

By Senator Lynn

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1 A bill to be entitled
2 An act relating to unemployment compensation; amending
3 s. 443.036, F.S.; defining the terms "community
4 service" and "reemployment services"; amending s.
5 443.091, F.S.; providing that an unemployed individual
6 is eligible to receive benefits if he or she
7 participates in a community service program
8 administered by a regional workforce board;
9 authorizing the Agency for Workforce Innovation to
10 adopt rules; conforming a cross-reference; amending s.
11 443.1216, F.S.; providing that community services are
12 not covered by unemployment compensation; conforming
13 cross-references; amending s. 443.131, F.S.;
14 conforming cross-references; providing an effective
15 date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Present subsections (13) through (36) of section
20 443.036, Florida Statutes, are renumbered as subsections (14)
21 through (37), respectively, present subsections (37) through
22 (45) of that section are renumbered as subsections (39) through
23 (47), respectively, and new subsections (13) and (38) are added
24 to that section, to read:

25 443.036 Definitions.—As used in this chapter, the term:

26 (13) "Community service" means any program operated by a
27 regional workforce board in which claimants volunteer to perform
28 services for private nonprofit or public entities.

29 (38) "Reemployment services" means job search assistance

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30 services, which include, but are not limited to, job referral
 31 and placement assistance; development of an employability
 32 development plan; provision of labor market information;
 33 assessment of skill levels, abilities, and aptitudes; career
 34 guidance when appropriate; job search workshops such as resume
 35 writing and interviewing classes; and referral to training as
 36 required.

37 Section 2. Paragraphs (b) and (d) of subsection (1) of
 38 section 443.091, Florida Statutes, are amended to read:

39 443.091 Benefit eligibility conditions.—

40 (1) An unemployed individual is eligible to receive
 41 benefits for any week only if the Agency for Workforce
 42 Innovation finds that:

43 (b) She or he has registered with the agency for work and
 44 subsequently reports to the one-stop career center as directed
 45 by the regional workforce board for reemployment services. This
 46 requirement does not apply to persons who are:

- 47 1. Non-Florida residents;
- 48 2. On a temporary layoff, ~~as defined in s. 443.036(42);~~
- 49 3. Union members who customarily obtain employment through
 50 a union hiring hall; or
- 51 4. Claiming benefits under an approved short-time
 52 compensation plan as provided in s. 443.1116.

53 (d) She or he is able to work and is available for work. In
 54 order to assess eligibility for a claimed week of unemployment,
 55 the agency shall develop criteria to determine a claimant's
 56 ability to work and availability for work. However:

- 57 1. Notwithstanding any other provision of this paragraph or
 58 paragraphs (b) and (e), an otherwise eligible individual may not

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59 be denied benefits for any week because she or he is in training
60 with the approval of the agency, or by reason of s. 443.101(2)
61 relating to failure to apply for, or refusal to accept, suitable
62 work. Training may be approved by the agency in accordance with
63 criteria prescribed by rule. A claimant's eligibility during
64 approved training is contingent upon satisfying eligibility
65 conditions prescribed by rule.

66 2. Notwithstanding any other provision of this chapter, an
67 otherwise eligible individual who is in training approved under
68 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
69 determined ineligible or disqualified for benefits due to her or
70 his enrollment in such training or because of leaving work that
71 is not suitable employment to enter such training. As used in
72 this subparagraph, the term "suitable employment" means work of
73 a substantially equal or higher skill level than the worker's
74 past adversely affected employment, as defined for purposes of
75 the Trade Act of 1974, as amended, the wages for which are at
76 least 80 percent of the worker's average weekly wage as
77 determined for purposes of the Trade Act of 1974, as amended.

78 3. Notwithstanding any other provision of this section, an
79 otherwise eligible individual may not be denied benefits for any
80 week because she or he is before any state or federal court
81 pursuant to a lawfully issued summons to appear for jury duty.

82 4. Notwithstanding any other provision of this section, an
83 otherwise eligible individual may not be denied benefits for any
84 week because she or he is participating in a community service
85 program administered by a regional workforce board during a
86 period of elevated unemployment that begins after July 2, 2011.

87 a. For the purposes of this subparagraph, a period of

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88 elevated unemployment:

89 (I) Begins with the first day of the week following the 8th
90 consecutive week during which the average total unemployment
91 rate, as determined by the United States Secretary of Labor,
92 equals or exceeds 9 percent; and

93 (II) Ends with the first day of the week following the 8th
94 consecutive week that the average total unemployment rate is
95 less than 9 percent.

96 b. The community service performed by a claimant may not
97 exceed 20 hours per week.

98 c. A participant in a community service program under this
99 paragraph shall be deemed an employee of the state for purposes
100 of workers' compensation coverage. In determining the average
101 weekly wage, any remuneration the participant may receive in
102 connection with the community service is considered a gratuity
103 and the participant is not entitled to any benefits otherwise
104 payable under s. 440.15, regardless of whether the participant
105 is receiving wages and remuneration from other employment with
106 another employer and regardless of his or her future wage-
107 earning capacity.

108 5. The agency may adopt rules as necessary to administer
109 this paragraph.

110 Section 3. Paragraph (a) of subsection (1) and paragraph
111 (f) of subsection (13) of section 443.1216, Florida Statutes,
112 are amended, and paragraph (z) is added to subsection (13) of
113 that section, to read:

114 443.1216 Employment.—Employment, as defined in s. 443.036,
115 is subject to this chapter under the following conditions:

116 (1) (a) The employment ~~subject to this chapter~~ includes a

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117 service performed, including a service performed in interstate
118 commerce, by:

119 1. An officer of a corporation.

120 2. An individual who, under the usual common-law rules
121 applicable for ~~in~~ determining the employer-employee
122 relationship, is an employee. However, if ~~whenever~~ a client who
123 ~~as defined in s. 443.036(18), which~~ would otherwise be
124 designated as an employing unit has contracted with an employee
125 leasing company to supply it with workers, those workers are
126 considered employees of the employee leasing company. An
127 employee leasing company may lease corporate officers of the
128 client to the client and other workers to the client, except as
129 prohibited by regulations of the Internal Revenue Service.
130 Employees of an employee leasing company must be reported under
131 the employee leasing company's tax identification number and
132 contribution rate for work performed for the employee leasing
133 company.

134 a. In addition to any other report required to be filed by
135 law, an employee leasing company shall submit a report to the
136 Labor Market Statistics Center within the Agency for Workforce
137 Innovation which includes each client establishment and each
138 establishment of the employee leasing company, or as otherwise
139 directed by the agency. The report must include the following
140 information for each establishment:

141 (I) The trade or establishment name;

142 (II) The former unemployment compensation account number,
143 if available;

144 (III) The former federal employer's identification number
145 (FEIN), if available;

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146 (IV) The industry code recognized and published by the
147 United States Office of Management and Budget, if available;

148 (V) A description of the client's primary business activity
149 in order to verify or assign an industry code;

150 (VI) The address of the physical location;

151 (VII) The number of full-time and part-time employees who
152 worked during, or received pay that was subject to unemployment
153 compensation taxes for, the pay period including the 12th of the
154 month for each month of the quarter;

155 (VIII) The total wages subject to unemployment compensation
156 taxes paid during the calendar quarter;

157 (IX) An internal identification code to uniquely identify
158 each establishment of each client;

159 (X) The month and year that the client entered into the
160 contract for services; and

161 (XI) The month and year that the client terminated the
162 contract for services.

163 b. The report shall be submitted electronically or as in a
164 ~~manner~~ otherwise prescribed by the Agency for Workforce
165 Innovation and in the format specified by the Bureau of Labor
166 Statistics of the United States Department of Labor for its
167 Multiple Worksite Report for Professional Employer
168 Organizations. The report must be provided quarterly to the
169 Labor Market Statistics Center within the Agency for Workforce
170 Innovation, or as otherwise directed by the agency, and must be
171 filed by the last day of the month immediately following the end
172 of the calendar quarter. The information required in sub-sub-
173 subparagraphs a.(X) and (XI) need be provided only in the
174 quarter in which the contract to which it relates was entered

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175 into or terminated. The sum of the employment data and the sum
176 of the wage data in the ~~this~~ report must match the employment
177 and wages reported in the unemployment compensation quarterly
178 tax and wage report. A report is not required for any calendar
179 quarter preceding the third calendar quarter of 2010.

180 c. The Agency for Workforce Innovation shall adopt rules as
181 necessary to administer this subparagraph, and may administer,
182 collect, enforce, and waive the penalty imposed by s.
183 443.141(1)(b) for the report required by this subparagraph.

184 d. For the purposes of this subparagraph, the term
185 "establishment" means any location where business is conducted
186 or where services or industrial operations are performed.

187 3. An individual other than an individual who is an
188 employee under subparagraph 1. or subparagraph 2., who performs
189 services for remuneration for any person:

190 a. As an agent-driver or commission-driver engaged in
191 distributing meat products, vegetable products, fruit products,
192 bakery products, beverages other than milk, or laundry or
193 drycleaning services for his or her principal.

194 b. As a traveling or city salesperson engaged on a full-
195 time basis in the solicitation on behalf of, and the
196 transmission to, his or her principal of orders from
197 wholesalers, retailers, contractors, or operators of hotels,
198 restaurants, or other similar establishments for merchandise for
199 resale or supplies for use in their business operations. This
200 sub-subparagraph does not apply to an agent-driver, or ~~or~~ a
201 commission-driver, or ~~and does not apply to~~ sideline sales
202 activities performed on behalf of a person other than the
203 salesperson's principal.

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

206 a. The contract of service contemplates that substantially
207 all of the services are to be performed personally by the
208 individual;

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

212 c. The services are not in the nature of a single
213 transaction that is not part of a continuing relationship with
214 the person for whom the services are performed.

215 (13) The following are exempt from coverage under this
216 chapter:

217 (f) Service performed in the employ of a public employer ~~as~~
218 ~~defined in s. 443.036~~, except as provided in subsection (2), and
219 service performed in the employ of an instrumentality of a
220 public employer as described in s. 443.036(36) (b) or (c) ~~or~~
221 ~~443.036(35) (b) or (c)~~, to the extent that the instrumentality is
222 immune under the United States Constitution from the tax imposed
223 by s. 3301 of the Internal Revenue Code for that service.

224 (z) Service performed as part of a community service
225 program under s. 443.091(1) (d) 4.

226 Section 4. Paragraph (f) of subsection (3) of section
227 443.131, Florida Statutes, is amended to read:

228 443.131 Contributions.—

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

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

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

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233 employers who are parties to a transfer of business or the
234 subject of a merger, consolidation, or other form of
235 reorganization, effecting a change in legal identity or form,
236 are deemed a single employer and are considered to be one
237 employer with a continuous employment record if the tax
238 collection service provider finds that the successor employer
239 continues to carry on the employing enterprises of all of the
240 predecessor employers, ~~and that the successor employer~~ has paid
241 all contributions required of and due from all of the
242 predecessor employers, ~~and~~ has assumed liability for all
243 contributions that may become due from all of the predecessor
244 employers. ~~In addition,~~ An employer may not be considered a
245 successor under this subparagraph if the employer purchases a
246 company with a lower rate into which employees with job
247 functions unrelated to the business endeavors of the predecessor
248 are transferred for the purpose of acquiring the low rate and
249 avoiding payment of contributions. ~~As used in this paragraph,~~
250 Notwithstanding s. 443.036(15) ~~s. 443.036(14)~~, the term
251 "contributions," as used in this paragraph, means all
252 indebtedness to the tax collection service provider, including,
253 but not limited to, interest, penalty, collection fee, and
254 service fee.

255 2. A successor employer must accept the transfer of all of
256 the predecessor employers' employment records within 30 days
257 after the date of the official notification of liability by
258 succession. If a predecessor employer has unpaid contributions
259 or outstanding quarterly reports, the successor employer must
260 pay the total amount with certified funds within 30 days after
261 the date of the notice listing the total amount due. After the

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262 total indebtedness is paid, the tax collection service provider
263 shall transfer the employment records of all of the predecessor
264 employers to the successor employer's employment record. The tax
265 collection service provider shall determine the contribution
266 rate of the combined successor and predecessor employers upon
267 the transfer of the employment records, as prescribed by rule,
268 in order to calculate any change in the contribution rate
269 resulting from the transfer of the employment records.

270 ~~3.2.~~ Regardless of whether a predecessor employer's
271 employment record is transferred to a successor employer under
272 this paragraph, the tax collection service provider shall treat
273 the predecessor employer, if he or she subsequently employs
274 individuals, as an employer without a previous employment record
275 or, if his or her coverage is terminated under s. 443.121, as a
276 new employing unit.

277 ~~4.3.~~ The state agency providing unemployment tax collection
278 services may adopt rules governing the partial transfer of
279 experience rating when an employer transfers an identifiable and
280 segregable portion of his or her payrolls and business to a
281 successor employing unit. As a condition of each partial
282 transfer, these rules must require the following to be filed
283 with the tax collection service provider: an application by the
284 successor employing unit, an agreement by the predecessor
285 employer, and the evidence required by the tax collection
286 service provider to show the benefit experience and payrolls
287 attributable to the transferred portion through the date of the
288 transfer. These rules must provide that the successor employing
289 unit, if not an employer subject to this chapter, becomes an
290 employer as of the date of the transfer and that the transferred

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291 portion of the predecessor employer's employment record is
292 removed from the employment record of the predecessor employer.
293 For each calendar year after the date of the transfer of the
294 employment record in the records of the tax collection service
295 provider, the service provider shall compute the contribution
296 rate payable by the successor employer or employing unit based
297 on his or her employment record, combined with the transferred
298 portion of the predecessor employer's employment record. These
299 rules may also prescribe what contribution rates are payable by
300 the predecessor and successor employers for the period between
301 the date of the transfer of the transferred portion of the
302 predecessor employer's employment record in the records of the
303 tax collection service provider and the first day of the next
304 calendar year.

305 5.4. This paragraph does not apply to an employee leasing
306 company and client contractual agreement ~~as defined in s.~~
307 ~~443.036.~~ The tax collection service provider shall, if the
308 contractual agreement is terminated or the employee leasing
309 company fails to submit reports or pay contributions as required
310 by the service provider, treat the client as a new employer
311 without previous employment record unless the client is
312 otherwise eligible for a variation from the standard rate.

313 Section 5. This act shall take effect July 1, 2011.