

UNEMPLOYMENT COMPENSATION LAW - OMNIBUS AMENDMENTS

Act of Dec. 9, 2002, P.L. 1330, No. 156

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Session of 2002

No. 2002-156

HB 591

AN ACT

Amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," providing for referral to employment offices and for relief from certain employer charges; and further providing for establishment and maintenance of employer's accounts, for qualifications required to secure compensation, for ineligibility for compensation and for ineligibility of incarcerated employees.

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

Section 1. The act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, is amended by adding sections to read:

Section 212. Referral to Employment Offices.--The department shall refer all claimants eligible for compensation to employment offices for reemployment services.

Section 213. Relief from Charges for Certain Employers.--(a) An employer that makes payments in lieu of contributions pursuant to Article X, XI or XII shall be relieved of charges in accordance with section 302(a) and regulations of the department, for compensation paid on applications for benefits effective during a calendar year, if the employer satisfies the following requirements:

(1) The employer pays a nonrefundable solvency fee under subsection (b) for the calendar year within thirty (30) days after notice of the fee is sent to the employer's last known address. The department may for good cause extend the period within which the fee must be paid.

(2) All reports required by this act and regulations of the department for calendar quarters through the second calendar quarter of the preceding calendar year are filed.

(b) An employer's solvency fee for a calendar year shall be the monetary amount determined by multiplying the solvency fee rate for the year by the amount of wages paid, without regard to the exclusion in section 4(x)(1), by the employer in the four consecutive calendar quarters ending on June 30 of the preceding calendar year, provided that an employer's solvency fee for a year shall not be less than twenty-five dollars (\$25).

(1) For calendar years 2003, 2004 and 2005, the solvency fee rate shall be three ten thousandths (.0003).

(2) In 2005 the secretary shall redetermine the solvency fee rate. The secretary shall redetermine the rate so that the unrounded rate yields solvency fees approximately equal to the amount of compensation for which charges are relieved under this section. For purposes of redetermining the rate, the secretary shall use the amount of compensation for which charges are relieved under this section paid during 2003 and 2004 and the amount of wages paid, without regard to the exclusion in section 4(x)(1), during the same time period by employers who paid a solvency fee under this section. The rate as redetermined shall take effect for the next calendar year and shall remain in effect for three years.

(3) Beginning in 2008 and each fifth year thereafter, the secretary shall redetermine the solvency fee rate. The secretary shall redetermine the rate so that the unrounded rate yields solvency fees approximately equal to the amount of compensation for which charges are relieved under this section. For purposes of redetermining the rate, the secretary shall use the amount of compensation for which charges are relieved under this section paid during the five calendar years immediately preceding the year in which the redetermination occurs and the amount of wages paid, without regard to the exclusion in section 4(x)(1), during the same time period by employers who paid a solvency fee under this section. The rate as redetermined shall take effect for the next calendar year and shall remain in effect for five years.

(4) If the solvency fee rate redetermined under paragraphs (2) and (3) is not a multiple of one-hundredth of one per cent, it shall be rounded to the next higher multiple of one-hundredth of one per cent.

(c) Solvency fees paid by employers under this section shall be deposited in the Unemployment Compensation Fund. Compensation for which charges are relieved under this section shall not be used in the calculation of the State adjustment factor under section 301.1(e).

(d) The provisions of this section shall constitute the exclusive means by which an employer who makes payments in lieu of contributions pursuant to Article X, XI or XII may be excused from reimbursing the Unemployment Compensation Fund for compensation paid to an individual that is based on wages paid by the employer or that portion of the individual's compensation determined in accordance with section 1108.

(e) A group account under section 1109 shall constitute an employer for purposes of this section.

Section 1.1. Section 302(a)(1) of the act, amended July 21, 1983 (P.L.68, No.30), is amended to read:

Section 302. Establishment and Maintenance of Employer's Reserve Accounts.--The department shall establish and maintain for each employer a separate employer's reserve account in the following manner:

(a) (1) Such account shall be credited with all contributions paid by such employer for periods subsequent to June thirtieth, one thousand nine hundred forty-eight. Such account shall be charged with an amount determined by multiplying the wages of compensated employees of such employer for the twelve month period ended June thirtieth, one thousand nine hundred forty-nine, by the state experience heretofore used in determining rates of contributions for the year one thousand nine hundred forty-nine. Subsequent to January 1, 1984, such account shall be charged with all compensation, including dependents' allowances, paid to each individual who received from such employer wage credits constituting the base of such compensation, in the proportion that such wage credits with such employer bears to the total wage credits received by such individual from all employers: Provided, That if the department finds that such individual was separated from his most

recent work for such employer due to being discharged for willful misconduct connected with such work, or due to his leaving such work without good cause attributable to his employment, **or due to his being separated from such work under conditions which would result in disqualification for benefits under the provisions of section 3 or section 402(e.1)**, thereafter no compensation paid to such individual with respect to any week of unemployment occurring subsequent to such separation, which is based upon wages paid by such employer with respect to employment prior to such separation, shall be charged to such employer's account under the provisions of this subsection (a); provided, such employer has filed a notice with the department in accordance with its rules and regulations and within the time limits prescribed therein; and provided if the department finds that such individual's unemployment is directly caused by a major natural disaster declared by the President pursuant to section 102(1) of the Disaster Relief Act of 1970 (P.L.91-606) and such individual would have been eligible for disaster unemployment assistance as provided in section 240 of that act with respect to such unemployment but for the receipt of unemployment compensation, no compensation paid to such individual with respect to any week of unemployment occurring due to such natural disaster, to a maximum of the eight weeks immediately following the President's declaration of emergency, shall be charged to the employer's account under the provisions of this subsection.

* * *

Section 2. Section 401(f) of the act, amended September 27, 1971 (P.L.460, No.108), is amended to read:

Section 401. Qualifications Required to Secure Compensation.--Compensation shall be payable to any employe who is or becomes unemployed, and who--

* * *

(f) Has earned, subsequent to his separation from work under circumstances which are disqualifying under the provisions of subsections 402(b), 402(e), **402(e.1)** and 402(h) of this act, remuneration for services in an amount equal to or in excess of six (6) times his weekly benefit rate irrespective of whether or not such services were in "employment" as defined in this act. The provisions of this subsection shall not apply to a suspension of work by an individual pursuant to a leave of absence granted by his last employer, provided such individual has made a reasonable effort to return to work with such employer upon the expiration of his leave of absence.

* * *

Section 3. Section 402 of the act is amended by adding a subsection to read:

Section 402. Ineligibility for Compensation.--An employe shall be ineligible for compensation for any week--

* * *

(e.1) In which his unemployment is due to discharge or temporary suspension from work due to failure to submit and/or pass a drug test conducted pursuant to an employer's established substance abuse policy, provided that the drug test is not requested or implemented in violation of the law or of a collective bargaining agreement.

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Section 4. Section 402.6 of the act, added October 30, 1996 (P.L.738, No.133), is amended to read:

Section 402.6. Ineligibility of Incarcerated Employe.--[Nothing in this act] **An employe** shall [require] **not be eligible for** payment of unemployment compensation benefits for any weeks of unemployment during which the employe is incarcerated after a conviction.

Section 5. The amendment of section 402.6 of the act shall apply to compensation for weeks ending on or after the effective date of this act.

Section 6. The addition of section 213 of the act shall be applicable to calendar years beginning after December 31, 2002, and to compensation paid on applications for benefits effective after December 31, 2002.

Section 7. This act shall take effect immediately.

APPROVED--The 9th day of December, A. D. 2002.

MARK S. SCHWEIKER