

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2858 Session of
2004

INTRODUCED BY DENLINGER, ARMSTRONG, SCHRODER AND STEIL,
SEPTEMBER 28, 2004

REFERRED TO COMMITTEE ON LABOR RELATIONS, SEPTEMBER 28, 2004

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 eligibility of seasonal workers.

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

19 Section 1. Section 402.5 of the act of December 5, 1936 (2nd
20 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
21 Compensation Law, added July 1, 1985 (P.L.96, No.30), is amended
22 to read:

23 Section 402.5. Eligibility of Certain Seasonal Workers [in
24 fruit and vegetable food processing].--(a) Notwithstanding any
25 other provision of this act with respect to service performed in

1 a "seasonal operation" or "seasonal industry," as defined in
2 this section, benefits shall not be paid to a seasonal worker,
3 based on such services, for any week of unemployment occurring
4 outside of the normal seasonal period of operation, provided
5 there is a contract or reasonable assurance that such seasonal
6 worker will perform services in that seasonal industry in his
7 next normal seasonal period. However, if, upon presenting
8 himself for work in his next normal seasonal period, the
9 individual is not offered an opportunity to perform such
10 services, his claims for unemployment compensation shall be
11 accepted retroactively to the time the individual's benefits
12 (based on seasonal and non-seasonal wages) would have commenced
13 but for this subsection.

14 (b) Upon written application filed with the department by an
15 employer engaged in a "seasonal industry," as defined in this
16 section, the secretary shall determine, and may thereafter
17 redetermine, in accordance with the rules and regulations of the
18 department, the normal seasonal period during which workers are
19 ordinarily employed for the purpose of carrying on seasonal
20 operations in the seasonal industry in which such employer is
21 engaged. An application for such determination shall be made on
22 forms prescribed by the department. Such application must be
23 made at least twenty (20) days prior to the estimated beginning
24 date of the normal seasonal period for which the determination
25 is requested. Simultaneously with the filing of the application,
26 the employer shall conspicuously display on the employer's
27 premises, in a sufficient number of places, a copy of the
28 application.

29 (c) An employer determined, in accordance with the
30 provisions of this section, to be a "seasonal operation" or

1 "seasonal industry," as defined in this section, shall be
2 required to conspicuously display notices of the seasonal
3 determination on its premises in a sufficient number of places
4 as will fairly advise its employees of the estimated beginning
5 and estimated ending dates of its normal seasonal period. Such
6 notices shall be provided by the department.

7 (d) Any successor of a seasonal employer shall be deemed to
8 be a seasonal industry or a seasonal operation unless such
9 successor shall, within one hundred twenty (120) days after the
10 acquisition, request cancellation of such determination.

11 (e) Any determination issued under the provisions of this
12 section shall be subject to review in the same manner and to the
13 same extent as all other determinations issued under this act.

14 (f) Benefits payable to any otherwise eligible individual
15 who is determined to be a seasonal worker, as defined in
16 paragraph (5) of subsection (h) of this section, shall be
17 calculated in accordance with the provisions of this section for
18 any benefit year which is established on or after the beginning
19 date of a determination of a seasonal industry or a seasonal
20 operation by which such individual was employed during the base
21 year applicable to such benefit year, as if such determination
22 had been effective in such base period.

23 (g) In no case shall a seasonal worker be eligible to
24 receive a total amount of compensation in a benefit year in
25 excess of the maximum compensation payable for such benefit
26 year, as provided in section 404 of this act.

27 (h) For the purposes of this section, the following
28 definitions shall apply:

29 (1) "Fruit or vegetable food processing operation" means
30 those services performed in connection with commercial canning

1 or commercial freezing of fruits and vegetables.

2 (2) "Normal seasonal period" means the normal seasonal
3 period, as determined in accordance with subsection (b) of this
4 section, during which workers are ordinarily employed for the
5 purpose of carrying on seasonal operations in each seasonal
6 industry, as defined in this section.

7 (3) "Seasonal industry" means an industry, establishment or
8 process within an industry which, because of climatic conditions
9 making it impractical or impossible to do otherwise[,]:

10 (i) customarily carries on fruit or vegetable food
11 processing operations, or both, only during a regularly
12 recurring period of one hundred eighty (180) days of work or
13 less in a calendar year; or

14 (ii) operates as a recreational business.

15 (4) "Seasonal operation" means engagement in:

16 (i) [an operation in which it is customary for an employer
17 engaged in] a seasonal industry as defined in paragraphs (1) and
18 (3)(i) of this subsection [(h) of this section, to operate all
19 or a portion of its business during a regularly recurring period
20 of one hundred eighty (180) days of work or less for a normal
21 seasonal period during a calendar year]; or

22 (ii) a seasonal industry as defined in paragraph (3)(ii) of
23 this subsection.

24 An employer may be determined to be engaged in a seasonal
25 industry as defined in this section, with respect to a portion
26 of its business, only if that portion, under the usual and
27 customary practice in the industry, is identifiable as a
28 functionally distinct operation.

29 (5) "Seasonal worker" means a worker who performs:

30 (i) commercial canning or commercial freezing services for a

1 fruit or vegetable food processing operation for less than one
2 hundred eighty (180) days of work[.]; or

3 (ii) services for a recreational business.

4 (6) "Recreational business" means any golf course, ski area,
5 amusement park, campground or other recreational operation which
6 is seasonal in nature.

7 Section 2. The amendment of section 402.5 of the act shall
8 apply to initial claims filed after January 1, 2006.

9 Section 3. This act shall take effect immediately.