

An Act

ENROLLED HOUSE
BILL NO. 3164

By: Hickman and McDaniel
(Randy) of the House

and

Newberry of the Senate

An Act relating to labor; creating procedure for seasonal workers; allowing benefits in certain periods; making employer apply for certain designation; setting procedure for determination and appeal; requiring certain notice to employer within certain time; authorizing termination as seasonal employer; defining terms; providing for codification; and providing an effective date.

SUBJECT: Seasonal workers

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-422 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Unemployment benefits based on services by a seasonal worker performed in seasonal employment are payable only for weeks of unemployment that occur during the normal seasonal work period. Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment that begins during the period between two (2) successive normal seasonal work periods to any individual if that individual performs the service in the first of the normal seasonal work periods and if there is a reasonable assurance that the individual will perform the service for a seasonal employer in the second of the normal seasonal work periods. The notice of reasonable assurance shall be given by the employer to the employee in writing on or before the last day of work in the

season. If benefits are denied to an individual for any week solely as a result of this section and the individual is not offered an opportunity to perform in the second normal seasonal work period for which reasonable assurance of employment had been given, the individual is entitled to a retroactive payment of benefits under this section for each week that the individual previously filed a timely claim for benefits. An individual may apply for any retroactive benefits under this section in accordance with the provisions of Article 2 of the Employment Security Act of 1980.

B. Not less than twenty (20) days before the estimated beginning date of a normal seasonal work period, an employer may apply to the Commission in writing for designation as a seasonal employer. At the time of application, the employer shall conspicuously display a copy of the application on the employer's premises. Within ninety (90) days after receipt of the application, the Commission shall determine if the employer is a seasonal employer. The employer may appeal this decision pursuant to the provisions of Section 3-115 of Title 40 of the Oklahoma Statutes. A determination of the Commission concerning the status of an employer as a seasonal employer, or the decision of the Assessment Board or a court of this state through the administrative appeal process, which has become final, may be introduced in any proceeding involving a claim for benefits, and the facts found and decision issued in the determination or decision shall be conclusive unless substantial evidence to the contrary is introduced by or on behalf of the claimant.

C. If the employer is determined to be a seasonal employer, the employer shall give notice to each employee of the employer's status as a seasonal employer and the beginning and ending dates of the employer's normal seasonal work periods, and this notice shall be given to the employee within the first seven (7) days of employment. On or before the last day of work in the season, if the employer intends to issue a notice of reasonable assurance of employment for the next season, the employer shall also give notice to each employee advising that the employee shall timely file an initial application for unemployment benefits at the end of the current seasonal work period and file timely weekly continued claims thereafter to preserve his or her right to receive retroactive unemployment benefits if he or she is not reemployed by the seasonal employer in the subsequent normal seasonal work period. The notices must be on a separate document written in clear and concise language that states these provisions. Failure of the employer to give adequate notice as required by this subsection will result in the

termination of the employer as a seasonal employer under subsection D of this section.

D. The Commission may issue a determination terminating an employer's status as a seasonal employer on the Commission's own motion for good cause, or upon the written request of the employer. The effective date of a termination determination under this subsection shall be set by the Commission. A determination under this subsection may be appealed pursuant to the provisions of Section 3-115 of Title 40 of the Oklahoma Statutes.

E. An employer whose status as a seasonal employer is terminated under subsection D of this section shall not reapply for a seasonal employer status determination until after a regularly recurring normal seasonal work period has begun and ended.

F. If a seasonal employer informs an employee who received assurance of being rehired that, despite the assurance, the employee will not be rehired at the beginning of the employer's next normal seasonal work period, this section does not prevent the employee from receiving unemployment benefits in the same manner and to the same extent he or she would receive benefits under the Employment Security Act of 1980 from an employer who has not been determined to be a seasonal employer.

G. A successor of a seasonal employer is considered to be a seasonal employer unless the successor provides the Commission, within one hundred twenty (120) days after the transfer, with a written request for termination of its status as a seasonal employer in accordance with subsection D of this section.

H. At the time an employee is hired by a seasonal employer, the employer shall notify the employee in writing if the employee will be a seasonal worker. The employer shall provide the worker with written notice of any subsequent change in the employee's status as a seasonal worker. If an employee of a seasonal employer is denied benefits because that employee is a seasonal worker, the employee may contest that designation by filing an appeal pursuant to the provisions of Part 6 of Article 2 of the Employment Security Act of 1980.

I. As used in this section:

1. "Construction industry" means the work activity designated in Sector Group 23 - Construction of the North American Industrial

Classification System published by the Executive Office of the President, Office of Management and Budget, 2012 edition;

2. "Normal seasonal work period" means that period, or those periods, of time during which an individual is employed in seasonal employment, as determined by the Commission;

3. "Seasonal employment" means the employment of one or more individuals primarily hired to perform services during regularly recurring periods of twenty-six (26) weeks or less in any fifty-two-week period other than services in the construction industry;

4. "Seasonal employer" means an employer, other than an employer in the construction industry, who applies to the Commission for designation as a seasonal employer and whom the Commission determines to be an employer whose operations and business require employees engaged in seasonal employment; and

5. "Seasonal worker" means a worker who has been paid wages by a seasonal employer for work performed only during the normal seasonal work period.

SECTION 2. This act shall become effective November 1, 2016.

Passed the House of Representatives the 18th day of May, 2016.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of May, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____