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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2009	.	
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The Committee on Commerce (Justice) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 443.036, Florida Statutes, is amended to
read:

443.036 Definitions.—As used in this chapter, the term:

(1) "Able to work" means physically and mentally capable of
performing the duties of the occupation in which work is being
sought.

(2) "Agricultural labor" means any remunerated service
performed:



245684

13 (a) On a farm, in the employ of any person, in connection
14 with cultivating the soil or in connection with raising or
15 harvesting any agricultural or horticultural commodity,
16 including the raising, shearing, feeding, caring for, training,
17 and management of livestock, bees, poultry, and fur-bearing
18 animals and wildlife.

19 (b) In the employ of the owner or tenant or other operator
20 of a farm in connection with the operation, management,
21 conservation, improvement, or maintenance of such farm and its
22 tools and equipment, or in salvaging timber or clearing land of
23 brush and other debris left by a hurricane if the major part of
24 the service is performed on a farm.

25 (c) In connection with the production or harvesting of any
26 commodity defined as an agricultural commodity in s. 15(g) of
27 the Agricultural Marketing Act, as amended (46 Stat. 1550, s. 3;
28 12 U.S.C. s. 1141j); the ginning of cotton; or the operation or
29 maintenance of ditches, canals, reservoirs, or waterways, not
30 owned or operated for profit, used exclusively for supplying and
31 storing water for farming purposes.

32 (d)1. In the employ of the operator of a farm in handling,
33 planting, drying, packing, packaging, processing, freezing,
34 grading, storing, or delivering to storage or to market or to a
35 carrier for transportation to market, in its unmanufactured
36 state, any agricultural or horticultural commodity, but only if
37 the operator produced more than one-half of the commodity for
38 which the service is performed.

39 2. In the employ of a group of operators of farms, or a
40 cooperative organization of which the operators are members, in
41 the performance of service described in subparagraph 1., but



245684

42 only if the operators produced more than one-half of the
43 commodity for which the service is performed.

44 3. Subparagraphs 1. and 2. do not apply to service
45 performed in connection with commercial canning or commercial
46 freezing or in connection with any agricultural or horticultural
47 commodity after its delivery to a terminal market for
48 distribution for consumption or in connection with grading,
49 packing, packaging, or processing fresh citrus fruits.

50 (e) On a farm operated for profit if the service is not in
51 the course of the employer's trade or business.

52 (3) "Alternative Base Period" means the last four completed
53 calendar quarters immediately preceding the first day of an
54 individual's benefit year.

55 ~~(43)~~ "American aircraft" means an aircraft registered under
56 the laws of the United States.

57 ~~(54)~~ "American employer" means:

58 (a) An individual who is a resident of the United States.

59 (b) A partnership, if two-thirds or more of the partners
60 are residents of the United States.

61 (c) A trust, if each of the trustees is a resident of the
62 United States.

63 (d) A corporation organized under the laws of the United
64 States or of any state.

65 ~~(65)~~ "American vessel" means any vessel documented or
66 numbered under the laws of the United States. The term includes
67 any vessel that is neither documented or numbered under the laws
68 of the United States, nor documented under the laws of any
69 foreign country, if its crew is employed solely by one or more
70 citizens or residents of the United States or corporations



245684

71 organized under the laws of the United States or of any state.

72 ~~(76)~~ "Available for work" means actively seeking and being
73 ready and willing to accept suitable employment.

74 ~~(87)~~ "Base period" means the first four of the last five
75 completed calendar quarters immediately preceding the first day
76 of an individual's benefit year. In any case in which the Agency
77 for Workforce Innovation determines, pursuant to s.
78 443.091(1)(f), that an alternative base period will be used, the
79 term "base period" will mean alternative base period.

80 ~~(98)~~ "Benefits" means the money payable to an individual,
81 as provided in this chapter, for his or her unemployment.

82 ~~(109)~~ "Benefit year" means, for an individual, the 1-year
83 period beginning with the first day of the first week for which
84 the individual first files a valid claim for benefits and,
85 thereafter, the 1-year period beginning with the first day of
86 the first week for which the individual next files a valid claim
87 for benefits after the termination of his or her last preceding
88 benefit year. Each claim for benefits made in accordance with s.
89 443.151(2) is a "valid claim" under this subsection if the
90 individual was paid wages for insured work in accordance with
91 the provisions of s. 443.091(1)(f) and is unemployed as defined
92 in subsection ~~(4643)~~ at the time of filing the claim. However,
93 the Agency for Workforce Innovation may adopt rules providing
94 for the establishment of a uniform benefit year for all workers
95 in one or more groups or classes of service or within a
96 particular industry when the agency determines, after notice to
97 the industry and to the workers in the industry and an
98 opportunity to be heard in the matter, that those groups or
99 classes of workers in a particular industry periodically



245684

100 experience unemployment resulting from layoffs or shutdowns for
101 limited periods of time.

102 (~~1110~~) "Calendar quarter" means each period of 3
103 consecutive calendar months ending on March 31, June 30,
104 September 30, and December 31 of each year.

105 (~~1211~~) "Casual labor" means labor that is occasional,
106 incidental, or irregular, not exceeding 200 person-hours in
107 total duration. As used in this subsection, the term "duration"
108 means the period of time from the commencement to the completion
109 of the particular job or project. Services performed by an
110 employee for his or her employer during a period of 1 calendar
111 month or any 2 consecutive calendar months, however, are deemed
112 to be casual labor only if the service is performed on 10 or
113 fewer calendar days, regardless of whether those days are
114 consecutive. If any of the services performed by an individual
115 on a particular labor project are not casual labor, each of the
116 services performed by the individual on that job or project may
117 not be deemed casual labor. Services must constitute casual
118 labor and may not be performed in the course of the employer's
119 trade or business for those services to be exempt under this
120 section.

121 (~~1312~~) "Commission" means the Unemployment Appeals
122 Commission.

123 (~~1413~~) "Contributing employer" means an employer who is
124 liable for contributions under this chapter.

125 (~~1514~~) "Contribution" means a payment of payroll tax to the
126 Unemployment Compensation Trust Fund which is required under
127 this chapter to finance unemployment benefits.

128 (~~1615~~) "Crew leader" means an individual who:



245684

129 (a) Furnishes individuals to perform service in
130 agricultural labor for another person.

131 (b) Pays, either on his or her own behalf or on behalf of
132 the other person, the individuals furnished by him or her for
133 the service in agricultural labor performed by those
134 individuals.

135 (c) Has not entered into a written agreement with the other
136 person under which the individual is designated as an employee
137 of the other person.

138 (~~1716~~) "Earned income" means gross remuneration derived
139 from work, professional service, or self-employment. The term
140 includes commissions, bonuses, back pay awards, and the cash
141 value of all remuneration paid in a medium other than cash. The
142 term does not include income derived from invested capital or
143 ownership of property.

144 (~~1817~~) "Educational institution" means an institution,
145 except for an institution of higher education:

146 (a) In which participants, trainees, or students are
147 offered an organized course of study or training designed to
148 transfer to them knowledge, skills, information, doctrines,
149 attitudes, or abilities from, by, or under the guidance of, an
150 instructor or teacher;

151 (b) That is approved, licensed, or issued a permit to
152 operate as a school by the Department of Education or other
153 governmental agency that is authorized within the state to
154 approve, license, or issue a permit for the operation of a
155 school; and

156 (c) That offers courses of study or training which are
157 academic, technical, trade, or preparation for gainful



245684

158 employment in a recognized occupation.

159 (~~1918~~) "Employee leasing company" means an employing unit
160 that has a valid and active license under chapter 468 and that
161 maintains the records required by s. 443.171(5) and, in
162 addition, maintains a listing of the clients of the employee
163 leasing company and of the employees, including their social
164 security numbers, who have been assigned to work at each client
165 company job site. Further, each client company job site must be
166 identified by industry, products or services, and address. The
167 client list must be provided to the tax collection service
168 provider by June 30 and by December 31 of each year. As used in
169 this subsection, the term "client" means a party who has
170 contracted with an employee leasing company to provide a worker,
171 or workers, to perform services for the client. Leased employees
172 include employees subsequently placed on the payroll of the
173 employee leasing company on behalf of the client. An employee
174 leasing company must notify the tax collection service provider
175 within 30 days after the initiation or termination of the
176 company's relationship with any client company under chapter
177 468.

178 (~~2019~~) "Employer" means an employing unit subject to this
179 chapter under s. 443.1215.

180 (~~2120~~) "Employing unit" means an individual or type of
181 organization, including a partnership, limited liability
182 company, association, trust, estate, joint-stock company,
183 insurance company, or corporation, whether domestic or foreign;
184 the receiver, trustee in bankruptcy, trustee, or successor of
185 any of the foregoing; or the legal representative of a deceased
186 person, which has or had in its employ one or more individuals



245684

187 performing services for it within this state.

188 (a) Each individual employed to perform or to assist in
189 performing the work of any agent or employee of an employing
190 unit is deemed to be employed by the employing unit for the
191 purposes of this chapter, regardless of whether the individual
192 was hired or paid directly by the employing unit or by an agent
193 or employee of the employing unit, if the employing unit had
194 actual or constructive knowledge of the work.

195 (b) Each individual performing services in this state for
196 an employing unit maintaining at least two separate
197 establishments in this state is deemed to be performing services
198 for a single employing unit for the purposes of this chapter.

199 (c) A person who is an officer of a corporation, or a
200 member of a limited liability company classified as a
201 corporation for federal income tax purposes, and who performs
202 services for the corporation or limited liability company in
203 this state, regardless of whether those services are continuous,
204 is deemed an employee of the corporation or the limited
205 liability company during all of each week of his or her tenure
206 of office, regardless of whether he or she is compensated for
207 those services. Services are presumed to be rendered for the
208 corporation in cases in which the officer is compensated by
209 means other than dividends upon shares of stock of the
210 corporation owned by him or her.

211 (d) A limited liability company shall be treated as having
212 the same status as it is classified for federal income tax
213 purposes.

214 (~~2221~~) "Employment" means a service subject to this chapter
215 under s. 443.1216 which is performed by an employee for the



245684

216 person employing him or her.

217 (~~2322~~) "Farm" includes stock, dairy, poultry, fruit, fur-
218 bearing animal, and truck farms, plantations, ranches,
219 nurseries, ranges, greenhouses or other similar structures used
220 primarily for the raising of agricultural or horticultural
221 commodities, and orchards.

222 (~~2423~~) "Fund" means the Unemployment Compensation Trust
223 Fund created under this chapter, into which all contributions
224 and reimbursements required under this chapter are deposited and
225 from which all benefits provided under this chapter are paid.

226 (25) "Good cause" for voluntarily quitting employment as
227 used in s. 443.101(1) (a) means:

228 (a) Cause attributable to the employing unit or which
229 consists of illness or disability of the individual requiring
230 separation from her or his work;

231 (b) Domestic violence, as defined in s. 741.28 and
232 substantiated by evidence that reasonably proves that domestic
233 violence has occurred, such as an injunction, protective order,
234 or other such reasonable and confidential documentation
235 authorized by state law, including statements from qualified
236 professionals, such as counselors, shelter workers, clergy,
237 attorneys, or health workers, which causes the individual to
238 reasonably believe that continued employment will jeopardize the
239 individual's safety, the safety of a member of her or his
240 immediate family, or the safety of other employees;

241 (c) Illness or disability of a member of the individual's
242 immediate family; or

243 (d) The need of the individual to accompany her or his
244 spouse, if the spouse's relocation resulted from a change in the



245684

245 spouse's employment and if the relocation makes it impractical
246 for the individual to commute to her or his workplace.

247 (~~2624~~) "High quarter" means the quarter in an individual's
248 base period in which the individual has the greatest amount of
249 wages paid, regardless of the number of employers paying wages
250 in that quarter.

251 (~~2725~~) "Hospital" means an institution that is licensed,
252 certified, or approved by the Agency for Health Care
253 Administration as a hospital.

254 (~~2826~~) "Institution of higher education" means an
255 educational institution that:

256 (a) Admits as regular students only individuals having a
257 certificate of graduation from a high school, or the recognized
258 equivalent of a certificate of graduation;

259 (b) Is legally authorized in this state to provide a
260 program of education beyond high school;

261 (c) Provides an educational program for which it awards a
262 bachelor's or higher degree, or provides a program that is
263 acceptable for full credit toward a bachelor's or higher degree;
264 a program of postgraduate or postdoctoral studies; or a program
265 of training to prepare students for gainful employment in a
266 recognized occupation; and

267 (d) Is a public or other nonprofit institution.

268

269 The term includes each community college and state university in
270 this state, and each other institution in this state authorized
271 under s. 1005.03 to use the designation "college" or
272 "university."

273 (~~2927~~) "Insured work" means employment for employers.



245684

274 (~~3028~~) "Leave of absence" means a temporary break in
275 service to an employer, for a specified period of time, during
276 which the employing unit guarantees the same or a comparable
277 position to the worker at the expiration of the leave.

278 (31) "Member of the individual's immediate family", for
279 purposes of 443.101, means an individual's spouse, parent, or
280 minor child under the age of 18.

281 (~~3229~~) "Misconduct" includes, but is not limited to, the
282 following, which may not be construed in pari materia with each
283 other:

284 (a) Conduct demonstrating willful or wanton disregard of an
285 employer's interests and found to be a deliberate violation or
286 disregard of the standards of behavior which the employer has a
287 right to expect of his or her employee; or

288 (b) Carelessness or negligence to a degree or recurrence
289 that manifests culpability, wrongful intent, or evil design or
290 shows an intentional and substantial disregard of the employer's
291 interests or of the employee's duties and obligations to his or
292 her employer.

293 (~~3330~~) "Monetary determination" means a determination of
294 whether and in what amount a claimant is eligible for benefits
295 based on the claimant's employment during the base period of the
296 claim.

297 (~~3431~~) "Nonmonetary determination" means a determination of
298 the claimant's eligibility for benefits based on an issue other
299 than monetary entitlement and benefit overpayment.

300 (~~3532~~) "Not in the course of the employer's trade or
301 business" means not promoting or advancing the trade or business
302 of the employer.



245684

303 (~~3633~~) "One-stop career center" means a service site
304 established and maintained as part of the one-stop delivery
305 system under s. 445.009.

306 (~~3734~~) "Pay period" means a period of 31 or fewer
307 consecutive days for which a payment or remuneration is
308 ordinarily made to the employee by the person employing him or
309 her.

310 (~~3835~~) "Public employer" means:

311 (a) A state agency or political subdivision of the state;

312 (b) An instrumentality that is wholly owned by one or more
313 state agencies or political subdivisions of the state; or

314 (c) An instrumentality that is wholly owned by one or more
315 state agencies, political subdivisions, or instrumentalities of
316 the state and one or more state agencies or political
317 subdivisions of one or more other states.

318 (~~3936~~) "Reasonable assurance" means a written or verbal
319 agreement, an agreement between an employer and a worker
320 understood through tradition within the trade or occupation, or
321 an agreement defined in an employer's policy.

322 (~~4037~~) "Reimbursement" means a payment of money to the
323 Unemployment Compensation Trust Fund in lieu of a contribution
324 which is required under this chapter to finance unemployment
325 benefits.

326 (~~4138~~) "Reimbursing employer" means an employer who is
327 liable for reimbursements in lieu of contributions under this
328 chapter.

329 (~~4239~~) "State" includes the states of the United States,
330 the District of Columbia, Canada, the Commonwealth of Puerto
331 Rico, and the Virgin Islands.



245684

332 (~~4340~~) "State law" means the unemployment insurance law of
333 any state, approved by the United States Secretary of Labor
334 under s. 3304 of the Internal Revenue Code of 1954.

335 (~~4441~~) "Tax collection service provider" or "service
336 provider" means the state agency providing unemployment tax
337 collection services under contract with the Agency for Workforce
338 Innovation through an interagency agreement pursuant to s.
339 443.1316.

340 (~~4542~~) "Temporary layoff" means a job separation due to
341 lack of work which does not exceed 8 consecutive weeks and which
342 has a fixed or approximate return-to-work date.

343 (~~4643~~) "Unemployment" means:

344 (a) An individual is "totally unemployed" in any week
345 during which he or she does not perform any services and for
346 which earned income is not payable to him or her. An individual
347 is "partially unemployed" in any week of less than full-time
348 work if the earned income payable to him or her for that week is
349 less than his or her weekly benefit amount. The Agency for
350 Workforce Innovation may adopt rules prescribing distinctions in
351 the procedures for unemployed individuals based on total
352 unemployment, part-time unemployment, partial unemployment of
353 individuals attached to their regular jobs, and other forms of
354 short-time work.

355 (b) An individual's week of unemployment commences only
356 after his or her registration with the Agency for Workforce
357 Innovation as required in s. 443.091, except as the agency may
358 otherwise prescribe by rule.

359 (~~4744~~) "Wages" means remuneration subject to this chapter
360 under s. 443.1217.



245684

361 (4845) "Week" means a period of 7 consecutive days as
362 defined in the rules of the Agency for Workforce Innovation. The
363 Agency for Workforce Innovation may by rule prescribe that a
364 week is deemed to be "in," "within," or "during" the benefit
365 year that contains the greater part of the week.

366 Section 2. Paragraphs (c) and (f) of subsection (1) of
367 section 443.091, Florida Statutes, are amended to read:

368 443.091 Benefit eligibility conditions.—

369 (1) An unemployed individual is eligible to receive
370 benefits for any week only if the Agency for Workforce
371 Innovation finds that:

372 (c)1. She or he is able to work and is available for work.
373 In order to assess eligibility for a claimed week of
374 unemployment, the Agency for Workforce Innovation shall develop
375 criteria to determine a claimant's ability to work and
376 availability for work. However, an individual may not be found
377 ineligible for benefits when he or she is able and available for
378 work for a number of weekly hours of work that are comparable to
379 the number of hours the individual worked during the majority of
380 the base period of his or her claim.

381 2. Notwithstanding any other provision of this paragraph or
382 paragraphs (b) and (d), an otherwise eligible individual may not
383 be denied benefits for any week because she or he is in training
384 with the approval of the Agency for Workforce Innovation, and
385 such an individual may not be denied benefits for any week in
386 which she or he is in training with the approval of the Agency
387 for Workforce Innovation by reason of subparagraph 1. relating
388 to availability for work, or s. 443.101(2) relating to failure
389 to apply for, or refusal to accept, suitable work. Training may



245684

390 be approved by the Agency for Workforce Innovation in accordance
391 with criteria prescribed by rule. A claimant's eligibility
392 during approved training is contingent upon satisfying
393 eligibility conditions prescribed by rule.

394 3. Notwithstanding any other provision of this chapter, an
395 individual who is in training approved under s. 236(a)(1) of the
396 Trade Act of 1974, as amended, may not be determined to be
397 ineligible or disqualified for benefits with respect to her or
398 his enrollment in such training or because of leaving work that
399 is not suitable employment to enter such training. As used in
400 this subparagraph, the term "suitable employment" means, for a
401 worker, work of a substantially equal or higher skill level than
402 the worker's past adversely affected employment, as defined for
403 purposes of the Trade Act of 1974, as amended, the wages for
404 which are at least 80 percent of the worker's average weekly
405 wage as determined for purposes of the Trade Act of 1974, as
406 amended.

407 4. Notwithstanding any other provision of this section, an
408 otherwise eligible individual may not be denied benefits for any
409 week by reason of subparagraph 1. because she or he is before
410 any court of the United States or any state under a lawfully
411 issued summons to appear for jury duty.

412 (f) She or he has been paid wages for insured work equal to
413 1.5 times her or his high quarter wages during her or his base
414 period, except that an unemployed individual is not eligible to
415 receive benefits if the base period wages are less than \$3,400.
416 Wages may be computed for an alternative base period only in
417 cases in which base period wages are inadequate to establish
418 eligibility under this section and only for benefit years which



245684

419 commence on or after January 1, 2010. Wages in a base period
420 used to establish a monetarily eligible benefit year may not be
421 used to establish monetary eligibility in a subsequent benefit
422 year.

423 Section 3. Paragraph (a) of subsection (1) and paragraph
424 (a) of subsection (2) of section 443.101, Florida Statutes, are
425 amended to read:

426 443.101 Disqualification for benefits.—An individual shall
427 be disqualified for benefits:

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

435 1. Disqualification for voluntarily quitting continues for
436 the full period of unemployment next ensuing after he or she has
437 left his or her full-time, part-time, or temporary work
438 voluntarily without good cause and until the individual has
439 earned income equal to or in excess of 17 times his or her
440 weekly benefit amount. As used in this subsection, the term
441 "good cause" means good cause as defined in s.

442 443.036(25) includes only that cause attributable to the
443 employing unit or which consists of illness or disability of the
444 individual requiring separation from his or her work. Any other
445 disqualification may not be imposed. An individual is not
446 disqualified under this subsection for voluntarily leaving
447 temporary work to return immediately when called to work by the



245684

448 permanent employing unit that temporarily terminated his or her
449 work within the previous 6 calendar months. For benefit years
450 beginning on or after July 1, 2004, an individual is not
451 disqualified under this subsection for voluntarily leaving work
452 to relocate as a result of his or her military-connected
453 spouse's permanent change of station orders, activation orders,
454 or unit deployment orders.

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

465 (2) If the Agency for Workforce Innovation finds that the
466 individual has failed without good cause to apply for available
467 suitable work when directed by the agency or the one-stop career
468 center, to accept suitable work when offered to him or her, or
469 to return to the individual's customary self-employment when
470 directed by the agency, the disqualification continues for the
471 full period of unemployment next ensuing after he or she failed
472 without good cause to apply for available suitable work, to
473 accept suitable work, or to return to his or her customary self-
474 employment, under this subsection, and until the individual has
475 earned income at least 17 times his or her weekly benefit
476 amount. The Agency for Workforce Innovation shall by rule adopt



245684

477 criteria for determining the "suitability of work," as used in
478 this section. The Agency for Workforce Innovation in developing
479 these rules shall consider the duration of a claimant's
480 unemployment in determining the suitability of work and the
481 suitability of proposed rates of compensation for available
482 work. Further, after an individual has received 25 weeks of
483 benefits in a single year, suitable work is a job that pays the
484 minimum wage and is 120 percent or more of the weekly benefit
485 amount the individual is drawing.

486 (a) In determining whether or not any work is suitable for
487 an individual, the Agency for Workforce Innovation shall
488 consider the degree of risk involved to his or her health,
489 safety, and morals; the individual's ~~his or her~~ physical
490 fitness, ~~and~~ prior training, ~~;~~ ~~the individual's~~ experience, ~~and~~
491 prior earnings, ~~;~~ ~~his or her~~ length of unemployment, ~~and~~
492 prospects for securing local work in his or her customary
493 occupation, ~~;~~ and the distance of the available work from his or
494 her residence. An unemployed individual may not be disqualified
495 for benefits solely because he or she is available for only
496 part-time work if he or she is able and available for work for a
497 number of weekly hours of work that are comparable to the number
498 of house the individual worked during the majority of the base
499 period of his or her claim.

500 Section 4. Subsection (3) of section 443.151, Florida
501 Statutes, is amended to read:

502 443.151 Procedure concerning claims.—

503 (3) DETERMINATION.—

504 (a) *In general.*—The Agency for Workforce Innovation shall
505 promptly make an initial determination for each claim filed



245684

506 under subsection (2). The determination must include a statement
507 of whether and in what amount the claimant is entitled to
508 benefits, and, in the event of a denial, must state the reasons
509 for the denial. A determination for the first week of a benefit
510 year must also include a statement of whether the claimant was
511 paid the wages required under s. 443.091(1)(f) and, if so, the
512 first day of the benefit year, the claimant's weekly benefit
513 amount, and the maximum total amount of benefits payable to the
514 claimant for a benefit year. The Agency for Workforce Innovation
515 shall promptly notify the claimant, the claimant's most recent
516 employing unit, and all employers whose employment records are
517 liable for benefits under the determination of the initial
518 determination. The determination is final unless within 20 days
519 after the mailing of the notices to the parties' last known
520 addresses, or in lieu of mailing, within 20 days after the
521 delivery of the notices, an appeal or written request for
522 reconsideration is filed by the claimant or other party entitled
523 to notice.

524 (b) Determinations involving an alternative base period.-
525 If, in the case of a claim for benefits involving an alternative
526 base period under s. 443.091(1)(f), the Agency for Workforce
527 Innovation is unable to access wage information through the
528 database of its tax collection service provider, the agency will
529 request the information from the employer by mail. The employer
530 must provide the requested information within 10 days after the
531 Agency for Workforce Innovation mails the request. If wage
532 information is unavailable, the Agency for Workforce Innovation
533 may base the determination on an affidavit submitted by the
534 individual attesting to her or his wages for those calendar



245684

535 quarters. The individual must furnish payroll information, if
536 available, in support of the affidavit. Benefits based on an
537 alternative base period must be adjusted if the quarterly report
538 of wage information received from the employer under s. 443.141
539 results in a change in the monetary determination.

540 (~~c~~) *Determinations in labor dispute cases.*—Whenever any
541 claim involves a labor dispute described in s. 443.101(4), the
542 Agency for Workforce Innovation shall promptly assign the claim
543 to a special examiner who shall make a determination on the
544 issues involving unemployment due to the labor dispute. The
545 special examiner shall make the determination after an
546 investigation, as necessary. The claimant or another party
547 entitled to notice of the determination may appeal a
548 determination under subsection (4).

549 (~~d~~) *Redeterminations.*—

550 1. The Agency for Workforce Innovation may reconsider a
551 determination when it finds an error or when new evidence or
552 information pertinent to the determination is discovered after a
553 prior determination or redetermination. A redetermination may
554 not be made more than 1 year after the last day of the benefit
555 year unless the disqualification for making a false or
556 fraudulent representation in s. 443.101(6) is applicable, in
557 which case the redetermination may be made within 2 years after
558 the false or fraudulent representation. The Agency for Workforce
559 Innovation must promptly give notice of redetermination to the
560 claimant and to any employers entitled to notice in the manner
561 prescribed in this section for the notice of an initial
562 determination. If the amount of benefits is increased by the
563 redetermination, an appeal of the redetermination based solely



245684

564 on the increase may be filed as provided in subsection (4). If
565 the amount of benefits is decreased by the redetermination, the
566 redetermination may be appealed by the claimant when a
567 subsequent claim for benefits is affected in amount or duration
568 by the redetermination. If the final decision on the
569 determination or redetermination to be reconsidered was made by
570 an appeals referee, the commission, or a court, the Agency for
571 Workforce Innovation may apply for a revised decision from the
572 body or court that made the final decision.

573 2. If an appeal of an original determination is pending
574 when a redetermination is issued, the appeal unless withdrawn is
575 treated as an appeal from the redetermination.

576 (~~ed~~) *Notice of determination or redetermination.*—Notice of
577 any monetary or nonmonetary determination or redetermination
578 under this chapter, together with the reasons for the
579 determination or redetermination, must be promptly given to the
580 claimant and to any employer entitled to notice in the manner
581 provided in this subsection. The Agency for Workforce Innovation
582 shall adopt rules prescribing the manner and procedure by which
583 employers within the base period of a claimant become entitled
584 to notice.

585 Section 5. Paragraph (a) of subsection (1) and paragraph
586 (f) of subsection (13) of section 443.1216, Florida Statutes, is
587 amended to read:

588 443.1216 Employment.—Employment, as defined in s. 443.036,
589 is subject to this chapter under the following conditions:

590 (1)(a) The employment subject to this chapter includes a
591 service performed, including a service performed in interstate
592 commerce, by:



245684

- 593 1. An officer of a corporation.
- 594 2. An individual who, under the usual common-law rules
595 applicable in determining the employer-employee relationship, is
596 an employee. However, whenever a client, as defined in s.
597 443.036(1918), which would otherwise be designated as an
598 employing unit has contracted with an employee leasing company
599 to supply it with workers, those workers are considered
600 employees of the employee leasing company. An employee leasing
601 company may lease corporate officers of the client to the client
602 and other workers to the client, except as prohibited by
603 regulations of the Internal Revenue Service. Employees of an
604 employee leasing company must be reported under the employee
605 leasing company's tax identification number and contribution
606 rate for work performed for the employee leasing company.
- 607 3. An individual other than an individual who is an
608 employee under subparagraph 1. or subparagraph 2., who performs
609 services for remuneration for any person:
- 610 a. As an agent-driver or commission-driver engaged in
611 distributing meat products, vegetable products, fruit products,
612 bakery products, beverages other than milk, or laundry or
613 drycleaning services for his or her principal.
- 614 b. As a traveling or city salesperson engaged on a full-
615 time basis in the solicitation on behalf of, and the
616 transmission to, his or her principal of orders from
617 wholesalers, retailers, contractors, or operators of hotels,
618 restaurants, or other similar establishments for merchandise for
619 resale or supplies for use in their business operations. This
620 sub-subparagraph does not apply to an agent-driver or a
621 commission-driver and does not apply to sideline sales



245684

622 activities performed on behalf of a person other than the
623 salesperson's principal.

624 4. The services described in subparagraph 3. are employment
625 subject to this chapter only if:

626 a. The contract of service contemplates that substantially
627 all of the services are to be performed personally by the
628 individual;

629 b. The individual does not have a substantial investment in
630 facilities used in connection with the services, other than
631 facilities used for transportation; and

632 c. The services are not in the nature of a single
633 transaction that is not part of a continuing relationship with
634 the person for whom the services are performed.

635 (13) The following are exempt from coverage under this
636 chapter:

637 (f) Service performed in the employ of a public employer as
638 defined in s. 443.036, except as provided in subsection (2), and
639 service performed in the employ of an instrumentality of a
640 public employer as described in s. 443.036(3835) (b) or (c), to
641 the extent that the instrumentality is immune under the United
642 States Constitution from the tax imposed by s. 3301 of the
643 Internal Revenue Code for that service.

644 Section 6. Paragraph (f) of subsection (3) of section
645 443.131, Florida Statutes, is amended to read:

646 443.131 Contributions.—

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

649 (f) *Transfer of employment records.*—

650 1. For the purposes of this subsection, two or more



245684

651 employers who are parties to a transfer of business or the
652 subject of a merger, consolidation, or other form of
653 reorganization, effecting a change in legal identity or form,
654 are deemed a single employer and are considered to be one
655 employer with a continuous employment record if the tax
656 collection service provider finds that the successor employer
657 continues to carry on the employing enterprises of all of the
658 predecessor employers and that the successor employer has paid
659 all contributions required of and due from all of the
660 predecessor employers and has assumed liability for all
661 contributions that may become due from all of the predecessor
662 employers. In addition, an employer may not be considered a
663 successor under this subparagraph if the employer purchases a
664 company with a lower rate into which employees with job
665 functions unrelated to the business endeavors of the predecessor
666 are transferred for the purpose of acquiring the low rate and
667 avoiding payment of contributions. As used in this paragraph,
668 notwithstanding s. 443.036(1514), the term "contributions" means
669 all indebtedness to the tax collection service provider,
670 including, but not limited to, interest, penalty, collection
671 fee, and service fee. A successor employer must accept the
672 transfer of all of the predecessor employers' employment records
673 within 30 days after the date of the official notification of
674 liability by succession. If a predecessor employer has unpaid
675 contributions or outstanding quarterly reports, the successor
676 employer must pay the total amount with certified funds within
677 30 days after the date of the notice listing the total amount
678 due. After the total indebtedness is paid, the tax collection
679 service provider shall transfer the employment records of all of



245684

680 the predecessor employers to the successor employer's employment
681 record. The tax collection service provider shall determine the
682 contribution rate of the combined successor and predecessor
683 employers upon the transfer of the employment records, as
684 prescribed by rule, in order to calculate any change in the
685 contribution rate resulting from the transfer of the employment
686 records.

687 2. Regardless of whether a predecessor employer's
688 employment record is transferred to a successor employer under
689 this paragraph, the tax collection service provider shall treat
690 the predecessor employer, if he or she subsequently employs
691 individuals, as an employer without a previous employment record
692 or, if his or her coverage is terminated under s. 443.121, as a
693 new employing unit.

694 3. The state agency providing unemployment tax collection
695 services may adopt rules governing the partial transfer of
696 experience rating when an employer transfers an identifiable and
697 segregable portion of his or her payrolls and business to a
698 successor employing unit. As a condition of each partial
699 transfer, these rules must require the following to be filed
700 with the tax collection service provider: an application by the
701 successor employing unit, an agreement by the predecessor
702 employer, and the evidence required by the tax collection
703 service provider to show the benefit experience and payrolls
704 attributable to the transferred portion through the date of the
705 transfer. These rules must provide that the successor employing
706 unit, if not an employer subject to this chapter, becomes an
707 employer as of the date of the transfer and that the transferred
708 portion of the predecessor employer's employment record is



245684

709 removed from the employment record of the predecessor employer.
710 For each calendar year after the date of the transfer of the
711 employment record in the records of the tax collection service
712 provider, the service provider shall compute the contribution
713 rate payable by the successor employer or employing unit based
714 on his or her employment record, combined with the transferred
715 portion of the predecessor employer's employment record. These
716 rules may also prescribe what contribution rates are payable by
717 the predecessor and successor employers for the period between
718 the date of the transfer of the transferred portion of the
719 predecessor employer's employment record in the records of the
720 tax collection service provider and the first day of the next
721 calendar year.

722 4. This paragraph does not apply to an employee leasing
723 company and client contractual agreement as defined in s.
724 443.036. The tax collection service provider shall, if the
725 contractual agreement is terminated or the employee leasing
726 company fails to submit reports or pay contributions as required
727 by the service provider, treat the client as a new employer
728 without previous employment record unless the client is
729 otherwise eligible for a variation from the standard rate.

730 Section 7. This act shall take effect October 1, 2009.

731
732 ===== T I T L E A M E N D M E N T =====

733 And the title is amended as follows:

734 Delete everything before the enacting clause
735 and insert:

736 An act relating to unemployment compensation; amending s.
737 443.036, F.S.; defining the terms "alternative base period",



245684

738 "good cause", and "member of the individual's immediate family";
739 redefining the term "base period"; amending s. 443.091, F.S.;
740 revising the requirements for eligibility to receive benefits;
741 prohibiting unemployed individuals from being ineligible for
742 unemployment benefits based solely on the individual's
743 availability to work certain hours; providing for an alternative
744 base period after a certain date; amending s. 443.101, F.S.;
745 prohibiting an individual from being disqualified from benefits
746 if he or she leaves work due to "good cause"; prohibiting
747 unemployed individuals from being disqualified for unemployment
748 benefits based solely on the individual's availability for only
749 part-time work under certain circumstances; amending s. 443.151,
750 F.S.; requiring an employer to provide wage information to
751 support an individual's eligibility for benefits; authorizing
752 the Agency for Workforce Innovation to accept an affidavit from
753 the claimant to support eligibility for benefits; amending ss.
754 443.1216 and 443.131; conforming provisions to changes made by
755 the act; providing an effective date.
756