

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1038 Session of 2003

INTRODUCED BY FLEAGLE, CREIGHTON, EGOLF, GEIST, HARRIS,
HENNESSEY, HERSHEY, S. MILLER, NAILOR, O'NEILL, PICKETT,
ROHRER, SAYLOR AND E. Z. TAYLOR, APRIL 2, 2003

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 25, 2003

AN ACT

1 Amending the act of December 5, 1936 (2nd Sp.Sess., 1937
2 P.L.2897, No.1), entitled "An act establishing a system of
3 unemployment compensation to be administered by the
4 Department of Labor and Industry and its existing and newly
5 created agencies with personnel (with certain exceptions)
6 selected on a civil service basis; requiring employers to
7 keep records and make reports, and certain employers to pay
8 contributions based on payrolls to provide moneys for the
9 payment of compensation to certain unemployed persons;
10 providing procedure and administrative details for the
11 determination, payment and collection of such contributions
12 and the payment of such compensation; providing for
13 cooperation with the Federal Government and its agencies;
14 creating certain special funds in the custody of the State
15 Treasurer; and prescribing penalties," further providing for
16 rate and amount of compensation.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Section 404(d) of the act of December 5, 1936
20 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
21 Compensation Law, amended October 19, 1988 (P.L.818, No.109), is
22 amended to read:

23 Section 404. Rate and Amount of Compensation.--Compensation
24 shall be paid to each eligible employe in accordance with the

1 following provisions of this section except that compensation
2 payable with respect to weeks ending in benefit years which
3 begin prior to the first day of January 1989 shall be paid on
4 the basis of the provisions of this section in effect at the
5 beginning of such benefit years.

6 * * *

7 (d) (1) Notwithstanding any other provisions of this
8 section each eligible employee who is unemployed with respect to
9 any week ending subsequent to July 1, 1980 shall be paid, with
10 respect to such week, compensation in an amount equal to his
11 ~~weekly benefit rate less the total of (i) the remuneration, if~~ <—
12 ~~any, paid or payable to him with respect to such week for~~
13 ~~services performed which is in excess of his partial benefit~~
14 ~~credit [and]; (ii) vacation pay, if any, which is in excess of~~
15 ~~his partial benefit credit, except when paid to an employee who~~
16 ~~is permanently or indefinitely separated from his employment;~~
17 ~~and (iii) severance pay.~~ WEEKLY BENEFIT RATE LESS THE TOTAL OF <—
18 ALL OF THE FOLLOWING:

19 (I) [THE] THE REMUNERATION, IF ANY, PAID OR PAYABLE TO HIM
20 WITH RESPECT TO SUCH WEEK FOR SERVICES PERFORMED WHICH IS IN
21 EXCESS OF HIS PARTIAL BENEFIT CREDIT [AND].

22 (II) [VACATION] VACATION PAY, IF ANY, WHICH IS IN EXCESS OF
23 HIS PARTIAL BENEFIT CREDIT, EXCEPT WHEN PAID TO AN EMPLOYEE WHO
24 IS PERMANENTLY OR INDEFINITELY SEPARATED FROM HIS EMPLOYMENT.

25 (III) SEVERANCE PAY. FOR PURPOSES OF THIS SUBCLAUSE, ALL OF
26 THE FOLLOWING APPLY:

27 (A) SEVERANCE PAY IS ATTRIBUTED TO THE DAY, DAYS, WEEK OR
28 WEEKS IMMEDIATELY FOLLOWING THE EMPLOYEE'S SEPARATION.

29 (B) THE NUMBER OF DAYS OR WEEKS TO WHICH SEVERANCE PAY IS
30 ATTRIBUTED IS DETERMINED BY DIVIDING THE TOTAL AMOUNT OF

1 SEVERANCE PAY BY THE REGULAR FULL-TIME DAILY OR WEEKLY WAGE OF
2 THE CLAIMANT.

3 (C) THE AMOUNT OF SEVERANCE PAY ATTRIBUTED TO EACH DAY OR
4 WEEK EQUALS THE REGULAR FULL-TIME DAILY OR WEEKLY WAGE OF THE
5 CLAIMANT.

6 (D) WHEN THE ATTRIBUTION OF SEVERANCE PAY IS MADE ON THE
7 BASIS OF THE NUMBER OF DAYS, THE PAY SHALL BE ATTRIBUTED TO THE
8 CUSTOMARY WORKING DAYS IN THE CALENDAR WEEK.

9 (2) (i) In addition to the deductions provided for in
10 clause (1), for any week with respect to which an individual is
11 receiving a pension, including a governmental or other pension,
12 retirement or retired pay, annuity or any other similar periodic
13 payment, under a plan maintained or contributed to by a base
14 period or chargeable employer, the weekly benefit amount payable
15 to such individual for such week shall be reduced, but not below
16 zero, by the pro-rated weekly amount of the pension as
17 determined under subclause (ii).

18 (ii) If the pension is entirely contributed to by the
19 employer, then one hundred per centum (100%) of the pro-rated
20 weekly amount of the pension shall be deducted. If the pension
21 is contributed to by the individual, in any amount, then fifty
22 per centum (50%) of the pro-rated weekly amount of the pension
23 shall be deducted.

24 (iii) No deduction shall be made under this clause by reason
25 of the receipt of a pension if the services performed by the
26 individual during the base period or remuneration received for
27 such services for such employer did not affect the individual's
28 eligibility for, or increase the amount of, such pension,
29 retirement or retired pay, annuity or similar payment. This
30 subclause shall not apply to pensions paid under the Social

1 Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.) or the
2 Railroad Retirement Act of 1974 (Public Law 93-445, 88 Stat.
3 1305) or the corresponding provisions of prior law. Payments
4 made under such acts shall be treated solely in the manner
5 specified by subclause (i) of this clause.

6 (3) The provisions of this subsection shall be applicable
7 whether or not such vacation pay, severance pay, retirement
8 pension or annuities or wages are legally required to be paid.
9 If such retirement pension or annuity payments deductible under
10 the provisions of this subsection are received on other than a
11 weekly basis, the amount thereof shall be allocated and pro-
12 rated in accordance with the rules and regulations of the
13 department. Vacation pay or other remuneration deductible under
14 the provisions of this subsection shall be pro-rated on the
15 basis of the employee's normal full-time weekly wage and as so
16 pro-rated shall be allocated to such period or periods of
17 unemployment as shall be determined by rules and regulations of
18 the department. Such compensation, if not a multiple of one
19 dollar (\$1), shall be computed to the next lower multiple of one
20 dollar (\$1).

21 (4) For purposes of this subsection, the term "severance
22 pay" means a periodic or lump sum payment made as compensation <—
23 to an employee in excess of wages owed upon termination of an
24 employment relationship, regardless of whether the payment is
25 made prior or subsequent to the actual termination date. PAY" <—
26 MEANS PAYMENTS MADE BY AN EMPLOYER TO AN EMPLOYEE ON ACCOUNT OF
27 SEPARATION FROM THE SERVICE OF THE EMPLOYER, REGARDLESS OF
28 WHETHER THE EMPLOYER IS LEGALLY BOUND BY CONTRACT, STATUTE OR
29 OTHERWISE TO MAKE SUCH PAYMENTS. THE TERM DOES NOT INCLUDE
30 PAYMENTS FOR PENSION, RETIREMENT OR ACCRUED LEAVE OR PAYMENTS OF

1 SUPPLEMENTAL UNEMPLOYMENT BENEFITS.

2 * * *

3 SECTION 2. THE AMENDMENT OF SECTION 404(D) OF THE ACT SHALL <—
4 APPLY TO APPLICATIONS FOR BENEFITS FILED AFTER DECEMBER 31,
5 2004.

6 Section ~~2~~ 3. This act shall take effect in 60 days. <—