

By Senator Braynon

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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), subsections
 13 (5), (11), and (14), paragraph (b) of subsection (15), and
 14 subsections (18), (20), (21), (23), (25), (27), (35), (39),
 15 (40), (46), and (47) of section 443.036, Florida Statutes, are
 16 amended to read:

17 443.036 Definitions.—As used in this chapter, the term:

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

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

28 (5) "American vessel" means a ~~any~~ vessel documented or
 29 numbered under the laws of the United States. The term includes

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30 ~~a any~~ vessel that is not ~~neither~~ documented or numbered under
31 the laws of the United States or a, ~~nor documented under the~~
32 ~~laws of any~~ foreign country, if its crew is employed solely by
33 one or more citizens or residents of the United States or
34 corporations organized under the laws of the United States or of
35 any state.

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

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

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

56 (b) Pays, ~~either~~ on his or her own behalf or on behalf of
57 the other person, the individuals furnished by him or her for
58 the service in agricultural labor performed by those

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59 individuals.

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

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

83 (a) Each individual employed to perform or to assist in
84 performing the work of any agent or employee of an employing
85 unit is deemed to be employed by the employing unit ~~for the~~
86 ~~purposes of this chapter,~~ regardless of whether the individual
87 was hired or paid directly by the employing unit or by an agent

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88 or employee of the employing unit, if the employing unit had
89 actual or constructive knowledge of the work.

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

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

106 (d) A limited liability company shall be treated as having
107 the same status as it is classified for federal income tax
108 purposes. However, a single-member limited liability company
109 shall be treated as the employer.

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

113 (23) "Fund" means the Unemployment Compensation Trust Fund
114 ~~created under this chapter,~~ into which all contributions and
115 reimbursements required under this chapter are deposited and
116 from which all benefits provided under this chapter are paid.

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

120 (27) "Institution of higher education" means an educational
121 institution that:

122 (a) Admits as regular students only individuals having a
123 certificate of graduation from a high school, or the recognized
124 equivalent of a certificate of graduation;

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

127 (c) Provides an educational program that ~~for which it~~
128 awards a bachelor's or higher degree, or ~~provides a program~~ that
129 is acceptable for full credit toward a bachelor's or higher
130 degree; a program of postgraduate or postdoctoral studies; or a
131 program of training to prepare students for gainful employment
132 in a recognized occupation; and

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

134
135 The term includes each community college and state university in
136 this state, and any ~~each other~~ institution in this state
137 authorized ~~under s. 1005.03~~ to use the designation "college" or
138 "university-" under s. 1005.03.

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

142 (39) "Reimbursement" means a payment of money to the
143 Unemployment Compensation Trust Fund in lieu of a contribution
144 ~~which is~~ required under this chapter to finance reemployment
145 assistance benefits.

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146 (40) "Reimbursing employer" means an employer who is liable
147 for reimbursements in lieu of contributions made under this
148 chapter.

149 (46) "Wages" means remuneration ~~subject to this chapter~~
150 under s. 443.1217.

151 (47) "Week" means ~~a period of~~ 7 consecutive days as defined
152 in the rules of the Department of Economic Opportunity. The
153 department may by rule prescribe that a week is deemed to be
154 "in," "within," or "during" the benefit year that contains the
155 greater part of the week.

156 Section 2. Paragraph (a) of subsection (1) of section
157 443.101, Florida Statutes, is amended to read:

158 443.101 Disqualification for benefits.—An individual shall
159 be disqualified for benefits:

160 (1) (a) For the week in which he or she has voluntarily left
161 work without good cause attributable to his or her employing
162 unit or has been discharged by the employing unit for misconduct
163 connected with his or her work, based on a finding by the
164 Department of Economic Opportunity. As used in this paragraph,
165 the term "work" means any work, whether full-time, part-time, or
166 temporary.

167 1. Disqualification for voluntarily quitting continues for
168 the full period of unemployment next ensuing after the
169 individual has left his or her full-time, part-time, or
170 temporary work voluntarily without good cause and until the
171 individual has earned income equal to or greater than 17 times
172 his or her weekly benefit amount. ~~As used in this subsection,~~
173 ~~the term "good cause" includes only that cause attributable to~~
174 ~~the employing unit which would compel a reasonable employee to~~

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175 ~~cease working or attributable to the individual's illness or~~
176 ~~disability requiring separation from his or her work.~~ Any other
177 disqualification may not be imposed. An individual is not
178 disqualified ~~under this subsection~~ for voluntarily leaving
179 temporary work to return immediately when called to work by the
180 permanent employing unit that temporarily terminated his or her
181 work within the previous 6 calendar months, or for voluntarily
182 leaving work to relocate as a result of his or her military-
183 connected spouse's permanent change of station orders,
184 activation orders, or unit deployment orders.

185 2. Disqualification for being discharged for misconduct
186 connected with his or her work continues for the full period of
187 unemployment next ensuing after having been discharged and until
188 the individual is reemployed and has earned income of at least
189 17 times his or her weekly benefit amount and for not more than
190 52 weeks immediately following that week, as determined by the
191 department in each case according to the circumstances or the
192 seriousness of the misconduct, under the department's rules for
193 determining ~~adopted for determinations of~~ disqualification for
194 benefits for misconduct.

195 3. If an individual has provided notification to the
196 employing unit of his or her intent to voluntarily leave work
197 and the employing unit discharges the individual for reasons
198 other than misconduct before the date the voluntary quit was to
199 take effect, the individual, if otherwise entitled, shall
200 receive benefits from the date of the employer's discharge until
201 the effective date of his or her voluntary quit.

202 4. If an individual is notified by the employing unit of
203 the employer's intent to discharge the individual for reasons

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204 other than misconduct and the individual quits without good
205 cause before the date the discharge was to take effect, the
206 claimant is ineligible for benefits pursuant to s. 443.091(1)(d)
207 for failing to be available for work for the week or weeks of
208 unemployment occurring before the effective date of the
209 discharge.

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

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

213 b. Domestic violence, as defined in s. 741.28, which causes
214 the individual to reasonably believe that continued employment
215 will jeopardize the individual's safety or the safety of a
216 member of her or his immediate family. Such cause must be
217 substantiated by evidence that reasonably proves that domestic
218 violence has occurred, such as an injunction, protective order,
219 or other such reasonable and confidential documentation
220 authorized by state law.

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

224 443.1216 Employment.—Employment, as defined in s. 443.036,
225 is subject to this chapter under the following conditions:

226 (1)(a) The employment ~~subject to this chapter~~ includes a
227 service performed, including a service performed in interstate
228 commerce, by:

229 1. An officer of a corporation.

230 2. An individual who, under the usual common-law rules
231 applicable for ~~in~~ determining the employer-employee
232 relationship, is an employee. However, if ~~whenever~~ a client who ~~7~~

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233 ~~as defined in s. 443.036(18),~~ which would otherwise be
234 designated as an employing unit has contracted with an employee
235 leasing company to supply it with workers, those workers are
236 considered employees of the employee leasing company. An
237 employee leasing company may lease corporate officers of the
238 client to the client and other workers to the client, except as
239 prohibited by regulations of the Internal Revenue Service.
240 Employees of an employee leasing company must be reported under
241 the employee leasing company's tax identification number and
242 contribution rate for work performed for the employee leasing
243 company.

244 a. However, except for the internal employees of an
245 employee leasing company, each employee leasing company may make
246 a separate one-time election to report and pay contributions
247 under the tax identification number and contribution rate for
248 each client of the employee leasing company. Under the client
249 method, an employee leasing company choosing this option must
250 assign leased employees to the client company that is leasing
251 the employees. The client method is solely a method to report
252 and pay unemployment contributions, and, whichever method is
253 chosen, such election may not impact any other aspect of state
254 law. An employee leasing company that elects the client method
255 must pay contributions at the rates assigned to each client
256 company.

257 (I) The election applies to all of the employee leasing
258 company's current and future clients.

259 (II) The employee leasing company must notify the
260 Department of Revenue of its election by July 1, 2012, and such
261 election applies to reports and contributions for the first

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262 quarter of the following calendar year. The notification must
263 include:

264 (A) A list of each client company and the unemployment
265 account number or, if one has not yet been issued, the federal
266 employment identification number, as established by the employee
267 leasing company upon the election to file by client method;

268 (B) A list of each client company's current and previous
269 employees and their respective social security numbers for the
270 prior 3 state fiscal years or, if the client company has not
271 been a client for the prior 3 state fiscal years, such portion
272 of the prior 3 state fiscal years that the client company has
273 been a client must be supplied;

274 (C) The wage data and benefit charges associated with each
275 client company for the prior 3 state fiscal years or, if the
276 client company has not been a client for the prior 3 state
277 fiscal years, such portion of the prior 3 state fiscal years
278 that the client company has been a client must be supplied. If
279 the client company's employment record is chargeable with
280 benefits for less than 8 calendar quarters while being a client
281 of the employee leasing company, the client company must pay
282 contributions at the initial rate of 2.7 percent; and

283 (D) The wage data and benefit charges for the prior 3 state
284 fiscal years that cannot be associated with a client company
285 must be reported and charged to the employee leasing company.

286 (III) Subsequent to choosing the client method, the
287 employee leasing company may not change its reporting method.

288 (IV) The employee leasing company shall file a Florida
289 Department of Revenue Employer's Quarterly Report for each
290 client company by approved electronic means, and pay all

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291 contributions by approved electronic means.

292 (V) For the purposes of calculating experience rates when
293 the client method is chosen, each client's own benefit charges
294 and wage data experience while with the employee leasing company
295 determines each client's tax rate where the client has been a
296 client of the employee leasing company for at least 8 calendar
297 quarters before the election. The client company shall continue
298 to report the nonleased employees under its tax rate.

299 (VI) The election is binding on each client of the employee
300 leasing company for as long as a written agreement is in effect
301 between the client and the employee leasing company pursuant to
302 s. 468.525(3)(a). If the relationship between the employee
303 leasing company and the client terminates, the client retains
304 the wage and benefit history experienced under the employee
305 leasing company.

306 (VII) Notwithstanding which election method the employee
307 leasing company chooses, the applicable client company is an
308 employing unit for purposes of s. 443.071. The employee leasing
309 company or any of its officers or agents are liable for any
310 violation of s. 443.071 engaged in by such persons or entities.
311 The applicable client company or any of its officers or agents
312 are liable for any violation of s. 443.071 engaged in by such
313 persons or entities. The employee leasing company or its
314 applicable client company is not liable for any violation of s.
315 443.071 engaged in by the other party or by the other party's
316 officers or agents.

317 (VIII) If an employee leasing company fails to select the
318 client method of reporting not later than July 1, 2012, the
319 entity is required to report under the employee leasing

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320 company's tax identification number and contribution rate.

321 (IX) After an employee leasing company is licensed pursuant
322 to part XI of chapter 468, each newly licensed entity has 30
323 days after the date the license is granted to notify the tax
324 collection service provider in writing of their selection of the
325 client method. A newly licensed employee leasing company that
326 fails to timely select reporting pursuant to the client method
327 of reporting must report under the employee leasing company's
328 tax identification number and contribution rate.

329 (X) Irrespective of the election, each transfer of trade or
330 business, including workforce, or a portion thereof, between
331 employee leasing companies is subject to the provisions of s.
332 443.131(3)(g) if, at the time of the transfer, there is common
333 ownership, management, or control between the entities.

334 b. In addition to any other report required to be filed by
335 law, an employee leasing company shall submit a report to the
336 Labor Market Statistics Center within the Department of Economic
337 Opportunity which includes each client establishment and each
338 establishment of the leasing company, or as otherwise directed
339 by the department. The report must include the following
340 information for each establishment:

341 (I) The trade or establishment name;

342 (II) The former reemployment assistance account number, if
343 available;

344 (III) The former federal employer's identification number,
345 if available;

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

348 (V) A description of the client's primary business activity

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349 in order to verify or assign an industry code;
350 (VI) The address of the physical location;
351 (VII) The number of full-time and part-time employees who
352 worked during, or received pay that was subject to reemployment
353 assistance taxes for, the pay period including the 12th of the
354 month for each month of the quarter;
355 (VIII) The total wages subject to reemployment assistance
356 taxes paid during the calendar quarter;
357 (IX) An internal identification code to uniquely identify
358 each establishment of each client;
359 (X) The month and year that the client entered into the
360 contract for services; and
361 (XI) The month and year that the client terminated the
362 contract for services.

363 c. The report must be submitted electronically or in a
364 manner otherwise prescribed by the Department of Economic
365 Opportunity in the format specified by the Bureau of Labor
366 Statistics of the United States Department of Labor for its
367 Multiple Worksite Report for Professional Employer
368 Organizations. The report must be provided quarterly to the
369 Labor Market Statistics Center within the department, or as
370 otherwise directed by the department, and must be filed by the
371 last day of the month immediately after the end of the calendar
372 quarter. The information required in sub-sub-subparagraphs b.(X)
373 and (XI) need be provided only in the quarter in which the
374 contract to which it relates was entered into or terminated. The
375 sum of the employment data and the sum of the wage data in this
376 report must match the employment and wages reported in the
377 reemployment assistance quarterly tax and wage report. A report

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378 is not required for any calendar quarter preceding the third
379 calendar quarter of 2010.

380 d. The department shall adopt rules as necessary to
381 administer this subparagraph, and may administer, collect,
382 enforce, and waive the penalty imposed by s. 443.141(1)(b) for
383 the report required by this subparagraph.

384 e. For the purposes of this subparagraph, the term
385 "establishment" means any location where business is conducted
386 or where services or industrial operations are performed.

387 3. An individual other than an individual who is an
388 employee under subparagraph 1. or subparagraph 2., who performs
389 services for remuneration for any person:

390 a. As an agent-driver or commission-driver engaged in
391 distributing meat products, vegetable products, fruit products,
392 bakery products, beverages other than milk, or laundry or
393 drycleaning services for his or her principal.

394 b. As a traveling or city salesperson engaged on a full-
395 time basis in the solicitation on behalf of, and the
396 transmission to, his or her principal of orders from
397 wholesalers, retailers, contractors, or operators of hotels,
398 restaurants, or other similar establishments for merchandise for
399 resale or supplies for use in the business operations. This sub-
400 subparagraph does not apply to an agent-driver or a commission-
401 driver, or ~~and does not apply to~~ sideline sales activities
402 performed on behalf of a person other than the salesperson's
403 principal.

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

406 a. The contract of service contemplates that substantially

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407 all of the services are to be performed personally by the
408 individual;

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

412 c. The services are not in the nature of a single
413 transaction that is not part of a continuing relationship with
414 the person for whom the services are performed.

415 (2) The employment subject to this chapter includes service
416 performed in the employ of a public employer ~~as defined in s.~~
417 ~~443.036~~, if the service is excluded from the definition of
418 "employment" in s. 3306(c)(7) of the Federal Unemployment Tax
419 Act and is not excluded from the employment subject to this
420 chapter under subsection (4).

421 (13) The following are exempt from coverage under this
422 chapter:

423 (f) Service performed in the employ of a public employer ~~as~~
424 ~~defined in s. 443.036~~, except as provided in subsection (2), and
425 service performed in the employ of an instrumentality of a
426 public employer as described in s.443.036(36)(b) or (c), to the
427 extent that the instrumentality is immune under the United
428 States Constitution from the tax imposed by s. 3301 of the
429 Internal Revenue Code for that service.

430 Section 4. Paragraph (f) of subsection (3) of section
431 443.131, Florida Statutes, is amended to read:

432 443.131 Contributions.—

433 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
434 EXPERIENCE.—

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

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436 1. For the purposes of this subsection, two or more
437 employers who are parties to a transfer of business or the
438 subject of a merger, consolidation, or other form of
439 reorganization, effecting a change in legal identity or form,
440 are deemed a single employer and are considered to be one
441 employer with a continuous employment record if the tax
442 collection service provider finds that the successor employer
443 continues to carry on the employing enterprises of all of the
444 predecessor employers, ~~and that the successor employer~~ has paid
445 all contributions required of and due from all of the
446 predecessor employers, ~~and~~ has assumed liability for all
447 contributions that may become due from all of the predecessor
448 employers. ~~In addition,~~ An employer may not be considered a
449 successor under this subparagraph if the employer purchases a
450 company with a lower rate into which employees with job
451 functions unrelated to the business endeavors of the predecessor
452 are transferred for the purpose of acquiring the low rate and
453 avoiding payment of contributions. ~~As used in this paragraph,~~
454 Notwithstanding s. 443.036(14), the term "contributions," as
455 used in this paragraph, means all indebtedness to the tax
456 collection service provider, including, but not limited to,
457 interest, penalty, collection fee, and service fee.

458 2. A successor employer must accept the transfer of all of
459 the predecessor employers' employment records within 30 days
460 after the date of the official notification of liability by
461 succession. If a predecessor employer has unpaid contributions
462 or outstanding quarterly reports, the successor employer must
463 pay the total amount with certified funds within 30 days after
464 the date of the notice listing the total amount due. After the

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465 total indebtedness is paid, the tax collection service provider
466 shall transfer the employment records of all of the predecessor
467 employers to the successor employer's employment record. The tax
468 collection service provider shall determine the contribution
469 rate of the combined successor and predecessor employers upon
470 the transfer of the employment records, as prescribed by rule,
471 in order to calculate any change in the contribution rate
472 resulting from the transfer of the employment records.

473 ~~3.2.~~ Regardless of whether a predecessor employer's
474 employment record is transferred to a successor employer under
475 this paragraph, the tax collection service provider shall treat
476 the predecessor employer, if he or she subsequently employs
477 individuals, as an employer without a previous employment record
478 or, if his or her coverage is terminated under s. 443.121, as a
479 new employing unit.

480 ~~4.3.~~ The state agency providing reemployment assistance tax
481 collection services may adopt rules governing the partial
482 transfer of experience rating when an employer transfers an
483 identifiable and segregable portion of his or her payrolls and
484 business to a successor employing unit. As a condition of each
485 partial transfer, these rules must require the following to be
486 filed with the tax collection service provider: an application
487 by the successor employing unit, an agreement by the predecessor
488 employer, and the evidence required by the tax collection
489 service provider to show the benefit experience and payrolls
490 attributable to the transferred portion through the date of the
491 transfer. These rules must provide that the successor employing
492 unit, if not an employer subject to this chapter, becomes an
493 employer as of the date of the transfer and that the transferred

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494 portion of the predecessor employer's employment record is
495 removed from the employment record of the predecessor employer.
496 For each calendar year after the date of the transfer of the
497 employment record in the records of the tax collection service
498 provider, the service provider shall compute the contribution
499 rate payable by the successor employer or employing unit based
500 on his or her employment record, combined with the transferred
501 portion of the predecessor employer's employment record. These
502 rules may also prescribe what contribution rates are payable by
503 the predecessor and successor employers for the period between
504 the date of the transfer of the transferred portion of the
505 predecessor employer's employment record in the records of the
506 tax collection service provider and the first day of the next
507 calendar year.

508 5.4. This paragraph does not apply to an employee leasing
509 company and client contractual agreement ~~as defined in s.~~
510 ~~443.036~~, except as provided in s. 443.1216(1)(a)2.a. The tax
511 collection service provider shall, if the contractual agreement
512 is terminated or the employee leasing company fails to submit
513 reports or pay contributions as required by the service
514 provider, treat the client as a new employer without previous
515 employment record unless the client is otherwise eligible for a
516 variation from the standard rate.

517 Section 5. This act shall take effect July 1, 2013.