

U.S. DEPARTMENT OF LABOR  
Employment and Training Administration  
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 3  
November 2015

**ARKANSAS**            HB 1540                    ENACTED and EFFECTIVE April 2, 2015  
                                  (Act No. 945)

Coverage

Amends the definition of service performed by an individual for wages which allows a worker to be classified as an independent contractor, by requiring that:

- The individual has been and will continue to be free from control and direction in connection with the performance of the service, both under his or her contract for the performance of service and in fact; and either
  - (A) The service is performed either outside the usual course of the business for which the service is performed or is performed outside all the places of business of the enterprise for which the service is performed; or
  - (B) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

(Previously, such individual has been and will continue to be free from control and direction in connection with the performance of the service, both under his or her contract for the performance of service and in fact; the service is performed either outside the usual course of the business for which the service is performed or is performed outside all the places of business of the enterprise for which the service is performed; and the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.)

**CALIFORNIA**            AB 1270                    ENACTED and EFFECTIVE October 7, 2015  
                                  (CH 94)

Administration

Renames the State Workforce Investment Board to the State Workforce Development Board. Requires the Board to assist the Governor, as part of the development and updating of comprehensive state performance accountability measures, in developing a workforce metrics dashboard to measure participant earnings in California, and to the extent feasible, in other

states. The Employment Development Department shall assist the board by calculating aggregated participant earnings using unemployment insurance wage records, without violating any applicable confidentiality requirements.

Provides that it is the intent of the Legislature that universal access to career services shall be available to adult residents regardless of income, education, employment barriers, or other eligibility requirements. Career services shall include, but not be limited to, provision of information on the filing of claims for unemployment compensation benefits and unemployment compensation disability benefits.

**DELAWARE**

**RULE 3482**

**ADOPTED June 3, 2015**

**EFFECTIVE July 11, 2015**

### Nonmonetary Eligibility

Defines the term “partially unemployed individual” to mean an employee who, during any given week, is still employed by his or her employer but worked less than his or her regular full-time hours because of the lack of full-time work.

Defines the term “week of partial unemployment” to mean, with respect to a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his or her pay period week. With respect to a partially unemployed individual whose wages are not paid on a weekly basis (e.g., bi-weekly, monthly) a week of partial unemployment shall be any consecutive 7-day period the Division of Unemployment Insurance may prescribe as to any employee or group of employees as it deems appropriate.

Provides that to file a claim for partial unemployment insurance, a partially unemployed individual must establish an original benefit year claim in person at one of the Division’s local offices or by using the Division’s on-line filing system.

Provides that, after the end of any week in which an employer has furnished any of its employees with less than regular full-time work (or the earnings equivalent thereto), on the customary payday for the pay period during which full-time work was unavailable the employer or the employee shall deliver a completed Low Earnings Report (Form UC-114) to the nearest Division local office signed by both the employer and the employee.

Provides that, upon receiving a Form UC-114, the Division shall promptly process the information contained in it so that a timely payment of unemployment insurance may be made to the partially unemployed individual who has established an original benefit year claim. For any given week, if the earnings stated on a Form UC-114 exceed the earnings allowance for the partially unemployed individual based on his or her weekly benefit amount, the Division will mail a notice to the affected employee stating the reason why no partial unemployment insurance is owed for the week in question.

Provides that no claim for partial unemployment insurance benefits may be made more than 14 days after the week ending period reflected on the Form UC-114 being filed.

Provides that, in addition to the records required to be maintained by employers, each employer shall maintain for a period of 4 years payroll records containing the following information on each employee that was determined to be eligible to receive partial unemployment insurance:

- the amount of wages earned by week;
- the specific dates of weeks of less than full-time work by the employee; and
- the number of hours of work lost by each employee, if any, due to the employee's unavailability for work.

**FLORIDA** Rule 41857

ADOPTED September 3, 2015  
EFFECTIVE September 23, 2015

### Coverage

Clarifies services performed on or in connection with a non-American vessel or aircraft as follows:

- Applicability of exemption for services performed on or in connection with a non-American vessel or aircraft:

(a) Service performed by an employee during a reporting period on or in connection with a non-American vessel or a non-American aircraft is exempt from the definition of employment if such employee is employed by the employer on and in any way connected with the vessel or aircraft while it is outside the United States.

(b) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exemption, and the citizenship or residence of the employer is material only in determining whether the vessel is American. Services performed within the United States on or in connection with a non-American vessel are exempted from employment if the employee is employed by the employer on and in connection with the vessel when it is outside the United States.

(c) Exempt services under this rule are not considered employment for reemployment tax purposes and shall not be reported on the employer's quarterly report (RT-6).

- "Non-American aircraft" means any aircraft that is not an "American aircraft" as defined by Section 443.036(3), Florida Statutes.
- "Non-American vessel" means any vessel that is not an "American vessel" as defined in Section 443.036(5), Florida Statutes.

**IDAHO** SB 1075  
(CH 125)

ENACTED and EFFECTIVE March 26, 2015

### Coverage

Adds language that inmates engaged in authorized productive work are not entitled to unemployment compensation.

Adds “private agricultural employer that is party to a contract for inmate labor” to the list of entities for which inmates are not employees.

**LOUISIANA**                      HB 772                      ENACTED and EFFECTIVE June 29, 2015  
(Act No. 360)

Appeals

Provides, that if the Executive Director of the Louisiana Workforce Commission, acting as the Administrator who is a party to every proceeding, fails to timely file the case records along with filing his answer to the petition for review, the court upon hearing sufficient evidence, may make a judgment based on the evidence presented. (Previously, may make a judgment directing payment of benefits to the claimant.)

**NEW JERSEY**                      SB 2082                      ENACTED and EFFECTIVE May 4, 2015  
(CH 41)

Nonmonetary Eligibility

Provides that the requalification provision, that an individual become reemployed and work 8 weeks in employment for leaving work voluntarily without good cause attributable to such work, does not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than 7 days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the 7-day period will commence from the specified date.

**NORTH DAKOTA**                      HB 1212                      ENACTED and EFFECTIVE March 12, 2015  
(CH 355)

Nonmonetary Eligibility

Adds “stalking” to the list of good personal causes for voluntarily leaving employment.

Establishes documentation requirements to authenticate a good cause quit due to stalking. The documentation of stalking must include:

- A police or law enforcement record; and
- A written affidavit provided by an individual who has assisted the claimant in dealing with the stalking and who is a:
  - Licensed counselor;



Deletes the words “Workforce Investment Act programs” from the Unemployment Compensation Act and inserts the words “workforce system programs” in their place. Also deletes the words “Workforce Investment Act of 1998”.

### Coverage

Provides that the term “employment” includes domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person or entity who paid cash remuneration of \$1,000 or more to individuals employed in domestic service in any calendar quarter in the calendar year or the preceding calendar year (added “or entity”).

Excludes from the term “employment” services performed by persons working under an AmeriCorps grant from the Corporation for National Service made pursuant to the National and Community Service Act of 1990 codified, at 42 U.S.C. Section 12501, et seq.

### Financing

Provides that the following procedures will apply to a notice of levy served on an employer or a contracting entity:

- any employer that fails or refuses to surrender money or rights to money belonging to its employee in the employer’s possession, or that fails or refuses to make the appropriate deduction from wages pursuant to a levy upon being served with a notice of levy and supporting warrant of levy and lien of the Commission, shall be liable to the Commission in a sum equal to the amount of money, rights to money, or wage deduction not so surrendered, but not exceeding the amount of the debtor’s indebtedness for the collection of which the levy has been made, together with accrued interest, and the cost of service of the notice of levy. Any amount recovered in this manner shall be credited against the liability of the debtor for the benefit overpayment indebtedness, for which the levy was made; and
- any employer in possession of money or rights to money subject to levy upon which a levy has been made that surrenders the money or rights to money to the Commission shall be discharged from any obligation or liability to the debtor and any other person or entity with respect to such money or rights to money arising from the surrender or payment.

Changes the computation of the percentage of wages payable to: Beginning January 1, 2016, each employer, unless otherwise prescribed in Sections 3-111, 3-111.1, 3-701 or 3-801 of the Unemployment Compensation Act or Section 14 of this Act, shall pay contributions equal to 1.5 percent of taxable wages paid by the employer with respect to employment. (Previously, the computation provided that beginning January 1, 1996, each employer, unless otherwise prescribed in Sections 3-111, 3-111.1, 3-112, 3-701 or 3-801 of the Unemployment Compensation Act, shall pay contributions equal to a percent of taxable wages paid by the employer with respect to employment which shall be the greater of 1 percent or the average contribution rate paid by all employers during the second year preceding the current calendar

year. The average contribution rate shall be calculated by dividing annual net contributions received by total annual taxable wages.)

Provides that an employer shall be relieved of a benefit wage charge if the employer satisfactorily proves that the benefit wage charge includes wages paid by the employer to any employee or former employee, who: (1) left employment with that employer, or with his or her last employer, voluntarily without good cause connected to the work; or (2) was discharged from such employment for misconduct connected with his or her work; except an employer shall not be relieved of a benefit wage charge, under the above circumstances, if the employer was sent a notice of benefit claim and failed to timely file protest to the benefit claim.

Provides that the Oklahoma Employment Security Commission shall be authorized to collect state unemployment tax indebtedness established pursuant to Article 3 of the Employment Security Act of 1980, through the Tax Offset Program of the U.S. Department of the Treasury pursuant to 26 U.S.C. Section 6402(f) and 31 CFR Section 285.8.

Repeals Section 3-110 of the Unemployment Compensation Act titled "Minimum Contributions" that provided no employer's rate shall be less than the greater of 1 percent or the average contribution rate paid by all employers during the second year preceding the current calendar year unless throughout the 1 calendar year immediately preceding such year some eligible individual could have filed a claim in each quarter of said year establishing a base period as prescribed by Section 1-202 which would include wages from that employer.

Repeals Section 3-112 of the Unemployment Compensation Act titled "Employers With At Least One Year's Experience" that provided for each calendar year commencing after December 31, 1954, for those employers who have had at least 1 year of compensation experience, the Commission shall determine the contribution rate of each such employer on the basis of his compensation experience as determined by the fund's maximum liability for benefits to their employees who have been paid benefits modified by the state experience as to the average duration of benefit payments as provided by law.

#### Nonmonetary Eligibility

Provides that the Commission may require an individual to personally appear at a location for a purpose relevant to, among other things, the individual's reemployment services. If the individual fails to appear, the individual's claim for unemployment benefits will be (previously, may be) disqualified indefinitely by the Commission until the individual makes a personal appearance as directed.

#### Overpayments

Provides that the Oklahoma Employment Security Commission shall be authorized to collect unemployment benefit overpayment indebtedness through the Tax Offset Program of the U.S. Department of the Treasury pursuant to 26 U.S.C. Section 6402(f) and 31 CFR Section 285.8. The Commission may submit overpayment indebtedness due to claimant error, if the claimant error overpayment was due to a failure to report earnings.

**OREGON** HB 2440  
(CH 103)

ENACTED and EFFECTIVE May 20, 2015

Nonmonetary Eligibility

Provides an additional exception to the presumption that an individual who leaves the individual's normal labor market area for the major portion of any week is unavailable for work such that the presumption may be overcome if the individual satisfactorily establishes that the individual was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market. (Applicable to weeks beginning on or after May 20, 2015.)

**OREGON** SB 243  
(CH 530)

ENACTED and EFFECTIVE June 22, 2015

Overpayments

Provides that, if an individual has been paid benefits to which the individual is not entitled because of an error not due to fraud, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, the individual is liable to have the amount deducted from any future benefits otherwise payable to the individual under the state's law or the equivalent law of another state for any week or weeks within 5 years following the week in which the decision establishing the erroneous payment became final. A decision to recover the paid benefits must be final and must specify that the individual is liable to have the amount deducted from any future benefits otherwise payable under the state's law or the equivalent law of another state for any week or weeks within 5 years following the week in which the decision establishing the erroneous payment became final.

Provides that, if any amount paid to an individual as benefits for which the individual has been found liable, due to misrepresentation, to repay or to have deducted from benefits payable, has neither been repaid nor deducted within a period of 5 years (previously, 3 years) following the date the decision establishing the overpayment became final, and is equal to or is less than the state maximum weekly benefit amount or determined to be uncollectible, the overpayment together with the record of the overpayment and the resulting shortage may be canceled (previously, shall be canceled), and the overpayment, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund.

**OREGON** SB 5508  
(CH 485)

ENACTED June 18, 2015  
EFFECTIVE July 1, 2015

Financing

Appropriates to the Employment Department, for the biennium beginning July 1, 2015, out of Reed Act funds made available to the state on March 13, 2002, under federal law, as amended, the amount of \$24,300,000 to be used under the direction of the Employment Department for the purposes of administering unemployment compensation law and public employment offices, and for debt service and capital improvements.





### Nonmonetary Eligibility

Changes when the waiting period is compensated to after having received benefits equal to or exceeding two times the individual's weekly benefit amount, provided the individual has either: 1) returned to full-time employment after being totally or partially unemployed for at least seven consecutive days, or 2) exhausted the individual's regular benefits for the current benefit year. (Previously the individual was compensated for the waiting period after receiving benefits equal to or exceeding three times the individual's weekly benefit amount.)

<b>TEXAS</b>	HB 1251 (CH 525)	ENACTED May 19, 2015 EFFECTIVE September 1, 2015
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### Financing

Provides that, following a partial acquisition of an organization, trade, or business, common ownership does not exist solely because the predecessor employing unit has the right to repossess the part acquired in the event of the successor's failure to complete a condition of the acquisition. Additionally, in the case of a partial acquisition where the transfer of experience is required, not later than two years following the date of the acquisition, the predecessor and successor employers may jointly submit information to clarify which workers were, in fact, part of the transfer of trade or business.

<b>TEXAS</b>	HB 3150 (CH 1260)	ENACTED June 20, 2015 EFFECTIVE September 1, 2015
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### Financing

Provides that, in a calendar year during which an employee becomes a covered employee of a license holder, a license holder may apply any wages paid to an employee in that calendar by the client, or by another license holder under a prior professional employer services agreement with that client, toward the maximum amount of taxable wages.

Additionally, references to the Standard Industrial Classification Manual are changed to the North American Industry Classification System.

<b>TEXAS</b>	HB 2732 (CH 414)	SB 208 (CH 1138)	HB 2732 SB 208	ENACTED June 10, 2015 ENACTED June 19, 2015 EFFECTIVE September 1, 2015
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### Overpayments

Authorizes the use of the Treasury Offset Program (TOP) to recover certain covered unemployment compensation debts, and requires the Commission to notify the debtor of plans to recover the debt through the offset of any Federal tax refund. The Commission is also required to provide the debtor at least 60 days after the debt becomes final to provide the Commission with evidence that the debt is not either: legally enforceable; due to fraud or unreported earnings; or a contribution owed to the fund.

**TEXAS**

SB 529  
(CH 37)

ENACTED and EFFECTIVE May 19, 2015

Coverage

Excludes from covered employment services performed by a landman, provided the compensation the individual receives relates only to the performance of service as a landman.