

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.

Act 802 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/17/09

A Bill

SENATE BILL 429

5 By: Senator Steele
6 By: Representative Allen
7

For An Act To Be Entitled

10 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
11 DEPARTMENT OF WORKFORCE SERVICES LAW; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14 TO AMEND VARIOUS PROVISIONS OF THE
15 DEPARTMENT OF WORKFORCE SERVICES LAW.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 *SECTION 1. Arkansas Code 11-10-201, concerning a claimant's base*
22 *period, is amended by adding an additional subsection to read as follows:*

23 *(c)(1) Beginning with initial claims filed on July 1, 2009, and*
24 *thereafter, if an individual lacks sufficient base period wages, an alternate*
25 *base period shall be substituted for the current base period.*

26 *(2) "Alternate base period" means the four (4) completed calendar*
27 *quarters immediately preceding the first day of that benefit year.*
28

29 *SECTION 2. Arkansas Code § 11-10-215(a)(1)(A), concerning*
30 *remunerations that are not included in the definition of wages, is amended to*
31 *read as follows:*

32 *(1)(A) For the purposes of §§ 11-10-701--11-10-715:*

33 *(i) That part of remuneration paid to an individual*
34 *by an employer with respect to employment during any calendar year beginning*
35 *after December 31, ~~1994~~ 2003, and ending December 31, ~~2002~~ 2009, which*



1 ~~exceeds nine thousand dollars (\$9,000)~~ ten thousand dollars (\$10,000); and
 2 (ii) For ~~the~~ any calendar year beginning after
 3 December 31, ~~2002~~ 2009, that part of remuneration which exceeds ~~nine thousand~~
 4 ~~five hundred dollars (\$9,500)~~ twelve thousand dollars (\$12,000); and
 5 ~~(iii) For any calendar year beginning after December~~
 6 ~~31, 2003, that part of remuneration which exceeds ten thousand dollars~~
 7 ~~(\$10,000).~~

8
 9 SECTION 3. Arkansas Code § 11-10-507(3)(A), concerning ability and
 10 availability for work, is amended to read as follows:

11 (A) The worker is unemployed, is physically and mentally
 12 able to perform suitable work, and is available for such work. Mere
 13 registration and reporting at a local employment office shall not be
 14 conclusive evidence of ability to work, availability for work, or willingness
 15 to accept work unless the individual is doing those things which a reasonably
 16 prudent individual would be expected to do to secure work. In determining
 17 suitable work under this section and for refusing to apply for or accept
 18 suitable work under § 11-10-515, part-time work shall be considered suitable
 19 work unless the majority of weeks of work in the period used to determine
 20 monetary eligibility is from full-time work.

21
 22 SECTION 4. Arkansas Code § 11-10-513(b), concerning disqualification
 23 for voluntarily leaving work, is amended to read as follows:

24 (b) No individual shall be disqualified under this section if after
 25 making reasonable efforts to preserve his or her job rights he or she left
 26 his or her last work:

27 (1) Due to a personal emergency of such nature and compelling
 28 urgency that it would be contrary to good conscience to impose a
 29 disqualification;

30 (2)(A) Because of illness, injury, pregnancy, or disability; or
 31 of the individual or a member of the individual's immediate family.

32 (B) As used in subdivision (b)(2)(A) of this section,
 33 "immediate family member" means a spouse, child, parent, brother, sister,
 34 grandchild, or grandparent of the individual;

35 (3)(A) ~~To move with a military spouse to a new duty station~~ Due
 36 to domestic violence that causes the individual reasonably to believe that

1 the individual's continued employment will jeopardize the safety of the
 2 individual or a member of the individual's immediate family.

3 (B) As used in subdivision (b)(3)(A) of this section,
 4 "immediate family member" means a spouse, child, parent, brother, sister,
 5 grandchild, or grandparent of the individual; or

6 (4) To accompany the individual's spouse because of a change in
 7 the location of the spouse's employment that makes it impractical to commute.

8
 9 SECTION 5. Arkansas Code § 11-10-514(a)(3), concerning the
 10 continuation of a disqualification for misconduct, is amended to read as
 11 follows:

12 (3)(A) Except as otherwise provided in this section, an individual's
 13 disqualification for misconduct shall be for eight (8) weeks of unemployment
 14 as defined in § 11-10-512.

15 (B) However, for a discharge that occurs during the period of
 16 July 1, 2009, through June 30, 2011, the disqualification under subdivision
 17 (a)(3)(A) of this section shall continue until, subsequent to filing a claim,
 18 he or she has had at least thirty (30) days of employment covered by an
 19 unemployment compensation law of this state, another state, or the United
 20 States.

21
 22 SECTION 6. Arkansas Code § 11-10-524(b)(1), concerning the appeal of a
 23 claims determination made by the Department of Workforce Services, is amended
 24 to read as follows:

25 (b)(1) Unless the appeal is withdrawn with its permission or is
 26 removed to the board, the appeal tribunal, after affording the parties a
 27 reasonable opportunity for a fair hearing, and on the basis of the record,
 28 shall affirm, modify, reverse, dismiss, or remand the determination.

29
 30 SECTION 7. Arkansas Code § 11-10-525(c)(1), concerning the appeal of a
 31 claims determination of the appeal tribunal, is amended to read as follows:

32 (c)(1) Upon review on its own motion or upon appeal and on the basis
 33 of evidence previously submitted in the case, or upon the basis of any
 34 additional evidence as it may direct be taken, the board may affirm, modify,
 35 ~~or reverse, the findings and conclusions of the appeal tribunal or may~~
 36 dismiss, or remand the case.

1
2 SECTION 8. Arkansas Code § 11-10-526(a)(2), concerning the
3 promulgation of rules governing appeals under the Department of Workforce
4 Services Law, is amended to read as follows:

5 (2) In like manner as provided at § 11-10-307(a) for the adopting,
6 amending, or rescinding of general rules by the Director of the Department of
7 Workforce Services, the board ~~shall~~ may adopt reasonable regulations
8 governing the manner of filing appeals, the conduct of hearings, and other
9 appellate procedures, consistent with this chapter.

10
11 SECTION 9. Arkansas Code § 11-10-532(a)(2), concerning the method for
12 recovering an overpayment resulting from a false statement,
13 misrepresentation, or omission that was knowingly made by a claimant, is
14 amended to read as follows:

15 (2) ~~However, beginning on July 1, 2001, the person shall not be liable~~
16 ~~to repay such amount to the fund, except through the deduction of future~~
17 ~~benefits, after ten (10) years from the date the determination of the amount~~
18 ~~of the overpayment becomes final within the meaning of § 11-10-527.~~ Once the
19 overpayment becomes final pursuant to § 11-10-527, the amount owed shall
20 accrue interest at the rate of ~~one and one half percent (1.5%) per month~~ ten
21 percent (10%) per annum beginning thirty (30) days after the date of the
22 first billing statement.

23
24 SECTION 10. Arkansas Code § 11-10-532(b), concerning the limitation of
25 liability for repayment of a benefit that a claimant was not entitled to
26 receive, is amended to read as follows:

27 (b)(1)~~(A)~~ If the director finds that ~~any~~ a person has received ~~any~~ an
28 amount as benefits under this chapter to which he or she was not entitled by
29 reasons other than fraud, willful misrepresentation, or willful nondisclosure
30 of facts, the person shall be liable to repay the amount to the fund.

31 ~~(B)(2)~~ (2) In lieu of requiring the repayment, the director, ~~on~~
32 ~~and after July 1, 1999,~~ may recover the amount by deduction of any future
33 benefits payable to the person under this chapter unless the director finds
34 that the overpayment was received without fault on the part of the recipient
35 and that its recovery would be against equity and good conscience.

36 ~~(2) Any person held liable to repay an amount to the fund or to~~

1 ~~have the amount deducted from any future benefits payable to him or her shall~~
2 ~~not be liable to repay the amount nor shall recovery be made from any future~~
3 ~~benefits after four (4) years from the date the determination of the amount~~
4 ~~of the overpayment becomes final within the meaning of the provisions of §~~
5 ~~11-10-527.~~

6
7 SECTION 11. Arkansas Code § 11-10-532, concerning the recovery of a
8 benefit obtained through misrepresentation, omission, or fraud, is amended to
9 add an additional subsection as follows:

10 (e) The federal income tax refund of a person held liable to repay an
11 amount to the fund as the result of a finding of fraud shall be subject to
12 interception pursuant to Public Law No. 110-328 and any rule or regulation
13 adopted to implement that law.

14
15 SECTION 12. Arkansas Code § 11-10-901 (a) and (b), concerning the
16 director's duties and the hiring and duties of the administrator, are amended
17 to read as follows:

18 11-10-901. Creation – Administrator – Authority.

19 (a)(1) The Director of ~~There is established within~~ the Department of
20 Workforce Services ~~a division to be called the Division~~ is assigned
21 responsibility for the administration of the State New Hire Registry, ~~which~~
22 ~~shall be administered by a full-time salaried administrator who shall be~~
23 ~~appointed by and serve at the pleasure of the Director of the Department of~~
24 ~~Workforce Services.~~

25 (2) The director shall hire an administrator of the State New
26 Hire Registry who shall serve at the pleasure of the director.

27 (b)(1) The ~~division~~ administrator shall compile a state registry of
28 newly hired and returning employees as required by the Personal
29 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No.
30 104-193.

31 (2) The director may enter into such professional services
32 contracts as may be necessary to assist in the development and operation of
33 the state new hire registry.

34
35 SECTION 13. Arkansas Code § 11-10-902 is amended to read as follows:
36 11-10-902. Reporting requirements – Enforcement of child support

1 obligations – Confidentiality.

2 (a) As used in this section:

3 (1) “Administrator” means the administrator of the State New
4 Hire Registry;

5 ~~(1)~~(2) “Employee” means an individual who is an employee as
6 defined in Chapter 24 of the Internal Revenue Code of 1986 but does not
7 include an employee of a federal or state agency performing intelligence or
8 counterintelligence operations if the head of the agency has determined that
9 reporting pursuant to subsection (b) of this section could endanger the
10 safety of the employee or could compromise an ongoing operation or
11 investigation;

12 ~~(2)~~(3) “Employer” means an employer as that term is defined in §
13 3401(d) of the Internal Revenue Code of 1986 and includes any labor
14 organization and any governmental entity; and

15 ~~(3)~~(4) “Labor organization” means a labor organization as that
16 term is defined in § 2(5) of the National Labor Relations Act and includes
17 any entity, sometimes known as a “hiring hall”, that is used by the labor
18 organization and an employer to carry out the requirements listed in §
19 8(f)(3) of the federal act of an agreement between the organization and the
20 employer.

21 (b)(1) ~~On and after October 1, 1997, the Division of the State New~~
22 ~~Hire Registry~~ The administrator shall compile an automated state registry of
23 newly hired and returning employees.

24 (2) An employer shall report electronically or in any manner
25 authorized by the ~~Arkansas Employment Security Department~~ Department of
26 Workforce Services for inclusion in the ~~state registry~~ State New Hire
27 Registry whenever an employee is newly hired or returns to work.

28 (3) An employer shall include in each report the name, address,
29 and social security number of the employee and the name, address, and federal
30 taxpayer identification number of the employer.

31 (4) An employer shall make the report by submitting a copy of
32 Internal Revenue Service Form W-4 for the employee or, ~~at the option of the~~
33 ~~employer,~~ an equivalent form. An employer may transmit the report by first
34 class mail, magnetically, or electronically. If an employer makes the report
35 by mail, the reporting date is that of the postmark. The report shall be
36 received not later than twenty (20) days after the date the employer hires

1 the employee or, in the case of an employer transmitting reports magnetically
2 or electronically, by two (2) monthly transmissions, if necessary, not less
3 than twelve (12) days nor more than sixteen (16) days apart.

4 (5) An employer that has employees employed in two (2) or more
5 states and transmits reports magnetically or electronically may comply with
6 the reporting requirements of this section by designating one (1) state in
7 which the employer has employees and to which the employer will transmit the
8 report required by this section. Any employer that transmits reports shall
9 notify the Secretary of the Department of Health and Human Services in
10 writing as to which state the employer designates for the purpose of sending
11 reports.

12 (c)(1) Information reported pursuant to this section shall be entered
13 into the ~~registry~~ State New Hire Registry data base maintained by the
14 ~~Arkansas Employment Security Department~~ Department of Workforce Services or
15 its designated contractor within five (5) business days of receipt from an
16 employer. As used herein, "business day" means a day on which state offices
17 are open for regular business.

18 (2) Within two (2) business days after the ~~data~~ date information
19 regarding a newly hired employee is entered into the ~~registry~~ State New Hire
20 Registry, the Office of Child Support Enforcement of the Revenue Division of
21 the Department of Finance and Administration shall transmit a notice to the
22 employer directing the employer to withhold from the income of the employee
23 an amount equal to the monthly or other periodic child support obligation,
24 including any past due child support obligation, of the employee.

25 (3) Within three (3) business days after the date information
26 regarding a newly hired employee is entered into the ~~registry~~ State New Hire
27 Registry, the ~~Arkansas Employment Security Department~~ Department of Workforce
28 Services or its designated contractor shall furnish the information to the
29 National ~~Registry~~ Directory of New Hires.

30 (4) On a quarterly basis, the ~~state registry~~ State New Hire
31 Registry shall furnish to the ~~national registry~~ National Directory of New
32 Hires extracts of reporting required to be made to the Secretary of Labor
33 concerning the wages and unemployment compensation paid to individuals by
34 such dates, in such format, and containing such information as the Secretary
35 of the Department of Health and Human Services shall specify in regulations.

36 (5)(A) The Department of Human Services shall have access to

1 information reported by employers pursuant to this section for the purpose of
2 verifying eligibility for programs pursuant to 42 U.S.C. § 1320B-7.

3 (B) ~~The Arkansas Employment Security Department~~ Department
4 of Workforce Services shall have access to information reported by employers
5 pursuant to this section for purposes of administering the ~~Arkansas~~
6 ~~Employment Security Department's~~ Department of Workforce Services's programs.

7 (C) The Workers' Compensation Commission shall have access
8 to information reported by employers pursuant to this section for purposes of
9 administering the workers' compensation programs.

10 (d)(1) ~~Not later than May 1, 1998, the Arkansas Employment Security~~
11 ~~Department~~ The Department of Workforce Services shall directly or by contract
12 conduct automated comparisons of the social security numbers reported by
13 employers and the social security numbers appearing within records of the
14 Office of Child Support Enforcement of the Revenue Division of the Department
15 of Finance and Administration for cases being enforced under the Title IV - D
16 State Plan.

17 (2) When an information comparison reveals a match with respect
18 to the social security number of an individual required to provide child
19 support under a support order, the ~~registry~~ State New Hire Registry shall
20 immediately provide the Office of Child Support Enforcement of the Revenue
21 Division of the Department of Finance and Administration with the name,
22 address, and social security number of the employee to whom the social
23 security number is assigned and the name, address, and federal employer
24 identification number of the employer.

25 (e) The Office of Child Support Enforcement of the Revenue Division of
26 the Department of Finance and Administration shall use information received
27 pursuant to subsection (d) of this section to locate individuals for purposes
28 of establishing paternity and establishing, modifying, and enforcing child
29 support obligations and may disclose that information to its agents under
30 contract for purposes connected to the administration of the Title IV-D Child
31 Support Program.

32 (f) All information gathered and maintained by the ~~registry~~ State New
33 Hire Registry:

34 (1) Shall ~~shall~~ be held confidential and be utilized solely for
35 the purposes authorized in this section; and

36 (2) ~~The information shall be considered~~ Is an exception to the

1 open public record requirements of the Freedom of Information Act of 1967, §
2 25-19-101 et seq.

3 (g) To the maximum extent allowable, all expenses associated with the
4 development and operation of the ~~registry~~ State New Hire Registry shall be
5 reimbursed through available funding under the Title IV-D Child Support
6 Program.

7
8 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the
9 General Assembly of the State of Arkansas that this act should go into effect
10 as soon as possible in order to assure the prompt determination of claims for
11 unemployment benefits and the continued provision of benefits and services to
12 eligible persons. Therefore, an emergency is declared to exist and this act
13 being immediately necessary for the preservation of the public peace, health,
14 and safety shall become effective on:

- 15 (1) The date of its approval by the Governor;
- 16 (2) If the bill is neither approved nor vetoed by the Governor,
17 the expiration of the period of time during which the Governor may veto the
18 bill; or
- 19 (3) If the bill is vetoed by the Governor and the veto is
20 overridden, the date the last house overrides the veto.

21
22 /s/ Steele

23
24 **APPROVED: 4/3/2009**