

Committee Substitute for
Committee Substitute for Senate Bill No. 810

An act relating to unemployment compensation; amending s. 443.1217, F.S.; raising the amount of an employer's wages subject to an employer's contribution to the trust fund, with a reversion to current law after January 1, 2015; amending s. 443.131, F.S.; revising the rate and recoupment period for computing the employer contribution to the trust fund, with a reversion to current law for recoupment after January 1, 2015; providing the calculation for lowering an employer's contribution to the trust fund under certain circumstances beginning January 1, 2015; providing for a suspension of lowering the employer's contribution under certain circumstances; providing a definition of taxable payroll; amending s. 443.191, F.S.; providing for advances to be credited to the Unemployment Compensation Trust Fund; providing authority to the Governor or the Governor's designee to request advances; creating s. 443.1117, F.S.; providing for retroactive application; establishing temporary state extended benefits for weeks of unemployment between February 22, 2009, and January 2, 2010; creating definitions; providing for state extended benefits for certain weeks and for periods of high unemployment; providing for applicability of s. 443.1117, F.S.; amending s. 443.101, F.S.; providing additional provisions dealing with disqualification for benefits under certain conditions; providing that the act fulfills an important state interest; providing effective dates.

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

Section 1. Effective January 1, 2010, paragraph (a) of subsection (2) of section 443.1217, Florida Statutes, is amended to read:

443.1217 Wages.—

(2) For the purpose of determining an employer's contributions, the following wages are exempt from this chapter:

(a) That part of remuneration paid to an individual by an employer for employment during a calendar year in excess of the first ~~\$8,500~~ \$7,000 of remuneration paid to the individual by the employer or his or her predecessor during that calendar year, unless that part of the remuneration is subject to a tax, under a federal law imposing the tax, against which credit may be taken for contributions required to be paid into a state unemployment fund. As used in this section only, the term "employment" includes services constituting employment under any employment security law of another state or of the Federal Government. Beginning January 1, 2015, the part of remuneration paid to an individual by an employer for employment during a calendar year in excess of the first \$7,000 is exempt from this chapter.

Section 2. Effective January 1, 2010, paragraph (e) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(e) Assignment of variations from the standard rate.—For the calculation of contribution rates effective January 1, 2010, and thereafter:

1. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-subparagraphs a.-d. ~~a.-e.~~ shall be added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-subparagraphs a.-d. ~~a.-e.~~ shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)2. shall be charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-subparagraphs a.-d. ~~a.-e.~~ to the gross benefit ratio shall be multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except that in any instance in which the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor shall be reduced in order that the sum equals the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products shall be divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio shall be subtracted from the sum of the adjustment factors computed under sub-subparagraphs a.-d. ~~a.-e.~~ to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor shall be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor shall be added to the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent.

a. An adjustment factor for noncharge benefits shall be computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)2. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-subparagraph, the term "noncharge benefits"

means benefits paid to an individual from the Unemployment Compensation Trust Fund, but which were not charged to the employment record of any employer.

b. An adjustment factor for excess payments shall be computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)2. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under subparagraph a. As used in this sub-subparagraph, the term "excess payments" means the amount of benefits charged to the employment record of an employer during the 3-year period described in subparagraph (b)2., less the product of the maximum contribution rate and the employer's taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-subparagraph, the term "total excess payments" means the sum of the individual employer excess payments for those employers that were eligible to be considered for assignment of a contribution rate different from the standard rate.

c. If the balance of the Unemployment Compensation Trust Fund on June 30 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than 4 ~~3.7~~ percent of the taxable payrolls for the year ending June 30 as reported to the tax collection service provider by September 30 of that calendar year, a positive adjustment factor shall be computed. The positive adjustment factor shall be computed annually to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-third ~~one-fourth~~ of the difference between the balance of the fund as of June 30 of that calendar year and the sum of 5 ~~4.7~~ percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of June 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 5 ~~3.7~~ percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. Beginning January 1, 2015, and for each year thereafter, the positive adjustment authorized by this section shall be computed by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of June 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of June 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of

the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

d. If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of June 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 4.7 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor shall be computed. The negative adjustment factor shall be computed annually beginning on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of June 30 of the current calendar year and 5 4.7 percent of the total taxable payrolls of that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of June 30 of the year immediately preceding the effective date of the contribution rate is less than 5 4.7 percent, but more than 4 3.7 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal government.

e.d. The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer's employment record.

f. As used in this subsection, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first \$7,000.

2. If the transfer of an employer's employment record to an employing unit under paragraph (f) which, before the transfer, was an employer, the tax collection service provider shall recompute a benefit ratio for the successor employer based on the combined employment records and reassign an appropriate contribution rate to the successor employer effective on the first day of the calendar quarter immediately after the effective date of the transfer.

Section 3. Subsections (1) and (3) of section 443.191, Florida Statutes, are amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—

(1) There is established, as a separate trust fund apart from all other public funds of this state, an Unemployment Compensation Trust Fund, which shall be administered by the Agency for Workforce Innovation exclusively for the purposes of this chapter. The fund shall consist of:

- (a) All contributions and reimbursements collected under this chapter;
- (b) Interest earned on any moneys in the fund;
- (c) Any property or securities acquired through the use of moneys belonging to the fund;
- (d) All earnings of these properties or securities; ~~and~~
- (e) All money credited to this state's account in the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1103; and.
- (f) Advances on the amount in the federal Unemployment Compensation Trust Fund credited to the state under 42 U.S.C. s. 1321, as requested by the Governor or the Governor's designee.

Except as otherwise provided in s. 443.1313(4), all moneys in the fund shall be mingled and undivided.

(3) Moneys may only be requisitioned from the state's account in the federal Unemployment Compensation Trust Fund solely for the payment of benefits and extended benefits and for payment in accordance with rules prescribed by the Agency for Workforce Innovation, or for the repayment of advances made pursuant to 42 U.S.C. s. 1321, as authorized by the Governor or the Governor's designee, except that money credited to this state's account under 42 U.S.C. s. 1103 may only be used exclusively as provided in subsection (5). The Agency for Workforce Innovation, through the Chief Financial Officer, shall requisition from the federal Unemployment Compensation Trust Fund amounts, not exceeding the amounts credited to this state's account in the fund, as necessary for the payment of benefits and extended benefits for a reasonable future period. Upon receipt of these amounts, the Chief Financial Officer shall deposit the moneys in the benefit account in the State Treasury and warrants for the payment of benefits and extended benefits shall be drawn upon the order of the Agency for Workforce Innovation against the account. All warrants for benefits and extended benefits are payable directly to the ultimate beneficiary. Expenditures of these moneys in the benefit account and refunds from the clearing account are not subject to any law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued for the payment of benefits and refunds must bear the signature of the Chief Financial Officer. Any balance of moneys requisitioned from this state's account in the federal Unemployment Compensation Trust Fund which remains unclaimed or unpaid in the benefit account after the period for which the moneys were requisitioned shall be deducted from estimates for, and may be used for the payment of, benefits and extended benefits during succeeding periods, or, in the discretion of the Agency for Workforce Innovation, shall be redeposited with the Secretary of the Treasury of the United

States, to the credit of this state's account in the federal Unemployment Compensation Trust Fund, as provided in subsection (2).

Section 4. Effective upon becoming a law, and retroactive to February 1, 2009, and expiring January 2, 2010, section 443.1117, Florida Statutes, is created to read:

443.1117 Temporary extended benefits.—

(1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except when the result is inconsistent with the other provisions of this section, the provisions of s. 443.1115(3), (4), (6), and (7) apply to all claims covered by this section.

(2) DEFINITIONS.—For the purposes of this section the term:

(a) “Regular benefits” and “extended benefits” have the same meaning as in s. 443.1115.

(b) “Eligibility period” means the period consisting of the weeks in an individual's benefit year or emergency benefit period which begin in an extended benefit period and, if the benefit year or emergency benefit period ends within that extended benefit period, any subsequent weeks beginning in that period.

(c) “Emergency benefits” means Emergency Unemployment Compensation paid pursuant to Pub. L. No. 110-252, Pub. L. No. 110-449, and Pub. L. No. 111-5.

(d) “Extended benefit period” means a period that:

1. Begins with the third week after a week for which there is a state “on” indicator; and

2. Ends with any of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state “off” indicator;

b. The 13th consecutive week of that period.

However, an extended benefit period may not begin by reason of a state “on” indicator before the 14th week after the end of a prior extended benefit period that was in effect for this state.

(e) “Emergency benefit period” means the period during which an individual receives emergency benefits as defined in paragraph (c).

(f) “Exhaustee” means an individual who, for any week of unemployment in her or his eligibility period:

1. Has received, before that week, all of the regular benefits and emergency benefits, if any, available under this chapter or any other law, including dependents' allowances and benefits payable to federal civilian employ-

ees and ex-servicemembers under 5 U.S.C. ss. 8501-8525, in the current benefit year or emergency benefit period that includes that week. For the purposes of this subparagraph, an individual has received all of the regular benefits and emergency benefits, if any, available although, as a result of a pending appeal for wages paid for insured work which were not considered in the original monetary determination in the benefit year, she or he may subsequently be determined to be entitled to added regular benefits;

2. Had a benefit year which expired before that week, and was paid no, or insufficient, wages for insured work on the basis of which she or he could establish a new benefit year that includes that week; and

3.a. Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act or other federal laws as specified in regulations issued by the United States Secretary of Labor; and

b. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if an individual is seeking those benefits and the appropriate agency finally determines that she or he is not entitled to benefits under that law, she or he is considered an exhaustee.

(g) “State ‘on’ indicator” means, with respect to weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 12, 2009, the occurrence of a week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3 month period ending in each of the preceding 2 calendar years; and

2. Equals or exceeds 6.5 percent.

(h) “High unemployment period” means, with respect to weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 12, 2009, any week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3 month period ending in each of the preceding 2 calendar years; and

2. Equals or exceeds 8 percent.

(i) “State ‘off’ indicator” means the occurrence of a week in which there is no state “on” indicator or which does not constitute a high unemployment period.

(3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in subsection (5):

(a) For any week for which there is an “on” indicator pursuant to paragraph (3)(g), the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Fifty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Thirteen times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(b) For any high unemployment period as defined in paragraph (3)(h), the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Eighty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Twenty times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any other provision of this chapter, if the benefit year of an individual ends within an extended benefit period, the number of weeks of extended benefits the individual is entitled to receive in that extended benefit period for weeks of unemployment beginning after the end of the benefit year, except as provided in this section, is reduced, but not to below zero, by the number of weeks for which the individual received, within that benefit year, trade readjustment allowances under the Trade Act of 1974, as amended.

Section 5. The provisions of s. 443.1117, Florida Statutes, as created by this act, apply only to claims for weeks of unemployment, in which an exhaustee establishes entitlement to extended benefits pursuant to that section, established for the period between February 22, 2009, and January 2, 2010.

Section 6. Paragraph (a) of subsection (1) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left his or her work without good cause attributable to his or her employing unit or in which the individual has been discharged by his or her employing unit for misconduct connected with his or her work, based on a finding by the Agency for Workforce Innovation. As used in this paragraph, the term “work” means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after he or she has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or in excess of 17 times his or her weekly benefit amount. As used in this subsection, the term “good cause”

includes only that cause attributable to the employing unit or which consists of illness or disability of the individual requiring separation from his or her work. Any other disqualification may not be imposed. An individual is not disqualified under this subsection for voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months. For benefit years beginning on or after July 1, 2004, an individual is not disqualified under this subsection for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

2. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual has become reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks that immediately follow that week, as determined by the Agency for Workforce Innovation in each case according to the circumstances in each case or the seriousness of the misconduct, under the agency's rules adopted for determinations of disqualification for benefits for misconduct.

3. When an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct prior to the date the voluntary quit was to take effect, the individual, if otherwise entitled, will receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

4. When an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause, as defined in this section, prior to the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(c)1. for failing to be available for work for the week or weeks of unemployment occurring prior to the effective date of the discharge.

Section 7. The Legislature finds that this act fulfills an important state interest.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 1, 2009.

Filed in Office Secretary of State June 1, 2009.