

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Eskamani offered the following:

Amendment (with title amendment)

Remove lines 425-487 and insert:

Section 8. Subsections (3) through (46) of section 443.036, Florida Statutes, are renumbered as subsections (4) through (47), respectively, present subsections (24) and (43) of that section are amended, and a new subsection (3) is added to that section, to read:

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

(3) "Alternative base period" means the four most recently completed calendar quarters before an individual's benefit year,

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13 if such quarters qualify the individual for benefits and were
14 not previously used to establish a prior valid benefit year.

15 (25)-(24) "High quarter" means the quarter in an
16 individual's base period, or in the individual's alternative
17 base period if an alternative base period is used for
18 determining benefits eligibility, in which the individual has
19 the greatest amount of wages paid, regardless of the number of
20 employers paying wages in that quarter.

21 (44)-(43) "Temporary layoff" means:

22 (a) An individual's a job separation due to lack of work
23 which does not exceed 8 consecutive weeks and which has a fixed
24 or approximate return-to-work date; or

25 (b) An individual's employer-initiated furlough that
26 causes a mandatory complete stoppage of work if such furlough is
27 temporary and the individual remains job attached and is
28 expected to return to work with the employer.

29 Section 9. Paragraphs (c), (d), and (g) of subsection (1)
30 of section 443.091, Florida Statutes, are amended to read:

31 443.091 Benefit eligibility conditions.—

32 (1) An unemployed individual is eligible to receive
33 benefits for any week only if the Department of Economic
34 Opportunity finds that:

35 (c) To make continued claims for benefits, she or he is
36 reporting to the department in accordance with this paragraph
37 and department rules. Department rules may not conflict with s.

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38 443.111(1) (b), which requires that each claimant continue to
39 report regardless of any pending appeal relating to her or his
40 eligibility or disqualification for benefits.

41 1. For each week of unemployment claimed, each report
42 must, at a minimum, include the name and, ~~address, and telephone~~
43 ~~number~~ of each prospective employer contacted, or the date the
44 claimant reported to a one-stop career center, pursuant to
45 paragraph (d). For the purposes of this subparagraph, the term
46 "address" means a website address, a physical address, or an e-
47 mail address.

48 2. The department shall offer an online assessment aimed
49 at identifying an individual's skills, abilities, and career
50 aptitude. The skills assessment must be voluntary, and the
51 department shall allow a claimant to choose whether to take the
52 skills assessment. The online assessment shall be made available
53 to any person seeking services from a local workforce
54 development board or a one-stop career center.

55 a. If the claimant chooses to take the online assessment,
56 the outcome of the assessment shall be made available to the
57 claimant, local workforce development board, and one-stop career
58 center. The department, local workforce development board, or
59 one-stop career center shall use the assessment to develop a
60 plan for referring individuals to training and employment
61 opportunities. Aggregate data on assessment outcomes may be made
62 available to CareerSource Florida, Inc., and Enterprise Florida,

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63 Inc., for use in the development of policies related to
64 education and training programs that will ensure that businesses
65 in this state have access to a skilled and competent workforce.

66 b. Individuals shall be informed of and offered services
67 through the one-stop delivery system, including career
68 counseling, the provision of skill match and job market
69 information, and skills upgrade and other training
70 opportunities, and shall be encouraged to participate in such
71 services at no cost to the individuals. The department shall
72 coordinate with CareerSource Florida, Inc., the local workforce
73 development boards, and the one-stop career centers to identify,
74 develop, and use best practices for improving the skills of
75 individuals who choose to participate in skills upgrade and
76 other training opportunities. The department may contract with
77 an entity to create the online assessment in accordance with the
78 competitive bidding requirements in s. 287.057. The online
79 assessment must work seamlessly with the Reemployment Assistance
80 Claims and Benefits Information System.

81 (d) She or he is able to work and is available for work.
82 In order to assess eligibility for a claimed week of
83 unemployment, the department shall develop criteria to determine
84 a claimant's ability to work and availability for work. A
85 claimant must be actively seeking work in order to be considered
86 available for work. This means engaging in systematic and
87 sustained efforts to find work, including contacting at least

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88 three ~~five~~ prospective employers for each week of unemployment
89 claimed. For the purposes of meeting the requirements of this
90 paragraph, a claimant may contact a prospective employer by
91 submitting a resume to an employer through an online job search
92 service. A claimant who submits a resume to at least three
93 employers through an online job search service satisfies the
94 work search requirements of this paragraph. The department may
95 require the claimant to provide proof of such efforts to the
96 one-stop career center as part of reemployment services. A
97 claimant's proof of work search efforts may not include the same
98 prospective employer at the same location in 3 consecutive
99 weeks, unless the employer has indicated since the time of the
100 initial contact that the employer is hiring. The department
101 shall conduct random reviews of work search information provided
102 by claimants. As an alternative to contacting at least three
103 ~~five~~ prospective employers for any week of unemployment claimed,
104 a claimant may, for that same week, report in person to a one-
105 stop career center to meet with a representative of the center
106 and access reemployment services of the center. The center shall
107 keep a record of the services or information provided to the
108 claimant and shall provide the records to the department upon
109 request by the department. However:

110 1. Notwithstanding any other provision of this paragraph
111 or paragraphs (b) and (e), an otherwise eligible individual may
112 not be denied benefits for any week because she or he is in

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113 training with the approval of the department, or by reason of s.
114 443.101(2) relating to failure to apply for, or refusal to
115 accept, suitable work. Training may be approved by the
116 department in accordance with criteria prescribed by rule. A
117 claimant's eligibility during approved training is contingent
118 upon satisfying eligibility conditions prescribed by rule.

119 2. Notwithstanding any other provision of this chapter, an
120 otherwise eligible individual who is in training approved under
121 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
122 determined ineligible or disqualified for benefits due to
123 enrollment in such training or because of leaving work that is
124 not suitable employment to enter such training. As used in this
125 subparagraph, the term "suitable employment" means work of a
126 substantially equal or higher skill level than the worker's past
127 adversely affected employment, as defined for purposes of the
128 Trade Act of 1974, as amended, the wages for which are at least
129 80 percent of the worker's average weekly wage as determined for
130 purposes of the Trade Act of 1974, as amended.

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

135 4. Union members who customarily obtain employment through
136 a union hiring hall may satisfy the work search requirements of
137 this paragraph by reporting daily to their union hall.

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138 5. The work search requirements of this paragraph do not
139 apply to persons who are unemployed as a result of a temporary
140 layoff or who are claiming benefits under an approved short-time
141 compensation plan as provided in s. 443.1116.

142 6. In small counties as defined in s. 120.52(19), a
143 claimant engaging in systematic and sustained efforts to find
144 work must contact at least three prospective employers for each
145 week of unemployment claimed.

146 7. The work search requirements of this paragraph do not
147 apply to persons required to participate in reemployment
148 services under paragraph (e).

149 (g) She or he has been paid wages for insured work equal
150 to 1.5 times her or his high quarter wages during her or his
151 base period, except that an unemployed individual is not
152 eligible to receive benefits if the base period wages are less
153 than \$3,400. If an unemployed individual is ineligible for
154 benefits based on base period wages, his or her wages shall be
155 calculated using the alternative base period, and his or her
156 claim shall be established using such wages.

157 Section 10. Subsection (2) of section 443.111, Florida
158 Statutes, is amended, and paragraph (b) of subsection (1) of
159 that section is republished, to read:

160 443.111 Payment of benefits.—

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161 (1) MANNER OF PAYMENT.—Benefits are payable from the fund
162 in accordance with rules adopted by the Department of Economic
163 Opportunity, subject to the following requirements:

164 (b) As required under s. 443.091(1), each claimant must
165 report at least biweekly to receive reemployment assistance
166 benefits and to attest to the fact that she or he is able and
167 available for work, has not refused suitable work, is seeking
168 work and has met the requirements of s. 443.091(1)(d), and, if
169 she or he has worked, to report earnings from that work. Each
170 claimant must continue to report regardless of any appeal or
171 pending appeal relating to her or his eligibility or
172 disqualification for benefits.

173 (2) QUALIFYING REQUIREMENTS.—

174 (a) To establish a benefit year for reemployment
175 assistance benefits, an individual must have:

176 ~~1.(a)~~ Wage credits in two or more calendar quarters of the
177 individual's base period or alternative base period.

178 ~~2.(b)~~ Minimum total base period wage credits equal to the
179 high quarter wages multiplied by 1.5, but at least \$3,400 in the
180 base period, or in the alternative base period if the
181 alternative base period is used for benefits eligibility.

182 (b)1. If a worker is ineligible for benefits based on base
183 period wages, wages for that worker must be calculated using an
184 alternative base period and the claim shall be established using
185 such wages.

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186 2. If the wage information for an individual's most
187 recently completed calendar quarter is unavailable to the
188 department from regular quarterly reports of systematically
189 accessible wage information, the department must promptly
190 contact the individual's employer to obtain the wage
191 information.

192 3. Wages that fall within the alternative base period of
193 claims established under this paragraph are not available for
194 reuse in qualifying for any subsequent benefit years.

195 4. The department shall adopt rules to administer this
196 paragraph.

197 Section 11. Paragraph (a) of subsection (4) of section
198 215.425, Florida Statutes, is amended to read:

199 215.425 Extra compensation claims prohibited; bonuses;
200 severance pay.—

201 (4) (a) On or after July 1, 2011, a unit of government that
202 enters into a contract or employment agreement, or renewal or
203 renegotiation of an existing contract or employment agreement,
204 that contains a provision for severance pay with an officer,
205 agent, employee, or contractor must include the following
206 provisions in the contract:

207 1. A requirement that severance pay provided may not
208 exceed an amount greater than 20 weeks of compensation.

209 2. A prohibition of provision of severance pay when the
210 officer, agent, employee, or contractor has been fired for

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211 misconduct, as defined in s. 443.036(30) ~~s. 443.036(29)~~, by the
212 unit of government.

213 Section 12. Paragraph (a) of subsection (1) and paragraph
214 (f) of subsection (13) of section 443.1216, Florida Statutes,
215 are amended to read:

216 443.1216 Employment.—Employment, as defined in s. 443.036,
217 is subject to this chapter under the following conditions:

218 (1) (a) The employment subject to this chapter includes a
219 service performed, including a service performed in interstate
220 commerce, by:

221 1. An officer of a corporation.

222 2. An individual who, under the usual common-law rules
223 applicable in determining the employer-employee relationship, is
224 an employee. However, whenever a client, as defined in s.
225 443.036(19) ~~s. 443.036(18)~~, which would otherwise be designated
226 as an employing unit has contracted with an employee leasing
227 company to supply it with workers, those workers are considered
228 employees of the employee leasing company. An employee leasing
229 company may lease corporate officers of the client to the client
230 and other workers to the client, except as prohibited by
231 regulations of the Internal Revenue Service. Employees of an
232 employee leasing company must be reported under the employee
233 leasing company's tax identification number and contribution
234 rate for work performed for the employee leasing company.

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235 a. However, except for the internal employees of an
236 employee leasing company, each employee leasing company may make
237 a separate one-time election to report and pay contributions
238 under the tax identification number and contribution rate for
239 each client of the employee leasing company. Under the client
240 method, an employee leasing company choosing this option must
241 assign leased employees to the client company that is leasing
242 the employees. The client method is solely a method to report
243 and pay unemployment contributions, and, whichever method is
244 chosen, such election may not impact any other aspect of state
245 law. An employee leasing company that elects the client method
246 must pay contributions at the rates assigned to each client
247 company.

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

250 (II) The employee leasing company must notify the
251 Department of Revenue of its election by July 1, 2012, and such
252 election applies to reports and contributions for the first
253 quarter of the following calendar year. The notification must
254 include:

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

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259 (B) A list of each client company's current and previous
260 employees and their respective social security numbers for the
261 prior 3 state fiscal years or, if the client company has not
262 been a client for the prior 3 state fiscal years, such portion
263 of the prior 3 state fiscal years that the client company has
264 been a client must be supplied;

265 (C) The wage data and benefit charges associated with each
266 client company for the prior 3 state fiscal years or, if the
267 client company has not been a client for the prior 3 state
268 fiscal years, such portion of the prior 3 state fiscal years
269 that the client company has been a client must be supplied. If
270 the client company's employment record is chargeable with
271 benefits for less than 8 calendar quarters while being a client
272 of the employee leasing company, the client company must pay
273 contributions at the initial rate of 2.7 percent; and

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

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

280 (IV) The employee leasing company shall file a Florida
281 Department of Revenue Employer's Quarterly Report for each
282 client company by approved electronic means, and pay all
283 contributions by approved electronic means.

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284 (V) For the purposes of calculating experience rates when
285 the client method is chosen, each client's own benefit charges
286 and wage data experience while with the employee leasing company
287 determines each client's tax rate where the client has been a
288 client of the employee leasing company for at least 8 calendar
289 quarters before the election. The client company shall continue
290 to report the nonleased employees under its tax rate.

291 (VI) The election is binding on each client of the
292 employee leasing company for as long as a written agreement is
293 in effect between the client and the employee leasing company
294 pursuant to s. 468.525(3) (a). If the relationship between the
295 employee leasing company and the client terminates, the client
296 retains the wage and benefit history experienced under the
297 employee leasing company.

298 (VII) Notwithstanding which election method the employee
299 leasing company chooses, the applicable client company is an
300 employing unit for purposes of s. 443.071. The employee leasing
301 company or any of its officers or agents are liable for any
302 violation of s. 443.071 engaged in by such persons or entities.
303 The applicable client company or any of its officers or agents
304 are liable for any violation of s. 443.071 engaged in by such
305 persons or entities. The employee leasing company or its
306 applicable client company is not liable for any violation of s.
307 443.071 engaged in by the other party or by the other party's
308 officers or agents.

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309 (VIII) If an employee leasing company fails to select the
310 client method of reporting not later than July 1, 2012, the
311 entity is required to report under the employee leasing
312 company's tax identification number and contribution rate.

313 (IX) After an employee leasing company is licensed
314 pursuant to part XI of chapter 468, each newly licensed entity
315 has 30 days after the date the license is granted to notify the
316 tax collection service provider in writing of their selection of
317 the client method. A newly licensed employee leasing company
318 that fails to timely select reporting pursuant to the client
319 method of reporting must report under the employee leasing
320 company's tax identification number and contribution rate.

321 (X) Irrespective of the election, each transfer of trade
322 or business, including workforce, or a portion thereof, between
323 employee leasing companies is subject to the provisions of s.
324 443.131(3)(g) if, at the time of the transfer, there is common
325 ownership, management, or control between the entities.

326 b. In addition to any other report required to be filed by
327 law, an employee leasing company shall submit a report to the
328 Labor Market Statistics Center within the Department of Economic
329 Opportunity which includes each client establishment and each
330 establishment of the leasing company, or as otherwise directed
331 by the department. The report must include the following
332 information for each establishment:

333 (I) The trade or establishment name;

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334 (II) The former reemployment assistance account number, if
335 available;

336 (III) The former federal employer's identification number,
337 if available;

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

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

342 (VI) The address of the physical location;

343 (VII) The number of full-time and part-time employees who
344 worked during, or received pay that was subject to reemployment
345 assistance taxes for, the pay period including the 12th of the
346 month for each month of the quarter;

347 (VIII) The total wages subject to reemployment assistance
348 taxes paid during the calendar quarter;

349 (IX) An internal identification code to uniquely identify
350 each establishment of each client;

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

353 (XI) The month and year that the client terminated the
354 contract for services.

355 c. The report must be submitted electronically or in a
356 manner otherwise prescribed by the Department of Economic
357 Opportunity in the format specified by the Bureau of Labor
358 Statistics of the United States Department of Labor for its

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359 Multiple Worksite Report for Professional Employer
360 Organizations. The report must be provided quarterly to the
361 Labor Market Statistics Center within the department, or as
362 otherwise directed by the department, and must be filed by the
363 last day of the month immediately after the end of the calendar
364 quarter. The information required in sub-sub-subparagraphs b.(X)
365 and (XI) need be provided only in the quarter in which the
366 contract to which it relates was entered into or terminated. The
367 sum of the employment data and the sum of the wage data in this
368 report must match the employment and wages reported in the
369 reemployment assistance quarterly tax and wage report.

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

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

377 3. An individual other than an individual who is an
378 employee under subparagraph 1. or subparagraph 2., who performs
379 services for remuneration for any person:

380 a. As an agent-driver or commission-driver engaged in
381 distributing meat products, vegetable products, fruit products,
382 bakery products, beverages other than milk, or laundry or
383 drycleaning services for his or her principal.

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384 b. As a traveling or city salesperson engaged on a full-
385 time basis in the solicitation on behalf of, and the
386 transmission to, his or her principal of orders from
387 wholesalers, retailers, contractors, or operators of hotels,
388 restaurants, or other similar establishments for merchandise for
389 resale or supplies for use in the business operations. This sub-
390 subparagraph does not apply to an agent-driver or a commission-
391 driver and does not apply to sideline sales activities performed
392 on behalf of a person other than the salesperson's principal.

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

395 a. The contract of service contemplates that substantially
396 all of the services are to be performed personally by the
397 individual;

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

401 c. The services are not in the nature of a single
402 transaction that is not part of a continuing relationship with
403 the person for whom the services are performed.

404 (13) The following are exempt from coverage under this
405 chapter:

406 (f) Service performed in the employ of a public employer
407 as defined in s. 443.036, except as provided in subsection (2),
408 and service performed in the employ of an instrumentality of a

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409 public employer as described in s. 443.036(36)(b) or (c) ~~s.~~
410 ~~443.036(35)(b) or (c)~~, to the extent that the instrumentality is
411 immune under the United States Constitution from the tax imposed
412 by s. 3301 of the Internal Revenue Code for that service.

413 Section 13. Paragraph (f) of subsection (3) of section
414 443.131, Florida Statutes, is amended to read:

415 443.131 Contributions.—

416 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
417 EXPERIENCE.—

418 (f) Transfer of employment records.—

419 1. For the purposes of this subsection, two or more
420 employers who are parties to a transfer of business or the
421 subject of a merger, consolidation, or other form of
422 reorganization, effecting a change in legal identity or form,
423 are deemed a single employer and are considered to be one
424 employer with a continuous employment record if the tax
425 collection service provider finds that the successor employer
426 continues to carry on the employing enterprises of all of the
427 predecessor employers and that the successor employer has paid
428 all contributions required of and due from all of the
429 predecessor employers and has assumed liability for all
430 contributions that may become due from all of the predecessor
431 employers. In addition, an employer may not be considered a
432 successor under this subparagraph if the employer purchases a
433 company with a lower rate into which employees with job

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434 functions unrelated to the business endeavors of the predecessor
435 are transferred for the purpose of acquiring the low rate and
436 avoiding payment of contributions. As used in this paragraph,
437 notwithstanding s. 443.036(15) ~~s. 443.036(14)~~, the term
438 "contributions" means all indebtedness to the tax collection
439 service provider, including, but not limited to, interest,
440 penalty, collection fee, and service fee. A successor employer
441 must accept the transfer of all of the predecessor employers'
442 employment records within 30 days after the date of the official
443 notification of liability by succession. If a predecessor
444 employer has unpaid contributions or outstanding quarterly
445 reports, the successor employer must pay the total amount with
446 certified funds within 30 days after the date of the notice
447 listing the total amount due. After the total indebtedness is
448 paid, the tax collection service provider shall transfer the
449 employment records of all of the predecessor employers to the
450 successor employer's employment record. The tax collection
451 service provider shall determine the contribution rate of the
452 combined successor and predecessor employers upon the transfer
453 of the employment records, as prescribed by rule, in order to
454 calculate any change in the contribution rate resulting from the
455 transfer of the employment records.

456 2. Regardless of whether a predecessor employer's
457 employment record is transferred to a successor employer under
458 this paragraph, the tax collection service provider shall treat

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459 the predecessor employer, if he or she subsequently employs
460 individuals, as an employer without a previous employment record
461 or, if his or her coverage is terminated under s. 443.121, as a
462 new employing unit.

463 3. The state agency providing reemployment assistance tax
464 collection services may adopt rules governing the partial
465 transfer of experience rating when an employer transfers an
466 identifiable and segregable portion of his or her payrolls and
467 business to a successor employing unit. As a condition of each
468 partial transfer, these rules must require the following to be
469 filed with the tax collection service provider: an application
470 by the successor employing unit, an agreement by the predecessor
471 employer, and the evidence required by the tax collection
472 service provider to show the benefit experience and payrolls
473 attributable to the transferred portion through the date of the
474 transfer. These rules must provide that the successor employing
475 unit, if not an employer subject to this chapter, becomes an
476 employer as of the date of the transfer and that the transferred
477 portion of the predecessor employer's employment record is
478 removed from the employment record of the predecessor employer.
479 For each calendar year after the date of the transfer of the
480 employment record in the records of the tax collection service
481 provider, the service provider shall compute the contribution
482 rate payable by the successor employer or employing unit based
483 on his or her employment record, combined with the transferred

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484 portion of the predecessor employer's employment record. These
485 rules may also prescribe what contribution rates are payable by
486 the predecessor and successor employers for the period between
487 the date of the transfer of the transferred portion of the
488 predecessor employer's employment record in the records of the
489 tax collection service provider and the first day of the next
490 calendar year.

491 4. This paragraph does not apply to an employee leasing
492 company and client contractual agreement as defined in s.
493 443.036, except as provided in s. 443.1216(1)(a)2.a. The tax
494 collection service provider shall, if the contractual agreement
495 is terminated or the employee leasing company fails to submit
496 reports or pay contributions as required by the service
497 provider, treat the client as a new employer without previous
498 employment record unless the client is otherwise eligible for a
499 variation from the standard rate.

500

501

502

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

503

Remove lines 32-36 and insert:

504

amending s. 443.036, F.S.; defining and revising terms

505

for purposes of the Reemployment Assistance Program

506

Law; amending s. 443.091, F.S.; revising requirements

507

for reemployment assistance benefits eligibility;

508

amending s. 443.111, F.S.; requiring an alternative

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509 base period to be used under certain circumstances
510 when calculating wages in determining qualification
511 for reemployment assistance benefits; requiring the
512 department to contact an individual's employer if
513 certain wage information is unavailable through
514 specified means; specifying that wages that fall
515 within an alternative base period are not available
516 for reuse in subsequent benefit years; requiring the
517 department to adopt rules; amending ss. 215.425,
518 443.1216, and 443.131, F.S.; conforming cross-
519 references; amending s. 443.101, F.S.;

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