

No. 2013-75

AN ACT

HB 421

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," in preliminary provisions, further providing for definitions; in contributions, further providing for establishment and maintenance of employer's reserve accounts, for relief from charges and for reciprocal agreements; in compensation, further providing for qualifications required to secure compensation and for ineligibility for compensation; in penalties, further providing for false statements and representations to obtain or increase compensation and for recovery and recoupment of compensation; and, in shared-work program, further providing for definitions, for application to approve shared-work plan, for shared-work plan requirements and for expiration.

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

Section 1. Section 4(1)(4) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, is amended by adding a subparagraph to read:

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

* * *

(1) * * *

(4) The word "employment" shall not include—

* * *

(21) Services performed by a full-time student in the employ of an organized camp if:

(A) the camp did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third per centum (33 1/3%) of its average gross receipts for the other six months in the preceding calendar year; and

(B) the full-time student performs services in the employ of the camp for less than thirteen calendar weeks in any such year.

(C) For purposes of this subparagraph, an individual shall be treated as a full-time student for any period during which the individual is enrolled as a full-time student at an educational institution; or which is between academic years or terms if the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term and there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term.

(D) For purposes of this subparagraph, the term "educational institution" shall mean any educational institution of secondary, higher educational, professional or vocational educational training.

(E) For purposes of this subparagraph, the term "camp" shall mean a children's overnight camp or a summer day camp of any variety.

* * *

Section 2. Sections 302(a) and 302.1 introductory paragraph of the act, amended or added June 17, 2011 (P.L.16, No.6), are amended to read:

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:

(a) An employer's account shall be charged with all compensation, including dependents' allowances, 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] accordance with this subsection.

(1) An employer's account shall be charged with compensation paid to an individual for which an overpayment under section 804 of this act is not established against the individual.

(2) In addition to charges assigned under paragraph (1), an employer's account shall be charged with compensation paid to an individual for which an overpayment under section 804 of this act is established against the individual if the compensation is paid because the employer or an agent of the employer responds untimely or inadequately or fails to respond to a request by the department for information regarding the individual's eligibility for compensation. For the purposes of this paragraph, the following shall apply:

(i) A request by the department for information regarding an individual's eligibility shall:

(A) Indicate the name and social security number of the individual.

(B) Contain specific inquiries, indicate the type of information sought, or both.

(C) Be mailed to the employer's or agent's last known address or be transmitted electronically to the employer's or agent's electronic mail address if the employer or agent has designated an electronic mail address.

(D) Indicate the date the request is mailed or transmitted electronically.

(E) Indicate a mailing address, an electronic mail address, or both, where a response shall be filed.

(ii) An employer's or agent's response to a request by the department for information shall be untimely if the response is filed more than

fourteen days after the department's request for information is mailed or transmitted electronically to the employer or agent. The filing date of a response shall be determined in accordance with 34 Pa. Code § 63.25 (relating to filing methods).

(iii) An employer's or agent's response shall be inadequate if the response misrepresents or omits facts that, if represented accurately or disclosed, would have been a basis for the department to disqualify the individual from receiving compensation.

(iv) A determination by the department assigning charges under this paragraph may be appealed as provided in Article V of this act for appeals from determinations regarding an individual's eligibility for compensation.

(3) An employer's account shall be charged with compensation paid to an individual in the proportion that the individual's wage credits with the employer bear to the total wage credits received by the individual from all employers.

* * *

Section 302.1. Relief from Charges.—Notwithstanding any other provisions of this act assigning charges for compensation paid to employes, *except for section 302(a)(2)*, the department shall relieve an employer of charges for compensation in accordance with this section and section 213 of this act.

* * *

Section 3. Section 312 of the act is amended by adding a subsection to read:

Section 312. Reciprocal Agreements.—The department is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government, or both, whereby—

* * *

(g) Overpayments of compensation under this act shall be deducted from compensation payable under an unemployment benefit program of the United States or another state, and overpayments of compensation under an unemployment benefit program of the United States or another state shall be deducted from compensation payable under this act or compensation paid by the Commonwealth pursuant to an unemployment benefit program of the United States. A reciprocal agreement under this subsection shall be consistent with the requirements of section 303(g) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) and the regulations and instructions of the United States Department of Labor.

Section 3.1. Section 401(f) of the act, amended June 12, 2012 (P.L.577, No.60), is amended to read:

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

* * *

(f) Has earned, subsequent to his separation from work under circumstances which are disqualifying under the provisions of subsections 402(b), 402(e), 402(e.1) [and 402(h)], 402(h) and 402(k) of this act,

remuneration for services in an amount equal to or in excess of six (6) times his weekly benefit rate 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. Sections 402 and 801 of the act are amended by adding subsections to read:

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

* * *

(k) In which the employe's unemployment is due to a separation from work initiated by the employe or the employer in order to preserve the employe's existing entitlement to a pension, including a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payments.

Section 801. False Statements and Representations to Obtain or Increase Compensation.—* * *

(c) Whoever makes a false statement knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase compensation or other payment under this act or under an employment security law of the Federal Government and as a result receives compensation to which he is not entitled, shall be liable to pay to the Unemployment Compensation Fund a sum equal to fifteen per centum (15%) of the amount of the compensation. The sum shall be collectible in the manner provided in section 308.1 or 309 of this act for the collection of past due contributions and by any other means available under Federal or State law. No administrative or legal proceeding for the collection of the sum may be instituted after the expiration of ten years following the end of the benefit year with respect to which the sum was paid.

Section 4.1. Section 804(b) of the act, amended July 10, 1980 (P.L.521, No.108), is amended to read:

Section 804. Recovery and Recoupment of Compensation.—* * *

(b) (1) 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 three-year period immediately following such benefit year[: **Provided, That with], in accordance with the provisions of this paragraph.**

(i) *With* respect to overpayments of one hundred dollars or more, recoupment from such future compensation shall 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.

(ii) *If an overpayment is established under this paragraph, an employer is assigned charges for the overpayment under section 302(a)(2) of this act and the determination assigning charges to the employer is final, an*

amount equal to the amount charged to the employer shall be applied as a credit toward the person's overpayment. The provisions of this subparagraph shall not apply to an overpayment to which subparagraph (iii) applies.

(iii) 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 [(i)]:

(A) a subsequent reversal of two decisions of eligibility under the provisions of section five hundred one (e) of this act[, or (ii)];

(B) the subsequent receipt of holiday pay, vacation pay or the like of which the person had no knowledge[, or (iii)]; or

(C) a subsequent determination that the person's base year wages were not earned in employment as defined in this act.

(iv) 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.

(2) 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.

(3) Notwithstanding any other provisions of this subsection, any person who has received or employer who has made a back wage payment pursuant to an award of a labor relations board arbitrator or the like without deduction for unemployment compensation benefits received during the period to which such wages are allocated shall notify the department immediately of the receipt or payment of such back wage award. The recipient of such back wage award, made without deduction for unemployment compensation benefits received during the period, shall be liable to pay into the Unemployment Compensation Fund an amount equal to the amount of such unemployment compensation benefits received.

* * *

Section 5. Sections 1301, 1302, 1303 and 1313 of the act, added June 17, 2011 (P.L.16, No.6), are amended to read:

Section 1301. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affected unit." A department, shift or other organizational unit of two or more employees that is designated by an employer to participate in a shared-work plan.

"Approved shared-work plan." An employer's shared-work plan which meets the requirements of section 1303 and which the department approves in writing.

["Fringe benefit." Health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave and any other similar employee benefit provided by an employer.]

"Participating employee." An employee in the affected unit whose hours of work are reduced by the reduction percentage under the shared-work plan.

"Participating employer." An employer who has a shared-work plan in effect.

"Reduction percentage." The percentage by which each participating employee's normal weekly hours of work are reduced under a shared-work plan in accordance with section 1303(b).

"Shared-work plan." A plan for reducing unemployment under which participating employees of an affected unit share the work remaining after reduction in their normal weekly hours of work.

Section 1302. Application to approve shared-work plan.

(a) Requirements.—An employer that meets all of the following requirements may apply to the department for approval of a shared-work plan:

(1) The employer has filed all quarterly reports and other reports required under this act and has paid all contribution, reimbursement, interest and penalty due through the date of the employer's application.

(2) If the employer is contributory, the employer's reserve account balance as of the most recent computation date preceding the date of the employer's application is a positive number.

(3) The employer has paid wages for the 12 consecutive calendar quarters preceding the date of the employer's application.

(b) Application.—An application under this section shall be made in the manner prescribed by the department and contain all information required by the department, including the following:

(1) The employer's written plan, describing the manner in which the requirements of this article will be implemented, including a plan for giving advance notice, where feasible, to participating employees whose hours of work are reduced, an estimate of the number of layoffs that would have occurred in the absence of the employer's shared-work plan and other information required by the department and the United States Department of Labor.

[(1)] (1.1) The employer's assurance that it will provide reports to the department relating to the operation of its shared-work plan at the times and in the manner prescribed by the department and containing all information required by the department, including the number of hours worked each week by participating employees.

(2) The employer's assurance that it will not hire new employees in or transfer employees to the affected unit during the effective period of the shared-work plan.

(3) The employer's assurance that it will not lay off participating employees during the effective period of the shared-work plan, or reduce participating employees' hours of work by more than the reduction percentage during the effective period of the shared-work plan, except in cases of holidays, designated vacation periods, equipment maintenance or similar circumstances.

(4) A list of the week or weeks within the requested effective period of the shared-work plan during which participating employees are anticipated to work fewer hours than the number of hours determined under section 1303(a)(5) due to circumstances included in paragraph (3).

(5) The employer's certification that the implementation of a shared-work plan is in lieu of **[temporary]** layoffs that would affect at least 10% of the employees in the affected unit and would result in an equivalent reduction in work hours.

(6) The employer's assurance that it will abide by all terms and conditions of this article.

(7) The employer's attestation that its implementation of the shared-work plan is consistent with the employer's obligations under Federal and State law.

(8) If the employer provides health benefits and retirement benefits under a defined benefit plan as defined in section 414(j) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 414(j)), or contributions under a defined contribution plan as defined in section 414(i) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 414(i)), to a participating employee whose hours of work are reduced under the shared-work plan, the employer's certification that the benefits will continue to be provided to participating employees under the same terms and conditions as though the hours of work of the employees had not been reduced or to the same extent as other employees not participating in the shared-work plan.

(c) Multiple shared-work plans.—An employer may apply to the department for approval of more than one shared-work plan.

Section 1303. Shared-work plan requirements.

(a) General rule.—The department may approve a shared-work plan only if the plan meets all of the following requirements:

(1) The shared-work plan applies to one affected unit.

(2) All employees in the affected unit are participating employees, except that the following employees may not be participating employees:

(i) An employee who has been employed in the affected unit for less than three months prior to the date the employer applies for approval of the shared-work plan.

(i.1) An employee in the affected unit who is employed on a seasonal, temporary or intermittent basis.

(ii) An employee whose hours of work per week determined under paragraph (5) is 40 or more hours.

(3) There are no fewer than two participating employees, determined without regard to corporate officers.

(4) The participating employees are identified by name and Social Security number.

(5) The number of hours a participating employee will work each week during the effective period of the shared-work plan is determined by the following formula:

employee's normal weekly hours of
work x (100% - reduction percentage)

(6) As a result of a decrease in the number of hours worked by each participating employee, there is a corresponding reduction in wages.

(7) If any participating employee is covered by a collective bargaining agreement, the shared-work plan is approved in writing by the collective bargaining representative.

[(8) The shared-work plan does not affect the fringe benefits of any participating employee not covered by a collective bargaining agreement.]

(9) The effective period of the shared-work plan is not more than 52 consecutive weeks.

(10) The effective period of the shared-work plan combined with effective periods of the participating employer's prior shared-work plans does not equal more than 104 weeks out of a 156-week period.

(11) The reduction percentage satisfies the requirements of subsection (b).

(b) Reduction percentage.—The reduction percentage under an approved shared-work plan shall meet all of the following requirements:

(1) The reduction percentage shall be no less than 20% and no more than 40%.

(2) The reduction percentage shall be the same for all participating employees.

(3) The reduction percentage shall not change during the period of the shared-work plan unless the plan is modified in accordance with section 1308.

[Section 1313. Expiration.

This article shall expire five years from its effective date.]

Section 6. This act shall apply as follows:

(1) The addition of section 4(1)(4)(21) of the act shall apply to services performed on or after the effective date of this section.

(2) The addition of section 302(a)(2) of the act shall apply to overpayments established on or after October 21, 2013.

(3) The amendment or addition of sections 401(f) and 402(k) of the act shall apply to benefit years beginning on or after the effective date of this section.

(4) The addition of section 801(c) of the act shall apply to overpayments established on or after October 21, 2013.

Section 7. This act shall take effect as follows:

(1) The amendment of sections 1301, 1302 and 1303 of the act shall take effect in 90 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 23rd day of October, A.D. 2013

TOM CORBETT