

# CHAPTER 98-154

## Senate Bill No. 1724

An act relating to unemployment compensation; amending s. 443.036, F.S.; revising definitions of employment and wages to incorporate additional exclusions; amending s. 443.091, F.S.; clarifying certain benefit eligibility conditions relating to services at educational institutions; amending s. 443.191, F.S.; limiting use of certain moneys in the Unemployment Compensation Trust Fund for a time certain; providing an effective date.

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

Section 1. Paragraphs (d) and (n) of subsection (19) and paragraph (b) of subsection (33) of section 443.036, Florida Statutes, are 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 or her.

(d) Exclusions from paragraphs (b) and (c).—For the purposes of paragraphs (b) and (c), the term “employment” does not apply to service performed:

1. In the employ of:
  - a. A church or convention or association of churches.
  - b. An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.
2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.
3. Prior to January 1, 1978, in the employ of a nonprofit educational institution which is not an institution of higher education and which would otherwise be employment as defined in paragraph (c).
4. In the employ of a governmental entity referred to in paragraph (b), if such service is performed by an individual in the exercise of duties:
  - a. As an elected official.
  - b. As a member of a legislative body, or a member of the judiciary, of a state or political subdivision.

c. As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

d. In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than 8 hours per week.

e. As an election official or election worker if the amount of remuneration received by the individual during the calendar year for such services is less than \$1,000.

5. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

6. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training, except that this subparagraph does not apply to unemployment work-relief or work-training programs for which unemployment compensation coverage is required under a federal law, rule, or regulation.

7. By an inmate of a custodial or penal institution.

(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 or her son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his or her 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 salesperson 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 or she 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.

25. Service performed by a person who is an inmate of a penal institution.

(33) WAGES.—

(b) “Wages” does not include:

1. That part of remuneration which, after remuneration equal to \$6,000 prior to January 1, 1983, and \$7,000 after December 31, 1982, has been paid in a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such 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. For the purposes of this subsection, the term “employment” includes services constituting employment under any employment security law of another state or of the Federal Government.

2. The amount of any payment, with respect to services performed, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:

a. Sickness or accident disability, but, in the case of payments made to an employee or any of his or her dependents, this subparagraph shall exclude from the term “wages” only those payments received under a workers’ compensation law.

b. Medical and hospitalization expenses in connection with sickness or accident disability.

c. Death, provided the individual in its employ:

(I) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums, or contributions to premiums, paid by his or her employing unit; and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his or her withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his or her services with such employing unit.

3. The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of 6 calendar months following the last calendar month in which the individual performed services for such employing unit.

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under s. 3101 of the federal Internal Revenue Code with respect to services performed.

5. The value of:

a. Meals furnished to an employee or the employee's spouse or dependents by the employer on the business premises of the employer for the convenience of the employer; or

b. Lodging furnished to an employee or the employee's spouse or dependents by the employer on the business premises of the employer for the convenience of the employer when such lodging is included as a condition of employment.

6. The amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or a beneficiary of such individual:

a. From or to a trust described in s. 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under s. 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

b. Under or to an annuity plan which, at the time of such payment, is a plan described in s. 403(a) of the Internal Revenue Code of 1954;

c. Under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under s. 219(b)(2) of the Internal Revenue Code of 1954 for such payment;

d. Under or to an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise;

e. Under or to an exempt governmental deferred compensation plan as described in s. 3121(v)(3) of the Internal Revenue Code of 1954; or

f. To supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the United States Secretary of Labor, since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan under s. 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974.

g. Under a cafeteria plan, within the meaning of s. 125 of the Internal Revenue Code of 1986, as amended, if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that, if s. 125 of the Internal Revenue Code of 1986, as amended, applied for purposes of this section, s. 125 of the Internal Revenue Code of 1986, as amended, would not treat any wages as constructively received.

h. Any payment made, or benefit provided, to or for the benefit of an employee if at the time of such payment or provision of benefit it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under s. 127 of the Internal Revenue Code of 1986, as amended.

Section 2. Paragraph (c) of subsection (3) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(3) Benefits based on service in employment defined in s. 443.036(19)(b) and (c) shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(c) Benefits shall not be paid, based on services provided to an educational institution or institution of higher learning, to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs any services described in paragraph (a) or paragraph (b) in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform any such service in the period immediately following such vacation period or holiday recess.

Section 3. Paragraph (a) of subsection (5) of section 443.191, Florida Statutes, is amended to read:

443.191 Unemployment Compensation Trust Fund; establishment and control.—



(5) MONEY CREDITED UNDER SECTION 903 OF THE SOCIAL SECURITY ACT.—

(a) Money credited to the account of this state in the Unemployment Compensation Trust Fund by the Secretary of the Treasury of the United States pursuant to s. 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this law. Such money may be requisitioned pursuant to subsection (3) for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this law but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

1. Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;
2. Limits the period within which such money may be obligated to a period ending not more than 2 years after the date of the enactment of the appropriation law; and
3. Limits the amount which may be obligated during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to s. 903 of the Social Security Act during the same 12-month period and the 34 preceding 12-month periods, exceeds the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such 35 12-month periods.

4. Notwithstanding subparagraph 1., money credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and such money shall not otherwise be subject to the requirements of subparagraph 1. when appropriated by the Legislature.

Section 4. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.