

CHAPTER 97-29

Committee Substitute for Committee Substitute for House Bill No. 3

An act relating to unemployment compensation; providing for temporary reductions in certain contribution rates for specified employers; amending s. 443.036, F.S.; revising exemption criteria for services performed by children employed by their parents; amending s. 443.111, F.S.; increasing the maximum weekly and yearly benefit amounts for unemployment compensation benefits; specifying benefit years; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Notwithstanding section 443.131(3), Florida Statutes, for the 1998 calendar year or any quarter thereof, the division shall subtract 0.5 percent from each employer's assigned tax rate, except for those employers who are assigned the initial rate or who have been assigned a contribution rate of 5.4 percent or higher for more than 36 months. Notwithstanding section 443.131(2), Florida Statutes, for the 1998 calendar year, each employer whose employment record has been chargeable with benefit payments for less than eight calendar quarters shall pay contributions at the initial rate of 2 percent.

Section 2. Paragraph (n) of subsection (19) of section 443.036, Florida Statutes, 1996 Supplement, is amended to read:

443.036 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(19) EMPLOYMENT.—“Employment,” subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(n) Exclusions generally.—The term “employment” does not include:

1. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (g).
2. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.
3. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

- a. Service performed in connection with the catching or taking of salmon or halibut for commercial purposes.
- b. Service performed on, or in connection with, a vessel of more than 10 net tons, determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.
4. Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 ~~18~~ in the employ of his father or mother.
5. Service performed in the employ of the United States Government or of an instrumentality of the United States which is:
 - a. Wholly or partially owned by the United States.
 - b. Exempt from the tax imposed by s. 3301 of the Internal Revenue Code by virtue of any provision of federal law which specifically refers to such section, or the corresponding section of prior law, in granting such exemption; except that to the extent that the Congress shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the Secretary of Labor under s. 3304 of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in s. 443.141(6) with respect to contributions erroneously collected.
6. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b), and any service performed in the employ of any instrumentality of one or more states or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.
7. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c).

8. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

9.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s. 501(a) of the Internal Revenue Code, other than an organization described in s. 401(a), or under s. 521, if the remuneration for such service is less than \$50.

b. Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

10. Service performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative.

11. Service performed in the employ of an instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

b. The Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

12. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law; and service performed by a patient of a hospital for such hospital.

13. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission, except for such services performed in accordance with 26 U.S.C.S. s. 3306(c)(7) and (8). For purposes of this subsection, those benefits excluded from the definition of wages pursuant to subparagraphs (33)(b)2.-6., inclusive, shall not be considered remuneration.

14. Service performed by an individual for a person as a real estate salesman or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

15. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

16. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

17. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

18. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

19. Casual labor not in the course of the employer's trade or business.

20. Service performed by a speech therapist, occupational therapist, or physical therapist who is nonsalaried and working pursuant to a written contract with a home health agency as defined in s. 400.462.

21. Service performed by a direct seller. For purposes of this subparagraph, the term "direct seller" means a person:

a.(I) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers on a buy-sell basis or a deposit-commission basis, or on any similar basis, for resale in the home or in any other place that is not a permanent retail establishment; or

(II) Who is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in any other place that is not a permanent retail establishment;

b. Substantially all of whose remuneration for services described in subparagraph a., whether or not paid in cash, is directly related to sales or other output, rather than to the number of hours worked; and

c. Who performs such services pursuant to a written contract with the person for whom the services are performed, which contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

22. Service performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or subparagraph (J) of s. 101(a)(15) of the Immigration and Nationality Act, and which is performed to carry out the purpose specified in subparagraph (F) or subparagraph (J), as the case may be.

23. Service performed by an individual for remuneration for a private, for-profit delivery or messenger service, if the individual:

a. Is free to accept or reject jobs from the delivery or messenger service and the delivery or messenger service has no control over when the individual works;

b. Is remunerated for each delivery, or the remuneration is based on factors that relate to the work performed, including receipt of a percentage of any rate schedule;

c. Pays all expenses and the opportunity for profit or loss rests solely with the individual;

d. Is responsible for operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

e. Determines the method of performing the service, including selection of routes and order of deliveries;

f. Is responsible for the completion of a specific job and is liable for any failure to complete that job;

g. Enters into a contract with the delivery or messenger service which specifies the relationship of the individual to the delivery or messenger service to be that of an independent contractor and not that of an employee; and

h. Provides the vehicle used to perform the service.

24. Service performed in agricultural labor by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to ss. 101(a)(15)(H) and 214(c) of the Immigration and Nationality Act.

Section 3. Subsection (3) and paragraph (a) of subsection (5) of section 443.111, Florida Statutes, 1996 Supplement, are amended to read:

443.111 Payment of benefits.—

(3) WEEKLY BENEFIT AMOUNT.—An individual's "weekly benefit amount" shall be an amount equal to one-twenty-sixth of the total wages for insured work paid during that quarter of the base period in which such total wages paid were the highest, but not less than \$32 or more than \$250. For claims with benefit years beginning July 1, 1997, through December 31, 1997, an additional 5 percent of the weekly benefit amount shall be added for the first 8 compensable weeks of benefits paid, not to exceed \$262. For benefit years beginning January 1, 1998, an individual's "weekly benefit amount" shall be an amount equal to one-twenty-sixth of the total wages for insured work paid during that quarter of the base period in which such total wages paid were the highest, but not less than \$32 or more than \$275. For claims with benefit years beginning January 1, 1998, through June 30, 1998, an additional 5 percent of the weekly benefit amount shall be added for the first 8 compensable weeks of benefits paid, not to exceed \$288. Such weekly

benefit amount, if not a multiple of \$1, shall be rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount shall be the maximum benefit amount applicable throughout the claimant's benefit year.

(5) DURATION OF BENEFITS.—

(a)1. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in the base period, not to exceed \$6,500. For claims with benefit years beginning July 1, 1997, through December 31, 1997, an additional amount equal to 5 percent of the weekly benefit amount multiplied by eight shall be added to the calculated total amount of benefits, the sum of which may not exceed \$6,596. For benefit years beginning January 1, 1998, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 25 percent of the total wages in the base period, not to exceed \$7,150. For claims with benefit years beginning January 1, 1998, through June 30, 1998, an additional amount equal to 5 percent of the weekly benefit amount multiplied by eight shall be added to the calculated total amount of benefits, the sum of which may not exceed \$7,254. However, such total amount of benefits, if not a multiple of \$1, shall be rounded downward to the nearest full dollar amount. Such benefits shall be payable at a weekly rate no greater than the weekly benefit amount.

2. For the purposes of this subsection, wages shall be counted as “wages for insured work” for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of this chapter with respect to becoming an employer.

Section 4. This act shall take effect July 1, 1997.

Approved by the Governor April 29, 1997.

Filed in Office Secretary of State April 29, 1997.