

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
4

As Engrossed: S3/31/03

A Bill

HOUSE BILL 1635

5 By: Representative Lamoureux
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For An Act To Be Entitled

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

Subtitle

12 AN ACT TO AMEND VARIOUS SECTIONS OF THE
13 ARKANSAS EMPLOYMENT SECURITY LAW.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

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) Nothing in this section shall be deemed to prohibit the
13 department from providing information subpoenaed by the Attorney General in
14 any case.

15 (3)(A) The director may release information in the possession of
16 the department to federal public officials in the performance of their
17 official duties acting through the U. S. Attorney's office.

18 (B) The information will be disclosed under an Information
19 Exchange Agreement with the U. S. Attorney's office which will ensure the
20 protection of the confidentiality of the information and the cost of
21 providing the information.

22 (4) In cases except as provided in subdivision (r)(1) of this
23 section, the director shall:

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

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

30
31 SECTION 4. Arkansas Code § 11-10-507(2), concerning conditions for
32 eligibility for unemployment benefits, is amended to read as follows:

33 (2) REGISTRATION AND REPORTING. He or she has registered for work at,
34 and thereafter continued to report ~~at~~ to, an Arkansas Employment Security
35 Department office in accordance with such regulations as the director may
36 prescribe. The director may, by regulation, waive or alter either or both of

1 the requirements of this subdivision as to individuals attached to regular
2 jobs and as to such other types of cases or situations with respect to which
3 he or she finds that compliance with these requirements would be oppressive
4 or would be inconsistent with the purpose of this chapter. However, no such
5 regulations shall conflict with § 11-10-501;

6
7 SECTION 5. Arkansas Code § 11-10-513, concerning disqualification from
8 unemployment benefits for voluntarily leaving work, is amended to add an
9 additional subsection to read as follows:

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

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

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

18
19 SECTION 6. Arkansas Code § 11-10-517, concerning disqualification for
20 unemployment benefits for receipt of other remunerations, is amended to add
21 an additional subsection to read as follows:

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

33
34 SECTION 7. Arkansas Code § 11-10-519 is amended to read as follows:

35 11-10-519. Disqualification - Penalty for false statement or
36 misrepresentation.

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

3 (1) If he or she willfully makes a false statement or
4 misrepresentation of a material fact or willfully fails to disclose a
5 material fact in filing an initial claim or a claim renewal. ~~The~~
6 ~~disqualification shall be for thirteen (13) weeks beginning with the date of~~
7 ~~the filing of the claim~~ He or she shall be disqualified from the date of
8 filing the claim until he or she has ten (10) weeks of employment in each of
9 which he or she has earned wages equal to at least his or her weekly benefit
10 amount;

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

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

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

32
33 SECTION 8. Arkansas Code § 11-10-524(a), concerning claims,
34 administrative appeals, and hearings for unemployment benefits, is amended to
35 read as follows:

36 (a)(1) The claimant, the Director of the Arkansas Employment Security

1 Department, or any other party entitled to notice may appeal a determination
 2 made by the agency by filing a written notice of appeal with the appeal
 3 tribunal or at any office of the Arkansas Employment Security Department
 4 within twenty (20) calendar days after the date of mailing of the notice to
 5 his or her last known address, or if the notice is not mailed, within twenty
 6 (20) calendar days after the date of delivery of the notice. If mailed, an
 7 appeal shall be considered to have been filed as of the date of the postmark
 8 on the envelope.

9 (2) However, if it is determined by ~~an~~ the appeal tribunal or
 10 the Board of Review that the appeal is not perfected within the twenty-
 11 calendar-day period as a result of circumstances beyond the appellant's
 12 control, the appeal may be considered as having been filed timely.

13
 14 SECTION 9. Arkansas Code § 11-10-524(c) and (d), concerning claims,
 15 administrative appeals, and hearings for unemployment benefits, is amended to
 16 read as follows:

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

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

24 ~~(d)(1)(A) A party which files an appeal pursuant to subsection (a) of~~
 25 ~~this section and fails to appear at the initial tribunal hearing scheduled as~~
 26 ~~a result of that appeal may request that the matter be reopened by the~~
 27 ~~tribunal~~ If any party fails to appear at the initial tribunal hearing
 28 scheduled as a result of an appeal, that party may request that the matter be
 29 reopened by the tribunal.

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

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

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

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

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

7
8 SECTION 10. Arkansas Code § 11-10-525 is amended to read as follows:

9 11-10-525. Claims - Administrative appeal - Review by Board of Review.

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

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

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

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

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

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

35 (f) However, upon denial by the board of an application for appeal
36 from the decision of an appeal tribunal, the decision of the appeal tribunal

1 shall be deemed to be a decision of the board within the meaning of this
2 section for purposes of judicial review and shall be subject to judicial
3 review within the time and in the manner provided for with respect to
4 decisions of the board, except that the time for initiating the review shall
5 run from the date of notice of the order of the board denying the application
6 for appeal.

7
8 SECTION 11. Arkansas Code § 11-10-529(a)(1), concerning decisions of
9 the board of review and judicial review of unemployment claims, is amended to
10 read as follows:

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

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

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

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

26
27 SECTION 12. Arkansas Code § 11-10-710(d)(2)(A), concerning transfer of
28 experience when a business is purchased, is amended to read as follows:

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

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

36

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

4 (2)(A)(i)(a) In order to relieve client lessees from joint and
5 several liability and the separate reporting requirements imposed under
6 subdivision (e)(1) of this section, any lessor employing unit as defined in
7 subdivision (e)(4) of this section may post and maintain a surety bond issued
8 by a corporate surety authorized to do business in Arkansas in the amount of
9 one hundred thousand dollars (\$100,000) to ensure prompt payment of
10 contributions, interest, and penalties for which the lessor employing unit
11 may be or becomes liable under this chapter.

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

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

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

25
26 SECTION 14. Arkansas Code § 11-10-722(b), concerning collection and
27 impoundment of employer accounts, is amended to read as follows:

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

34
35 SECTION 15. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that this act should go into effect

1 as soon as possible in order to bring the Arkansas Employment Security
2 Department into conformity with the Federal Unemployment Tax Act, as amended,
3 so that Arkansas employers may continue to receive the tax credits accorded
4 by the Federal Unemployment Tax Act and Arkansas workers may receive
5 unemployment benefits when they are unemployed. Therefore, an emergency is
6 declared to exist and this act being immediately necessary for the
7 preservation of the public peace, health, and safety shall become effective
8 on:

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

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

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

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16 */s/ Lamoureux*
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