

No. 1985-30

## AN ACT

HB 1042

Amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), 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," providing for benefits for certain seasonal workers; providing a reduction in the Unemployment Compensation Interest Fund tax; further providing for the State Unemployment Compensation Advisory Council; and making repeals.

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

Section 1. Section 201(a) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, amended July 21, 1983 (P.L.68, No.30), is amended to read:

Section 201. General Powers and Duties of Department.—(a) It shall be the duty of the department to administer and enforce this act through such employment service and public employment offices as have been or may be constituted in accordance with the provisions of this act and existing laws. It shall have power and authority to adopt, amend, and rescind such rules and regulations, require such reports from employers, employes, the board and from any other person deemed by the department to be affected by this act, make such investigations, and take such other action as it deems necessary or suitable. Such rules and regulations shall not be inconsistent with the provisions of this act. The department shall submit to the Governor and the General Assembly a biennial report covering the administration and operation of this act and shall make such recommendations for amendments to this act as it deems proper. **[The department shall also prepare and present to the Governor and the General Assembly, on or before the thirty-first day of December of each year, an actuarial evaluation of the financial operations of the unemployment compensation program, together with its findings and recommendations for developing and improving solvency of the fund and adjusting and regulating income and disbursements in the fields of contributions and benefits. Such report shall include the presentation of the current economic trends, statistics and analyses on which the evaluation is based. This evaluation shall include all of the following:**

- (1) Statistics relating to population, labor force and covered labor force.

- (2) Claims data.
- (3) Payment data.
- (4) Minimum, maximum, average weekly benefit amount and minimum earnings requirement.
- (5) Federal-State extended benefits program.
- (6) Number of nonmonetary determinations for unemployment benefits.
- (7) Experience of reimbursable and contributory employers.
- (8) Tax rates by industry, taxable payroll, total payroll and number of employers.
- (9) Disbursements from the unemployment fund.
- (10) Income of the unemployment fund.
- (11) Difference between income and disbursements of the unemployment fund.
- (12) Status of the unemployment fund.
- (13) Experience rating factors of insured employers.
- (14) Net reserve or deficit of active employer accounts.
- (15) Reserve ratio contributions received.
- (16) Benefit ratio contributions received.]

In the discharge of the duties imposed by this act, the Secretary and any agent duly authorized in writing by him shall have the power to administer oaths and affirmations, take depositions, and certify to official acts. The department shall have the power to issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary in the administration of this act.

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Section 2. Section 204 of the act is repealed.

Section 3. The act is amended by adding a section to read:

*Section 204.1. State Unemployment Compensation Advisory Council.—*

*(a) There is hereby created the State Unemployment Compensation Advisory Council to be composed of nineteen members which shall consist of:*

- (1) The Secretary of Labor and Industry or his designee.*
- (2) The Chairman and Minority Chairman of the Senate Committee on Labor and Industry or their designees.*
- (3) The Chairman and Minority Chairman of the House Committee on Labor Relations or their designees.*
- (4) Fourteen individuals appointed by the Governor which shall include:*
  - (i) Four employe representatives who shall be appointed from a list supplied by the Pennsylvania AFL-CIO.*
  - (ii) Four employer representatives who shall be appointed from a list supplied by the Pennsylvania Chamber of Commerce.*
  - (iii) Six individuals, of whom no more than three shall represent employers and no more than three shall represent labor organizations.*

*(b) Members shall be appointed for two-year terms commencing on February 1 of each odd-numbered year. Initial appointments shall be made within sixty days of final enactment of this act and shall expire on January 30, 1987.*

*(c) Members of the council shall receive no compensation but shall be entitled to receive an allowance for expenses incurred in the performance of their duties.*

*(d) The Secretary of Labor and Industry shall be the chairman of the council. The council shall meet at least four times each year.*

*(e) The council may, upon a majority vote, appoint an executive director and one clerical assistant, and establish their compensation, to aid the council in the performance of its functions. The compensation of such employes and the amount allowed them for traveling and other incidental expenses shall be deemed part of the expenses incurred in connection with the administration of this act.*

*(f) The council shall consider and advise the department upon all matters related to the administration of this act, including the formulation of policies assuring impartiality and freedom from political influence in its administration, and making studies relating to unemployment and unemployment-compensation payments. Such council may recommend to the Governor and the General Assembly, upon its own initiative, such changes in the provisions of this act, and in the administration thereof, as it deems necessary and shall make periodic reports to the Governor and the General Assembly regarding the findings of its studies and the performance of its duties and functions. The council shall have full access to information relating to the purpose of this act, provided the department shall not be required to provide any information which would specifically identify any employer, employe or claimant.*

*(g) The Governor shall have the power to create such local advisory councils as the State Advisory Council may deem necessary for the efficient performance of its functions. Such local advisory councils shall be composed of an equal number of members representing employers, employes and the public and shall be appointed by the Governor.*

*(h) The members of local advisory councils shall serve without compensation but shall be entitled to be reimbursed out of the administration fund for all necessary expenses incurred in the discharge of their duties.*

*(i) The State Advisory Council upon request shall be given copies of any report made by the department to the United States Department of Labor and shall have access to any other information requested by the council, including, but not limited to:*

- (1) Statistics relating to population, labor force and covered labor force.*
- (2) Claims data.*
- (3) Payment data.*
- (4) Minimum, maximum, average weekly benefit amount and minimum earnings requirement.*
- (5) Federal-State extended benefits program.*
- (6) Number of nonmonetary determinations for unemployment benefits.*
- (7) Experience of reimbursable and contributory employers.*
- (8) Tax rates by industry, taxable payroll, total payroll and number of employers.*

- (9) Disbursements from the Unemployment Compensation Fund.*
- (10) Income of the Unemployment Compensation Fund.*
- (11) Difference between income and disbursements of the Unemployment Compensation Fund.*
- (12) Status of the Unemployment Compensation Fund.*
- (13) Experience rating factors of insured employers.*
- (14) Net reserve or deficit of active employer accounts.*
- (15) Reserve ratio contributions received.*
- (16) Benefit ratio contributions received.*

*At the discretion of the council, this information shall be provided on computer tape if the information is on computer tape. The department shall not be required to provide any information which would specifically identify any employer, employe or claimant.*

*(j) The council shall have the authority to authorize the preparation of an annual financial analysis of the Unemployment Compensation Fund and may contract with an independent actuarial firm of certified actuaries and such other consultants as may be necessary to perform such thorough annual financial analysis. The department shall supply the actuaries with all information required to perform this analysis as the actuaries may require, provided the department shall not be required to provide any information which would specifically identify any employer, employe or claimant. This analysis, if authorized, shall be completed by September 1 of each year for the previous calendar year. The analysis report shall be given to the Governor, the secretary, the State Advisory Council and the General Assembly and shall be made available to the public. The analysis shall include, but not be limited to, the following:*

- (1) The solvency of the fund.*
- (2) The effect upon the fund of:*
  - (i) changes in State and Federal law;*
  - (ii) State and Federal court decisions; or*
  - (iii) the State and national economic situation.*
- (3) A three-year projection of the condition of the fund.*

*(k) The department shall also prepare and present to the Governor and the General Assembly, on or before the first day of March of each year, an evaluation of the financial operations of the unemployment compensation program, together with its findings and recommendations for developing and improving solvency of the fund and adjusting and regulating income and disbursements in the fields of contributions and benefits. Such report shall include the presentation of the current economic trends, statistics and analyses on which the evaluation is based. This evaluation shall include all of the following:*

- (1) Statistics relating to population, labor force and covered labor force.*
- (2) Claims data.*
- (3) Payment data.*
- (4) Minimum, maximum, average weekly benefit amount and minimum earnings requirement.*

- (5) *Federal-State extended benefits program.*
- (6) *Number of nonmonetary determinations for unemployment benefits.*
- (7) *Experience of reimbursable and contributory employers.*
- (8) *Tax rates by industry, taxable payroll, total payroll and number of employers.*
- (9) *Disbursements from the unemployment fund.*
- (10) *Income of the unemployment fund.*
- (11) *Difference between income and disbursements of the unemployment fund.*
- (12) *Status of the unemployment fund.*
- (13) *Experience rating factors of insured employers.*
- (14) *Net reserve or deficit of active employer accounts.*
- (15) *Reserve ratio contributions received.*
- (16) *Benefit ratio contributions received.*

Section 4. Section 211 of the act is repealed.

Section 5. Section 301.6 of the act, added July 21, 1983 (P.L.68, No.30), is amended to read:

Section 301.6. Additional Contribution for Interest.—

(a) Notwithstanding any other provision of this act, all employers required to pay contributions under section 301 or 301.1 other than those employers covered by paragraphs (3) and (4) of subsection (a) of section 301 shall have their rate of contribution increased by the rate of the Interest Factor in effect for the applicable calendar year.

(b) All taxes collected under this section shall be considered to be separate and apart from any contributions required to be deposited in the Unemployment Compensation Fund. All taxes collected under this section shall be deposited in the Interest Fund established by section 601.2 of this act. Such taxes will not be credited to the employer's reserve account.

(c) The Interest Factor calculated on wages with regard to the limitations specified in section 4(x)(1) shall be equal to twenty-five hundredths of one per centum (0.25%) for calendar year 1984, five-tenths of one per centum (0.5%) for calendar year 1985, and ~~one per centum (1.0%)~~ *three-tenths of one per centum (0.3%)* for calendar year 1986. Thereafter the Interest Factor shall be a variable rate not to exceed one per centum (1.0%) to be determined annually by the department at a rate necessary to pay the interest on outstanding interest-bearing advances under Title XII of the Social Security Act for the following calendar year. ~~[No interest factor shall be required for any year following the year in which the amount of such interest-bearing advances is reduced to zero.]~~ *No Interest Factor shall be required for the year following any year in which the amount of such interest-bearing advances has been reduced to zero, provided that an interest tax shall be required and shall be reimposed by the department for the calendar year following any year in which an interest-bearing advance remains outstanding on October 1 and there are not sufficient funds in the Interest Fund to pay the interest due in that year.*

Section 6. The act is amended by adding a section to read:

**Section 402.5. Eligibility of Seasonal Workers in fruit and vegetable food processing.**—(a) Notwithstanding any other provision of this act with respect to service performed in a “seasonal operation” or “seasonal industry,” as defined in this section, benefits shall not be paid to a seasonal worker, based on such services, for any week of unemployment occurring outside of the normal seasonal period of operation, provided there is a contract or reasonable assurance that such seasonal worker will perform services in that seasonal industry in his next normal seasonal period. However, if, upon presenting himself for work in his next normal seasonal period, the individual is not offered an opportunity to perform such services, his claims for unemployment compensation shall be accepted retroactively to the time the individual’s benefits (based on seasonal and non-seasonal wages) would have commenced but for this subsection.

(b) Upon written application filed with the department by an employer engaged in a “seasonal industry,” as defined in this section, the secretary shall determine, and may thereafter redetermine, in accordance with the rules and regulations of the department, the normal seasonal period during which workers are ordinarily employed for the purpose of carrying on seasonal operations in the seasonal industry in which such employer is engaged. An application for such determination shall be made on forms prescribed by the department. Such application must be made at least twenty (20) days prior to the estimated beginning date of the normal seasonal period for which the determination is requested. Simultaneously with the filing of the application, the employer shall conspicuously display on the employer’s premises, in a sufficient number of places, a copy of the application.

(c) An employer determined, in accordance with the provisions of this section, to be a “seasonal operation” or “seasonal industry,” as defined in this section, shall be required to conspicuously display notices of the seasonal determination on its premises in a sufficient number of places as will fairly advise its employes of the estimated beginning and estimated ending dates of its normal seasonal period. Such notices shall be provided by the department.

(d) Any successor of a seasonal employer shall be deemed to be a seasonal industry or a seasonal operation unless such successor shall, within one hundred twenty (120) days after the acquisition, request cancellation of such determination.

(e) Any determination issued under the provisions of this section shall be subject to review in the same manner and to the same extent as all other determinations issued under this act.

(f) Benefits payable to any otherwise eligible individual who is determined to be a seasonal worker, as defined in paragraph (5) of subsection (h) of this section, shall be calculated in accordance with the provisions of this section for any benefit year which is established on or after the beginning date of a determination of a seasonal industry or a seasonal operation by which such individual was employed during the base year applicable to such benefit year, as if such determination had been effective in such base period.

*(g) In no case shall a seasonal worker be eligible to receive a total amount of compensation in a benefit year in excess of the maximum compensation payable for such benefit year, as provided in section 404 of this act.*

*(h) For the purposes of this section, the following definitions shall apply:*

*(1) "Fruit or vegetable food processing operation" means those services performed in connection with commercial canning or commercial freezing of fruits and vegetables.*

*(2) "Normal seasonal period" means the normal seasonal period, as determined in accordance with subsection (b) of this section, during which workers are ordinarily employed for the purpose of carrying on seasonal operations in each seasonal industry, as defined in this section.*

*(3) "Seasonal industry" means an industry, establishment or process within an industry which, because of climatic conditions making it impractical or impossible to do otherwise, customarily carries on fruit or vegetable food processing operations, or both, only during a regularly recurring period of one hundred eighty (180) days of work or less in a calendar year.*

*(4) "Seasonal operation" means an operation in which it is customary for an employer engaged in a seasonal industry as defined in paragraphs (1) and (3) of subsection (h) of this section, to operate all or a portion of its business during a regularly recurring period of one hundred eighty (180) days of work or less for a normal seasonal period during a calendar year. An employer may be determined to be engaged in a seasonal industry as defined in this section, with respect to a portion of its business, only if that portion, under the usual and customary practice in the industry, is identifiable as a functionally distinct operation.*

*(5) "Seasonal worker" means a worker who performs commercial canning or commercial freezing services for a fruit or vegetable food processing operation for less than one hundred eighty (180) days of work.*

Section 7. Initial appointments to the State Unemployment Compensation Advisory Council shall be made within 60 days of the effective date of this act. The initial meeting of the council shall be called by the Secretary of Labor and Industry and shall occur within 90 days of the effective date of this act.

Section 8. Section 402.5 of the act shall apply to benefit years commencing on and after June 30, 1985.

Section 9. (a) Sections 1, 2, 3, 4 and 7 of this act shall take effect immediately.

(b) The remainder of this act shall take effect in 60 days.

APPROVED—The 1st day of July, A. D. 1985.

DICK THORNBURGH