

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 1635

4
5 By: Representative Lamoureux
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For An Act To Be Entitled

8
9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 EMPLOYMENT SECURITY LAW; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT TO AMEND VARIOUS SECTIONS OF THE
14 ARKANSAS EMPLOYMENT SECURITY LAW.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 11-10-210(f), concerning defining the term
20 "employment" for the Employment Security Law, is amended to add an additional
21 subdivision to read as follows:

22 (20) Service performed by a person committed to a penal
23 institution.
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25 SECTION 2. Arkansas Code § 11-10-214(a), defining unemployment for
26 unemployment benefits, is amended to read as follows:

27 (a) As used in this chapter, unless the context clearly requires
28 otherwise, an individual shall be deemed "unemployed" with respect to any
29 week during which:

30 (1) He or she performs no services; ~~and~~

31 (2) No wages are payable to him or her with respect to that
32 week, or if wages are payable to him or her for any week of less than full-
33 time work, the wages are less than one hundred forty percent (140%) of his or
34 her weekly benefit amount-; and

35 (3) He or she is not on leave approved by an employer under the
36 Family and Medical Leave Act, as in effect January 1, 2003.



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2 SECTION 3. Arkansas Code § 11-10-314, concerning disclosure of
3 information by the Arkansas Employment Security Department, is amended to add
4 an additional subsection to read as follows:

5 (r)(1) The director may, pursuant to a valid subpoena issued by a
6 state prosecuting attorney, the Attorney General of Arkansas, a United States
7 Attorney, a United States Magistrate Judge, or the Federal Bureau of
8 Investigation, release information in the possession of the department to law
9 enforcement officials who seek unemployment information for the investigation
10 or prosecution of a crime, or to enforce an order of a court in a criminal
11 matter.

12 (2) In cases other than investigation or prosecution of a crime,
13 or enforcement of an order of a court in a criminal matter, the director
14 shall:

15 (A) First move to quash the subpoena; and

16 (B) Honor the subpoena and subpoenas dealing with similar
17 subject matter, only if a court of competent jurisdiction finds that the need
18 to examine the subpoenaed information outweighs the express policy of
19 maintaining confidentiality in matters involving individuals and employers
20 dealing with the department.

21
22 SECTION 4. Arkansas Code § 11-10-507(2), concerning conditions for
23 eligibility for unemployment benefits, is amended to read as follows:

24 (2) REGISTRATION AND REPORTING. He or she has registered for work at,
25 and thereafter continued to report ~~at~~ to, an Arkansas Employment Security
26 Department office in accordance with such regulations as the director may
27 prescribe. The director may, by regulation, waive or alter either or both of
28 the requirements of this subdivision as to individuals attached to regular
29 jobs and as to such other types of cases or situations with respect to which
30 he or she finds that compliance with these requirements would be oppressive
31 or would be inconsistent with the purpose of this chapter. However, no such
32 regulations shall conflict with § 11-10-501;

33
34 SECTION 5. Arkansas Code § 11-10-513, concerning disqualification from
35 unemployment benefits for voluntarily leaving work, is amended to add an
36 additional subsection to read as follows:

1 (c)(1) No individual shall be disqualified under this section if he or
2 she left his or her last work because he or she voluntarily participated in a
3 permanent reduction in the employer’s work force after the employer announced
4 a pending reduction in its work force, and asked for volunteers.

5 (2) Such actions initiated by the employer shall be considered
6 layoffs regardless of any incentives offered by the employer to induce its
7 employees to volunteer.

8 (3) Any incentives received shall be reported under § 11-10-517.

9
10 SECTION 6. Arkansas Code § 11-10-517, concerning disqualification for
11 unemployment benefits for receipt of other remunerations, is amended to add
12 an additional subsection to read as follows:

13 (7) SICK PAY. However, if otherwise eligible, he or she shall be
14 paid, with respect to the week in which the sick pay period occurred, an
15 amount equal to the weekly benefit amount less that part of the sick pay, if
16 any, payable to him or her that he or she has been paid or will be paid at a
17 later date with respect to a week that is in excess of forty percent (40%) of
18 his or her weekly benefit amount, rounded to the nearest lower full dollar
19 amount. For the purpose of this subdivision (7), the employer shall promptly
20 report the week or weeks involved in the sick pay period as well as the
21 corresponding amount of sick pay with respect to the week or weeks. However,
22 any sick pay received due to a permanent separation from employment shall not
23 be disqualifying nor deductible under this section.

24
25 SECTION 7. Arkansas Code § 11-10-519 is amended to read as follows:

26 11-10-519. Disqualification - Penalty for false statement or
27 misrepresentation.

28 If so found by the Director of the Arkansas Employment Security
29 Department, an individual shall be disqualified for benefits:

30 (1) If he or she willfully makes a false statement or
31 misrepresentation of a material fact or willfully fails to disclose a
32 material fact in filing an initial claim or a claim renewal. ~~The~~
33 ~~disqualification shall be for thirteen (13) weeks beginning with the date of~~
34 ~~the filing of the claim~~ He or she shall be disqualified from the date of
35 filing the claim until he or she has ten (10) weeks of employment in each of
36 which he or she has earned wages equal to at least his or her weekly benefit

1 amount;

2 (2)(A) For any continued week claimed with respect to which the
3 employee has willfully made a false statement or misrepresentation of a
4 material fact or willfully fails to disclose a material fact in obtaining or
5 attempting to obtain any benefits, and for an additional thirteen (13) weeks
6 of unemployment, as defined in § 11-10-512, and which shall commence with
7 Sunday of the first week with respect to which a claim is filed commencing
8 with the week of delivery or mailing of the determination of disqualification
9 under this section; and

10 (B) In addition to the thirteen (13) weeks of disqualification,
11 a disqualification of three (3) weeks shall be imposed for each week of
12 failure or falsification. Any weekly benefits payable subsequent to the date
13 of the delivery or mailing of the determination shall be reduced fifty
14 percent (50%) rounded to the next lower dollar, and the remainder of maximum
15 benefits shall be reduced accordingly. The reduction shall apply only to
16 benefits payable within the benefit year of the claim with respect to which
17 the claimant willfully made a false statement or misrepresentation; and

18 ~~(C)~~(3) The disqualification shall not be applied after five (5) years
19 have elapsed from the date of the delivery or mailing of the determination of
20 disqualification under this section, but all overpayments established by the
21 determination of disqualification shall be collected as otherwise provided by
22 this chapter.

23

24 SECTION 8. Arkansas Code § 11-10-524(a), concerning claims,
25 administrative appeals, and hearings for unemployment benefits, is amended to
26 read as follows:

27 (a)(1) The claimant, the Director of the Arkansas Employment Security
28 Department, or any other party entitled to notice may appeal a determination
29 made by the agency by filing a written notice of appeal with the appeal
30 tribunal or at any office of the Arkansas Employment Security Department
31 within twenty (20) calendar days after the date of mailing of the notice to
32 his or her last known address, or if the notice is not mailed, within twenty
33 (20) calendar days after the date of delivery of the notice. If mailed, an
34 appeal shall be considered to have been filed as of the date of the postmark
35 on the envelope.

36 (2) However, if it is determined by ~~an~~ the appeal tribunal or

1 the Board of Review that the appeal is not perfected within the twenty-
 2 calendar-day period as a result of circumstances beyond the appellant's
 3 control, the appeal may be considered as having been filed timely.

4
 5 SECTION 9. Arkansas Code § 11-10-524(c) and (d), concerning claims,
 6 administrative appeals, and hearings for unemployment benefits, is amended to
 7 read as follows:

8 (c)(1) The parties shall be promptly notified of the tribunal's
 9 decision and shall be furnished a copy of the decision and the findings and
 10 conclusions in support thereof.

11 (2) The decision shall become final unless within twenty (20)
 12 calendar days after the date of mailing of the notice to the parties' last
 13 known addresses an appeal is initiated pursuant to § 11-10-525 or a request
 14 for reopening is made pursuant to subsection (d) of this section.

15 ~~(d)(1)(A) A party which files an appeal pursuant to subsection (a) of~~
 16 ~~this section and fails to appear at the initial tribunal hearing scheduled as~~
 17 ~~a result of that appeal may request that the matter be reopened by the~~
 18 ~~tribunal~~ If any party fails to appear at the initial tribunal hearing
 19 scheduled as a result of an appeal, that party may request that the matter be
 20 reopened by the tribunal.

21 (2) Requests for reopening shall be made in writing and shall be
 22 granted by the tribunal only upon a showing of good cause for failing to
 23 appear at the initial tribunal hearing.

24 (3)(A)(i) If a request for reopening is granted, the tribunal
 25 shall schedule another hearing, after which it will issue a new decision.

26 (ii) If a request for reopening is not granted, the
 27 tribunal's initial decision shall stand as issued.

28 (B)(i) In either event, the parties shall be promptly
 29 notified of the tribunal's decision and shall be furnished a copy of the
 30 decision and the findings and conclusions in support thereof.

31 (ii) The decision shall become final unless within
 32 twenty (20) calendar days after the date of its mailing to the parties' last
 33 known addresses an appeal is initiated pursuant to § 11-10-525.

34
 35 SECTION 10. Arkansas Code § 11-10-525 is amended to read as follows:
 36 11-10-525. Claims - Administrative appeal - Review by Board of Review.

1 (a) An appeal filed by any party shall be allowed as of right if the
 2 ~~decision was not unanimous or if the examiner's~~ determination was not
 3 affirmed by the appeal tribunal.

4 (b) The Board of Review, on its own motion and within the time
 5 specified in § 11-10-524, may initiate a review of the decision of an appeal
 6 tribunal or determination of a special examiner or may allow an appeal from
 7 the decision on application filed within the time by any party entitled to
 8 notice of the decision.

9 (c)(1) Upon review on its own motion or upon appeal and on the basis
 10 of evidence previously submitted in the case, or upon the basis of any
 11 additional evidence as it may direct be taken, the board may affirm, modify,
 12 or reverse the findings and conclusions of the appeal tribunal or may remand
 13 the case.

14 (2) In cases where the board directs that additional evidence be
 15 taken ~~upon request from any interested party in an intrastate claim~~ in an
 16 appeal involving an intrastate claim, an in-person hearing shall be granted,
 17 if requested by any interested party.

18 (d) The board shall promptly notify the parties to any proceeding
 19 before it of its decision, including its findings and conclusions in support
 20 of the decision.

21 (e) The decision shall be final unless within twenty (20) calendar
 22 days after the mailing of notice thereof to the parties' last known address,
 23 or, in the absence of the mailing, within twenty (20) calendar days after the
 24 delivery of the notice, a proceeding for judicial review is initiated
 25 pursuant to § 11-10-529.

26 (f) However, upon denial by the board of an application for appeal
 27 from the decision of an appeal tribunal, the decision of the appeal tribunal
 28 shall be deemed to be a decision of the board within the meaning of this
 29 section for purposes of judicial review and shall be subject to judicial
 30 review within the time and in the manner provided for with respect to
 31 decisions of the board, except that the time for initiating the review shall
 32 run from the date of notice of the order of the board denying the application
 33 for appeal.

34
 35 SECTION 11. Arkansas Code § 11-10-529(a)(1), concerning decisions of
 36 the board of review and judicial review of unemployment claims, is amended to

1 read as follows:

2 (a)(1)(A) Any party entitled to a decision of the Board of Review
 3 shall have ~~twenty (20)~~ thirty (30) calendar days from the date the decision
 4 is mailed to his or her last known address in which to request a judicial
 5 review thereof by filing in the Arkansas Court of Appeals a petition for
 6 review of the decision, and in the proceedings any other party to the
 7 proceeding before the board shall be made a party respondent.

8 (B)(i) If mailed, a petition for review shall be
 9 considered filed as of the date of the postmark on the envelope.

10 (ii) In the event of a nonexistent or illegible
 11 postmark, the clerk's office shall notify the appellant by mail; and

12 (iii) The appellant shall then have ten (10)
 13 calendar days from the posted mailing date of the clerk's notification letter
 14 to provide the Arkansas Court of Appeals proof of timely mailing of the
 15 request for judicial review by producing delivery confirmation or certified
 16 mail return receipt document bearing evidence of the accurate post date.

17
 18 SECTION 12. Arkansas Code § 11-10-710(d)(2)(A), concerning transfer of
 19 experience when a business is purchased, is amended to read as follows:

20 (2)(A)(i) The director may, if he or she finds the reasons set
 21 forth by the employer making application for redetermination insufficient to
 22 change his or her determination, deny the application; otherwise, it shall be
 23 granted, and he or she shall make a redetermination.

24 (ii) The director may issue a redetermination within
 25 one (1) year of the original determination if, through his or her own
 26 investigation, he or she finds the original determination to be in error.

27
 28 SECTION 13. Arkansas Code § 11-10-717(e)(2)(A), concerning
 29 collections, failure to pay or report, and penalty for employer contributions
 30 to unemployment insurance, is amended to read as follows:

31 (2)(A)(i)(a) In order to relieve client lessees from joint and
 32 several liability and the separate reporting requirements imposed under
 33 subdivision (e)(1) of this section, any lessor employing unit as defined in
 34 subdivision (e)(4) of this section may post and maintain a surety bond issued
 35 by a corporate surety authorized to do business in Arkansas in the amount of
 36 one hundred thousand dollars (\$100,000) to ensure prompt payment of

1 contributions, interest, and penalties for which the lessor employing unit
 2 may be or becomes liable under this chapter.

3 (b) Beginning on or after January 1, 1998, the
 4 lessor employer shall report all clients' wages on the lessor employer's
 5 quarterly contribution and wage report using its contribution rate, account
 6 number, and federal identification number.

7 (ii) If after three (3) years, throughout which the
 8 lessor employing unit as defined in subdivision (e)(4) of this section has
 9 paid all contributions due in a timely manner, the bond shall be reduced to
 10 thirty-five thousand dollars (\$35,000) and shall remain at thirty-five
 11 thousand dollars (\$35,000) so long as the lessor employing unit continues to
 12 report and pay all contributions due in a timely manner.

13 (iii) The employee leasing company is prohibited
 14 from moving the wages of a client from one leasing company account to another
 15 leasing company account with a lower rate.

16
 17 SECTION 14. Arkansas Code § 11-10-722(b), concerning collection and
 18 impoundment of employer accounts, is amended to read as follows:

19 (b) Any bank or savings and loan institution served with notice of
 20 impoundment shall be required to recognize the Arkansas Employment Security
 21 Department's lien on any deposit subject thereto by withholding payment of
 22 any deposit in an amount not to exceed the amount of the delinquent
 23 contributions, interest, and penalty to the depositor or to his or her order
 24 for a period not to exceed ~~thirty (30)~~ sixty (60) days.

25
 26 SECTION 15. EMERGENCY CLAUSE. It is found and determined by the
 27 General Assembly of the State of Arkansas that this act should go into effect
 28 as soon as possible in order to bring the Arkansas Employment Security
 29 Department into conformity with the Federal Unemployment Tax Act, as amended,
 30 so that Arkansas employers may continue to receive the tax credits accorded
 31 by the Federal Unemployment Tax Act and Arkansas workers may receive
 32 unemployment benefits when they are unemployed. Therefore, an emergency is
 33 declared to exist and this act being immediately necessary for the
 34 preservation of the public peace, health, and safety shall become effective
 35 on:

36 (1) The date of its approval by the Governor;

1 (2) If the bill is neither approved nor vetoed by the Governor,
2 the expiration of the period of time during which the Governor may veto the
3 bill; or

4 (3) If the bill is vetoed by the Governor and the veto is
5 overridden, the date the last house overrides the veto.

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