

No. 396

AN ACT

To further amend the act, approved the fifth day of December, one thousand nine hundred thirty-six (1937 Pamphlet Laws 2897), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," by providing for the disposition of obsolete files and records and for the selection of personnel in the classified service; requiring signature of predecessor on all transfers of employer experience; modifying provisions with respect to contributions, relief from charges and benefit qualifications; defining and redefining certain terms; and modifying provisions with respect to recoupment of benefits.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Clauses (u) and (z.5) of section 4 of the act, approved the fifth day of December, one thousand nine hundred thirty-six (1937 Pamphlet Laws 2897), entitled "An act establishing a system of unemployment compensation to be administered by the Department of Labor and Industry and its existing and newly created agencies with personnel (with certain exceptions) selected on a civil service basis; requiring employers to keep records and make reports, and certain employers to pay contributions based on payrolls to provide moneys for the payment of compensation to certain unemployed persons; providing procedure and administrative details for the determination, payment and collection of such contributions and the payment of such compensation; providing for cooperation with the Federal Government and its agencies; creating certain special funds in the custody of the State Treasurer; and prescribing penalties," as amended by the act, approved the twenty-ninth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1580), are hereby further amended to read as follows:

Section 4. Definitions.—The following words and phrases, as used in this act, shall have the following meanings, unless the context clearly requires otherwise:

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(u) "Unemployed"—An individual shall be deemed unemployed (I) with respect to any week (i) during

"Unemployment Compensation Law."

Clauses (u) and (z.5) of section 4, act of December 5, 1936, 1937 P. L. 2897, as amended by act of September 29, 1951, P. L. 1580, further amended.

which he performs no services for which remuneration is paid or payable to him and (ii) with respect to which no remuneration is paid or payable to him, or (II) with respect to any week of less than his full-time work if the remuneration paid or payable to him with respect to such week is less than his weekly benefit rate *plus six dollars (\$6)*: Provided, That for the purposes of this subsection, (i) vacation pay and similar payments, whether or not legally required to be paid, and (ii) wages in lieu of notice, separation allowances, dismissal wages and similar payments, which are legally required to be paid, *shall be deemed remuneration paid or payable with respect to such period as shall be determined by rules and regulations of the department. *Charges resulting exclusively from the payment of benefits made solely by reason of this particular amendment of this particular subsection shall be considered only on the basis of a five year average in the determination of the contribution rate of base year employer.*

(z.5) "Average Annual Payroll" means the average of the last [three or] five consecutive "annual payrolls" of any employer [, whichever is the lesser].

Said act amended by adding, after section 208 thereof, a new section numbered 208.1.

Section 2. Said act is hereby amended by adding, after section 208 thereof, a new section to read as follows:

***Section 208.1. Civil Service Appointment of Personnel.—Any person who, on the first day of January, one thousand nine hundred fifty-three, was employed in the classified service in the department and who has not qualified therefor by examination and been regularly appointed thereto, may make application to the Civil Service Commission, in the manner and within the time prescribed by said commission, for appointment to the position in which he was and is employed; and notwithstanding any provisions of the act, approved the fifth day of August, one thousand nine hundred forty-one (Pamphlet Laws 725), known as the "Civil Service Act," or any other act, upon the finding of said commission that he possesses the minimum qualifications prescribed therefor, shall be accorded regular employe status as of the effective date of this amendment.*

Section 209, subsections (d) and (e) of section 301, subsection (f) of section 302, section 310, section 311, and subsections (d) and (f) of section 401, said act, as amended or last amended by act of September 29, 1951, P. L. 1580, further amended.

Section 3. Section 209, subsections (d) and (e) of section 301, subsection (f) of section 302, section 310, section 311, and subsections (d) and (f) of section 401 of said act, as amended or last amended by the act, approved the twenty-ninth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1580), are hereby further amended to read as follows:

Section 209. Obsolete Files, Records, etc.—The department may cause to be made such summaries, com-

* "shall be deemed remuneration paid" omitted in original.

** "Section 208.1. Civil Service Appointment of Personnel" omitted in original

pilations, photographs, duplications or reproductions of any records, reports, *or transcripts thereof, as it may deem advisable for the effective and economical preservation of the information contained therein [; and such]. *Original documents so photographed, duplicated or reproduced may be destroyed.* Such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceedings under this act if the original record or records would have been admissible therein.

The provisions of section five hundred twenty-four of the Administrative Code of one thousand nine hundred twenty-nine, as amended, to the contrary notwithstanding, the department may provide by regulation for the destruction, after reasonable periods, of any records, reports, transcripts, other papers in its custody, or reproductions thereof, the preservation of which is no longer necessary for the establishment of contribution liability or of benefit rights or for any other purpose necessary to the proper administration of this act, including any required audit thereof [: Provided, That contribution]. *Contribution reports of employers or the photographs thereof* shall be retained for a period of at least two years from the date of filing.

Section 301. Contributions by Employers; Experience Rating.—

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(d) Successor-in-interest. Where an employer, subsequent to the thirtieth day of June, one thousand nine hundred and forty-nine, transfers his or its organization, trade or business, in whole or in part, to a successor-in-interest *who continues essentially the same business activity of the whole or part transferred*, such successor-in-interest may, prior to the end of the calendar year subsequent to the calendar year in which the transfer occurred, make application for transfer of the whole, or appropriate part, of the experience record of the preceding employer to the successor-in-interest, including credit for the years during which contributions were paid by the preceding employer [: Provided, however Where such transfer involves only a part of such organization, trade or business of the preceding employer, the]. *The department shall transfer the whole or appropriate part of such experience record of the preceding employer only if such preceding employer has joined in such application and has filed with the department such supporting schedules or other information with respect to such experience record as the department may require.* If the application for such transfer is filed in accordance with the rules and regulations of the de-

* "and" in original.

partment, the department may allow such transfer only if all contributions, interest and penalties owing by the predecessor have been or are paid [and the department finds that the employment experience of the preceding employer with respect to the organization, trade or business, or part thereof, as the case may be, which has been transferred, may be considered indicative of the future employment experience of the successor-in-interest] *at the time such application is filed with the department.* In the event of a part transfer of an employer's organization, trade or business, only such portion of the experience record of the preceding employer as such employer's *average annual wages* for the last *three* calendar [year's annual payroll] *years* of the organization, trade or business transferred bears to his total *average annual payroll* for such last *three* calendar [year] *years*, shall be transferred: *Provided, That if the part transferred has been in existence for a period of less than three calendar years but more than one calendar year, then only such portion of the experience record of the preceding employer as the average annual wages for such period of the part transferred bears to the total average annual payroll for such period shall be transferred,* and credit shall be given to the successor-in-interest only for the years during which contributions were paid by the preceding employer with respect to that part of the organization, trade or business transferred. A transfer of a reserve account balance, in whole or in part, having been applied for and approved by the department, the preceding employer shall not be entitled to consideration for an adjusted rate for the calendar year following the date of transfer and for subsequent calendar years, based upon his reserve account balance which has been thus transferred.

A preceding employer or successor-in-interest who, prior to the transfer, was an employer during the calendar year in which the transfer occurred, shall not have his rate of contribution adjusted under the provisions of this subsection for the remainder of such year. A successor-in-interest who, prior to the transfer, was not an employer during the calendar year in which the transfer occurred and who has made application for a transfer which has been approved by the department, as provided herein, and who, together with his predecessor, has paid contributions for the period required under subsection (a) of section three hundred one with respect to the organization, trade or business, or part thereof, which has been transferred, shall be assigned the same rate of contribution as the preceding employer for the remainder of such year, after which his rate of contribution shall be determined on the basis of the

balance in the reserve account which has been combined with any other reserve account which such successor-in-interest may have acquired.

(e) (1) The department, at least once during each calendar quarter, shall furnish each employer with a notice showing the amount of compensation paid during the preceding calendar quarter and charged to such employer's account, including the names of the claimants, the weeks for which compensation was paid, and the amount of compensation charged. All questions involving the eligibility of a claimant to receive compensation which have been resolved with notice to the employer as provided under the provisions of section five hundred one of this act shall remain final, and such eligibility may not be directly contested by an employer under the provisions of this section. However, any determination of eligibility or allowance of benefits as to which the employer was not furnished notice under the provisions of section five hundred one of this act shall become final, unless a protest contesting such determination is filed by the employer with the department within [one hundred twenty (120)] *ninety (90)* days from the date of the mailing of notice under the provisions of this subsection. Where such protest has been filed, the department shall proceed in accordance with the provisions of section five hundred one and furnish the employer with notice of its determination or allowance. The clerical accuracy of the notice provided under the provisions of this subsection may not be contested by an employer in connection with any future appeal by the employer from the rate of contribution assigned to him, unless within [one hundred and twenty] *ninety* days from the date of mailing of such notice, the employer files with the department a protest in writing contesting the clerical accuracy of such notice and setting forth in detail the item or items to which exception is taken and the reasons therefor. Such period of [one hundred and twenty] *ninety* days may be extended with the approval of the department upon written application by the employer filed prior to the expiration of such period.

(2) The department shall promptly notify each employer of his rate of contribution for the calendar year, determined as provided in this section. The determination of the department of the employer's rate of contribution shall become conclusive and binding upon the employer, unless within [one hundred and twenty] *ninety* days after the mailing of notice thereof to the employer's last known post office address [or prior to the expiration of the calendar year to which the notice relates whichever is the greater period] the employer

files an application for review [and redetermination], setting forth his reasons therefor: Provided, That if the department finds that because of an error of the department it has notified an employer that his rate of contribution is more than the rate to which he is entitled, the department shall, [subject only to the time limitation prescribed in section 311 for the allowance of refunds to employers] *within one year from the date of such notice*, adjust the rate of contribution. The department may, if it deems the reasons set forth by the employer insufficient to change the rate of contribution, deny the application, otherwise it shall grant the employer a fair hearing. The employer shall be promptly notified of the denial of his application or of the department's redetermination, both of which shall become final and conclusive within thirty days after the mailing of notice thereof to the employer's last known post office address, unless the employer shall appeal by petition from the action of the department to the Court of Common Pleas of Dauphin County within such time.

Section 302. Establishment and Maintenance of Employer's Reserve Accounts.—The department shall establish and maintain for each employer a separate employer's reserve account in the following manner:

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(f) Subsequent to June thirtieth, one thousand nine hundred forty-nine, such account shall be charged with all compensation, by even dollars, paid to each individual who received from such employer wage credits constituting the base of such compensation, in the proportion that such wage credits with such employer bears to the total wage credits received by such individual from all employers: Provided, That if the department finds that such individual was separated from his most recent work for such employer due to being discharged for willful misconduct connected with such work, or due to his [voluntarily] leaving such work without good cause attributable to his employment, thereafter no compensation paid to such individual with respect to any week of unemployment occurring subsequent to such separation, which is based upon wages paid by such employer with respect to employment prior to such separation, shall be charged to such employer's account under the provisions of this subsection (f); provided, such employer has filed a notice with the department in accordance with its rules and regulations *and within the time limits prescribed therein*. The findings and determinations of the department under this subsection (f) shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation. The provisions of this subsection (f) as hereby amended shall become effective with respect to charges arising out of

any benefit year which commences after the thirtieth day of September, one thousand nine hundred fifty-one.

Section 310. Priorities Under Legal Dissolutions and Distributions.—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this Commonwealth, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions or installments thereof, or interest thereon, then or thereafter due shall be paid in full prior to all other claims except taxes, claims arising under The Workmen's Compensation Act of one thousand nine hundred fifteen, and its amendments and supplements, and claims for wages of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension, proposal, or composition under the Federal Bankruptcy Act of one thousand eight hundred ninety-eight, as amended, contributions and interest then or thereafter due shall be entitled to such priority as are now or may hereafter be granted to taxes due a state under the said Federal Bankruptcy Act or its amendments.

[No sheriff, receiver, trustee, assignee, master, or other officer shall sell the property or franchises of any corporation or similar entity, unincorporated association, co-partnership, or individual, without first filing with the Department of Labor and Industry, not less than ten (10) days prior to such sale, a statement containing the following information: (a) name or names of the plaintiff or party at whose instance or upon whose account the sale is made; (b) the name of the corporation or similar entity, unincorporated association, co-partnership, or individual whose property or franchise is to be sold; (c) the time and place of sale; and (d) the nature of the property to be sold and the location of the same.]

Section 311. Refunds and Adjustments.—If any individual or organization shall make application for refund or credit of any amount paid as contribution, interest or penalties, under this act, and the department shall determine that such amount, or any portion thereof, was erroneously collected, the department may at its discretion either allow a credit therefor, without interest, in connection with subsequent contribution payments or shall refund from the Unemployment Compensation Fund, without interest, the amount erroneously paid: Provided, That an amount equal to any refund or credit of interest and penalties allowed, as provided herein, shall be transferred from the Special Administration Fund to the Unemployment Compensation Fund, irre-

spective of whether such interest or penalties were paid into the Unemployment Compensation Fund or into the Special Administration Fund. No refund or credit shall be allowed with respect to a payment as contributions, interest or penalties, unless an application therefor shall be made on or before, whichever of the following dates shall be the later: (a) one year from the date on which such payment was made, or (b) four years from the reporting due date of the reporting period with respect to which such payment was made. For a like cause and within the same period, a refund may be so made or a credit allowed on the initiative of the department.

An amount paid as contribution, interest or penalties shall not be deemed to have been erroneously collected within the meaning of this section if such amount was collected under and pursuant to a notice of contribution rate or a notice of assessment which, because of the applicant's failure to file a timely appeal therefrom, shall have become binding and final against the applicant under the provisions of this act [: Provided, That nothing contained herein shall be construed as prohibiting the department from granting, within the period prescribed herein, a refund of contribution, interest or penalties erroneously collected due to an error of the department].

Section 401. Qualifications Required to Secure Compensation.—Compensation shall be payable to any employe who is or becomes unemployed, and who—

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(d) Is able to work and available for suitable work: *Provided, That a claimant shall be conclusively presumed to be unavailable for work with respect to any week of unemployment attributable to pregnancy, and in any event after the sixth month of pregnancy and until after one month of confinement;*

* * * * *

(f) Has, subsequent to his voluntarily leaving work without good cause or to his discharge or suspension from work for willful misconduct connected with his work, been paid remuneration for services in an amount equal to or in excess of eight (8) times his weekly benefit rate, *irrespective of whether or not such services were in "employment" as defined in this act. The provisions of this subsection shall not apply to a suspension of work by an individual pursuant to a leave of absence granted by his last employer, provided such individual has made a reasonable effort to return to work with such employer upon the expiration of his leave of absence.*

Section 4. Subsections (a), (b) and (e) of section 402 and subsection (d) of section 404 of said act, as last amended by the acts, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws *1738), and the twenty-ninth day of **September, one thousand nine hundred fifty-one (Pamphlet Laws 1580), and the second day of January, one thousand nine hundred fifty-two (Pamphlet Laws 1802), are hereby further amended to read as follows:

Subsections (a), (b) and (e) of section 402, and subsection (d) of section 404, said act, as last amended by acts of May 23, 1949, P. L. 1738, September 29, 1951, P. L. 1580 and January 2, 1952, P. L. 1802, further amended.

Section 402. Ineligibility for Compensation.—An employe shall be ineligible for compensation for any week—

(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe, or to accept suitable work when offered to him by the employment office or by any employer, *irrespective of whether or not such work is in "employment" as defined in this act*: Provided, That such employer [simultaneously] notifies the employment office of such offer *within three (3) days after the making thereof*;

(b) In which his unemployment is due to voluntarily leaving work without good cause, *irrespective of whether or not such work is in "employment" as defined in this act*: Provided, That no employe shall be deemed to be ineligible under this subsection where as a condition of continuing in employment such employe would be required to join or remain a member of a company union or to resign from or refrain from joining any bona fide labor organization, or to accept wages, hours or conditions of employment not desired by a majority of the employes in the establishment or the occupation, or would be denied the right of collective bargaining under generally prevailing conditions, and that in determining whether or not an employe has left his work voluntarily without good cause, the department shall give consideration to the same factors, in so far as they are applicable, provided, with respect to the determination of suitable work under section four (t), *marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this act*: And provided further, That the provisions of this subsection shall not apply in the event of a stoppage of work, which exists because of a labor dispute within the meaning of subsection (d).

(e) In which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work, *irrespective of whether or not such work is "employment" as defined in this act*; and

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* "1738" in original.

** "Septembe" in original.

Section 404. Rate and Amount of Compensation.— Compensation shall be paid to each eligible employe in accordance with the following provisions of this section except that compensation payable with respect to weeks ending in benefit years which begin prior to the first day of October, one thousand nine hundred fifty-one, shall be paid on the basis of the provisions of this section in effect at the beginning of such benefit years.

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(d) Notwithstanding any other provisions of this section, each eligible employe who is unemployed with respect to any week ending subsequent to the effective date of this act shall be paid with respect to such week compensation in an amount equal to his weekly benefit rate less that part of the remuneration, if any, paid or payable to him with respect to such week which is in excess of [five dollars (\$5)] *six dollars (\$6)*. Such compensation, if not a multiple of one dollar (\$1), shall be computed to the next higher multiple of one dollar (\$1): Provided, That if at the end of any calendar quarter the balance in the Unemployment Trust Fund to the credit of Pennsylvania is less than one and one-half times the highest amount paid out for compensation less any refunds during any twelve *consecutive months, the maximum amount of compensation payable to any employe for a week of unemployment ending during the next calendar quarter shall not be in excess of twenty dollars (\$20).

Section 804, said act, as last amended by act of September 29, 1951, P. L. 1580, further amended.

Section 5. Section 804 of said act, as last amended by the act, approved the twenty-ninth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1580), is hereby further amended to read as follows:

Section 804. Recovery and Recoupment of Compensation.—(a) Any person who by reason of his fault has received any sum as compensation under this act to which he was not entitled shall be liable to repay to the Unemployment Compensation Fund to the credit of the Compensation Account a sum equal to the amount so received by him. Such sum shall be collectible (a) in the manner provided in this act for the collection of past due contributions, or (b) by deduction from any future compensation payable to the claimant under this act: Provided, That no administrative or legal proceedings for the collection of such sum shall be instituted after the expiration of six years following the end of the benefit year with respect to which such sum was paid.

(b) Any person who other than by reason of his fault has received with respect to a benefit year any sum as compensation under this act to which he was not entitled shall not be liable to repay such sum but shall be liable to have such sum deducted from any future compensation payable to him with respect to such benefit year, or the

* "consecutive" omitted in original.

[one-year] *three-year* period immediately following such benefit year: Provided, [however,] That [no] *with respect to overpayments of one hundred dollars or more*, recoupment from *such* future compensation shall [be had if such recoupment would be inequitable or unconscionable] *not exceed one-third of the maximum benefit amount to which such person is entitled during any such subsequent benefit year nor one-third of the weekly benefit amount to which such person may be entitled for any particular week. In the absence of misrepresentation or non-disclosure of a material fact, no recoupment shall be had if such overpayment is created by reason of (1) a subsequent reversal of a decision of eligibility under the provisions of section five hundred one (e) of this act, or (2) a retroactive allocation of wages pursuant to an award of a labor relations board arbitrator or the like, unless such award provides for the repayment of unemployment compensation benefits received during the period to which such wages are allocated, or (3) the subsequent receipt of holiday pay, vacation pay or the like of which the person had no knowledge, or (4) a subsequent determination that the person's base year wages were not earned in employment as defined in this act. No provision of this subsection shall be construed to prevent or prohibit the voluntary repayment of compensation by such person or the maintenance of records of overpayments by the department. In determining whether or not recoupment from future compensation would be inequitable or unconscionable, the claimant's financial worth shall not be considered.*

The claimant and other affected parties shall be notified in writing of the department's determination to deduct any sum from future compensation under this section, and such determination shall be subject to appeal in the manner provided in this act for appeals from determinations of compensation.

Section 6. This act shall become effective immediately upon final enactment. The provisions of section 4 shall apply in the determination of the rates of contributions for the calendar year one thousand nine hundred fifty-four and thereafter.

Act effective immediately.

Applicability of section 4.

APPROVED—The 24th day of August, A. D. 1953.

JOHN S. FINE