

By Senator Braynon

33-01113A-12

20121440__

1 A bill to be entitled
 2 An act relating to unemployment compensation; amending
 3 s. 443.036, F.S.; updating and revising definitions;
 4 amending s. 443.101, F.S., relating to
 5 disqualification for benefits; revising the definition
 6 of the term "good cause"; amending ss. 443.1216 and
 7 443.131, F.S.; conforming cross-references; providing
 8 an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (c) of subsection (2) and subsections
 13 (5), (11), (14), (15), (18), (20), (21), (23), (25), (26), (27),
 14 (35), (38), (39), (45), and (46) of section 443.036, Florida
 15 Statutes, are amended to read:

16 443.036 Definitions.—As used in this chapter, the term:

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

19 (c) In connection with the production or harvesting of ~~any~~
 20 ~~commodity defined as~~ an agricultural commodity as defined in s.
 21 15(f) in s. 15(g) of the Agricultural Marketing Act, as amended,
 22 ~~(46 Stat. 1550, s. 3; 12 U.S.C. s. 1141j);~~ the ginning of
 23 cotton; or the operation or maintenance of ditches, canals,
 24 reservoirs, or waterways, not owned or operated for profit, used
 25 exclusively for supplying and storing water for farming
 26 purposes.

27 (5) "American vessel" means a ~~any~~ vessel documented or
 28 numbered under the laws of the United States. The term includes
 29 a ~~any~~ vessel that is not ~~neither~~ documented or numbered under

33-01113A-12

20121440__

30 the laws of the United States or a, ~~nor documented under the~~
31 ~~laws of any~~ foreign country, if its crew is employed solely by
32 one or more citizens or residents of the United States or
33 corporations organized under the laws of the United States or ~~of~~
34 any state.

35 (11) "Casual labor" means labor that is occasional,
36 incidental, or irregular, not exceeding 200 person-hours in
37 total duration. As used in this subsection, the term "duration"
38 means the period of time from the commencement to the completion
39 of the particular job or project. Services performed by an
40 employee for an ~~his or her~~ employer during ~~a period of~~ 1
41 calendar month or any 2 consecutive calendar months, ~~however,~~
42 are deemed to be casual labor only if the service is performed
43 on 10 or fewer calendar days, regardless of whether those days
44 are consecutive. If any of the services performed by an
45 individual on a particular labor project are not casual labor,
46 each of the services performed by the individual on that job or
47 project may not be deemed casual labor. Services must constitute
48 casual labor and may not be performed in the course of the
49 employer's trade or business in order for those services to be
50 exempt under this section.

51 (14) "Contribution" means a payment of payroll tax to the
52 Unemployment Compensation Trust Fund ~~which is required under~~
53 ~~this chapter~~ to finance unemployment benefits.

54 (15) "Crew leader" means an individual who:

55 (a) Furnishes individuals to perform service in
56 agricultural labor for another person.

57 (b) Pays, ~~either~~ on his or her own behalf or on behalf of
58 the other person, the individuals furnished by him or her for

33-01113A-12

20121440__

59 the service in agricultural labor performed by those
60 individuals.

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

64 (18) "Employee leasing company" means an employing unit
65 that has a valid and active license under chapter 468, and that
66 maintains the records required by s. 443.171(5), and produces,
67 ~~in addition, is responsible for producing~~ quarterly reports
68 concerning the clients and the internal staff of the employee
69 leasing company ~~and the internal staff of the employee leasing~~
70 ~~company~~. As used in this subsection, the term "client" means a
71 party who has contracted with an employee leasing company that
72 provides ~~to provide a worker, or workers,~~ to perform services
73 for the client. Leased employees include employees subsequently
74 placed on the payroll of the employee leasing company on behalf
75 of the client. An employee leasing company must notify the tax
76 collection service provider within 30 days after the initiation
77 or termination of the company's relationship with a any client
78 company under chapter 468.

79 (20) "Employing unit" means an individual; an ~~or type of~~
80 organization, including a partnership, limited liability
81 company, association, trust, estate, joint-stock company,
82 insurance company, or corporation, whether domestic or foreign;
83 the receiver, trustee in bankruptcy, trustee, or successor of
84 any of the foregoing; or the legal representative of a deceased
85 person, who ~~which~~ has or had in his or her ~~its~~ employ one or
86 more individuals performing services for it within this state.

87 (a) Each individual employed to perform or to assist in

33-01113A-12

20121440

88 performing the work of any agent or employee of an employing
89 unit is deemed to be employed by the employing unit ~~for the~~
90 ~~purposes of this chapter~~, regardless of whether the individual
91 was hired or paid directly by the employing unit or by an agent
92 or employee of the employing unit, if the employing unit had
93 actual or constructive knowledge of the work.

94 (b) Each individual performing services in this state for
95 an employing unit maintaining at least two separate
96 establishments in this state is deemed to be performing services
97 for a single employing unit ~~for the purposes of this chapter~~.

98 (c) A person who is an officer of a corporation, or a
99 member of a limited liability company classified as a
100 corporation for federal income tax purposes, and who performs
101 services for the corporation or limited liability company in
102 this state, regardless of whether those services are continuous,
103 is deemed an employee of the corporation or the limited
104 liability company during all of each week of his or her tenure
105 of office, regardless of whether he or she is compensated for
106 those services. Services are presumed to be rendered for the
107 corporation if ~~in cases in which~~ the officer is compensated by
108 means other than dividends upon shares of stock of the
109 corporation owned by him or her.

110 (d) A limited liability company shall be treated as having
111 the same status as it is classified for federal income tax
112 purposes. However, a single-member limited liability company
113 shall be treated as the employer.

114 (21) "Employment" means a service subject to ~~this chapter~~
115 ~~under~~ s. 443.1216 which is performed by an employee for his or
116 her employer ~~the person employing him or her~~.

33-01113A-12

20121440__

117 (23) "Fund" means the Unemployment Compensation Trust Fund
118 ~~created under this chapter,~~ into which all contributions and
119 reimbursements required under this chapter are deposited and
120 from which all benefits provided under this chapter are paid.

121 (25) "Hospital" means an establishment ~~institution that is~~
122 licensed as a hospital under chapter 395, ~~certified, or approved~~
123 ~~by the Agency for Health Care Administration as a hospital.~~

124 (26) "Initial skills review" means an online education or
125 training program, such as that established under s. 1004.99,
126 that is approved by the Department of Economic Opportunity
127 ~~Agency for Workforce Innovation~~ and designed to measure an
128 individual's mastery level of workplace skills.

129 (27) "Institution of higher education" means an educational
130 institution that:

131 (a) Admits as regular students only individuals having a
132 certificate of graduation from a high school, or the recognized
133 equivalent of a certificate of graduation;

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

136 (c) Provides an educational program that ~~for which it~~
137 awards a bachelor's or higher degree, or ~~provides a program~~ that
138 is acceptable for full credit toward a bachelor's or higher
139 degree; a program of postgraduate or postdoctoral studies; or a
140 program of training to prepare students for gainful employment
141 in a recognized occupation; and

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

143
144 The term includes each community college and state university in
145 this state, and any ~~each other~~ institution in this state

33-01113A-12

20121440__

146 authorized ~~under s. 1005.03~~ to use the designation "college" or
147 "university-" under s. 1005.03.

148 (35) "Pay period" means ~~a period of~~ 31 or fewer consecutive
149 days for which a payment or remuneration is ordinarily made to
150 the employee by the person employing him or her.

151 (38) "Reimbursement" means a payment of money to the
152 Unemployment Compensation Trust Fund in lieu of a contribution
153 ~~which is~~ required under this chapter to finance unemployment
154 benefits.

155 (39) "Reimbursing employer" means an employer who is liable
156 for reimbursements in lieu of contributions made under this
157 chapter.

158 (45) "Wages" means remuneration ~~subject to this chapter~~
159 under s. 443.1217.

160 (46) "Week" means ~~a period of~~ 7 consecutive days as defined
161 in ~~the~~ rules of the Department of Economic Opportunity. The
162 department may by rule prescribe that a week is deemed to be
163 "in," "within," or "during" the benefit year that contains the
164 greater part of the week.

165 Section 2. Paragraph (a) of subsection (1) of section
166 443.101, Florida Statutes, is amended to read:

167 443.101 Disqualification for benefits.—An individual shall
168 be disqualified for benefits:

169 (1)(a) For the week in which he or she has voluntarily left
170 work without good cause attributable to his or her employing
171 unit or has been discharged by the employing unit for misconduct
172 connected with his or her work, based on a finding by the
173 Department of Economic Opportunity. As used in this paragraph,
174 the term "work" means any work, whether full-time, part-time, or

33-01113A-12

20121440__

175 temporary.

176 1. Disqualification for voluntarily quitting continues for
177 the full period of unemployment next ensuing after the
178 individual has left ~~his or her full-time, part-time, or~~
179 ~~temporary~~ work voluntarily without good cause and until the
180 individual has earned income equal to or greater than 17 times
181 his or her weekly benefit amount. ~~As used in this subsection,~~
182 ~~the term "good cause" includes only that cause attributable to~~
183 ~~the employing unit which would compel a reasonable employee to~~
184 ~~cease working or attributable to the individual's illness or~~
185 ~~disability requiring separation from his or her work.~~ Any other
186 disqualification may not be imposed. An individual is not
187 disqualified ~~under this subsection~~ for voluntarily leaving
188 temporary work to return immediately when called to work by the
189 permanent employing unit that temporarily terminated his or her
190 work within the previous 6 calendar months, or for voluntarily
191 leaving work to relocate as a result of his or her military-
192 connected spouse's permanent change of station orders,
193 activation orders, or unit deployment orders.

194 2. Disqualification for being discharged for misconduct
195 connected with his or her work continues for the full period of
196 unemployment next ensuing after having been discharged and until
197 the individual is reemployed and has earned income of at least
198 17 times his or her weekly benefit amount and for not more than
199 52 weeks immediately following that week, as determined by the
200 department in each case according to the circumstances or the
201 seriousness of the misconduct, under the department's rules for
202 determining ~~adopted for determinations of~~ disqualification for
203 benefits for misconduct.

33-01113A-12

20121440

204 3. If an individual has provided notification to the
205 employing unit of his or her intent to voluntarily leave work
206 and the employing unit discharges the individual for reasons
207 other than misconduct before the date the voluntary quit was to
208 take effect, the individual, if otherwise entitled, shall
209 receive benefits from the date of the employer's discharge until
210 the effective date of his or her voluntary quit.

211 4. If an individual is notified by the employing unit of
212 the employer's intent to discharge the individual for reasons
213 other than misconduct and the individual quits without good
214 cause before the date the discharge was to take effect, the
215 claimant is ineligible for benefits pursuant to s. 443.091(1)(d)
216 for failing to be available for work for the week or weeks of
217 unemployment occurring before the effective date of the
218 discharge.

219 5. As used in this paragraph, the term "good cause" means:

220 a. Cause attributable to the employing unit or an illness
221 or disability that requires separation from work; or

222 b. Domestic violence, as defined in s. 741.28, verified by
223 reasonable and confidential documentation that causes the
224 individual to reasonably believe that continued employment will
225 jeopardize the individual's safety and the safety of a member of
226 his or her immediate family.

227 Section 3. Paragraph (a) of subsection (1), subsection (2),
228 and paragraph (f) of subsection (13) of section 443.1216,
229 Florida Statutes, are amended to read:

230 443.1216 Employment.—Employment, as defined in s. 443.036,
231 is subject to this chapter under the following conditions:

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

33-01113A-12

20121440__

233 service performed, including a service performed in interstate
234 commerce, by:

235 1. An officer of a corporation.

236 2. An individual who, under the usual common-law rules
237 applicable for ~~in~~ determining the employer-employee
238 relationship, is an employee. However, if ~~whenever~~ a client who,
239 ~~as defined in s. 443.036(18), which~~ would otherwise be
240 designated as an employing unit has contracted with an employee
241 leasing company to supply it with workers, those workers are
242 considered employees of the employee leasing company. An
243 employee leasing company may lease corporate officers of the
244 client to the client and other workers to the client, except as
245 prohibited by regulations of the Internal Revenue Service.
246 Employees of an employee leasing company must be reported under
247 the employee leasing company's tax identification number and
248 contribution rate for work performed for the employee leasing
249 company.

250 a. In addition to any other report required to be filed by
251 law, an employee leasing company shall submit a report to the
252 Labor Market Statistics Center within the Department of Economic
253 Opportunity which includes each client establishment and each
254 establishment of the employee leasing company, or as otherwise
255 directed by the department. The report must include the
256 following information for each establishment:

257 (I) The trade or establishment name;

258 (II) The former unemployment compensation account number,
259 if available;

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

33-01113A-12

20121440__

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

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

266 (VI) The address of the physical location;

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

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

273 (IX) An internal identification code to uniquely identify
274 each establishment of each client;

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

277 (XI) The month and year that the client terminated the
278 contract for services.

279 b. The report shall be submitted electronically or as in a
280 ~~manner~~ otherwise prescribed by the Department of Economic
281 Opportunity in the format specified by the Bureau of Labor
282 Statistics of the United States Department of Labor for its
283 Multiple Worksite Report for Professional Employer
284 Organizations. The report must be provided quarterly to the
285 Labor Market Statistics Center within the department, or as
286 otherwise directed by the department, and must be filed by the
287 last day of the month immediately following the end of the
288 calendar quarter. The information required in sub-sub-
289 subparagraphs a.(X) and (XI) need be provided only in the
290 quarter in which the contract to which it relates was entered

33-01113A-12

20121440

291 into or terminated. The sum of the employment data and the sum
292 of the wage data in the ~~this~~ report must match the employment
293 and wages reported in the unemployment compensation quarterly
294 tax and wage report. A report is not required for any calendar
295 quarter preceding the third calendar quarter of 2010.

296 c. The department shall adopt rules as necessary to
297 administer this subparagraph, and may administer, collect,
298 enforce, and waive the penalty imposed by s. 443.141(1)(b) for
299 the report required by this subparagraph.

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

303 3. An individual other than an individual who is an
304 employee under subparagraph 1. or subparagraph 2., who performs
305 services for remuneration for any person:

306 a. As an agent-driver or commission-driver engaged in
307 distributing meat products, vegetable products, fruit products,
308 bakery products, beverages other than milk, or laundry or
309 drycleaning services for his or her principal.

310 b. As a traveling or city salesperson engaged on a full-
311 time basis in the solicitation on behalf of, and the
312 transmission to, his or her principal of orders from
313 wholesalers, retailers, contractors, or operators of hotels,
314 restaurants, or other similar establishments for merchandise for
315 resale or supplies for use in their business operations. This
316 sub-subparagraph does not apply to an agent-driver or a
317 commission-driver, or ~~and does not apply to~~ sideline sales
318 activities performed on behalf of a person other than the
319 salesperson's principal.

33-01113A-12

20121440__

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

322 a. The contract of service contemplates that substantially
323 all of the services are to be performed personally by the
324 individual;

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

328 c. The services are not in the nature of a single
329 transaction that is not part of a continuing relationship with
330 the person for whom the services are performed.

331 (2) The employment subject to this chapter includes service
332 performed in the employ of a public employer ~~as defined in s.~~
333 ~~443.036~~, if the service is excluded from the definition of
334 "employment" in s. 3306(c)(7) of the Federal Unemployment Tax
335 Act and is not excluded from the employment subject to this
336 chapter under subsection (4).

337 (13) The following are exempt from coverage under this
338 chapter:

339 (f) Service performed in the employ of a public employer ~~as~~
340 ~~defined in s. 443.036~~, except as provided in subsection (2), and
341 service performed in the employ of an instrumentality of a
342 public employer as described in s. 443.036(36)(b) or (c)
343 ~~443.036(35)(b) or (c)~~, to the extent that the instrumentality is
344 immune under the United States Constitution from the tax imposed
345 by s. 3301 of the Internal Revenue Code for that service.

346 Section 4. Paragraph (f) of subsection (3) of section
347 443.131, Florida Statutes, is amended to read:

348 443.131 Contributions.—

33-01113A-12

20121440

349 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
350 EXPERIENCE.—

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

352 1. For the purposes of this subsection, two or more
353 employers who are parties to a transfer of business or the
354 subject of a merger, consolidation, or other form of
355 reorganization, effecting a change in legal identity or form,
356 are deemed a single employer and are considered to be one
357 employer with a continuous employment record if the tax
358 collection service provider finds that the successor employer
359 continues to carry on the employing enterprises of all of the
360 predecessor employers, ~~and that the successor employer~~ has paid
361 all contributions required of and due from all of the
362 predecessor employers, ~~and~~ has assumed liability for all
363 contributions that may become due from all of the predecessor
364 employers. ~~In addition,~~ An employer may not be considered a
365 successor under this subparagraph if the employer purchases a
366 company with a lower rate into which employees with job
367 functions unrelated to the business endeavors of the predecessor
368 are transferred for the purpose of acquiring the low rate and
369 avoiding payment of contributions. ~~As used in this paragraph,~~
370 Notwithstanding s. 443.036(14), the term "contributions," as
371 used in this paragraph, means all indebtedness to the tax
372 collection service provider, including, but not limited to,
373 interest, penalty, collection fee, and service fee.

374 2. A successor employer must accept the transfer of all of
375 the predecessor employers' employment records within 30 days
376 after the date of the official notification of liability by
377 succession. If a predecessor employer has unpaid contributions

33-01113A-12

20121440

378 or outstanding quarterly reports, the successor employer must
379 pay the total amount with certified funds within 30 days after
380 the date of the notice listing the total amount due. After the
381 total indebtedness is paid, the tax collection service provider
382 shall transfer the employment records of all of the predecessor
383 employers to the successor employer's employment record. The tax
384 collection service provider shall determine the contribution
385 rate of the combined successor and predecessor employers upon
386 the transfer of the employment records, as prescribed by rule,
387 in order to calculate any change in the contribution rate
388 resulting from the transfer of the employment records.

389 ~~3.2.~~ Regardless of whether a predecessor employer's
390 employment record is transferred to a successor employer under
391 this paragraph, the tax collection service provider shall treat
392 the predecessor employer, if he or she subsequently employs
393 individuals, as an employer without a previous employment record
394 or, if his or her coverage is terminated under s. 443.121, as a
395 new employing unit.

396 ~~4.3.~~ The state agency providing unemployment tax collection
397 services may adopt rules governing the partial transfer of
398 experience rating when an employer transfers an identifiable and
399 segregable portion of his or her payrolls and business to a
400 successor employing unit. As a condition of each partial
401 transfer, these rules must require the following to be filed
402 with the tax collection service provider: an application by the
403 successor employing unit, an agreement by the predecessor
404 employer, and the evidence required by the tax collection
405 service provider to show the benefit experience and payrolls
406 attributable to the transferred portion through the date of the

33-01113A-12

20121440__

407 transfer. These rules must provide that the successor employing
408 unit, if not an employer subject to this chapter, becomes an
409 employer as of the date of the transfer and that the transferred
410 portion of the predecessor employer's employment record is
411 removed from the employment record of the predecessor employer.
412 For each calendar year after the date of the transfer of the
413 employment record in the records of the tax collection service
414 provider, the service provider shall compute the contribution
415 rate payable by the successor employer or employing unit based
416 on his or her employment record, combined with the transferred
417 portion of the predecessor employer's employment record. These
418 rules may also prescribe what contribution rates are payable by
419 the predecessor and successor employers for the period between
420 the date of the transfer of the transferred portion of the
421 predecessor employer's employment record in the records of the
422 tax collection service provider and the first day of the next
423 calendar year.

424 5.4. This paragraph does not apply to an employee leasing
425 company and client contractual agreement ~~as defined in s.~~
426 ~~443.036~~. The tax collection service provider shall, if the
427 contractual agreement is terminated or the employee leasing
428 company fails to submit reports or pay contributions as required
429 by the service provider, treat the client as a new employer
430 without previous employment record unless the client is
431 otherwise eligible for a variation from the standard rate.

432 Section 5. This act shall take effect July 1, 2012.