



695792

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/09/2011	.	
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The Committee on Judiciary (Joyner) recommended the following:

**Senate Amendment (with directory and title amendments)**

Delete lines 78 - 147  
and insert:

Section 2. Effective July 1, 2011, present subsections (5) through (25) of section 443.036, Florida Statutes, are redesignated as subsections (6) through (26) respectively, present subsections (26) through (45) of that section are redesignated as subsection (28) through (47) respectively, new subsections (5) and (27) are added to that section, and present subsections (6), (7), (9), (16), (29), and (43) of that section are amended, to read:

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



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14           (5) "Alternative base period" means the last four completed  
15 calendar quarters immediately preceding the first day of an  
16 individual's benefit year.

17           (7)~~(6)~~ "Available for work" means actively seeking and  
18 being ready and willing to accept suitable work ~~employment~~.

19           (8)~~(7)~~ "Base period" means the first four of the last five  
20 completed calendar quarters immediately preceding the first day  
21 of an individual's benefit year. If the agency determines,  
22 pursuant to s. 443.091(1)(g), that an alternative base period  
23 will be used, the term has the same meaning as the alternative  
24 base period.

25           (10)~~(9)~~ "Benefit year" means, for an individual, the 1-year  
26 period beginning with the first day of the first week for which  
27 the individual first files a valid claim for benefits and,  
28 thereafter, the 1-year period beginning with the first day of  
29 the first week for which the individual next files a valid claim  
30 for benefits after the termination of his or her last preceding  
31 benefit year. Each claim for benefits made in accordance with s.  
32 443.151(2) is a valid claim ~~under this subsection~~ if the  
33 individual was paid wages for insured work in accordance with s.  
34 443.091(1)(g) and is unemployed ~~as defined in subsection (43)~~ at  
35 the time of filing the claim. However, the Agency for Workforce  
36 Innovation may adopt rules providing for the establishment of a  
37 uniform benefit year for all workers in one or more groups or  
38 classes of service or within a particular industry if the agency  
39 determines, after notice to the industry and to the workers in  
40 the industry and an opportunity to be heard in the matter, that  
41 those groups or classes of workers in a particular industry  
42 periodically experience unemployment resulting from layoffs or



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43 shutdowns for limited periods of time.

44 ~~(17)(16)~~ "Earned income" means gross remuneration derived  
45 from work, professional service, or self-employment. The term  
46 includes commissions, bonuses, back pay awards or back pay  
47 settlements, front pay or front wages, and the cash value of all  
48 remuneration paid in a medium other than cash. The term does not  
49 include income derived from invested capital or ownership of  
50 property.

51 (27) "Initial skills review" means an online education or  
52 training program, such as that established under s. 1004.99,  
53 which is approved by the Agency for Workforce Innovation and  
54 designed to measure an individual's mastery level of workplace  
55 skills.

56 ~~(31)(29)~~ "Misconduct" includes, but is not limited to, the  
57 following, which may not be construed in pari materia with each  
58 other:

59 (a) Conduct demonstrating conscious ~~willful or wanton~~  
60 disregard of an employer's interests and found to be a  
61 deliberate violation or disregard of reasonable ~~the~~ standards of  
62 behavior which the employer has a right to expect of his or her  
63 employee, including standards lawfully set forth in the  
64 employer's written rules of conduct; or

65 (b) Carelessness or negligence to a degree or recurrence  
66 that manifests culpability or, wrongful intent, ~~or evil design~~  
67 or shows an intentional and substantial disregard of the  
68 employer's interests or of the employee's duties and obligations  
69 to his or her employer.

70 ~~(45)(43)~~ "Unemployment" or "unemployed" means:

71 (a) An individual is "totally unemployed" in any week



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72 during which he or she does not perform any services and for  
73 which earned income is not payable to him or her. An individual  
74 is "partially unemployed" in any week of less than full-time  
75 work if the earned income payable to him or her for that week is  
76 less than his or her weekly benefit amount. The Agency for  
77 Workforce Innovation may adopt rules prescribing distinctions in  
78 the procedures for unemployed individuals based on total  
79 unemployment, part-time unemployment, partial unemployment of  
80 individuals attached to their regular jobs, and other forms of  
81 short-time work.

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

86  
87 Between lines 235 and 236  
88 insert:

89 (g) She or he has been paid wages for insured work equal to  
90 1.5 times her or his high quarter wages during her or his base  
91 period, except that an unemployed individual is not eligible to  
92 receive benefits if the base period wages are less than \$3,400.  
93 If the individual is ineligible for benefits calculated on a  
94 base period wage, wages must be calculated using an alternative  
95 base period and the claimant must have the opportunity to choose  
96 whether to establish a claim using such wages. Wages shall be  
97 calculated for an alternative base period only if the base  
98 period wages are inadequate to establish eligibility under this  
99 paragraph and only for benefit years that begin on or after  
100 January 1, 2011. Wages used to establish a monetarily eligible



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101 benefit year may not be used to establish monetary eligibility  
102 in a subsequent benefit year.

103

104 Delete lines 895 - 930

105 and insert:

106 (a) *Notices of claim.*—The Agency for Workforce Innovation  
107 shall promptly provide a notice of claim to the claimant's most  
108 recent employing unit and all employers whose employment records  
109 are liable for benefits under the monetary determination. The  
110 employer must respond to the notice of claim within 20 days  
111 after the mailing date of the notice, or in lieu of mailing,  
112 within 20 days after the delivery of the notice. If a  
113 contributing employer fails to timely respond to the notice of  
114 claim, the employer's account may not be relieved of benefit  
115 charges as provided in s. 443.131(3)(a), notwithstanding  
116 paragraph (5)(b). The agency may adopt rules as necessary to  
117 administer ~~implement~~ the processes described in this paragraph  
118 relating to a notice ~~notices~~ of claim.

119 (b) *Monetary determinations.*—In addition to the notice of  
120 claim, the Agency for Workforce Innovation must ~~shall~~ also  
121 promptly provide an initial monetary determination to the  
122 claimant and each base period employer whose account is subject  
123 to being charged for its respective share of benefits on the  
124 claim. The monetary determination must include a statement of  
125 whether and in what amount the claimant is entitled to benefits,  
126 and, in the event of a denial, must state the reasons for the  
127 denial. A monetary determination for the first week of a benefit  
128 year must also include a statement of whether the claimant was  
129 paid the wages required under s. 443.091(1)(g) and, if so, the



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130 first day of the benefit year, the claimant's weekly benefit  
131 amount, and the maximum total amount of benefits payable to the  
132 claimant for a benefit year. The monetary determination is final  
133 unless within 20 days after the mailing of the notices to the  
134 parties' last known addresses, or in lieu of mailing, within 20  
135 days after the delivery of the notices, an appeal or written  
136 request for reconsideration is filed by the claimant or other  
137 party entitled to notice. The agency may adopt rules as  
138 necessary to implement the processes described in this paragraph  
139 relating to notices of monetary determinations and the appeals  
140 or reconsideration requests filed in response to such notices.

141 (c) Determinations involving an alternative base period.—In  
142 the case of a claim for benefits involving an alternative base  
143 period under s. 443.091(1)(g), if the agency is unable to access  
144 wage information through the database of its tax collection  
145 service provider, the agency shall request the information from  
146 the employer by mail. The employer must provide the requested  
147 information within 10 days after the agency mails the request.  
148 If wage information is unavailable, the agency may base the  
149 determination on an affidavit submitted by the individual  
150 attesting to her or his wages for those calendar quarters. The  
151 individual must furnish payroll information, if available, in  
152 support of the affidavit. Benefits based on an alternative base  
153 period must be adjusted if the quarterly report of wage  
154 information received from the employer under s. 443.141 results  
155 in a change in the monetary determination.

156 (d) ~~(e)~~ Nonmonetary determinations.—If the agency receives  
157 information that may result in a denial of benefits, the agency  
158 must complete an investigation of the claim required by



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159 subsection (2) and provide notice of a nonmonetary determination  
160 to the claimant and the employer from whom the claimant's reason  
161 for separation affects his or her entitlement to benefits. The  
162 determination must state the reason for the determination and  
163 whether the unemployment tax account of the contributing  
164 employer is charged for benefits paid on the claim. The  
165 nonmonetary determination is final unless within 20 days after  
166 the mailing of the notices to the parties' last known addresses,  
167 or in lieu of mailing, within 20 days after the delivery of the  
168 notices, an appeal or written request for reconsideration is  
169 filed by the claimant or other party entitled to notice. The  
170 agency may adopt rules as necessary to administer ~~implement~~ the  
171 processes described in this paragraph relating to notices of  
172 nonmonetary determination and the appeals or reconsideration  
173 requests filed in response to such notices, and may adopt rules  
174 prescribing the manner and procedure by which employers within  
175 the base period of a claimant become entitled to notice of  
176 nonmonetary determination.

177 (e) ~~(d)~~ *Determinations in labor dispute cases.*—~~If a~~ Whenever  
178 ~~any~~ claim involves a labor dispute described in s. 443.101(5)  
179 ~~443.101(4)~~, the Agency for Workforce Innovation shall promptly  
180 assign the claim to a special examiner who shall make a  
181 determination on the issues involving unemployment due to the  
182 labor dispute. The special examiner shall make the determination  
183 after an investigation, as necessary. The claimant or another  
184 party entitled to notice of the determination may appeal a  
185 determination under subsection (4).

186 (f) ~~(e)~~ *Redeterminations.*—

187 1. The Agency for Workforce Innovation may reconsider a



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188 determination if it finds an error or if new evidence or  
189 information pertinent to the determination is discovered after a  
190 prior determination or redetermination. A redetermination may  
191 not be made more than 1 year after the last day of the benefit  
192 year unless the disqualification for making a false or  
193 fraudulent representation under s. 443.101(7) ~~443.101(6)~~ is  
194 applicable, in which case the redetermination may be made within  
195 2 years after the false or fraudulent representation. The agency  
196 must promptly give notice of redetermination to the claimant and  
197 to any employers entitled to notice in the manner prescribed in  
198 this section for the notice of an initial determination.

199       2. If the amount of benefits is increased by the  
200 redetermination, an appeal of the redetermination based solely  
201 on the increase may be filed as provided in subsection (4). If  
202 the amount of benefits is decreased by the redetermination, the  
203 redetermination may be appealed by the claimant if a subsequent  
204 claim for benefits is affected in amount or duration by the  
205 redetermination. If the final decision on the determination or  
206 redetermination to be reconsidered was made by an appeals  
207 referee, the commission, or a court, the Agency for Workforce  
208 Innovation may apply for a revised decision from the body or  
209 court that made the final decision.

210       3. If an appeal of an original determination is pending  
211 when a redetermination is issued, the appeal, unless withdrawn,  
212 is treated as an appeal from the redetermination.

213  
214 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

215 And the directory clause is amended as follows:

216       Delete line 149





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217 and insert:  
218 (d), (f), and (g) of subsection (1) of section 443.091, Florida  
219

220 Delete line 876

221 and insert:  
222 subsection (2), subsection (3), and  
223

224 ===== T I T L E A M E N D M E N T =====

225 And the title is amended as follows:

226 Delete lines 6 - 15

227 and insert:  
228 understanding; amending s. 443.036, F.S.; revising the  
229 definitions for "available for work," "base period,"  
230 "earned income," "misconduct," and "unemployment";  
231 adding definitions for "alternative base period" and  
232 "initial skills review"; amending s. 443.091, F.S.;  
233 revising requirements for making continued claims for  
234 benefits; requiring that an individual claiming  
235 benefits report certain information and participate in  
236 an initial skills review; providing an exception;  
237 specifying criteria for determining an applicant's  
238 availability for work; providing for an alternative  
239 base period under certain circumstances; amending s.

240  
241 After line 47

242 insert:  
243 requiring an employer to provide wage information to  
244 support an individual's eligibility for benefits;  
245 authorizing the Agency for Workforce Innovation to



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246  
247

accept an affidavit from the claimant to support  
eligibility for benefits under certain circumstances;