
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 163 Session of
2005

INTRODUCED BY ADOLPH, YUDICHAK, THOMAS, BARRAR, BAKER, BELARDI, BELFANTI, BUNT, CALTAGIRONE, CAPPELLI, CAWLEY, DALLY, DeLUCA, DeWEESE, EACHUS, FABRIZIO, FREEMAN, GEIST, GEORGE, GINGRICH, GOODMAN, GRUCELA, HARHART, HARPER, HARRIS, HASAY, HENNESSEY, HERMAN, W. KELLER, KILLION, KOTIK, LEACH, LEH, MANN, McGEEHAN, McILHATTAN, McNAUGHTON, MELIO, R. MILLER, PISTELLA, PRESTON, REICHLEY, RUBLEY, SAINATO, SCAVELLO, SCHRODER, SHANER, SOLOBAY, SURRA, E. Z. TAYLOR, TIGUE, VEON, WASHINGTON, WATSON, YOUNGBLOOD, LEDERER, PALLONE, PETRARCA, BROWNE, SAMUELSON, GERGELY, RAYMOND, WANSACZ, CURRY, MAHER, WRIGHT, JAMES AND WALKO, JANUARY 31, 2005

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, DECEMBER 13, 2005

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 compensation rates.

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

1 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
2 Compensation Law, amended October 19, 1988 (P.L.818, No.109), is
3 amended to read:

4 Section 404. Rate and Amount of Compensation.--Compensation
5 shall be paid to each eligible employe in accordance with the
6 following provisions of this section except that compensation
7 payable with respect to weeks ending in benefit years which
8 begin prior to the first day of January 1989 shall be paid on
9 the basis of the provisions of this section in effect at the
10 beginning of such benefit years.

11 * * *

12 ~~(d) (1) Notwithstanding any other provisions of this~~ <—
13 ~~section each eligible employe who is unemployed with respect to~~
14 ~~any week ending subsequent to July 1, 1980 shall be paid, with~~
15 ~~respect to such week, compensation in an amount equal to his~~
16 ~~weekly benefit rate less the total of (i) the remuneration, if~~
17 ~~any, paid or payable to him with respect to such week for~~
18 ~~services performed which is in excess of his partial benefit~~
19 ~~credit and (ii) vacation pay, if any, which is in excess of his~~
20 ~~partial benefit credit, except when paid to an employe who is~~
21 ~~permanently or indefinitely separated from his employment.~~

22 ~~(2) (i) In addition to the deductions provided for in~~
23 ~~clause (1), for any week with respect to which an individual is~~
24 ~~receiving a pension, including a governmental or other pension,~~
25 ~~retirement or retired pay, annuity or any other similar periodic~~
26 ~~payment, under a plan maintained or contributed to by a base~~
27 ~~period or chargeable employer, the weekly benefit amount payable~~
28 ~~to such individual for such week shall be reduced, but not below~~
29 ~~zero, by the pro-rated weekly amount of the pension as~~
30 ~~determined under subclause (ii).~~

~~(ii) If the pension is entirely contributed to by the employer, then one hundred per centum (100%) of the pro-rated weekly amount of the pension shall be deducted. [If] Except as set forth in clause (4), if the pension is contributed to by the individual, in any amount, then fifty per centum (50%) of the pro-rated weekly amount of the pension shall be deducted.~~

~~(iii) No deduction shall be made under this clause by reason of the receipt of a pension if the services performed by the individual during the base period or remuneration received for such services for such employer did not affect the individual's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity or similar payment. [This subelause shall not apply to pensions paid under the Social Security Act (Public Law 74 271, 42 U.S.C. § 301 et seq.) or the Railroad Retirement Act of 1974 (Public Law 93 445, 88 Stat. 1305) or the corresponding provisions of prior law. Payments made under such acts shall be treated solely in the manner specified by subelause (i) of this clause.]~~

~~(3) The provisions of this subsection shall be applicable whether or not such vacation pay, retirement pension or annuities or wages are legally required to be paid. If such retirement pension or annuity payments deductible under the provisions of this subsection are received on other than a weekly basis, the amount thereof shall be allocated and pro-rated in accordance with the rules and regulations of the department. Vacation pay or other remuneration deductible under the provisions of this subsection shall be pro-rated on the basis of the employe's normal full time weekly wage and as so pro-rated shall be allocated to such period or periods of unemployment as shall be determined by rules and regulations of~~

1 the department. Such compensation, if not a multiple of one
2 dollar (\$1), shall be computed to the next lower multiple of one
3 dollar (\$1).

4 ~~(D) (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS~~ <—
5 ~~SECTION EACH ELIGIBLE EMPLOYEE WHO IS UNEMPLOYED WITH RESPECT TO~~
6 ~~ANY WEEK ENDING SUBSEQUENT TO JULY 1, 1980 SHALL BE PAID, WITH~~
7 ~~RESPECT TO SUCH WEEK, COMPENSATION IN AN AMOUNT EQUAL TO HIS~~
8 ~~WEEKLY BENEFIT RATE LESS THE TOTAL OF ALL OF THE FOLLOWING:~~

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

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

15 ~~(III) SEVERANCE PAY. FOR PURPOSES OF THIS SUBCLAUSE, ALL OF~~
16 ~~THE FOLLOWING APPLY:~~

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

19 ~~(B) THE NUMBER OF DAYS OR WEEKS TO WHICH SEVERANCE PAY IS~~
20 ~~ATTRIBUTED IS DETERMINED BY DIVIDING THE TOTAL AMOUNT OF~~
21 ~~SEVERANCE PAY BY THE REGULAR FULL TIME DAILY OR WEEKLY WAGE OF~~
22 ~~THE CLAIMANT.~~

23 ~~(C) THE AMOUNT OF SEVERANCE PAY ATTRIBUTED TO EACH DAY OR~~
24 ~~WEEK EQUALS THE REGULAR FULL TIME DAILY OR WEEKLY WAGE OF THE~~
25 ~~CLAIMANT.~~

26 ~~(D) WHEN THE ATTRIBUTION OF SEVERANCE PAY IS MADE ON THE~~
27 ~~BASIS OF THE NUMBER OF DAYS, THE PAY SHALL BE ATTRIBUTED TO THE~~
28 ~~CUSTOMARY WORKING DAYS IN THE CALENDAR WEEK.~~

29 ~~(2) (I) IN ADDITION TO THE DEDUCTIONS PROVIDED FOR IN~~
30 ~~CLAUSE (1), FOR ANY WEEK WITH RESPECT TO WHICH AN INDIVIDUAL IS~~

1 RECEIVING A PENSION, INCLUDING A GOVERNMENTAL OR OTHER PENSION,
2 RETIREMENT OR RETIRED PAY, ANNUITY OR ANY OTHER SIMILAR PERIODIC
3 PAYMENT, UNDER A PLAN MAINTAINED OR CONTRIBUTED TO BY A BASE
4 PERIOD OR CHARGEABLE EMPLOYER, THE WEEKLY BENEFIT AMOUNT PAYABLE
5 TO SUCH INDIVIDUAL FOR SUCH WEEK SHALL BE REDUCED, BUT NOT BELOW
6 ZERO, BY THE PRO RATED WEEKLY AMOUNT OF THE PENSION AS
7 DETERMINED UNDER SUBCLAUSE (II).

8 (II) IF THE PENSION IS ENTIRELY CONTRIBUTED TO BY THE
9 EMPLOYER, THEN ONE HUNDRED PER CENTUM (100%) OF THE PRO RATED
10 WEEKLY AMOUNT OF THE PENSION SHALL BE DEDUCTED. [IF] EXCEPT AS
11 SET FORTH IN CLAUSE (4), IF THE PENSION IS CONTRIBUTED TO BY THE
12 INDIVIDUAL, IN ANY AMOUNT, THEN FIFTY PER CENTUM (50%) OF THE
13 PRO RATED WEEKLY AMOUNT OF THE PENSION SHALL BE DEDUCTED.

14 (III) NO DEDUCTION SHALL BE MADE UNDER THIS CLAUSE BY REASON
15 OF THE RECEIPT OF A PENSION IF THE SERVICES PERFORMED BY THE
16 INDIVIDUAL DURING THE BASE PERIOD OR REMUNERATION RECEIVED FOR
17 SUCH SERVICES FOR SUCH EMPLOYER DID NOT AFFECT THE INDIVIDUAL'S
18 ELIGIBILITY FOR, OR INCREASE THE AMOUNT OF, SUCH PENSION,
19 RETIREMENT OR RETIRED PAY, ANNUITY OR SIMILAR PAYMENT. [THIS
20 SUBCLAUSE SHALL NOT APPLY TO PENSIONS PAID UNDER THE SOCIAL
21 SECURITY ACT (PUBLIC LAW 74 271, 42 U.S.C. § 301 ET SEQ.) OR THE
22 RAILROAD RETIREMENT ACT OF 1974 (PUBLIC LAW 93 445, 88 STAT.
23 1305) OR THE CORRESPONDING PROVISIONS OF PRIOR LAW. PAYMENTS
24 MADE UNDER SUCH ACTS SHALL BE TREATED SOLELY IN THE MANNER
25 SPECIFIED BY SUBCLAUSE (I) OF THIS CLAUSE.]

26 (3) THE PROVISIONS OF THIS SUBSECTION SHALL BE APPLICABLE
27 WHETHER OR NOT SUCH VACATION PAY, SEVERANCE PAY, RETIREMENT
28 PENSION OR ANNUITIES OR WAGES ARE LEGALLY REQUIRED TO BE PAID.
29 IF SUCH RETIREMENT PENSION OR ANNUITY PAYMENTS DEDUCTIBLE UNDER
30 THE PROVISIONS OF THIS SUBSECTION ARE RECEIVED ON OTHER THAN A

1 ~~WEEKLY BASIS, THE AMOUNT THEREOF SHALL BE ALLOCATED AND PRO-~~
2 ~~RATED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE~~
3 ~~DEPARTMENT. VACATION PAY OR OTHER REMUNERATION DEDUCTIBLE UNDER~~
4 ~~THE PROVISIONS OF THIS SUBSECTION SHALL BE PRO RATED ON THE~~
5 ~~BASIS OF THE EMPLOYEE'S NORMAL FULL TIME WEEKLY WAGE AND AS SO~~
6 ~~PRO RATED SHALL BE ALLOCATED TO SUCH PERIOD OR PERIODS OF~~
7 ~~UNEMPLOYMENT AS SHALL BE DETERMINED BY RULES AND REGULATIONS OF~~
8 ~~THE DEPARTMENT. SUCH COMPENSATION, IF NOT A MULTIPLE OF ONE~~
9 ~~DOLLAR (\$1), SHALL BE COMPUTED TO THE NEXT LOWER MULTIPLE OF ONE~~
10 ~~DOLLAR (\$1).~~

11 ~~(4) No deductions shall be made under this subsection for~~
12 ~~pensions paid under the Social Security Act (Public Law 74 271,~~
13 ~~42 U.S.C. § 301 et seq.), the Railroad Retirement Act of 1974~~
14 ~~(Public Law 93 445, 88 Stat. 1305) or other Federal pension, if~~
15 ~~the pension is contributed to by the individual in any amount.~~

16 ~~(5) FOR PURPOSES OF THIS SUBSECTION, THE TERM "SEVERANCE~~ <—
17 ~~PAY" MEANS PAYMENTS MADE BY AN EMPLOYER TO AN EMPLOYEE ON ACCOUNT~~
18 ~~OF SEPARATION FROM THE SERVICE OF THE EMPLOYER, REGARDLESS OF~~
19 ~~WHETHER THE EMPLOYER IS LEGALLY BOUND BY CONTRACT, STATUTE OR~~
20 ~~OTHERWISE TO MAKE SUCH PAYMENTS. THE TERM DOES NOT INCLUDE~~
21 ~~PAYMENTS FOR PENSION, RETIREMENT OR ACCRUED LEAVE OR PAYMENTS OF~~
22 ~~SUPPLEMENTAL UNEMPLOYMENT BENEFITS.~~

23 * * *

24 (D) (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS <—
25 SECTION EACH ELIGIBLE EMPLOYEE WHO IS UNEMPLOYED WITH RESPECT TO
26 ANY WEEK ENDING SUBSEQUENT TO JULY 1, 1980 SHALL BE PAID, WITH
27 RESPECT TO SUCH WEEK, COMPENSATION IN AN AMOUNT EQUAL TO HIS
28 WEEKLY BENEFIT RATE LESS THE TOTAL OF (I) THE REMUNERATION, IF
29 ANY, PAID OR PAYABLE TO HIM WITH RESPECT TO SUCH WEEK FOR
30 SERVICES PERFORMED WHICH IS IN EXCESS OF HIS PARTIAL BENEFIT

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

(2) (I) IN ADDITION TO THE DEDUCTIONS PROVIDED FOR IN CLAUSE (1), FOR ANY WEEK WITH RESPECT TO WHICH AN INDIVIDUAL IS RECEIVING A PENSION, INCLUDING A GOVERNMENTAL OR OTHER PENSION, RETIREMENT OR RETIRED PAY, ANNUITY OR ANY OTHER SIMILAR PERIODIC PAYMENT, UNDER A PLAN MAINTAINED OR CONTRIBUTED TO BY A BASE PERIOD OR CHARGEABLE EMPLOYER, THE WEEKLY BENEFIT AMOUNT PAYABLE TO SUCH INDIVIDUAL FOR SUCH WEEK SHALL BE REDUCED, BUT NOT BELOW ZERO, BY THE PRO-RATED WEEKLY AMOUNT OF THE PENSION AS DETERMINED UNDER SUBCLAUSE (II).

(II) IF THE PENSION IS ENTIRELY CONTRIBUTED TO BY THE EMPLOYER, THEN ONE HUNDRED PER CENTUM (100%) OF THE PRO-RATED WEEKLY AMOUNT OF THE PENSION SHALL BE DEDUCTED. [IF] EXCEPT AS SET FORTH IN CLAUSE (4), IF THE PENSION IS CONTRIBUTED TO BY THE INDIVIDUAL, IN ANY AMOUNT, THEN FIFTY PER CENTUM (50%) OF THE PRO-RATED WEEKLY AMOUNT OF THE PENSION SHALL BE DEDUCTED.

(III) NO DEDUCTION SHALL BE MADE UNDER THIS CLAUSE BY REASON OF THE RECEIPT OF A PENSION IF THE SERVICES PERFORMED BY THE INDIVIDUAL DURING THE BASE PERIOD OR REMUNERATION RECEIVED FOR SUCH SERVICES FOR SUCH EMPLOYER DID NOT AFFECT THE INDIVIDUAL'S ELIGIBILITY FOR, OR INCREASE THE AMOUNT OF, SUCH PENSION, RETIREMENT OR RETIRED PAY, ANNUITY OR SIMILAR PAYMENT. [THIS SUBCLAUSE SHALL NOT APPLY TO PENSIONS PAID UNDER THE SOCIAL SECURITY ACT (PUBLIC LAW 74-271, 42 U.S.C. § 301 ET SEQ.) OR THE RAILROAD RETIREMENT ACT OF 1974 (PUBLIC LAW 93-445, 88 STAT. 1305) OR THE CORRESPONDING PROVISIONS OF PRIOR LAW. PAYMENTS MADE UNDER SUCH ACTS SHALL BE TREATED SOLELY IN THE MANNER SPECIFIED BY SUBCLAUSE (I) OF THIS CLAUSE.]

1 (3) THE PROVISIONS OF THIS SUBSECTION SHALL BE APPLICABLE
2 WHETHER OR NOT SUCH VACATION PAY, RETIREMENT PENSION OR
3 ANNUITIES OR WAGES ARE LEGALLY REQUIRED TO BE PAID. IF SUCH
4 RETIREMENT PENSION OR ANNUITY PAYMENTS DEDUCTIBLE UNDER THE
5 PROVISIONS OF THIS SUBSECTION ARE RECEIVED ON OTHER THAN A
6 WEEKLY BASIS, THE AMOUNT THEREOF SHALL BE ALLOCATED AND PRO-
7 RATED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE
8 DEPARTMENT. VACATION PAY OR OTHER REMUNERATION DEDUCTIBLE UNDER
9 THE PROVISIONS OF THIS SUBSECTION SHALL BE PRO-RATED ON THE
10 BASIS OF THE EMPLOYEE'S NORMAL FULL-TIME WEEKLY WAGE AND AS SO
11 PRO-RATED SHALL BE ALLOCATED TO SUCH PERIOD OR PERIODS OF
12 UNEMPLOYMENT AS SHALL BE DETERMINED BY RULES AND REGULATIONS OF
13 THE DEPARTMENT. SUCH COMPENSATION, IF NOT A MULTIPLE OF ONE
14 DOLLAR (\$1), SHALL BE COMPUTED TO THE NEXT LOWER MULTIPLE OF ONE
15 DOLLAR (\$1).

16 (4) NO DEDUCTIONS SHALL BE MADE UNDER THIS SUBSECTION FOR
17 PENSIONS PAID UNDER THE SOCIAL SECURITY ACT (PUBLIC LAW 74-271,
18 42 U.S.C. § 301 ET SEQ.), OR THE RAILROAD RETIREMENT ACT OF 1974
19 (PUBLIC LAW 93-445, 88 STAT. 1305), IF THE PENSION IS
20 CONTRIBUTED TO BY THE INDIVIDUAL IN ANY AMOUNT.

21 * * *

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

23 ~~SECTION 2. THE AMENDMENT OF SECTION 404(D) OF THE ACT SHALL~~ <—
24 ~~APPLY TO WEEKS OF UNEMPLOYMENT ENDING ON OR AFTER THE EFFECTIVE~~
25 ~~DATE OF THIS SECTION.~~

26 ~~SECTION 2. THE AMENDMENT OR ADDITION OF SECTION 404(D)(1),~~ <—
27 ~~(3) AND (5) OF THE ACT SHALL APPLY TO WEEKS OF UNEMPLOYMENT~~
28 ~~ENDING AFTER DECEMBER 31, 2006.~~

29 SECTION 2. THE AMENDMENT OF SECTION 404(D) OF THE ACT SHALL <—
30 APPLY TO WEEKS OF UNEMPLOYMENT ENDING ON OR AFTER THE EFFECTIVE

1 DATE OF THIS SECTION.

2 Section 3. This act shall take effect immediately.