

HB 1083

2012

1 A bill to be entitled
 2 An act relating to unemployment compensation; amending
 3 s. 443.036, F.S.; updating and revising definitions;
 4 amending s. 443.101, F.S., relating to
 5 disqualification for benefits; revising the definition
 6 of the term "good cause"; amending ss. 443.1216 and
 7 443.131, F.S.; conforming cross-references; providing
 8 an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (c) of subsection (2) and subsections
 13 (5), (11), (14), (15), (18), (20), (21), (23), (25), (26), (27),
 14 (35), (38), (39), (45), and (46) of section 443.036, Florida
 15 Statutes, are amended to read:

16 443.036 Definitions.—As used in this chapter, the term:

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

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

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

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

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

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

54 | (15) "Crew leader" means an individual who:

55 | (a) Furnishes individuals to perform service in
 56 | agricultural labor for another person.

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

61 (c) Has not entered into a written agreement with the
 62 other person under which the individual is designated as an
 63 employee of the other person.

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

79 (20) "Employing unit" means an individual; an ~~or type of~~
 80 organization, including a partnership, limited liability
 81 company, association, trust, estate, joint-stock company,
 82 insurance company, or corporation, whether domestic or foreign;
 83 the receiver, trustee in bankruptcy, trustee, or successor of
 84 any of the foregoing; or the legal representative of a deceased

HB 1083

2012

85 person, who ~~which~~ has or had in his or her ~~its~~ employ one or
86 more individuals performing services for it within this state.

87 (a) Each individual employed to perform or to assist in
88 performing the work of any agent or employee of an employing
89 unit is deemed to be employed by the employing unit ~~for the~~
90 ~~purposes of this chapter~~, regardless of whether the individual
91 was hired or paid directly by the employing unit or by an agent
92 or employee of the employing unit, if the employing unit had
93 actual or constructive knowledge of the work.

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

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

110 (d) A limited liability company shall be treated as having
111 the same status as it is classified for federal income tax
112 purposes. However, a single-member limited liability company

HB 1083

2012

113 shall be treated as the employer.

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

117 (23) "Fund" means the Unemployment Compensation Trust Fund
118 ~~created under this chapter,~~ into which all contributions and
119 reimbursements required under this chapter are deposited and
120 from which all benefits provided under this chapter are paid.

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

124 (26) "Initial skills review" means an online education or
125 training program, such as that established under s. 1004.99,
126 that is approved by the Department of Economic Opportunity
127 ~~Agency for Workforce Innovation~~ and designed to measure an
128 individual's mastery level of workplace skills.

129 (27) " Institution of higher education" means an
130 educational institution that:

131 (a) Admits as regular students only individuals having a
132 certificate of graduation from a high school, or the recognized
133 equivalent of a certificate of graduation;

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

136 (c) Provides an educational program that ~~for which it~~
137 awards a bachelor's or higher degree, or ~~provides a program~~ that
138 is acceptable for full credit toward a bachelor's or higher
139 degree; a program of postgraduate or postdoctoral studies; or a
140 program of training to prepare students for gainful employment

HB 1083

2012

141 in a recognized occupation; and

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

143

144 The term includes each community college and state university in
 145 this state, and any ~~each other~~ institution in this state
 146 authorized ~~under s. 1005.03~~ to use the designation "college" or
 147 "university-" under s. 1005.03.

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

152 (38) "Reimbursement" means a payment of money to the
 153 Unemployment Compensation Trust Fund in lieu of a contribution
 154 ~~which is~~ required under this chapter to finance unemployment
 155 benefits.

156 (39) "Reimbursing employer" means an employer who is
 157 liable for reimbursements in lieu of contributions made under
 158 this chapter.

159 (45) "Wages" means remuneration ~~subject to this chapter~~
 160 under s. 443.1217.

161 (46) "Week" means ~~a period of~~ 7 consecutive days as
 162 defined in ~~the~~ rules of the Department of Economic Opportunity.
 163 The department may by rule prescribe that a week is deemed to be
 164 "in," "within," or "during" the benefit year that contains the
 165 greater part of the week.

166 Section 2. Paragraph (a) of subsection (1) of section
 167 443.101, Florida Statutes, is amended to read:

168 443.101 Disqualification for benefits.—An individual shall

169 be disqualified for benefits:

170 (1) (a) For the week in which he or she has voluntarily
 171 left work without good cause attributable to his or her
 172 employing unit or has been discharged by the employing unit for
 173 misconduct connected with his or her work, based on a finding by
 174 the Department of Economic Opportunity. As used in this
 175 paragraph, the term "work" means any work, whether full-time,
 176 part-time, or temporary.

177 1. Disqualification for voluntarily quitting continues for
 178 the full period of unemployment next ensuing after the
 179 individual has left ~~his or her full-time, part-time, or~~
 180 ~~temporary~~ work voluntarily without good cause and until the
 181 individual has earned income equal to or greater than 17 times
 182 his or her weekly benefit amount. ~~As used in this subsection,~~
 183 ~~the term "good cause" includes only that cause attributable to~~
 184 ~~the employing unit which would compel a reasonable employee to~~
 185 ~~cease working or attributable to the individual's illness or~~
 186 ~~disability requiring separation from his or her work.~~ Any other
 187 disqualification may not be imposed. An individual is not
 188 disqualified ~~under this subsection~~ for voluntarily leaving
 189 temporary work to return immediately when called to work by the
 190 permanent employing unit that temporarily terminated his or her
 191 work within the previous 6 calendar months, or for voluntarily
 192 leaving work to relocate as a result of his or her military-
 193 connected spouse's permanent change of station orders,
 194 activation orders, or unit deployment orders.

195 2. Disqualification for being discharged for misconduct
 196 connected with his or her work continues for the full period of

197 unemployment next ensuing after having been discharged and until
 198 the individual is reemployed and has earned income of at least
 199 17 times his or her weekly benefit amount and for not more than
 200 52 weeks immediately following that week, as determined by the
 201 department in each case according to the circumstances or the
 202 seriousness of the misconduct, under the department's rules for
 203 determining ~~adopted for determinations of~~ disqualification for
 204 benefits for misconduct.

205 3. If an individual has provided notification to the
 206 employing unit of his or her intent to voluntarily leave work
 207 and the employing unit discharges the individual for reasons
 208 other than misconduct before the date the voluntary quit was to
 209 take effect, the individual, if otherwise entitled, shall
 210 receive benefits from the date of the employer's discharge until
 211 the effective date of his or her voluntary quit.

212 4. If an individual is notified by the employing unit of
 213 the employer's intent to discharge the individual for reasons
 214 other than misconduct and the individual quits without good
 215 cause before the date the discharge was to take effect, the
 216 claimant is ineligible for benefits pursuant to s. 443.091(1)(d)
 217 for failing to be available for work for the week or weeks of
 218 unemployment occurring before the effective date of the
 219 discharge.

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

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

223 b. Domestic violence, as defined in s. 741.28, verified by
 224 reasonable and confidential documentation that causes the

225 individual to reasonably believe that continued employment will
 226 jeopardize the individual's safety and the safety of a member of
 227 his or her immediate family.

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

231 443.1216 Employment.—Employment, as defined in s. 443.036,
 232 is subject to this chapter under the following conditions:

233 (1)(a) The employment ~~subject to this chapter~~ includes a
 234 service performed, including a service performed in interstate
 235 commerce, by:

236 1. An officer of a corporation.

237 2. An individual who, under the usual common-law rules
 238 applicable for ~~in~~ determining the employer-employee
 239 relationship, is an employee. However, if ~~whenever~~ a client who
 240 ~~as defined in s. 443.036(18), which~~ would otherwise be
 241 designated as an employing unit has contracted with an employee
 242 leasing company to supply it with workers, those workers are
 243 considered employees of the employee leasing company. An
 244 employee leasing company may lease corporate officers of the
 245 client to the client and other workers to the client, except as
 246 prohibited by regulations of the Internal Revenue Service.
 247 Employees of an employee leasing company must be reported under
 248 the employee leasing company's tax identification number and
 249 contribution rate for work performed for the employee leasing
 250 company.

251 a. In addition to any other report required to be filed by
 252 law, an employee leasing company shall submit a report to the

HB 1083

2012

253 Labor Market Statistics Center within the Department of Economic
 254 Opportunity which includes each client establishment and each
 255 establishment of the employee leasing company, or as otherwise
 256 directed by the department. The report must include the
 257 following information for each establishment:

- 258 (I) The trade or establishment name;
- 259 (II) The former unemployment compensation account number,
 260 if available;
- 261 (III) The former federal employer's identification number
 262 (FEIN), if available;
- 263 (IV) The industry code recognized and published by the
 264 United States Office of Management and Budget, if available;
- 265 (V) A description of the client's primary business
 266 activity in order to verify or assign an industry code;
- 267 (VI) The address of the physical location;
- 268 (VII) The number of full-time and part-time employees who
 269 worked during, or received pay that was subject to unemployment
 270 compensation taxes for, the pay period including the 12th of the
 271 month for each month of the quarter;
- 272 (VIII) The total wages subject to unemployment
 273 compensation taxes paid during the calendar quarter;
- 274 (IX) An internal identification code to uniquely identify
 275 each establishment of each client;
- 276 (X) The month and year that the client entered into the
 277 contract for services; and
- 278 (XI) The month and year that the client terminated the
 279 contract for services.

280 b. The report shall be submitted electronically or as ~~in a~~

281 ~~manner~~ otherwise prescribed by the Department of Economic
 282 Opportunity in the format specified by the Bureau of Labor
 283 Statistics of the United States Department of Labor for its
 284 Multiple Worksite Report for Professional Employer
 285 Organizations. The report must be provided quarterly to the
 286 Labor Market Statistics Center within the department, or as
 287 otherwise directed by the department, and must be filed by the
 288 last day of the month immediately following the end of the
 289 calendar quarter. The information required in sub-sub-
 290 subparagraphs a.(X) and (XI) need be provided only in the
 291 quarter in which the contract to which it relates was entered
 292 into or terminated. The sum of the employment data and the sum
 293 of the wage data in the ~~this~~ report must match the employment
 294 and wages reported in the unemployment compensation quarterly
 295 tax and wage report. A report is not required for any calendar
 296 quarter preceding the third calendar quarter of 2010.

297 c. The department shall adopt rules as necessary to
 298 administer this subparagraph, and may administer, collect,
 299 enforce, and waive the penalty imposed by s. 443.141(1)(b) for
 300 the report required by this subparagraph.

301 d. For the purposes of this subparagraph, the term
 302 "establishment" means any location where business is conducted
 303 or where services or industrial operations are performed.

304 3. An individual other than an individual who is an
 305 employee under subparagraph 1. or subparagraph 2., who performs
 306 services for remuneration for any person:

307 a. As an agent-driver or commission-driver engaged in
 308 distributing meat products, vegetable products, fruit products,

309 bakery products, beverages other than milk, or laundry or
 310 drycleaning services for his or her principal.

311 b. As a traveling or city salesperson engaged on a full-
 312 time basis in the solicitation on behalf of, and the
 313 transmission to, his or her principal of orders from
 314 wholesalers, retailers, contractors, or operators of hotels,
 315 restaurants, or other similar establishments for merchandise for
 316 resale or supplies for use in their business operations. This
 317 sub-subparagraph does not apply to an agent-driver or a
 318 commission-driver, ~~or and does not apply to~~ sideline sales
 319 activities performed on behalf of a person other than the
 320 salesperson's principal.

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

323 a. The contract of service contemplates that substantially
 324 all of the services are to be performed personally by the
 325 individual;

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

329 c. The services are not in the nature of a single
 330 transaction that is not part of a continuing relationship with
 331 the person for whom the services are performed.

332 (2) The employment subject to this chapter includes
 333 service performed in the employ of a public employer ~~as defined~~
 334 ~~in s. 443.036~~, if the service is excluded from the definition of
 335 "employment" in s. 3306(c)(7) of the Federal Unemployment Tax
 336 Act and is not excluded from the employment subject to this

337 chapter under subsection (4).

338 (13) The following are exempt from coverage under this
339 chapter:

340 (f) Service performed in the employ of a public employer
341 ~~as defined in s. 443.036~~, except as provided in subsection (2),
342 and service performed in the employ of an instrumentality of a
343 public employer as described in s. 443.036(36)(b) or (c)
344 ~~443.036(35)(b) or (c)~~, to the extent that the instrumentality is
345 immune under the United States Constitution from the tax imposed
346 by s. 3301 of the Internal Revenue Code for that service.

347 Section 4. Paragraph (f) of subsection (3) of section
348 443.131, Florida Statutes, is amended to read:

349 443.131 Contributions.—

350 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
351 EXPERIENCE.—

352 (f) Transfer of employment records.—

353 1. For the purposes of this subsection, two or more
354 employers who are parties to a transfer of business or the
355 subject of a merger, consolidation, or other form of
356 reorganization, effecting a change in legal identity or form,
357 are deemed a single employer and are considered to be one
358 employer with a continuous employment record if the tax
359 collection service provider finds that the successor employer
360 continues to carry on the employing enterprises of all of the
361 predecessor employers, and that the successor employer has paid
362 all contributions required of and due from all of the
363 predecessor employers, and has assumed liability for all
364 contributions that may become due from all of the predecessor

HB 1083

2012

365 employers. ~~In addition,~~ An employer may not be considered a
366 successor under this subparagraph if the employer purchases a
367 company with a lower rate into which employees with job
368 functions unrelated to the business endeavors of the predecessor
369 are transferred for the purpose of acquiring the low rate and
370 avoiding payment of contributions. ~~As used in this paragraph,~~
371 Notwithstanding s. 443.036(14), the term "contributions," as
372 used in this paragraph, means all indebtedness to the tax
373 collection service provider, including, but not limited to,
374 interest, penalty, collection fee, and service fee.

375 2. A successor employer must accept the transfer of all of
376 the predecessor employers' employment records within 30 days
377 after the date of the official notification of liability by
378 succession. If a predecessor employer has unpaid contributions
379 or outstanding quarterly reports, the successor employer must
380 pay the total amount with certified funds within 30 days after
381 the date of the notice listing the total amount due. After the
382 total indebtedness is paid, the tax collection service provider
383 shall transfer the employment records of all of the predecessor
384 employers to the successor employer's employment record. The tax
385 collection service provider shall determine the contribution
386 rate of the combined successor and predecessor employers upon
387 the transfer of the employment records, as prescribed by rule,
388 in order to calculate any change in the contribution rate
389 resulting from the transfer of the employment records.

390 ~~3.2.~~ Regardless of whether a predecessor employer's
391 employment record is transferred to a successor employer under
392 this paragraph, the tax collection service provider shall treat

393 the predecessor employer, if he or she subsequently employs
394 individuals, as an employer without a previous employment record
395 or, if his or her coverage is terminated under s. 443.121, as a
396 new employing unit.

397 4.3. The state agency providing unemployment tax
398 collection services may adopt rules governing the partial
399 transfer of experience rating when an employer transfers an
400 identifiable and segregable portion of his or her payrolls and
401 business to a successor employing unit. As a condition of each
402 partial transfer, these rules must require the following to be
403 filed with the tax collection service provider: an application
404 by the successor employing unit, an agreement by the predecessor
405 employer, and the evidence required by the tax collection
406 service provider to show the benefit experience and payrolls
407 attributable to the transferred portion through the date of the
408 transfer. These rules must provide that the successor employing
409 unit, if not an employer subject to this chapter, becomes an
410 employer as of the date of the transfer and that the transferred
411 portion of the predecessor employer's employment record is
412 removed from the employment record of the predecessor employer.
413 For each calendar year after the date of the transfer of the
414 employment record in the records of the tax collection service
415 provider, the service provider shall compute the contribution
416 rate payable by the successor employer or employing unit based
417 on his or her employment record, combined with the transferred
418 portion of the predecessor employer's employment record. These
419 rules may also prescribe what contribution rates are payable by
420 the predecessor and successor employers for the period between

HB 1083

2012

421 the date of the transfer of the transferred portion of the
422 predecessor employer's employment record in the records of the
423 tax collection service provider and the first day of the next
424 calendar year.

425 5.4. This paragraph does not apply to an employee leasing
426 company and client contractual agreement ~~as defined in s.~~
427 ~~443.036.~~ The tax collection service provider shall, if the
428 contractual agreement is terminated or the employee leasing
429 company fails to submit reports or pay contributions as required
430 by the service provider, treat the client as a new employer
431 without previous employment record unless the client is
432 otherwise eligible for a variation from the standard rate.

433 Section 5. This act shall take effect July 1, 2012.