

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 575

5 By: Senator L. Chesterfield
6

For An Act To Be Entitled

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

Subtitle

13 TO AMEND VARIOUS PROVISIONS OF THE
14 DEPARTMENT OF WORKFORCE SERVICES LAW; AND
15 TO DECLARE AN EMERGENCY.
16
17
18

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

21 SECTION 1. Arkansas Code § 11-10-514 is amended to read as follows:
22 11-10-514. Disqualification – Discharge for misconduct.

23 (a)(1) If so found by the Director of the Department of Workforce
24 Services, an individual shall be disqualified for benefits if he or she is
25 discharged from his or her last work for misconduct in connection with the
26 work.

27 (2)~~(A)~~ In ~~all~~ cases of discharge for absenteeism, the individual
28 ~~will~~ shall be disqualified for misconduct in connection with the work if the
29 discharge was pursuant to the terms of a bona fide written attendance policy
30 with progressive warnings, regardless of whether the policy is a fault or no-
31 fault policy.

32 (3) Misconduct in connection with the work includes the
33 violation of any behavioral policies of the employer as distinguished from
34 deficiencies in meeting production standards or accomplishing job duties.

35 (4)(A) Misconduct in connection with the work shall not be found
36 for instances of poor performance unless the employer can prove that the poor



1 performance was intentional.

2 (B) An individual's repeated act of commission, omission,
 3 or negligence despite progressive discipline constitutes sufficient proof of
 4 intentional poor performance.

5 (5) An individual who refuses an alternate suitable job rather
 6 than being terminated for poor performance shall be considered discharged for
 7 misconduct in connection with the work.

8 ~~(B)(b)~~ The disqualification under ~~subdivision (a)(2)(A)~~ subsection (a)
 9 of this section shall continue until, subsequent to filing a claim, the
 10 individual has had at least thirty (30) days of employment covered by an
 11 unemployment compensation law of this state, another state, or the United
 12 States.

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

16 ~~(B) However, for a discharge that occurs on or after July~~
 17 ~~1, 2009, through June 30, 2013, the disqualification under subdivision~~
 18 ~~(a)(3)(A) of this section shall continue until, subsequent to filing a claim,~~
 19 ~~he or she has had at least thirty (30) days of employment covered by an~~
 20 ~~unemployment compensation law of this state, another state, or the United~~
 21 ~~States.~~

22 ~~(C) Misconduct includes violation of any behavioral~~
 23 ~~policies of the employer as distinguished from deficiencies in meeting~~
 24 ~~production standards or accomplishing job duties.~~

25 ~~(b)(1)(c)(1)~~ If ~~he or she~~ an individual is discharged from his or her
 26 last work for misconduct in connection with the work on account of
 27 dishonesty, drinking on the job, reporting for work while under the influence
 28 of intoxicants, including a controlled substance, or willful violation of
 29 bona fide rules or customs of the employer pertaining to his or her safety or
 30 the safety of fellow employees, persons, or company property, he or she shall
 31 be disqualified until, subsequent to the date of the disqualification, the
 32 ~~claimant~~ individual has been paid wages in two (2) quarters for insured work
 33 totaling not less than thirty-five (35) times his or her weekly benefit
 34 amount.

35 (2)(A) If an individual is discharged for testing positive for
 36 an illegal drug pursuant to a United States Department of Transportation-

1 qualified drug screen conducted in accordance with the employer's bona fide
2 written drug policy, the individual is disqualified:

3 (i) Until, subsequent to the date of the
4 disqualification, the claimant has been paid wages in two (2) quarters for
5 insured work totaling not less than thirty-five (35) times his or her weekly
6 benefit amount; and

7 (ii) Until he or she passes a United States
8 Department of Transportation-qualified drug screen by testing negative for
9 illegal drugs.

10 (B) If an individual is disqualified under subdivision
11 ~~(b)(2)(A)(c)(2)(A)~~ of this section, ~~no~~ a benefit paid to the individual with
12 respect to any week of unemployment after the discharge shall not be charged
13 to the account of the employer that discharged the individual if the benefit
14 is based upon wages paid to the individual for employment before the
15 discharge by the employer that discharged the individual.

16 ~~(e)(1)(d)(1)~~ If so found by the director, an individual shall be
17 disqualified for benefits if he or she is suspended from his or her last work
18 for misconduct in connection with the work.

19 (2) Except as otherwise provided, the disqualification shall be
20 for the duration of the suspension or eight (8) weeks, whichever is the
21 lesser.

22 ~~(d)(1) An individual shall not be deemed guilty of misconduct for poor~~
23 ~~performance in his or her job duties unless the employer can prove that the~~
24 ~~poor performance was intentional.~~

25 ~~(2) An individual's repeated act of commission or omission or~~
26 ~~negligence despite progressive discipline shall constitute sufficient proof~~
27 ~~of intentional poor performance.~~

28 ~~(3) An individual who refuses an alternate suitable job rather~~
29 ~~than being terminated for poor performance shall be disqualified until,~~
30 ~~subsequent to filing a claim, he or she has had at least thirty (30) days of~~
31 ~~employment covered by an unemployment compensation law of this state, another~~
32 ~~state, or the United States.~~

33
34 SECTION 2. Arkansas Code § 11-10-529(b)(2)(A), concerning petitions
35 for review by the Director of the Department of Workforce Services, is
36 amended to read as follows:

(2)(A) Upon the filing of a petition for review by the director or upon the service of the petition on him or her, the director shall forthwith send by ~~certified~~ mail to each of the parties to the proceeding a copy of the petition.

SECTION 3. Arkansas Code § 11-10-532 is amended to read as follows:

11-10-532. Claims – Recovery.

(a)(1) If the Director of the Department of Workforce Services finds that ~~any~~ a person knowingly has made a false statement or misrepresentation of a material fact ~~knowing it to be false~~ or ~~has~~ knowingly has failed to disclose a material fact and as a result of either action has received ~~any~~ amount as benefits under this chapter to which ~~the person~~ he or she was not entitled, then ~~the person shall be~~ he or she is liable to repay the amount to the Unemployment Compensation Fund, or ~~in lieu of requiring the repayment,~~ the director may recover the amount of the overpayment by deductions from any future benefits payable to the person under this chapter.

(2) Once the overpayment becomes final pursuant to § 11-10-527, the amount owed shall accrue interest at the rate of ten percent (10%) per annum beginning thirty (30) days after the date of the first billing statement.

(3) ~~Beginning on July 1, 2001, a penalty of ten percent (10%)~~ A penalty of fifteen percent (15%) of the amount of the overpayment at the time the overpayment becomes final shall be assessed on all fraudulent overpayments. ~~However, this penalty shall be waived in the event that the overpayment is repaid within one (1) year after the established date.~~

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

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

(c) ~~Any~~ A person held liable to repay an amount to the ~~fund shall be~~

1 Unemployment Compensation Fund is subject to having any state income tax
 2 refund to which he or she may be entitled intercepted pursuant to § 26-36-301
 3 et seq., as administered by the Revenue Division of the Department of Finance
 4 and Administration.

5 (d)(1) When an overpayment becomes final under § 11-10-527, the
 6 director shall present a certificate of overpayment describing the amount
 7 owed by the claimant to the circuit clerk of the county where the claimant is
 8 domiciled.

9 (2) The circuit clerk shall enter the certificate of overpayment
 10 in the docket of the circuit court for judgments and decrees and note the
 11 time of the filing of the certificate.

12 (3) After entry by the circuit clerk, the certificate of
 13 overpayment shall have the force ~~and effect~~ of a judgment of the circuit
 14 court and shall bear interest at the rate of ten percent (10%) annually.

15 (4) ~~Any interest or penalty~~ An interest payment recovered from
 16 an overpayment to a claimant shall be deposited into the Department of
 17 Workforce Services Special Fund.

18 (5) A penalty payment recovered from an overpayment to a
 19 claimant shall be deposited into the Unemployment Compensation Fund.

20 (e) The federal income tax refund of a person held liable to repay an
 21 amount to the ~~fund~~ Unemployment Compensation Fund is subject to interception
 22 under the Claims Resolution Act of 2010, Pub. L. No. 111-291, and any rule or
 23 a regulation adopted to implement that law.

24 (f) The Department of Workforce Services may issue an overpayment
 25 determination contemporaneously with any other determination.

26 (g) The deductions from future benefits provided for in subdivisions
 27 (a)(1) and (b)(2) of this section may proceed during an appeal of the
 28 overpayment determination.

29
 30 SECTION 4. Arkansas Code § 11-10-604(b), concerning criteria for
 31 approval of shared work plans, is amended to read as follows:

32 (b) The director shall approve a shared work unemployment compensation
 33 plan only if the following criteria are met:

34 (1) The plan:
 35 (A) ~~applies~~ Applies to and identifies the specified
 36 affected group; and

1 (B) Includes an estimate of the number of layoffs that
 2 might occur absent participation in the shared work program;

3 (2) The employees in the affected group or groups are identified
 4 by name, social security number, and by any other information required by the
 5 director;

6 (3) The usual weekly hours of work for employees in the affected
 7 group or groups are reduced by not less than ten percent (10%) and not more
 8 than forty percent (40%);

9 (4)(A) Health benefits and retirement benefits under defined
 10 benefit pension plans, as defined in Section 3(35) of the Employee Retirement
 11 Income Security Act of 1974, Pub. L. No. 93-406, and other fringe benefits
 12 will continue to be provided to employees in the affected group or groups as
 13 though their work weeks had not been reduced.

14 (B) However, if the employer reduces the level of benefits
 15 under subdivision (4)(A) of this section for its employees who are not in the
 16 shared work group, the level of benefits may be reduced by a like amount for
 17 the employer's shared work employees;

18 (5) The plan certifies that the aggregate reduction in work
 19 hours is in lieu of ~~temporary~~ all layoffs ~~which~~ that would have affected at
 20 least ten percent (10%) of the employees in the affected group or groups to
 21 which the plan applies and ~~which~~ that would have resulted in an equivalent
 22 reduction in work hours;

23 (6) During the previous four (4) months, the work force in the
 24 affected group has not been reduced by temporary layoffs of more than ten
 25 percent (10%) of the workers;

26 (7)(A) The plan applies to at least ten percent (10%) of the
 27 employees in the affected group.

28 (B)(i) If the plan applies to all employees in the
 29 affected group, the plan provides equal treatment to all employees of the
 30 group.

31 (ii) If the affected group is divided into
 32 subgroups, the plan provides equal treatment to employees within each
 33 subgroup;

34 (8)(A)(i) In the case of employees represented by an exclusive
 35 bargaining representative, the plan is approved in writing by the collective
 36 bargaining agent.

(ii) ~~In the event that~~ If the certification of an exclusive bargaining representative has been appealed, ~~such the~~ bargaining representative shall be considered to be the exclusive bargaining representative for work sharing plan purposes.

(B)(i) ~~In the absence of any bargaining representative, the plan must~~ The plan shall contain a certification by the employer that the employer has made the proposed plan, ~~or a summary thereof,~~ available to:

(a) ~~each~~ Each employee in the affected group for inspection; or

(b) If applicable, to the exclusive bargaining representative.

(ii) The plan shall include:

(a) A description of how the plan was made available; and

(b) If advance notice of the plan was not feasible, an explanation of why advance notice was not feasible;

(9)(A) The plan includes a certified statement by the employer that ~~each employee in the affected group would be eligible for normal unemployment compensation under § 11-10-507(5)~~ the terms and implementation of the shared work plan are consistent with any obligations the employer has under applicable federal and state laws.

(B) ~~Any~~ An employee who joins an affected group after the approval of the shared work plan is automatically covered under the previously approved plan, effective the week that the director receives written notice from the shared work employer that the employee has joined ~~and certification that the employee meets the requirements of § 11-10-507(5);~~

(10) On the most recent computation date preceding the date of ~~submittal~~ submission of the shared work plan for approval, the total of all contributions paid on the employing unit's own behalf and credited to its account for all previous periods equaled or exceeded the regular benefits charged to its account for all previous periods;

(11) The plan ~~will~~ shall not serve as a subsidy of seasonal employment during the off-season nor as a subsidy of temporary part-time employment or intermittent employment; and

(12) The employer agrees to:

(A) ~~furnish~~ Furnish reports relating to the proper conduct

1 of the plan;

2 ~~(B) and agrees to allow~~ Allow the director or his or her
3 authorized representatives access to all records necessary to verify the plan
4 ~~prior to before~~ approval; and,

5 ~~(C) after approval,~~ Allow the director to monitor and
6 evaluate application of the plan after approval.

7
8 SECTION 5. Arkansas Code § 11-10-609 is amended to read as follows:

9 11-10-609. Eligibility for compensation.

10 (a) An individual is eligible to receive shared work unemployment
11 compensation benefits with respect to any week only if, in addition to
12 monetary entitlement, the Director of the Department of Workforce Services
13 finds that:

14 (1) During the week, the individual is employed as a member of
15 an affected group under an approved shared work compensation plan that was
16 approved ~~prior to before~~ that week, and the plan is in effect with respect to
17 the week for which the benefits are claimed;

18 (2)(A) During the week, the individual is able to work and is
19 available for the normal work week with the shared work employer.

20 (B) However, an otherwise eligible individual shall not be
21 denied benefits with respect to any week in which he or she is in training to
22 enhance job skills, including employer-sponsored training and worker training
23 funded under the Arkansas Workforce Investment Act, § 15-4-2201 et seq., if
24 the training has been approved by the director+.

25 ~~(3)(b)~~ Notwithstanding any other provisions of this chapter to the
26 contrary, an individual is deemed unemployed in any week for which
27 remuneration is payable to him or her as an employee in an affected group for
28 ninety percent (90%) or less than his or her normal weekly hours of work as
29 specified under the approved shared work compensation plan in effect for the
30 week+.

31 ~~(4)(c)~~ Notwithstanding any other provisions of this chapter to the
32 contrary, an individual shall not be denied shared work unemployment
33 compensation benefits for any week by reason of the application of provisions
34 relating to availability for work and active search for work with an employer
35 other than the shared work unemployment compensation employer.

SECTION 6. Arkansas Code § 11-10-703(a), concerning employer rates and separate accounts regarding an employer's unemployment benefit contributions, is amended to add an additional subdivision to read as follows:

(6) Relief from charges shall not be granted if:

(A) An overpayment of benefits is the result of a failure by an employer or the employer's agent to respond timely or adequately to a request for information from the Department of Workforce Services; and

(B) The employer or the employer's agent has established a pattern of failing to respond to such requests.

SECTION 7. Arkansas Code § 11-10-801(b), concerning funds deposited into the Unemployment Compensation Fund, is amended to read as follows:

~~(b) This fund~~ The Unemployment Compensation Fund shall consist of:

(1) All the contributions collected ~~pursuant to~~ under this chapter;

(2) All interest earned upon any money in the ~~fund~~ Unemployment Compensation Fund;

(3) All property or securities acquired in lieu of contributions or other liabilities to the ~~fund~~ Unemployment Compensation Fund;

(4) All earnings of ~~such~~ property or securities acquired in lieu of contributions or other liabilities;

(5) All moneys recovered on losses sustained by the ~~fund~~ Unemployment Compensation Fund;

(6) All moneys received from the federal Unemployment Account in the federal Unemployment Trust Fund in accordance with Title XII of the Social Security Act;

(7) All moneys credited to this state's account in the federal Unemployment Trust Fund pursuant to § 903 of the Social Security Act;

(8) All moneys received for the ~~fund~~ Unemployment Compensation Fund from any other source;

(9) All moneys received from the federal government as reimbursements pursuant to § 204 of the Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No 91-373; ~~and~~

(10) All moneys received from the stabilization tax under § 11-10-706, except the proceeds of § 11-10-706(f); and

(11) All moneys recovered as penalty payments under § 11-10-

1 532(a)(3).

2
3 SECTION 8. Arkansas Code § 11-10-902(b), concerning reporting
4 requirements for new hires, is amended to read as follows:

5 (b)(1) The administrator shall compile an automated state registry of
6 newly hired and returning employees.

7 (2) An employer shall report electronically or in any manner
8 authorized by the Department of Workforce Services for inclusion in the State
9 New Hire Registry whenever an employee:

10 (A) ~~is~~ Is newly hired; or

11 (B) If the individual was previously employed by the
12 employer but has been separated from the previous employment for at least
13 sixty (60) consecutive days, returns to work.

14 (3) An employer shall include in each report:

15 (A) ~~the~~ The name, address, and social security number of
16 the employee and the date the employee began performing services for the
17 employer; and

18 (B) ~~the~~ The name, address, and federal taxpayer
19 identification number of the employer.

20 (4)(A) An employer shall make the report by submitting a copy of
21 Internal Revenue Service Form W-4 for the employee or an equivalent form.

22 (B)(i) An employer may transmit the report by first class
23 mail, magnetically, or electronically.

24 (ii) If an employer makes the report by mail, the
25 reporting date is that of the postmark.

26 (C) The report shall be received not later than twenty
27 (20) days after the date the employer hires the employee or, in the case of
28 an employer transmitting reports magnetically or electronically, by two (2)
29 monthly transmissions, if necessary, not less than twelve (12) days nor more
30 than sixteen (16) days apart.

31 (5)(A) An employer that has employees employed in two (2) or
32 more states and transmits reports magnetically or electronically may comply
33 with the reporting requirements of this section by designating one (1) state
34 in which the employer has employees and to which the employer will transmit
35 the report required by this section.

36 (B) ~~Any~~ An employer that transmits reports shall notify

1 the Secretary of the Department of Health and Human Services in writing as to
2 which state the employer designates for the purpose of sending reports.

3
4 SECTION 9. Arkansas Code § 19-5-984(b), concerning the Department of
5 Workforce Services Special Fund, is amended to read as follows:

6 (b)(1) This fund shall consist of unemployment compensation
7 contribution interest and penalty payments collected ~~pursuant to~~ under §§ 11-
8 10-716 – 11-10-723, and interest and penalty payments on overpayments
9 collected under § 11-10-532~~(e) and (d)~~.

10 (2) The fund shall be used for refunds of interest and penalties
11 erroneously paid and ~~such~~ other additional purposes necessary to the proper
12 administration of the Department of Workforce Services Law, § 11-10-101 et
13 seq., as determined by the Director of the Department of Workforce Services
14 ~~as set out in~~ under § 11-10-532~~(e) and (d)~~ and §§ 11-10-716 – 11-10-723.

15
16 SECTION 10. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that the Department of Workforce
18 Services must ensure the prompt determination of claims for unemployment
19 insurance benefits; that the state's unemployment insurance program must
20 remain in conformity with federal law requirements; and that this act is
21 immediately necessary because a delay would interfere with continued
22 provision of benefits and services to eligible persons. Therefore, an
23 emergency is declared to exist, and this act being necessary for the
24 preservation of the public peace, health, and safety shall become effective
25 on July 1, 2013.