Oklahoma Employment Security Act

40 Oklahoma Statutes, Chapter 1 as Last Amended

JUNE 2011

STATE OF OKLAHOMA

Mary Fallin, Governor
Richard McPherson, Executive Director

OES-1000 (Rev. 6-11)

Section **TABLE OF CONTENTS**

N O T E

The Oklahoma Employment Security Act was originally enacted as the Oklahoma Unemployment Compensation Law by the 16th Legislature, 1936 Special Session (HB 1) effective December 12, 1936 and published as Chapter 52, Oklahoma Session Laws 1936-37. The Act was amended by the 17th Legislature (HB 470). In 1941 the 18th Legislature (HB 209) amended the Oklahoma Unemployment Compensation Law extensively, changing the name to the Oklahoma Employment Security Act and removed the administration of the Act from the Commissioner of Labor to the Oklahoma Employment Security Commission. The Oklahoma Employment Security Act has been further amended by the 19th Legislature (HB 205 and 323); the 20th Legislature (HB 304); the 21st Legislature (HB 200); the 22nd Legislature (HB 463); the 24th Legislature (HB 855); the 25th Legislature (SB 92 and 355); the 26th Legislature (HB 754 and 940); the 27th Legislature (HB 592, 694 and 830); the 28th Legislature (HB 578 and 918); the 29th Legislature (SB 99); the 30th Legislature (HB 631); the 1st Session of the 31st Legislature (HB 766); the 2nd Session of the 32nd Legislature (SB 281); the 1st Session of the 33rd Legislature (HB 1414); the 2nd Session of the 33rd Legislature (SB 480 and 604 and HB 1424); the 2nd Session of the 34th Legislature (HB 1672 and 1756); the 1st Session of the 35th Legislature (SB 116 and HB 1297); the 2nd Session of the 35th Legislature (HB 1637 and 1839); the 1st Session of the 36th Legislature (HB 1126 and 1055); the 2nd Session of the 36th Legislature (SB 259 and HB 1789); the 2nd Session of the 37th Legislature (SB 637); the 1st Session of the 38th Legislature (HB 1399); the 2nd Session of the 38th Legislature (SB 410 and HB 1706 and 1808); the 1st Session of the 39th Legislature (HB 1223 and 1419); the 2nd Session of the 39th Legislature (SB 501 and 505); the 2nd Session of the 40th Legislature (SB 511 and HB 1465); the 1st Session of the 41st Legislature (HB 1207); the 2nd Session of the 41st Legislature (SB 493); the 1st Session of the 42nd Legislature (SB 79 and HB 1135 and 1262); the 2nd Session of the 42nd Legislature (SB 799, 855 and 858); the 1st Session of the 43rd Legislature (SB 120 and HB 1126 and 1723); the 2nd Session of the 43rd Legislature (HB 2485); the 1st Session of the 44th Legislature (SB 85, 93, 143, 344 and HB 1198 and 1447); the 2nd Session of the 44th Legislature (SB 597 and 641 and HB 1492, 1948, 2133 and 2154); the 1st Session of the 45th Legislature (HB 1462); the 1st Session of the 46th Legislature (SB 43, 706, 645 and HB 1130); the 2nd Session of the 46th Legislature (HB2792, HJR 19); the 1st Session of the 47th Legislature (HB 1579 and SB 259); the 2nd Session of the 47th Legislature (HB 2400); the 1st Session of the 48th Legislature (HB 1341); the 2nd Session of the 48th Legislature (SB 1404 and 882); the 1st Session of the 49th Legislature (SB 435 and SB 741); the 2nd Session of the 49th Legislature (SB 1288 and HB 2497);1st Session of the 50th Legislature (SB 763); 2nd Session of the 50th Legislature (SB 1634 and SB 1466); 1st Session of the 51st Legislature (SB 1028 and SB 809); 2nd Session of the 51st Legislature (HB 2662, SB1873, and SB 1531); 1st Session of the 52nd Legislature (SB 1175); 2nd Session of the 52nd Legislature (HB 2363, HB 2704, SB 1280, SB 1592, HB 2333 and SB 1970); and 1st Session of the 53rd Legislature (SB 756).

The Act is officially published as Title 40, Chapter 1, in the Oklahoma Statutes.

The Act is also available at: http://www.ok.gov/oesc_web/documents/ACT-BOOK.pdf

Sections amended or added this year are: ээ1-210, 1-221, 2-418, 2-605, 2-606, 2-607, 2-608, 2-609, 2-610, 2-612, 2-616, 3-106, 3-307, 4-203 and 4-508.

This publication is issued by the Oklahoma Employment Security Commission as authorized by the Oklahoma Employment Security Act. Fifteen hundred copies have been prepared and distributed at an approximate cost of $1,750.00 and paid for out of the federal funds granted by the U.S. Department of Labor to said Commission.

EQUAL OPPORTUNITY EMPLOYER/PROGRAMS
Auxiliary aids and services are available upon request to individuals with disabilities.

BOLD TEXT DENOTES NEW/AMENDED STATUTES

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

PART 1. GENERAL PROVISIONS

1-101 Short Title 1
1-102 Purpose of Act 1
1-103 Declaration of State Public Policy 1
1-104 Saving Clause 2
1-105 Repealed 2
1-106 Section Captions 2
1-107 Construction Against Implicit Repeal 2
1-108 Indian Tribes – Employer Requirements – Benefits 2

PART 2. GENERAL DEFINITIONS

1-201 General Definitions 5
1-202 Base Period 5
1-202.1 Extended Base Period [RECODIFIED FROM 1-202A] 5
1-202.2 Alternative Base Period [RECODIFIED FROM 1-202B] 5
1-203 Benefits 6
1-204 Benefit Year 6
1-205 Calendar Quarter 6
1-206 Commission, Commissioner 6
1-207 Contributions 6
1-208 Employer 6
1-208.1 Motor Carrier Not Employer of Lessor or Driver [RECODIFIED FROM 1-208A] 8
1-209 Employing Unit 8
1-209.1 Definition of Lessor Employing Unit [RECODIFIED FROM 1-209A] 9
***1-210 Employment [Effective 8-26-11] 10**
1-211 Employment Office 18
1-212 Fund Employment Security Administration Fund 18
1-213 Hospital 18
1-214 Institution of Higher Education 18
1-215 Insured Work 18
1-216 State 18
1-217 Unemployed 19
1-218 Wages 19
1-219 Wages Paid 20
1-220 Week 20
***1-221 Benefit Wages [Effective 8-26-11]** 20
1-222 Repealed 20
1-223 Taxable Wages Defined 21
1-224 File Definition 21
1-225 Supplemental Unemployment Benefit Plan 22
1-225A Supplemental Unemployment Benefit – Special Procedures [Repealed 11-1-2007] 23
1-226 Initial Claim and Additional Initial Claim 23
1-227 Experience Period 23

PART 3. OTHER DEFINITIONS

1-301 Other Definitions 23
1-302 Index of Other Definitions 24

ARTICLE II. BENEFITS

PART 1. COMPUTATION

2-101 Applicability 25
2-102 Rounding Provision 25
2-103 Benefits Paid from Fund 25
2-104 Computation of Benefit Amount 25
2-105 Wages Subtracted from Benefit Amount 26
2-106 Maximum Benefit Amount 26
2-107 Benefits - Portion of a Week 27
2-108 Benefits - Approved Training 27
2-109 Employment Requirement in Preceding Benefit Year 27

PART 2. ELIGIBILITY

2-201 Applicability 28
2-202 Conditions for Eligibility 28
2-203 Claim 28
2-204 Registration Employment 29
2-205 Repealed 29
2-205.1 Eligibility for Unemployment [RECODIFIED FROM 2-205A] 29
2-206 Waiting Period 29
2-207 Wage Requirement During Base Period 29
2-208 Aliens 30
2-209 Benefits for Employees of Government or Nonprofit Employers 30
2-210 Eligible Separations – Compelling Family Circumstances 31

PART 3. PROTECTION OF RIGHTS AND BENEFITS

2-301 Waiver Void 32
2-302 Fee - No Charge by Commission or its Employees - Counsel Fee Subject to Approval - Choice of Representative 33
2-303 Assignments Void, Exemption from Process 33
2-304 Health Insurance Premiums Deductions 34
2-305 Deduction of Individual Income Tax Withholding 34

PART 4. DISQUALIFICATION

2-401 Application of Part 4 34
2-402 Fraud 34
2-403 Repealed 35
2-404 Leaving Work Voluntarily 35
2-404.1 Temporary Help Firms and Temporary Employees Defined [RECODIFIED FROM 2-404A] 35
2-404.2 Work of A Limited Duration of Time [RECODIFIED FROM 2-404B] 36
2-405 Determining Good Cause 36
2-406 Discharge for Misconduct 36
2-406.1 Discharge for Misconduct if Refuse to Undergo Drug or Alcohol Testing [RECODIFIED FROM 2-406A] 36
2-407 Repealed 37
2-408 Suitable Work 37
2-409 Conditions Exempting Otherwise Suitable Work 37
2-410 Participation in Labor Disputes 37
2-411 Retirement Payments 38
2-412 Receiving Benefits from Another State 38
2-413 Inmates During Confinement 38
2-414 Pregnant Women Not Disqualified 39
2-415 Participating in Sports or Athletic Events 39
2-416 Prohibition Against Disqualification of Individuals Taking Approved Training Under Trade Act 39
2-417 Seek and Accept Work-Week of Occurrence Disqualification 39

*2-418 Seek and Accept - Work Indefinite Disqualification [Effective 8-26-11] 40
2-419 Disqualification – Employee Acceptance of Accelerated Buyout of Written Employment Agreement 40

PART 5. FILING CLAIMS - NOTICE

2-501 Applicability 40
2-502 Posting of Information 40
2-503 Claims, Notices and Objections 41
2-504 Determination of Benefits 41
2-505 Determinations in Labor Disputes 42
2-506 Redeterminations 42
2-507 Notice of Determinations 42

PART 6. APPEALS

2-601 Applicability 43
2-602 Appeal Referees 43
2-603 Appeal Tribunal 43
2-604 Hearing 43

*2-605 Notice of Referee Decision [Effective 8-26-11] 43
*2-606 Appeals from Tribunal Referee Decisions to Board of Review [Effective 8-26-11] 44
*2-607 Rules and Procedures in Appeals [Effective 8-26-11] 44
*2-608 Conclusiveness of Determinations and Decisions [Effective 8-26-11] 44
*2-609 Rules of Decision [Effective 8-26-11] 45
*2-610 Judicial Review [Effective 8-26-11] 45
2-610.1 Effect of Findings of Fact, Law, Judgment, Conclusions or Final Order by OESC [RECODIFIED FROM 2-610A] 46
2-611 Commission is a Party 46
*2-612 Payment of Benefits [Effective 8-26-11] 46
2-613 Benefit Overpayments 47
2-614 Waiver of Appeal Time 47
2-615 Interest May be Waived 48
*2-616 Notice of Overpayment of Unemployment Benefits – Appeal [Effective 8-26-11] 48
2-617 Warrant of Levy and Lien 48
2-618 Levy on Income and Monetary Assets 49

PART 7. EXTENDED BENEFITS

2-701 Definitions of Terms Applicable to Extended Benefits 51
2-702 Applicability 51
2-703 Extended Benefit Period 51
2-704 Repealed 52
2-705 Repealed 52
2-706 State "On" Indicator 52
2-707 State "Off" Indicator 52
2-708 Rate of Insured Unemployment 52
2-709 Regular Benefits 53
2-710 Extended Benefits 53
2-711 Eligibility Period 53
2-712 Exhaustee 53
2-713 State Law 54
2-714 Extended Benefits 54
2-715 Eligibility for Extended Benefits 54
2-716 Weekly Extended Benefit Amount 56
2-717 Total Amount of Extended Benefits 56
2-718 Public Announcement of Extended Benefit Period 57
2-719 Commission to Make Computations 57

2-720 Commission to Ensure Compliance 57
2-721 Employers not Liable for Reimbursed Payments 57
2-722 Reimbursement Deposited in Fund 57
2-723 Overpayments Restitution and Offset 57
2-724 Limitation on Amount of Combined Unemployment Insurance and Trade Act Benefits Received 57

PART 8. CHILD SUPPORT

2-801 Child Support Obligation 58
2-802 Reports by Employers to Employment Security Commission – New Hire Registry 59
2-803 Food Stamp Overissuance of Food Stamp Coupons 60

PART 9. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM

2-900 Shared Work Unemployment Compensation Program 61
2-901 Definitions 61
2-902 Rules/Employer Plan 61
2-903 Approval of Shared Work Plan 62
2-904 Effective Date and Duration of Plan 63
2-905 Modification of Plan 63
2-906 Eligibility for Shared Work Benefits 63
2-907 Amount of Benefits/Disqualification 64
2-908 Benefit Wage Charge for Shared Work Benefits 64
2-909 Termination of Shared Work Plan 64
2-910 Effective Date 65

ARTICLE 3. CONTRIBUTIONS

PART 1. RATES

3-101 Applicability 66
3-102 Contributions 66
3-103 Computation - Percentage of Wages Payable 66
3-104 Contribution Rate for Employers With Three Years Compensation Experience 67
3-105 Benefit Wages - Year Charged 67
***3-106 Benefit Wages Charged and Relief Therefrom [Effective 8-26-11]** 67
3-106.1 Relief from Benefit Wages Charged - Addendum 69
3-106.2 Separating Employers - Relief from Benefit Wage Charges 69
3-107 Benefit Wage Ratio 70
3-108 State Experience Factor 70
3-109 Experience Rate 70
3-109.1 Contribution Rate Reduction 70
3-109.2 Computer Fund Assessment Rate Reduction 71
3-110 Minimum Contributions 71
3-111 Successor and Predecessor Employers 71
3-111.1 Successor and Predecessor Employers - Special Rules on Transfer of Rates and Experience 72
3-112 Employers with at Least One but Less Than Three Year's Experience 73
3-113 Conditional Factors 74
3-114 Estimate of Financial Condition of Fund for Quarter- Surcharge 76
3-115 Appeal of OESC Determinations 76
3-116 Reconsideration of Determination 77
3-117 Findings of Fact or Law 78
3-118 Electronic Report Filing 78
3-119 Electronic Report Filing 78

PART 2. PERIOD, TERMINATION, ELECTION

3-201 Employer for any Part of Year Deemed Employer for Entire Year 78
3-202 Termination of Coverage 78
3-203 Election by Employer 79

PART 3. COLLECTION OF CONTRIBUTIONS

3-301 Penalty and Interest on Past Due Contributions 80
3-302 Collections 80
3-303 Priorities Under Legal Dissolutions or Distributions 81
3-304 Refunds 81
3-305 Assessments 81
3-306 Jeopardy Assessments 82
***3-307 Remittances [Effective 8-26-11] 83**
3-308 Perjury--Punishment 83
3-309 Collection of Delinquent Contributions, Penalties or Interest 84
3-310 Waiver of Penalty or Interest 84

PART 4. JUDICIAL REVIEW

3-401 Appeals to District Court 84
3-402 Repealed 84
3-403 Petition for Review and Transcript of Commission Proceedings 84
3-404 Commission's Conclusions of Facts Conclusive 85
3-405 Deposit of Assessment Required 85
3-406 Bond in Lieu of Cash Deposit 85
3-407 Repealed 85
3-408 Part Construed to Provide Legal Remedy 85

PART 5. WARRANTS

3-501 Commission to Issue Warrants 86
3-502 Filing Warrant with County Clerk 86
3-503 Filed Warrant is Lien 86
3-504 Sheriff to Execute Warrant in Same Manner as Judgment 86
3-505 Failure of Sheriff to Execute Warrant 87
3-506 State May Be Made Party Defendant 87
3-507 Injunctions 88
3-508 Appointment of Receiver 88
3-509 Levy on Bank Accounts 88
3-510 Enforcement of Bank Levy 89

PART 6. UNEMPLOYMENT COMPENSATION FUND

3-601 Establishment of Unemployment Compensation Fund 89
3-602 State Treasurer Custodian of Fund 89
3-603 State Treasurer to Maintain Three Accounts 90
3-604 Clearing Account 90
3-605 Unemployment Trust Fund 90
3-606 Benefit Account 90
3-607 Requisitions from Unemployment Trust Account 90
3-608 Expenditures Not Subject to Specific Appropriation Requirements 91
3-609 Discontinuance of Unemployment Trust Fund 91
3-610 Management of Funds of Unemployment Trust Fund 91

PART 7. FINANCING BENEFITS TO EMPLOYEES OF THE STATE

3-701 Applicability 92
3-702 Payments by the State Subdivisions and Instrumentalities in Lieu of Contributions 92
3-703 Benefits and Extended Benefits Paid from Unemployment Security Fund 92
3-704 Benefits Based On Wages Paid Both by the State and Other Employers 92
3-705 Election to Become Liable for Reimbursement Payments 92
3-706 Benefits That Do Not Apply in the Computation of State Experience Factor 93
3-707 State Pledge 93
3-708 Delinquent Payments 93

PART 8. FINANCING BENEFITS TO EMPLOYEES OF NONPROFIT ORGANIZATIONS

3-801 Applicability 93
3-802 Contributions 94
3-803 Election to Make Payments in Lieu of Contributions 94
3-804 Period of Election - Organizations Subject to Act after January 1, 1972 94
3-805 Written Notice of Termination of Election Required 94
3-806 Payment of In-Lieu Contributions 94
3-807 Payment In-Lieu Contributions - Benefits Based on Wages Paid by More Than One Employer 95
3-808 Election to Become Reimbursing Employer 96
3-809 Group Accounts 96
3-810 Commission To Provide Notice of Determinations 97

ARTICLE 4. ADMINISTRATION

PART 1. COMMISSION

4-101 Applicability 98
4-102 Composition 98
4-103 Qualifications 98
4-104 Term of Office 98
4-105 Removal by the Governor 98
4-106 Repealed 99
4-106.1 Compensation in Addition to Reimbursement for Travel Expenses 99
4-107 Quorum 99
4-108 Executive Director 99
4-109 Service of Process 99

PART 2. BOARD OF REVIEW

4-201 Applicability 100
4-202 Creation 100
***4-203 Salary [Effective 8-26-11] 100**
4-204 No Member to Serve as an Officer in a Political Organization 100
4-205 Temporary Members 100

PART 3. POWERS AND DUTIES OF COMMISSION

4-301 Applicability 100
4-302 Commission shall publish rules and other material 100
4-303 Repealed 101
4-304 Commission to Determine its Own Organization and Procedure 101
4-305 Official Seal 101
4-306 Report to Governor 101
4-307 Changes in Benefits or Contribution Rates 101
4-308 Repealed 101
4-309 Repealed 101
4-310 Repealed 101
4-310.1 Adoption and Promulgation of Rules in Accordance with Certain Procedures [RECODIFIED FROM 4-310A] 101
4-311 Commission Shall Publish Rules and Regulations 101
4-312 Personnel and Compensation 101
4-313 Commission to Cooperate and Comply with Federal Law 102
4-314 Petty Cash Fund 102
4-315 Repealed 103
4-316 Purchase of Real Property 103
4-317 Employee Recognition Program 103
4-318 Recognition for Excellence in Service to Veterans 103

PART 4. ADVISORY COUNCIL (Repealed 11-1-2007)

4-401 Repealed 104
4-402 Repealed 104
4-403 Repealed 104
4-404 Repealed 104
4-405 Repealed 104

PART 5. MAINTENANCE AND PRODUCTION OF WORK RECORDS

4-501 Applicability 104
4-502 Employing Units to Maintain Records Open to Commission 104
4-503 Sworn or Unsworn Reports 104
4-504 Oaths, Depositions, Certifications of Official Acts and Subpoenas 104
4-505 Refusal to Obey Commission Subpoenas - Judicial Orders 104
4-506 Penalties for Failure to Attend Lawful Inquiries or Obey Commission Subpoena 105
4-507 Self-Incrimination 105
***4-508 Information Be Kept Confidential-Disclosure [Effective 8-26-11] 105**
4-509 Information to Be Furnished to Public Agencies 109
4-510 Commission May Request Examination of Return of National Bank 109
4-511 Communications to Commission Privileged - Not Subject to Slander or Libel 109

PART 6. EMPLOYMENT SECURITY ADMINISTRATION FUND

4-601 Applicability 110
4-602 Fund Created 110
4-603 Moneys Expended in Accordance with Secretary of Labor 110
4-604 Composition of Fund 110
4-605 Maintenance of Administrative Fund 110
4-606 State Treasurer Liable on Official Bond 110
4-607 Reimbursement of Fund 111
4-608 Reed Act Distributions 111

PART 7. RECIPROCAL ARRANGEMENTS

4-701 Applicability 111
4-702 Reciprocal Arrangements Authorized 112
4-703 Reimbursements to be Deemed Benefits 113
4-704 Cooperation Authorized 113
4-705 Cooperative Arrangements with Foreign Governments 113

PART 8. OKLAHOMA STATE EMPLOYMENT SERVICE

4-801 Applicability 113
4-802 Establishment 113
4-803 Moneys to be Paid into the Employment Security Administration 114
4-804 Cooperative Agreements 114

PART 9. OKLAHOMA EMPLOYMENT SECURITY COMMISSION REVOLVING FUND

4-901 Creation of Oklahoma Employment Security Commission Revolving Fund 114

ARTICLE 5. PENALTIES & REPRESENTATION

PART 1. PENALTIES

5-101 Applicability 115
5-102 False Statement for Benefits, Failure to Disclose Material Fact 115
5-103 Violations by Employers 115
5-104 Violations of Act, and Regulations for Which No Specific Penalty is Otherwise Provided 116
5-105 Repealed 116
5-106 Repealed 116
5-107 Wrongful Disclosure of Information 116
5-108 Other Penalties in This Act 116

5-109 Renumbered at §3-310 116

PART 2. REPRESENTATION

5-201 Applicability 116
5-202 Civil Actions 116
5-203 Criminal Actions 117

ARTICLE 6.

6-101 OESC Computer Fund 118
6-102 Expenditures from Fund 118
6-103 Custodian and Treasurer of Fund 119
6-104 Computer Fund Assessments 119

ARTICLE 7. RESERVED

ARTICLE 8. RESERVED

ARTICLE 9. EFFECTIVE DATE, REPEALER, TRANSITIONAL PROVISIONS AND EMERGENCY

9-101 Effective Date 121
9-102 Repealed 121
9-103 Transitional Provisions 121
9-104 Emergency 121

RATE TABLE

TITLE 40. LABOR
CHAPTER 1 – EMPLOYMENT SECURITY ACT OF 1980
ARTICLE 1 - General Provisions & Definitions

Section 1-101 - Short Title

This act shall be known and may be cited as the Employment Security Act of 1980.

Section 1-102 - Purpose of Act

(1) The purpose of the act is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment. The Legislature hereby declares its intention to provide for carrying out the purposes of this act in cooperation with the appropriate agencies of other states and of the federal government, as part of a nationwide employment security program, in order to secure for this state and the citizens thereof the grants and privileges available thereunder.

(2) The purpose of this act is to renumber, recodify, amend, and to reenact the present Oklahoma Employment Security Act, 40 O.S.1971, Section 211 through Section 238.1, both inclusive, as amended, and to delete obsolete language therefrom and to add new language thereto. Said laws as reenacted and amended herein shall be codified in Title 40 with the article numbers, part numbers, section numbers and captions provided in this act. This act is and shall be interpreted and construed as a recodification and renumbering of the Oklahoma Employment Security Act, including amendments thereof as provided herein. It is the intention of the Legislature that this act shall be construed and interpreted as a reenactment with amendments of the Oklahoma Employment Security Act.

Section 1-103 - Declaration of State Public Policy

As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with nationwide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during periods of employment, thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Section 1-104 - Saving Clause

A. The Legislature reserves the right to amend or repeal all or any part of the Employment Security Act at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by the Employment Security Act, or by acts done pursuant thereto, shall exist subject to the power of the Legislature to amend or repeal the Employment Security Act at any time.

B. If any provision of the Employment Security Act necessary for certification for administrative grants under the Social Security Act or tax credits under the Federal Unemployment Tax Act are determined to be inconsistent with federal requirements by a delegate of the Secretary of Labor, the Commission, with the concurrence of the Oklahoma Attorney General, is authorized to administer such provisions consistently with federal requirements until the Legislature has an opportunity to enact appropriate legislation during its next regularly scheduled session.

Section 1-105 – Repealed by Laws 1989, c. 154, §2, operative July 1, 1989

Section 1-106 - Section Captions

Section captions are parts of this act.

Section 1-107 - Construction Against Implicit Repeal

This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 1-108 - Indian Tribes - Employer Requirements - Benefits

A. The term "employer" shall include any Indian tribe for which service in employment is performed, as defined in the Employment Security Act of 1980.

B. The term "employment" shall include service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is excluded from "employment" as defined in FUTA solely by reason of 26 U.S.C., Section 3306(c)(7), and is not otherwise excluded from employment under the Employment Security Act of 1980. For purposes of this section, the exclusions from employment in subparagraphs (c) and (e) of paragraph (7) of Section 1-210 of this title shall be applicable to services performed in the employ of an Indian tribe.

C. The terms "Indian tribe" and "tribal unit" shall have the meanings ascribed to them in federal law. "Tribal unit" includes subdivisions, subsidiaries, and business enterprises wholly owned by an Indian tribe.

D. Benefits based on service in employment defined in this section 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 the Employment Security Act of 1980, provided wages used to establish the claim were paid during a time in which the account of the Indian tribe for which services were rendered was not terminated pursuant to subparagraph a of paragraph 1 of subsection F of this section.

E. 1. An Indian tribe or tribal unit subject to the Employment Security Act of 1980 shall pay contributions under the same terms and conditions as required of nongovernmental employers for profit subject to the Employment Security Act of 1980 unless the tribe elects to pay into the State Unemployment Compensation Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

2. An Indian tribe or tribal unit electing to make payments in lieu of contributions shall so notify the Oklahoma Employment Security Commission in writing before the last day of January of the calendar year in which the tribe wishes to begin making reimbursement payments. If the Commission determines the Indian tribe is eligible to exercise its option, the Indian tribe shall be liable for reimbursement payments in lieu of contributions in the same manner and subject to the same provisions that apply to reimbursing nonprofit organizations as provided in Part 8 of Article 3 of the Employment Security Act of 1980, including formation of group accounts, and the proportionate allocation of benefit costs, except that one hundred percent (100%) of the extended benefits attributable to the Indian tribe shall be reimbursed. Indian tribes shall determine whether reimbursement for benefits paid shall be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units. If any provision contained in Part 8 of Article 3 of the Employment Security Act of 1980, including the administrative rules implementing that Part, contradicts a provision of this section, the provision of this section shall control.

3. An Indian tribe or tribal unit shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

F. 1. a. If an Indian tribe or tribal unit thereof fails to file the required reports and pay all late filing penalties or fails to make required payments under the Employment Security Act of 1980, including payment of all interest, penalties, surcharges, or fees, a notice of reporting or payment delinquency shall be mailed to the Indian tribe at its last-known address. If the delinquency is not corrected within ninety (90) days of the date of mailing of the notice of delinquency, the account of the Indian tribe shall be terminated and notice of termination shall be mailed to the tribe at its last-known address, together with a statement of protest rights available pursuant to Section 3-115 of this title. If the account of an Indian tribe is terminated pursuant to this subparagraph, the Indian tribe shall not be considered an "employer" for purposes of subsection A of this section, and services performed for the Indian tribe shall not be considered "employment" for purposes of subsection B of this section.

b. The Oklahoma Employment Security Commission may reinstate the account of any Indian tribe that loses coverage under subparagraph a of this subsection if the tribe pays all contributions, payments in lieu of contributions, interest, penalties, surcharges, and fees that are due and owing. Upon reinstatement, the tribe shall again be considered an "employer" for purposes of subsection A of this section and services performed for the tribe shall again be considered

"employment" for purposes of subsection B of this section.

2. a. Failure of an Indian tribe or tribal unit to make required payments, including assessments of interest, penalties, surcharges, and fees within ninety (90) days of the due date for payment shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection E of this section, for the following tax year unless payment in full is received before January 31 of the next tax year.

b. Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subparagraph a of this paragraph, shall have the option reinstated if, after a period of one (1) year, all contribution payments have been timely made, provided no contributions, payments in lieu of contributions for benefits paid, interest, penalties, surcharges, or fees remain outstanding.

G. The notice of payment or reporting delinquency to Indian tribes or their tribal units, referred to in subparagraph a of paragraph 1 of subsection F of this section, shall include information that failure to make full payment and file required reports within the prescribed time frame shall cause:

1. The Indian tribe to be liable for taxes under FUTA;
2. The Indian tribe to lose the option to make payments in lieu of contributions;
3. The Indian tribe to be excepted from the definition of "employer", as provided in subsection A of this section; and
4. Services performed in the employ of the Indian tribe to be excepted from the definition of "employment", as provided in subsection B of this section.

H. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the United States government shall be financed in their entirety by the Indian tribe.

I. If an Indian tribe fails to make required payments under the Employment Security Act of 1980, including the payment of all interest, penalties, surcharges, and fees, within ninety (90) days of the mailing of the notice of payment delinquency, the Oklahoma Employment Security Commission shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

J. The provisions of subsections K and L of this section shall provide a transition for the implementation of Section 166 of Public Law 106-554 enacted by the Congress of the United States and effective December 21, 2000, so that Indian tribes may qualify for federal tax credits and employees of Indian tribes may be eligible for benefits.

K. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section, but which desires to be covered for benefits for that period of time, may elect to be subject to one of the following, if the tribe notifies the Commission of the election in writing:

1. To pay contributions. If the tribe elects to make payments for contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if full payment for all contributions due is made within twenty (20) days after an account is established for the tribe; or

2. To make payments in lieu of contributions. If the tribe elects to make payments in lieu of contributions, interest or penalties shall not be assessed against such tribe for the period from January 1, 2001, to the effective date of this section if all reports that are due for that period are filed within twenty (20) days after an account is established for the tribe.

L. Any Indian tribe which did not have an active account with the Oklahoma Employment Security Commission from January 1, 2001, to the effective date of this section and does not desire to be covered for benefits for that period shall be covered by the provisions of subsections A through I of this section. The coverage for any such tribe shall be prospective only and shall not entitle any employee of the tribe to benefits for any period prior to the effective date of this section.

M. Indian tribes paying contributions prior to the date of this section shall not be able to make an election to make payments in lieu of contributions for the period from January 1, 2001, to the effective date of this section. Any change in election shall be prospective only.

N. Participation by any Indian tribe in the state unemployment insurance system shall not operate as a waiver of the sovereign immunity of the tribe.

PART 2. GENERAL DEFINITIONS

Section 1-201 - General Definitions

The words and phrases used in this act shall, unless the context clearly requires otherwise, have the meanings prescribed in Part 2 of this article.

Section 1-202 - Base Period

"Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

Section 1-202.1 Extended Base Period

If an individual lacks sufficient base period wages because of a job-related injury for which the individual received total temporary disability payments awarded by the Workers' Compensation Court, upon written application by the claimant, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim. "Extended base period" means the four quarters prior to the claimant's base period. These four quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except any wages earned that would render the Commission out of compliance with applicable federal law will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged.

Section 1-202.2 - Alternative Base Period

"Alternative Base Period" means the most recent four (4) completed calendar quarters immediately preceding the first day of an individual's benefit year. In the event that an individual's claim uses an alternative base period to meet the wage requirement

under Section 2-207 of Title 40 of the Oklahoma Statutes, this "alternative base period" shall be substituted for "base period" for all other purposes under the Employment Security Act of 1980.

Section 1-203 - Benefits

"Benefits" mean the money payments payable to an individual as provided in this act with respect to his unemployment, including extended benefits. The federal share of such extended benefits shall not be construed as benefits for the purposes of computing contribution rates under this act.

Section 1-204 - Benefit Year

"Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits shall be deemed a valid claim for the purpose of this section if the individual has been paid the wages for insured work required under this act.

Section 1-205 - Calendar Quarter

"Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commission may by regulation prescribe.

Section 1-206 - Commission, Commissioner

"Commission" means the Oklahoma Employment Security Commission and "Commissioner" means a member of such Commission.

Section 1-207 - Contributions

"Contributions" mean the money payments, including taxes and reimbursements, required by this act to be paid into the Unemployment Compensation Fund by an employer.

Section 1-208 - Employer

"Employer" means:

1. Any employing unit, except as provided under paragraphs 10 and 11 of this section, which:

   a. for some portion of a day, but not necessarily simultaneously, in each of twenty (20) different calendar weeks, whether or not such weeks are or were consecutive, within either the calendar year or the preceding calendar year, and for the purpose of this definition if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day, or

b. in any calendar quarter, in either the calendar year or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($1,500.00) or more;

2. Any individual or employing unit, whether or not an employing unit at the time of the acquisition, which acquired substantially all of the organization, employees, trade, business, or assets thereof, of another which at the time of such acquisition was an employer subject to the Employment Security Act of 1980; or which acquired a part of the organization, employees, trade, or business of another employing unit which at the time of such acquisition was an employer subject to the Employment Security Act of 1980;

3. Any individual or employing unit, whether or not an employing unit at the time of acquisition, which acquired substantially all of the organization, employees, trade, business, or assets thereof, of another employing unit, if the employment record of such individual or employing unit subsequent to such acquisition, together with the employment record of the acquired unit prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit and employer subject to the Employment Security Act of 1980 under paragraph 1 of this section; or any individual or employing unit which acquired substantially all of the organization, employees, trade, business, or assets of another employing unit if such employing unit subsequent to such acquisition, and such acquired unit prior to such acquisition, both within the same calendar quarter, together paid for service in employment wages totaling One Thousand Five Hundred Dollars ($1,500.00) or more;

4. Any employing unit which, together with one or more other employing units, is owned or controlled, by legally enforceable means or otherwise, directly by the same interest, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph 1 of this section;

5. Any employing unit which, having become an employer under paragraph 1, 2, 3, 4, 6, 8, 10, 11 or 12 of this section has not, under Section 3-202 of this title, ceased to be an employer subject to the Employment Security Act of 1980;

6. For the effective period of its election pursuant to Section 3-203 of this title any other employing unit which has elected to become subject to the Employment Security Act of 1980;

7. Any department of this state, any other state, and all instrumentalities thereof, including any political subdivisions and their instrumentalities, for which service in employment, as defined in paragraph (3) of Section 1-210 of this title, is performed, except as provided under paragraphs 10 and 11 of this section;

8. Any employing unit for which service in employment, as defined in paragraph (4) of Section 1-210 of this title, is performed, except as provided under paragraphs 10 and 11 of this section;

9. For purposes of paragraphs 1, 8, 10 and 11 of this section, employment shall include service which would constitute employment but for the fact that the service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with Section 4-702 of this title by the Oklahoma Employment

Security Commission and an agency charged with the administration of any other state or federal unemployment compensation law;
10. Any employing unit for which agricultural labor as defined in paragraph (5) of Section 1-210 of this title is performed. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph 1, 7, 8 or 11 of this section, the wages earned or the employment of an employee performing service in agricultural labor shall not be taken into account;
11. Any employing unit for which domestic service in employment as defined in paragraph (6) of Section 1-210 of this title is performed. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph 1, 7, 8 or 10 of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account;
12. Any employing unit which is not an employer by reason of any other provisions of the Employment Security Act of 1980 shall nevertheless be an "employer" if either:

a. within the calendar year or preceding calendar year, service is or was performed, with respect to which the employing unit is liable for any federal tax against which credit may be taken by the employing unit for contributions required to be paid by it into a state unemployment fund, or

b. the employing unit is required to be an "employer" as a condition for approval of the Employment Security Act of 1980 for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act, 26 U. S.C., Section 3301 et seq.; or

13. If two or more employers share common ownership, management, or control, the Commission may combine their merit rating accounts, including their actual contribution and benefit experience, annual payrolls, and contribution rates into one account.

Section 1-208.1 - Motor Carrier Not Employer of Lessor or Driver

In no event will a motor carrier be determined to be the employer of a lessor as defined in, or of a driver receiving comp Section 166a or 230.29 of Title 47 of the Oklahoma Statutesensation from a lessor.

Section 1-209 - Employing Unit

"Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state.

All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Employment Security Act of 1980, except as provided under paragraphs 10 and 11 of Section 1-208 of this title.

Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment, which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 1-208 or Section 3-203 of this title, the employing unit shall for all the purposes of the Employment Security Act of 1980 be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of Section 1-208 or Section 3-203 of this title shall alone be liable for the contributions measured by wages paid to individuals employed by the contractor or subcontractor, and except that any employing unit which shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of Section 1-208 or Section 3-203 of this title may recover the same from such contractor or subcontractor.

Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of the Employment Security Act of 1980, whether such individual was hired or paid directly by such employing unit or by such agent or employee of an employing unit, provided the employing unit had actual or constructive knowledge of the employment.

Section 1-209.1 - Definition of Lessor Employing Unit

A. “Lessor employing unit” means any independently established business entity which engages in the business of providing leased employees to any other employer, individual, organization, partnership, corporation or other legal entity, referred to herein as a client lessee.

B. Any employer or any individual, organization, partnership, corporation or other legal entity which meets the definition of lessor employing unit shall be liable for contribution on wages paid by the lessor employing unit to individuals performing services for client lessees of the lessor employing unit.

C. Unless the lessor employing unit has timely complied with the provisions of this section, any employer, individual, organization, partnership, corporation or other legal entity leasing employees from any lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest, penalties and fees due under this section from any lessor employing unit attributable to wages for services performed for the client lessee entity by the employees leased to the client lessee entity.

D. In order to relieve client lessees from joint and several liability imposed under this section, any lessor employing unit as defined herein may post and maintain a surety bond issued by a corporate surety authorized to do business in this state in an amount equivalent to the contributions for which the lessor employing unit was liable in the last calendar year in which it accrued contributions, or One Hundred Thousand Dollars ($100,000.00), whichever amount is the greater, to ensure prompt payment of contributions, interest, penalties and fees for which the lessor employing unit may be or may become liable under this section.

E. Any lessor employing unit as defined herein which is currently engaged in the business of leasing employees to client lessees shall comply with the provisions of this section by January 1, 1991.
F. Any lessor employing unit not engaged in the business of leasing employees to client lessees on or before the effective date of this act shall comply with the requirements herein before entering into lease agreements with client lessees.

Section 1-210. Employment

"Employment" means:

(1) Any service, including service in interstate commerce, performed by:
(a) any officer of a corporation; or
(b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

(2) (a) any service, including service in interstate commerce, performed by any individual other than an individual who is an employee under paragraph (1) of this section who performs services for remuneration for any person:
(i) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for his or her principal; or
(ii) as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;
(b) provided, the term "employment" shall include services described in divisions (i) and (ii) of subparagraph (a) of this paragraph if:
(i) the contract of service contemplates that substantially all of the services are to be performed personally by such individual;
(ii) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and
(iii) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c)(7), and is not excluded from "employment" under paragraph (7) of this section.

(4) Service performed by an individual in the employ of a community chest, fund, foundation or corporation, 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; provided that such organization had four or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the calendar year or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) Service performed by an individual in agricultural labor as defined in subparagraph (a) of paragraph (15) of this section when:

(a) the service is performed for a person who:

(i) during any calendar quarter in either the calendar year or the preceding calendar year, paid remuneration in cash of Twenty Thousand Dollars ($20,000.00) or more to individuals employed in agricultural labor; or

(ii) for some portion of a day in each of twenty (20) different calendar weeks, whether or not the weeks were consecutive, in either the calendar year or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(b) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, Public Law 95-562, 29 U.S.C., Sections 1801 through 1872; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(ii) if the individual is not an employee of the other person within the meaning of paragraph (1) of this section or subparagraph (d) of this paragraph.

(c) for the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subparagraph (b) of this paragraph:

(i) the other person and not the crew leader shall be treated as the employer of the individual; and

(ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on his or her own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person.

(d) for the purposes of this paragraph, the term “crew leader” means an individual who:

(i) furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on his or her own behalf or on behalf of another person, the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with the other person (farm operator) under which the individual is designated as an employee of the other person.

(6) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of One Thousand Dollars ($1,000.00) or more in the calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

(7) For the purposes of paragraphs (3) and (4) of this section the term " employment" does not apply to service performed:

(a) in the employ of:

(i) a church or convention or association of churches; or

(ii) 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; or

(iii) an elementary or secondary school which is operated primarily for religious purposes, which is described in 26 U.S.C., Section 501(c)(3), and which is exempt from tax under 26 U.S.C., Section 501(a).

(b) 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 the order;

(c) in the employ of a governmental entity referred to in paragraph (3) of this section if the service is performed by an individual in the exercise of duties:

(i) as an elected official;

(ii) as a member of a legislative body, or a member of the judiciary of a state or political subdivision;

(iii) as a member of the State National Guard or Air National Guard;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) 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 eight (8) hours per week;

(vi) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than One Thousand Dollars ($1,000.00);

(d) by an individual who is participating or enrolled in a program of an organization that provides rehabilitation through work for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or a program of an organization that provides work for individuals who, because of their impaired mental or physical capacity cannot be readily absorbed into the competitive labor market; provided that the services are performed by a program participant on real property owned or leased directly by the organization or by a program participant working under a special certificate issued by the U.S.

Secretary of Labor pursuant to 29 U.S.C., Section 214(c) and 29 C.F.R., Section 525.1 et seq.;

(e) 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 or of an Indian tribe, by an individual receiving such work-relief or work-training; or

(f) by an inmate of a custodial or penal institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer other than service which is deemed "employment" under the provisions of paragraphs (11) or (12) of this section or the parallel provisions of another state's law, if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United States, but:

(i) the employer is an individual who is a resident of this state;

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state;

(c) none of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state;

(d) an "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state; and

(e) the term "United States", for the purposes of this subsection, includes the states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(9) Notwithstanding paragraph (11) of this section, all service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(10) Notwithstanding any other provisions of the Employment Security Act of 1980, "employment":

(a) includes any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions

required to be paid into a state unemployment fund; and

(b) includes any service which is required to be "employment" for full tax credit to be allowed against the tax imposed by the Federal Unemployment Tax Act of 1954, Public Law 591, Chapter 736, as amended, 26 U.S.C., Section 3301 et seq.

(11) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(a) the service is localized in this state; or

(b) the service is not localized in any state but some of the service is performed in this state and:

(i) the individual's base of operations, or, if there is no base of operations, then the place from which the individual's employment is directed or controlled is in this state; or

(ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(12) (a) Services covered by an election pursuant to Section 3-203 of this title; and

(b) services covered by an arrangement pursuant to Section 4-701 et seq. of this title between the Oklahoma Employment Security Commission 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 are deemed to be performed entirely within this state,

shall be deemed to be employment if the Commission has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(13) Service shall be deemed to be localized within a state if:

(a) the service is performed entirely within such state; or

(b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(14) Notwithstanding any other provision of this subsection, services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to the Employment Security Act of 1980 unless and until it is shown to the satisfaction of the Commission that:

(a) such individual has been and will continue to be free from control or direction over the performance of the services, both under the contract of hire and in fact; and

(b) such individual is customarily engaged in an independently established business; or

(c) such service is outside the usual course of the business for which the service is performed and that the service is performed outside of all the places of business of the enterprise for which the service is performed.

(15) The term "employment" shall not include:

(a) services performed by an individual in agricultural labor, except as provided under paragraph (5) of this section. Services performed by an individual who is a nonresident alien admitted to the United States to perform agricultural labor, pursuant to 8 U.S.C. Sections 1101(a), 1184(c) and 1188. For purposes of this subparagraph, the term "agricultural labor" means remunerated service performed in agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S. C., Section 3306(k);

(b) domestic service, except as provided under paragraph (6) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) 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 twenty-one (21) in the employ of his or her father or mother, or both father and mother;

(d) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by the Employment Security Act of 1980, except that to the extent that the Congress of the United States 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 the Employment Security Act of 1980 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; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under the Federal Internal Revenue Code, 26 U.S.C., Section 3304(c), the payments required of such instrumentalities with respect to the year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in Section 3-304 of this title with respect to contributions erroneously collected;

(e) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;

(f) service performed in the employ of a foreign government, including service as a consul or other officer or employee or a nondiplomatic representative;

(g) service performed in the employ of an instrumentality wholly owned by a foreign government:

(i) 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

(ii) if the Commission finds that the United States Secretary of State has certified to the United States 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;

(h) service covered by an arrangement between the Commission 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 the jurisdiction of such other state or federal agency;

(i) 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 state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(j) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;

(k) service performed by an individual under the age of eighteen (18) in the delivery and distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, and services performed by an individual eighteen (18) years of age or older who meets the definition of a "direct seller" as defined in 26 U.S.C., Section 3508(b)(2), that states in pertinent part:

(i) the individual must be engaged in the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business,

(ii) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in clause (i) of this subdivision is directly related to sales or other output, including the performance of services, rather than the number of hours worked, and

(iii) the services performed by the individual are performed pursuant to a written contract between the person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee with respect to the services;

(l) service performed in the employ of a school, college or university, if the service is performed:

(i) by a student who is enrolled and is regularly attending classes at the school, college, or university, or

(ii) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform the service, that:

(I) the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university, and

(II) the employment will not be covered by any program of unemployment insurance;

(m) 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 the institution, which combines academic instruction with work

experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this provision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(n) service performed in the employ of a hospital, if the service is performed by a patient of the hospital;

(o) services performed by cooperative extension personnel holding federal appointments employed by state institutions of higher learning;

(p) earnings of employees being paid by state warrants who are presently covered by the Federal Unemployment Compensation Act, 5 U.S.C., Section 8501 et seq., by virtue of their federal status;

(q) cosmetology services performed by an individual in a beauty shop, as defined by Section 199.1 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the beauty shop leases or rents facilities for cosmetology to such individual;

(r) barbering services performed by an individual in a barber shop, as defined by Section 61.5 of Title 59 of the Oklahoma Statutes, pursuant to an agreement whereby the owner of the barber shop leases or rents facilities for barbering to such individual;

(s) services performed as a participant in a work or training program administered by the Department of Human Services;

(t) riding services performed by a jockey and services performed by a trainer of race horses in preparation for and during an approved race meeting licensed by the Oklahoma Horse Racing Commission;

(u) service performed by an individual whose remuneration consists solely of commissions, overrides, bonuses, and differentials related to sales or other output derived from in-person sales to, or solicitation of orders from, ultimate consumers primarily in the home, or otherwise than in a permanent retail establishment;

(v) service performed by a person, commonly referred to as “owner- operator”, who owns or leases a truck-tractor or truck for hire, provided the owner-operator actually operates the truck-tractor or truck and, further, that the entity contracting with the owner-operator is not the lessor of the truck-tractor or truck;

(w) services performed as a chopper of cotton who weeds or thins cotton crops by hand or hoe. This subsection shall be interpreted and applied consistently with the Federal Unemployment Tax Act, 26 U.S.C., Sections 3304(a)(6)(A) and 3306(k); or

(x) services performed for a private for-profit person or entity by an individual as a landman:

(i) if the individual is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or negotiating business agreements that provide for the exploration for or development of minerals,

(ii) if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and

(iii) if the services performed by the individual are performed under a written contract between the individual and the person for whom the services are performed; provided that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract.

[AMENDED BY SB 756, EFFECTIVE 8-26-11]

Section 1-211 - Employment Office

"Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

Section 1-212 - Fund, Employment Security Administration Fund

(1) "Fund" means the Unemployment Compensation Fund established by this act.
(2) "Employment Security Administration Fund" means the fund established by this act from which administration expenses under this act shall be paid.

Section 1-213 - Hospital

"Hospital" means any hospital required to be licensed under the Public Health Code, Sections 101 et seq. of Title 63 of the Oklahoma Statutes, and includes state mental hospitals and any other mental hospital or institution.

Section 1-214 - Institution of Higher Education

"Institution of higher education" means an educational institution which:
(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate;
(2) Is legally authorized in this state to provide a program of education beyond high school;
(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and
(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

Section 1-215 - Insured Work

"Insured work" means employment for employers as defined by this act.

Section 1-216 - State

"State" includes, in addition to the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

Section 1-217 - Unemployed

An individual shall be deemed "unemployed" with respect to any week during which he performed no services and with respect to which no wages are payable to him, or with respect to any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount plus One Hundred Dollars ($100.00); provided that for the purpose of this section only, any vacation leave payments or sick leave payments, which such individual may receive or be entitled to from his employer or former employer, arising by reason of separation from employment, shall be deemed not to be wages as the term wages is used in this section.

Section 1-218. Wages

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of work from persons other than the employing unit shall be treated as wages received from the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Oklahoma Employment Security Commission. The term wages shall not include:

1. 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. retirement, other than employee contributions or deferrals after December 31, 2002, under a qualified plan as described in 26 U.S.C., Section 401(k) and, after December 31, 2005, under a qualified plan as described in 26 U.S.C., Sections 403b, 408(k), 457 and 7701(j), and, after December 31, 2010, under a qualified plan as described in 26 U.S.C., Section 408(p),

b. sickness or accident disability,

c. medical and hospitalization expenses in connection with sickness or accident disability,

d. death, provided the individual in its employ:

(1) 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 premium or contributions to premiums paid by the employing unit, and

(2) 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 withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of the individual's services with such employing unit, or

e. a bona fide thrift or savings fund, providing:

(1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and

(2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

2. Any payment made to, or on behalf of, an employee or his or her beneficiary under a cafeteria plan of the type described in 26 U.S.C., Section 125 and referred to in 26 U.S.C., Section 3306(b)(5)(G);

3. Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C. , Section 127 or a dependent care assistance program as described in 26 U.S.C., Section 129 and as referred to in 26 U.S.C., Section 3306(b)(13);

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under 26 U.S.C., Section 3101 with respect to domestic services in a private home of the employer or for agricultural labor;

5. Dismissal payments which the employer is not required by law or contract to make;

6. The value of any meals and lodging furnished by or on behalf of an employer to an individual in its employ; provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer; or

7. Payments made under an approved supplemental unemployment benefit plan.

Section 1-219 - Wages Paid

"Wages paid" means wages actually paid to the worker; provided, however, that in the event of any distribution of an employer's assets through insolvency, receivership, composition, assignment for the benefit of creditors, or termination of business, wages earned but not actually paid shall be considered as paid.

Section 1-220 – Week

"Week" means such period of seven (7) consecutive days, as the Commission may by regulation prescribe.

Section 1-221 - Benefit Wages

"Benefit wages" means the taxable wages earned by a claimant during the claimant's base period which are not in excess of the current maximum weekly benefit amount, as determined under Section 2-104 of this title, multiplied by the maximum number of weeks for which benefits could be paid to any individual (now twenty-six (26) weeks) multiplied by three (3); provided, however, no wages shall be included as "benefit wages" unless and until the claimant has been paid benefits for five (5) weeks in one (1) benefit year.

[AMENDED BY SB 756, EFFECTIVE 8-26-11]

Section 1-222 - Repealed by Laws 1998, c. 161, § 15, eff. July 1, 1998

Section 1-223 - Taxable Wages Defined

A. Prior to January 1, 2000, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal fifty percent (50%) of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars ($100.00).

B. Beginning January 1, 2000, "taxable wages" means the wages paid to an individual with respect to employment during a calendar year for services covered by the Employment Security Act of 1980 or other state unemployment compensation acts which shall equal the applicable percentage of the state's average annual wage for the second preceding calendar year as determined by the Commission, rounded to the nearest multiple of One Hundred Dollars ($100.00). The applicable percentage is determined by the conditional factor in place during the calendar year for which the taxable wage is being calculated. The conditional factor is determined pursuant to the provisions of Section 3-113 of this title. The applicable percentages are as follows:

1. Forty percent (40%) during any calendar year in which the balance in the Unemployment Compensation Fund is in excess of the amount required to initiate conditional contribution rates, pursuant to the provisions of Section 3-113 of this title;
2. Forty-two and one-half percent (42.5%) during calendar years in which condition "a" exists;
3. Forty-five percent (45%) during calendar years in which condition "b" exists;
4. Forty-seven and one-half percent (47.5%) during calendar years in which condition "c" exists; and
5. Fifty percent (50%) during calendar years in which condition "d" exists.

Section 1-224 – File

A. When any document is required to be filed by the provisions of the Employment Security Act of 1980 or the rules promulgated under the authority of the Employment Security Act of 1980 with the Oklahoma Employment Security Commission, any of its representatives, or the Board of Review for the Oklahoma Employment Security Commission, the term "file", "files", or "filed" shall be defined as follows:

1. Hand-delivered to the central administrative office of the Oklahoma Employment Security Commission by the close of business on or before the date due;
2. Telefaxed to the telefax number indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission by midnight on or before the date due. Timely telefaxing shall be determined by the date and time recorded by the Commission's telefax equipment;
3. Mailed with sufficient postage and properly addressed to the address indicated on the determination letter, order or other document issued by the Oklahoma Employment Security Commission on or before the date due. Timely mailing shall be determined by the postmark; or
4. Electronically transmitted via data lines to the Oklahoma Employment Security Commission, as directed by the instructions on the determination letter, order or other document issued by the Commission, by midnight on or before the date due.