be  
24 electronic delivery through the agency digital portal or email. If



1 claimants or employers wish to opt into delivery by the agency  
2 digital portal or email, they may notify the Commission by one of  
3 the methods listed in subsection A of this section.

4 SECTION 12. AMENDATORY 40 O.S. 2021, Section 2-203, is  
5 amended to read as follows:

6 Section 2-203. CLAIM. A. An unemployed individual must file  
7 an initial claim for unemployment benefits by completing the  
8 required forms through the Internet Claims service provided by the  
9 Commission, or by completing all forms necessary to process an  
10 initial claim in a local office of the Commission or any alternate  
11 site designated by the Commission to take unemployment benefit  
12 claims. The Commission may obtain additional information regarding  
13 an individual's claim through any form of telecommunication,  
14 writing, or interview. An unemployed individual must file a claim  
15 by telecommunication or by Internet utilizing the digital services  
16 portal to create an account to access benefits with respect to each  
17 week in accordance with such rule as the Commission may prescribe.

18 ~~B. 1. During the process of filing an initial claim for~~  
19 ~~unemployment benefits, the claimant shall be made aware of the~~  
20 ~~definition of misconduct set out in Section 2-406 of this title, and~~  
21 ~~the claimant shall affirmatively certify that the answers given to~~  
22 ~~all questions in the initial claim process are true and correct to~~  
23 ~~the best of the claimant's knowledge and that no information has~~

24

1 ~~been intentionally withheld or misrepresented in an attempt by the~~  
2 ~~claimant to receive benefits to which the claimant is not entitled.~~

3 ~~2. The certification statement required in paragraph 1 of this~~  
4 ~~subsection shall be available through the Internet Claims service~~  
5 ~~provided by the Commission and by a form to be completed by the~~  
6 ~~claimant in a local office of the Commission or at any alternate~~  
7 ~~site designated by the Commission to take unemployment benefit~~  
8 ~~claims.~~

9 ~~C.~~ With respect to each week, the claimant must provide the  
10 Commission with a true and correct statement of all material facts  
11 relating to unemployment; ability to work; availability for work;  
12 activities or conditions which could restrict the individual from  
13 seeking or immediately accepting full-time employment or part-time  
14 work if subsection (4) of Section 2-408 of this title applies;  
15 applications for or receipt of workers' compensation benefits;  
16 employment and earnings; and the reporting of other income from  
17 retirement, pension, disability, self-employment, education or  
18 training allowances.

19 ~~D.~~ C. No claim will be allowed or paid unless the claimant  
20 resides within a state or foreign country with which the State of  
21 Oklahoma has entered into a reciprocal or cooperative arrangement  
22 pursuant to Part 7 of Article IV of the Employment Security Act of  
23 ~~1980~~ Section 4-701 et seq. of this title.

24

1        ~~E.~~ D. The Commission may require the individual to produce  
2 documents or information relevant to the claim for benefits. If the  
3 individual fails to produce it, the individual's claim for  
4 unemployment benefits may be disqualified indefinitely by the  
5 Commission until the information is produced. An individual that  
6 has been disqualified indefinitely by the provisions of this  
7 subsection may receive payment for any week between the initial  
8 failure and the compliance with this subsection if the claimant is  
9 otherwise eligible and has made a timely filing for each intervening  
10 week.

11        SECTION 13.        AMENDATORY        40 O.S. 2021, Section 2-205.1, is  
12 amended to read as follows:

13        Section 2-205.1 The unemployed individual must be able to  
14 perform work duties in keeping with his or her education, training  
15 and experience. He or she must also be available to seek and accept  
16 work at any time and may not be engaged in any activity that would  
17 ~~normally~~ restrict his or her seeking or accepting employment ~~in~~  
18 ~~keeping with his education, training and experience.~~

19        The fact that an individual is enrolled in school shall not, in  
20 and of itself, render an individual ineligible for unemployment  
21 benefits. Such individual who is involuntarily unemployed and  
22 otherwise eligible for benefits and who offers to quit school,  
23 adjust class hours or change shifts in order to secure employment  
24 shall be entitled to benefits.

1 SECTION 14. AMENDATORY 40 O.S. 2021, Section 2-503, is  
2 amended to read as follows:

3 Section 2-503. CLAIMS, NOTICES AND OBJECTIONS. A. Claims for  
4 benefits shall be made in accordance with all rules that the  
5 Oklahoma Employment Security Commission may prescribe.

6 B. Promptly after an initial claim or an additional initial  
7 claim is filed, the Commission shall give notice of the claim to the  
8 last employer of the claimant for whom the claimant worked at least  
9 fifteen (15) working days. ~~The required fifteen (15) working~~ These  
10 days are not required to be consecutive. ~~Provided, that promptly~~  
11 ~~after~~ the Commission is notified of the claimant's separation from  
12 ~~an~~ employment obtained ~~by a claimant~~ during a continued claim  
13 series, the Commission shall give notice of the claim to the last  
14 separating employer. Notices to separating employers during a  
15 continued claim series will be given to the last employer in the  
16 claim week without regard to length of employment. Each notice  
17 shall contain an admonition that failure to respond to the notice  
18 could affect the employer's tax rate.

19 C. Promptly after the claim is paid for the fifth week of  
20 benefits the Commission shall give written notice of the claim to  
21 all other employers of the claimant during the claimant's base  
22 period. The notice will be given ~~pursuant to Section 3-106 of this~~  
23 ~~title~~ by electronic means, or if the employer has opted out of such  
24 method of communication, the notice will be sent by mail.

1 D. ~~Notices~~ Notice shall be deemed to have been given ~~to the~~  
2 ~~employer at the last known address and by the date of the postmark~~  
3 ~~on the envelope in which the notice was sent. If the employer has~~  
4 ~~elected to be notified by electronic means according to procedures~~  
5 ~~set out in Oklahoma Employment Security Commission rules, notice~~  
6 ~~shall be deemed to be given when the Commission transmits the notice~~  
7 ~~by electronic means~~ or, if the employer has opted out of such method  
8 of communication, the notice will be sent by mail.

9 E. Within ten (10) days after the date ~~on the notice or the~~  
10 ~~date of the postmark on the envelope in which the notice was sent,~~  
11 ~~whichever is later~~ the notice is emailed, an employer may ~~file with~~  
12 ~~the Commission at the address prescribed in the notice written~~ send  
13 by email all objections to the claim setting forth specifically the  
14 facts which:

- 15 1. Make the claimant ineligible for benefits under Sections 2-  
16 201 through 2-210 of this title;
- 17 2. Disqualify the claimant from benefits under Sections 2-401  
18 through 2-417 and 2-419 of this title; or
- 19 3. Relieve ~~such~~ employer from being charged for the ~~benefits~~  
20 benefit wages of such claimant.

21 F. An untimely employer objection to a claim for unemployment  
22 benefits made pursuant to subsection E of this section may be  
23 allowed for good cause shown.

24

1 SECTION 15. AMENDATORY 40 O.S. 2021, Section 2-503.1, is  
2 amended to read as follows:

3 Section 2-503.1 FILING OF EMPLOYER PROTEST AND DOCUMENTS  
4 THROUGH EMPLOYER PORTAL.

5 A. ~~The procedure set out in this section for the filing of a~~  
6 ~~statement of objection through the employer portal is an optional~~  
7 ~~procedure for the employer. If the employer chooses not to utilize~~  
8 ~~this procedure, the employer must file its protest in accordance~~  
9 ~~with subsection E of Section 2-503 of Title 40 of the Oklahoma~~  
10 ~~Statutes.~~

11 B. An employer may file a statement of objections to the claim  
12 of a former employee at any time from the moment of discharge or  
13 separation from employment ~~of the employee~~ until the expiration of  
14 the ten-day time period set out in subsection E of Section 2-503 of  
15 ~~Title 40 of the Oklahoma Statutes. The~~ this title. Unless the  
16 employer has opted out of receiving electronic communications and  
17 filed their statement of objection through any method listed in  
18 Section 1-224 of this title, the statement of objection must be  
19 filed through the employer portal ~~on the Oklahoma Employment~~  
20 ~~Security Commission's Internet website~~ and must contain a statement  
21 of specific facts and documentation which:

22 1. Disclose the name and Social Security number of the  
23 employee;

24

- 1        2. Make the claimant ineligible for benefits under Sections 2-  
2 201 through 2-210 of ~~Title 40 of the Oklahoma Statutes~~ this title;
- 3        3. Disqualify the claimant for benefits under Sections 2-401  
4 through 2-419 of ~~Title 40 of the Oklahoma Statutes~~ this title; or
- 5        4. Relieve the employer from being charged for the ~~benefits~~  
6 benefit wages of this claimant.

7        ~~C. B.~~ Any timely statement of objection filed ~~pursuant to this~~  
8 ~~section within the time period and in the manner set out in~~  
9 ~~subsection B of this section~~ shall be considered a valid protest to  
10 a claim for unemployment benefits ~~filed by the former employee~~ and  
11 the employer shall be considered an interested party to the claim.  
12 A statement of objection filed ~~pursuant to this section~~ outside the  
13 time period or in any manner other than as set out in subsection ~~B~~ A  
14 of this section shall not be considered a valid protest to a claim  
15 for unemployment of the former employee, and the employer shall not  
16 be considered an interested party to the claim.

17        SECTION 16.        AMENDATORY        40 O.S. 2021, Section 2-605, is  
18 amended to read as follows:

19        Section 2-605. NOTICE OF REFEREE DECISION. The parties shall  
20 be promptly notified of such referee's decision and shall be  
21 furnished with a copy of the decision, including the findings and  
22 conclusions in support thereof. The decision shall be provided to  
23 the party by the agency's digital portal or email unless the party  
24 notifies the agency that they opted out from receiving notices by

1 email pursuant to Section 11 of this act. Such decision shall be  
2 final unless, within ten (10) days after the date ~~of mailing of~~  
3 ~~notice thereof to the parties' last-known addresses, or, in the~~  
4 ~~absence of such mailing, within ten (10) days after the delivery of~~  
5 ~~such~~ notice is deemed given, further review before the Board of  
6 Review is initiated pursuant to Section 2-606 of this title.

7 SECTION 17. AMENDATORY 40 O.S. 2021, Section 2-606, is  
8 amended to read as follows:

9 Section 2-606. APPEALS FROM TRIBUNAL REFEREE DECISIONS TO BOARD  
10 OF REVIEW.

11 The Board of Review shall review the record of an appeal filed  
12 by any of the parties entitled to notice on a determination of an  
13 appeal tribunal referee. ~~An appeal to the Board of Review may be~~  
14 ~~filed in any manner allowed by Section 1-224 of this title.~~ On  
15 appeal, the Board of Review may affirm, modify, reverse, or remand  
16 any decision of an appeal tribunal referee on the basis of evidence  
17 previously submitted, or on the basis of additional evidence  
18 received by an appeal tribunal referee on remand. The Board of  
19 Review shall promptly notify the parties of its decision in writing,  
20 and the decision shall be final unless within thirty (30) days after  
21 ~~the mailing of the decision to the parties' last-known addresses~~  
22 notice is deemed given, a proceeding for judicial review is  
23 initiated pursuant to Section 2-610 of this title.

24



1 SECTION 18. AMENDATORY 40 O.S. 2021, Section 3-106, is  
2 amended to read as follows:

3 Section 3-106. BENEFIT WAGES CHARGED AND RELIEF THEREFROM. A.

4 The Oklahoma Employment Security Commission shall give notice to  
5 each base period employer ~~of a claimant promptly~~ after the claimant  
6 ~~is~~ has been issued his or her fifth week of benefits by the  
7 Commission or ~~promptly~~ after the Commission receives notice of the  
8 amounts paid as benefits by another state under a reciprocal  
9 arrangement. ~~Notice shall be deemed given under this subsection~~  
10 ~~when the Commission deposits the same with the United States Postal~~  
11 ~~Service addressed to the employer at an address designated by the~~  
12 ~~employer to receive the notice or at the employer's last known~~  
13 ~~address. If the employer has elected to be notified by electronic~~  
14 ~~means according to procedures set out in Oklahoma Employment~~  
15 ~~Security Commission rules, notice shall be deemed to be given when~~  
16 ~~the Commission transmits the notification by electronic means.~~  
17 ~~Notice shall be presumed prima facie to have been given to the~~  
18 ~~employer to whom addressed on the date stated in the written notice.~~

19 This notice shall give the name and Social Security number of the  
20 claimant, the date the claim was filed, and the amount of benefit  
21 wages charged to the employer in each quarter of the base period.

22 B. Within twenty (20) days from the date stated ~~upon~~ on the  
23 notice ~~provided for in subsection A of this section,~~ the employer  
24 may file ~~with the Commission written objections~~ an objection to

1 being charged ~~with the benefit wages upon one or more of the grounds~~  
2 ~~for objection~~ as set forth in subsection G of this section. The  
3 employer's written objection must set forth specifically:

4 1. The date ~~on which the~~ employment was terminated;

5 2. ~~Full particulars as to the circumstances~~ Specific details of  
6 the termination including the reason given by the individual for  
7 voluntarily leaving the employment, or the nature of the misconduct  
8 for ~~which discharged, as the case may be~~ discharge;

9 3. ~~Full particulars as to~~ Specific details of the regular  
10 scheduled part-time or full-time employment of the employee  
11 including the starting date, and ending date if any, of the  
12 continuous period of ~~such part-time or full-time~~ employment; and

13 4. ~~Such other~~ Other information as called for by the notice.

14 C. Upon receipt of the employer's ~~written objections~~ objection,  
15 the Commission shall make a determination and notify the employer as  
16 to whether or not the employer is entitled to be relieved from ~~the~~  
17 ~~charging of benefit wages~~ wage charges. ~~The Commission shall~~  
18 ~~promptly notify the employer of that determination. Provided~~  
19 ~~further~~ Additionally, the twenty-day time period for filing ~~written~~  
20 ~~objections with the Commission~~ an objection as provided for in  
21 subsection B of this section may be waived for good cause shown.

22 D. Within twenty (20) days after the ~~mailing~~ issuing of the  
23 determination provided for in subsection C of this section, the  
24 employer may file with the ~~Commission or its representative~~

1 Assessment Board a ~~written~~ protest to the determination and request  
2 an oral hearing de novo to present evidence in support of its  
3 protest. The ~~Commission or its representative~~ Assessment Board  
4 shall, ~~by written notice,~~ advise the employer of the date of the  
5 hearing, which shall not be less than ten (10) days from the date of  
6 ~~mailing of the written notice.~~ At the discretion of the Commission,  
7 this hearing shall be conducted by the ~~Commission or its~~  
8 ~~representative appointed by the Commission for this purpose.~~  
9 ~~Pursuant to~~ Assessment Board. After the hearing, the ~~Commission or~~  
10 ~~its representative~~ Assessment Board shall, ~~as soon as practicable,~~  
11 ~~make a written order setting forth its findings of fact and~~  
12 ~~conclusions of law, and shall send it to the employer~~ notify the  
13 employer of its findings.

14 E. If any employer ~~fails to file a written protest within the~~  
15 ~~period of twenty (20) days, as provided by subsection D of this~~  
16 ~~section, then the determination shall be final, and no appeal shall~~  
17 ~~thereafter be allowed~~ does not file a timely appeal of the  
18 determination to the Assessment Board, the determination shall be  
19 final.

20 F. The employer or the Commission may appeal the Assessment  
21 Board's order of the Commission or its representative to the  
22 district court by filing a petition for review with the district  
23 court clerk ~~of that court~~ within thirty (30) days after the date the  
24

1 order was ~~mailed~~ issued to all parties. ~~The mailing date shall be~~  
2 ~~specifically stated in the order.~~

3 G. The benefit wages charged to an employer for a given  
4 calendar year shall be the total of the benefit wages stated in the  
5 notices given to the employer ~~by the Commission~~. Provided, that an  
6 employer shall be relieved of a benefit wage charge if the employer  
7 proves to the satisfaction of the Commission that the benefit wage  
8 charge includes wages paid by the employer to any employee or former  
9 employee, who:

10 1. ~~Left employment with that employer, or with his or her last~~  
11 ~~employer, voluntarily~~ Voluntarily left employment without good cause  
12 connected to the work;

13 2. Was discharged from ~~such~~ employment for misconduct connected  
14 with his or her work;

15 3. Was a regular scheduled employee of ~~that~~ the separating  
16 employer prior to the week the employee separated from other  
17 employment, and continued to work for the employer through the fifth  
18 compensable week of unemployment ~~in his or her~~ of the established  
19 benefit year;

20 4. Was separated from ~~his or her~~ employment as a direct result  
21 of a major natural disaster, declared as such by the President  
22 pursuant to the Disaster Relief Act of 1974, P.L. 93-288, and such  
23 employee would have been entitled to disaster unemployment  
24

1 assistance if he or she had not received unemployment insurance  
2 benefits;

3 5. Was discharged by an employer for unsatisfactory performance  
4 during an initial employment probationary period. As used in this  
5 paragraph, "probationary period" means a period of time set forth in  
6 an established probationary plan which applies to all employees or a  
7 specific group of employees and does not exceed ninety (90) calendar  
8 days from the first day a new employee begins work. The employee  
9 must be informed of the probationary period within the first seven  
10 (7) work days. There must be conclusive evidence to establish that  
11 the individual was separated due to unsatisfactory work performance;

12 6. Left employment to attend training approved under the Trade  
13 Act of 1974 and is allowed unemployment benefits pursuant to Section  
14 2-416 of this title; or

15 7. Was separated from employment for compelling family  
16 circumstances as defined in Section 2-210 of this title.

17 H. If an employer recalls an employee deemed unemployed as  
18 defined by the Employment Security Act of 1980 and the employee  
19 continues to be employed or the employee voluntarily terminates  
20 employment or is discharged for misconduct within the benefit year,  
21 the employer shall be entitled to have the benefit wage charged  
22 against the employer's experience rating for the employee reduced by  
23 the ratio of the number of weeks of remaining eligibility of the  
24 employee to the total number of weeks of entitlement.

1 I. An employer shall not be ~~charged with benefit wages~~ assessed  
2 a benefit wage charge of a laid-off employee if the employer lists  
3 as an objection in a statement filed in accordance with subsection B  
4 of this section that the employee collecting benefits was hired to  
5 replace a United States serviceman or servicewoman called into  
6 active duty and laid-off upon the return to work by that serviceman  
7 or servicewoman. The Unemployment Compensation Fund shall be  
8 charged with the benefit wages of the laid-off employee.

9 J. If the Commission receives a notice of amounts paid as  
10 benefits by another state under a reciprocal agreement, and the  
11 notice is received after three (3) years from the effective date of  
12 the underlying benefit claim, no benefit wage charge will be made  
13 against the employer identified in the notice, or if a benefit wage  
14 charge is made based on such a notice, the employer will be relieved  
15 of the charge when the facts are brought to the attention of the  
16 Commission.

17 K. An employer shall not be eligible to be relieved of a  
18 benefit wage charge under paragraphs 1 and 2 of subsection G of this  
19 section if the employer was sent a notice of benefit claim, pursuant  
20 to Section 2-503 of this title, and failed to timely file protest to  
21 the benefit claim.

22 SECTION 19. AMENDATORY 40 O.S. 2021, Section 3-115, is  
23 amended to read as follows:

24

1 Section 3-115. APPEAL OF DETERMINATIONS. A. If a  
2 determination is made by the Oklahoma Employment Security Commission  
3 on any aspect of an employer's account, and a method of appeal or  
4 protest of the determination is not set out in the statute or rule  
5 under which the determination was made, the employer may appeal or  
6 protest the determination under the procedure set forth in  
7 subsection B of this section.

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

16 2. Within twenty (20) days after the mailing or transmission of  
17 the Notice of Determination as provided for in paragraph 1 of this  
18 subsection, the employer may file with the Commission, or its  
19 representative, a written request for a review and redetermination  
20 setting forth the employer's reasons therefor. If any employer  
21 fails to file a written request for review and redetermination  
22 within twenty (20) days without good cause, then the initial  
23 determination of the Commission shall be final, and no further  
24 appeal or protest shall be allowed.

1           3. If a written request for review and redetermination is  
2 filed, the Commission shall provide for a review and issue a Notice  
3 of Redetermination in the matter. The employer may appeal the  
4 redetermination by filing a written ~~protest~~ appeal within twenty  
5 (20) days of the date of the mailing of the Notice of  
6 Redetermination. If the employer fails to file a written ~~protest~~  
7 appeal within twenty (20) days without good cause, the  
8 redetermination of the Commission shall be final and no further  
9 appeal ~~or protest~~ shall be allowed.

10           4. Upon the timely filing of a written ~~protest~~ appeal, the  
11 Commission shall provide for an oral hearing ~~de novo~~ to allow the  
12 employer to present evidence in support of the ~~protest~~ appeal. The  
13 standard of review on appeal shall be de novo. The Commission or  
14 its representatives shall, by written notice, advise the employer of  
15 the date of the hearing, which shall not be less than ten (10) days  
16 from the date of the mailing of the written notice. At the  
17 discretion of the Commission, this hearing shall be conducted by the  
18 Commission, or by a representative appointed by the Commission for  
19 this purpose. The appealing party shall bear the initial burden of  
20 proof at the hearing.

21           5. Pursuant to the hearing, the Commission or its  
22 representative shall, as soon as practicable, make a written order  
23 setting forth its findings of fact and conclusions of law, and shall  
24



1 mail it to the employer at the employer's last-known address with  
2 the mailing date and appeal rights set out in the document.

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

14 C. Untimely requests for review and redetermination pursuant to  
15 paragraph 2 of subsection B of this section and written protests for  
16 appeals filed pursuant to paragraph 3 of subsection B of this  
17 section may be allowed for good cause shown, if the request for good  
18 cause is filed in writing with the Commission within one (1) year of  
19 the date of the determination or redetermination that is the basis  
20 of the request for untimely filing.

21 SECTION 20. AMENDATORY 40 O.S. 2021, Section 3-307, is  
22 amended to read as follows:

23 Section 3-307. A. All remittance under Section 1-101 et seq.  
24 of this title shall be made payable to the Oklahoma Employment

1 Security Commission at Oklahoma City, Oklahoma, by automatic  
2 clearinghouse (ACH) debit/credit, financial institution, draft,  
3 check, cashier's check, electronic fund transfer, credit card, money  
4 order or money, and the Commission shall issue its receipt, for cash  
5 or money payment, to the payor. No remittance other than cash shall  
6 be in final discharge of liability due the Commission unless and  
7 until it shall have been paid in cash. All monies collected shall  
8 be deposited with the State Treasurer. There shall be assessed, in  
9 addition to any other penalties provided for by law, an  
10 administrative service fee of Twenty-five Dollars (\$25.00) on each  
11 check returned to the Commission or any agent thereof by reason of  
12 the refusal of the financial institution upon which such check was  
13 drawn to honor the same. There shall be assessed, in addition to  
14 any other penalties provided for by law, an administrative service  
15 fee of Twenty-five Dollars (\$25.00) on each electronic fund transfer  
16 that fails due to insufficient funds in the payor's account.

17 B. Upon the return of any check by reason of the refusal of the  
18 financial institution upon which such check was drawn to honor the  
19 same, the Commission may file a bogus check complaint with the  
20 appropriate district attorney who shall refer the complaint to the  
21 Bogus Check Restitution Program established by Section 111 of Title  
22 22 of the Oklahoma Statutes. Funds collected through the program  
23 after collection of the fee authorized by Section 114 of Title 22 of  
24 the Oklahoma Statutes for deposit in the Bogus Check Restitution

1 Program Fund in the county treasury shall be transmitted to the  
2 Commission and credited to the liability for which the returned  
3 check was drawn along with the administrative service fee provided  
4 by this section.

5 C. The Commission shall promulgate the rules for the deadlines  
6 of payment of unemployment taxes and the method of payment.

7 SECTION 21. AMENDATORY 40 O.S. 2021, Section 4-205, is  
8 amended to read as follows:

9 Section 4-205. TEMPORARY MEMBERS. In the event of the  
10 disqualification of one member of the Board of Review from the  
11 hearing and determination of a claim for the benefits, the Governor  
12 shall designate a fourth, temporary member to serve as an  
13 alternative member. In the event of the disqualification of two or  
14 more members of the Board of Review from the hearing and  
15 determination on a claim for benefits, the Governor shall designate  
16 by appointment temporary members to serve as alternate members,  
17 ~~such.~~ Such alternates ~~to~~ shall be paid traveling expenses incurred  
18 in the performance of their duties as provided in the State Travel  
19 Reimbursement Act. The Governor may at any time, after notice and  
20 hearing, remove any member for cause.

21 SECTION 22. AMENDATORY 40 O.S. 2021, Section 4-508, is  
22 amended to read as follows:

23 Section 4-508. INFORMATION TO BE KEPT CONFIDENTIAL -  
24 DISCLOSURE.

1       A. Except as otherwise provided by law, information obtained  
2 from any employing unit or individual pursuant to the administration  
3 of the Employment Security Act of 1980, any workforce system program  
4 administered or monitored by the Oklahoma Employment Security  
5 Commission, and determinations as to the benefit rights of any  
6 individual shall be kept confidential and shall not be disclosed or  
7 be open to public inspection in any manner revealing the  
8 individual's or employing unit's identity. Any claimant, employer,  
9 or agent of either as authorized in writing, shall be supplied with  
10 information from the records of the Oklahoma Employment Security  
11 Commission, to the extent necessary for the proper presentation of  
12 the claim or complaint in any proceeding under the Employment  
13 Security Act of 1980, with respect thereto.

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

24

1 C. The provisions of this section shall not prevent the  
2 Commission from disclosing the following information and no  
3 liability whatsoever, civil or criminal, shall attach to any member  
4 of the Commission or any employee thereof for any error or omission  
5 in the disclosure of this information:

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

9 2. The disclosure of information to any person for a purpose as  
10 authorized by the taxpayer or claimant pursuant to a waiver of  
11 confidentiality. The waiver shall be in writing and shall be  
12 notarized;

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

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

23 5. The disclosing of information or evidence to the Attorney  
24 General or any district attorney when the information or evidence is

1 to be used by the officials or other parties to the proceedings to  
2 prosecute or defend allegations of violations of the Employment  
3 Security Act of 1980. The information disclosed to the Attorney  
4 General or any district attorney shall be kept confidential by them  
5 and not be disclosed except when presented to a court in a  
6 prosecution of a violation of Section 1-101 et seq. of this title,  
7 and a violation by the Attorney General or district attorney by  
8 otherwise releasing the information shall be a felony;

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

14 7. The furnishing of information to other state agencies for  
15 the limited purpose of aiding in the collection of debts owed by  
16 individuals to the requesting agencies or the Oklahoma Employment  
17 Security Commission;

18 8. The release of information to employees of the ~~Oklahoma~~  
19 Department of Transportation required for use in federally mandated  
20 regional transportation planning, which is performed as a part of  
21 its official duties;

22 9. The release of information to employees of the ~~Oklahoma~~  
23 State Treasurer's office required to verify or evaluate the  
24

1 effectiveness of the Oklahoma Small Business Linked Deposit Program  
2 on job creation;

3 10. The release of information to employees of the Attorney  
4 General, the Department of Labor, the Workers' Compensation  
5 Commission and the Insurance Department for use in investigation of  
6 workers' compensation fraud;

7 11. The release of information to employees of any ~~Oklahoma~~  
8 state, ~~Oklahoma~~ county, ~~Oklahoma~~ municipal or ~~Oklahoma~~ tribal law  
9 enforcement agency for use in criminal investigations and the  
10 location of missing persons or fugitives from justice;

11 12. The release of information to employees of the Center of  
12 International Trade, Oklahoma State University, required for the  
13 development of International Trade for employers doing business in  
14 ~~the State of Oklahoma~~ this state;

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

22 14. The release of information to employees of the Oklahoma  
23 Department of Career and Technology Education, the Oklahoma State  
24 Regents for Higher Education, the Center for Economic and Management

1 Research of the University of Oklahoma, the Center for Economic and  
2 Business Development at Southwestern Oklahoma State University or a  
3 center of economic and business research or development at a  
4 comprehensive or regional higher education institution within The  
5 Oklahoma State System of Higher Education required to identify  
6 economic trends or educational outcomes. The information obtained  
7 shall be kept confidential by the Oklahoma Department of Career and  
8 Technology Education, the Oklahoma State Regents for Higher  
9 Education and the higher education institution and shall not be  
10 disclosed or be open to public inspection. The Oklahoma Department  
11 of Career and Technology Education, the Oklahoma State Regents for  
12 Higher Education and the higher education institution may release  
13 aggregated data, provided that the aggregation meets disclosure  
14 requirements of the Commission;

15 15. The release of information to employees of the Office of  
16 Management and Enterprise Services required to identify economic  
17 trends. The information obtained shall be kept confidential by the  
18 Office of Management and Enterprise Services and shall not be  
19 disclosed or be open to public inspection. The Office of Management  
20 and Enterprise Services may release aggregate data, provided that  
21 the aggregation meets disclosure requirements of the Oklahoma  
22 Employment Security Commission;

23 16. The release of information to employees of the Department  
24 of Mental Health and Substance Abuse Services required to evaluate



1 the effectiveness of mental health and substance abuse treatment and  
2 state or local programs utilized to divert persons from inpatient  
3 treatment. The information obtained shall be kept confidential by  
4 the Department and shall not be disclosed or be open to public  
5 inspection. The Department of Mental Health and Substance Abuse  
6 Services, however, may release aggregated data, either by treatment  
7 facility, program or larger aggregate units, provided that the  
8 aggregation meets disclosure requirements of the Oklahoma Employment  
9 Security Commission;

10 17. The release of information to employees of the Attorney  
11 General, the Oklahoma State Bureau of Investigation and the  
12 Insurance Department for use in the investigation of insurance fraud  
13 and health care fraud;

14 18. The release of information to employees of public housing  
15 agencies for purposes of determining eligibility pursuant to 42  
16 U.S.C., Section 503(i);

17 19. The release of wage and benefit claim information, at the  
18 discretion of the Commission, to an agency of this state or its  
19 political subdivisions that operate a program or activity designated  
20 as a required partner in the Workforce Innovation and Opportunity  
21 Act One-Stop delivery system pursuant to 29 U.S.C.A., Section  
22 3151(b)(1), based on a showing of need made to the Commission and  
23 after an agreement concerning the release of information is entered  
24 into with the entity receiving the information. For the limited

1 purpose of completing performance accountability reports required by  
2 the Workforce Innovation and Opportunity Act, only those designated  
3 required partners that meet the 20 CFR Section 603.2(d) definition  
4 of public official may contract with a private agent or contractor  
5 pursuant to 20 CFR Section 603.5(f) for the purpose of the private  
6 agent or contractor receiving confidential unemployment compensation  
7 information to the extent necessary to complete the performance  
8 accountability reports;

9 20. The release of information to the State Wage Interchange  
10 System, at the discretion of the Commission;

11 21. The release of information to the Bureau of the Census of  
12 the U.S. Department of Commerce, the Bureau of Labor Statistics of  
13 the U.S. Department of Labor, and its agents employed by the  
14 Oklahoma Department of Labor for the purpose of economic and  
15 statistical research;

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

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

24

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

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

15       26. The release of information to employees of the Office of  
16 Juvenile Affairs for use in assessing results and outcomes of  
17 clients served as well as the effectiveness of state and local  
18 juvenile and justice programs including prevention and treatment  
19 programs. The information obtained shall be kept confidential by  
20 the Office of Juvenile Affairs and shall not be disclosed or be open  
21 to public inspection. The Office of Juvenile Affairs may release  
22 aggregated data for programs or larger aggregate units, provided  
23 that the aggregation meets disclosure requirements of the Oklahoma  
24 Employment Security Commission;

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

16           28. The release of employer tax information and benefit claim  
17 information to employees of a county public defender's office in ~~the~~  
18 ~~State of Oklahoma~~ this state and the Oklahoma Indigent Defense  
19 System for the purpose of determining financial eligibility for the  
20 services provided by such entities.

21           D. Subpoenas to compel disclosure of information made  
22 confidential by this statute shall not be valid, except for  
23 administrative subpoenas issued by federal, state, or local  
24 governmental agencies that have been granted subpoena power by

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

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

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

23 SECTION 23. REPEALER 40 O.S. 2021, Sections 1-202, 1-  
24 202.2, 1-203, 1-204, 1-205, 1-206, 1-207, 1-211, 1-212, 1-213, 1-

1 215, 1-216, 1-219, 1-220, 1-221, 1-226, 1-301, 2-406.2, 2-709, 2-  
2 711, 2-713, and 3-118, are hereby repealed.

3 SECTION 24. This act shall become effective November 1, 2022.

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5 58-2-11612 LRB 05/18/22

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