

SENATE BILL 3657

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 7, relative to unemployment insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 7, Part 3, is amended by adding the following as a new section thereto:

50-7-3__.

(a) As used in this section:

(1) "Active period or periods of a seasonal employer" means the longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on;

(2) "Inactive period or periods of a seasonal pursuit" means that part of a calendar year which is not included in the active period or periods of such employer;

(3) "Interested party" means any individual affected by a seasonal determination;

(4) "Nonseasonal wages" means the wages earned in seasonal employment within the inactive period or periods of such employment, or wages earned at any time in nonseasonal employment;

(5) "Production operations" means all the activities of employment which are primarily related to the production of its characteristic goods or services;

(6) "Seasonal wages" means the wages earned in seasonal employment within its active period or periods. The department may prescribe by rule the manner in which seasonal wages shall be reported;

(7) "Seasonal worker" means a worker at least twenty-five percent (25%) of whose base period wages are seasonal wages; and

(8) "Wages" means remuneration for employment.

(b) Effective with claims filed on or after January 1, 2013:

(1) A seasonal employer is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of thirty-six (36) weeks in a calendar year. No employer shall be considered seasonal until the department makes a determination that the employer is seasonal. However, any successor to a seasonal employer shall be deemed seasonal unless the successor requests cancellation of the seasonal employer status within one hundred twenty days (120) after the acquisition. This subdivision (b)(1) shall not be applicable to pending cases nor retroactive in effect;

(2) Upon application by an employer for seasonal employer status, the department shall determine or redetermine whether the employer is seasonal and, if seasonal, the employer's active period. The department may, on its own motion, redetermine a seasonal employer's active period. An application for a seasonal determination must be made on forms prescribed by the department and must be made at least thirty days (30) prior to the beginning date of the period of production operations for which a determination is requested;

(3) Whenever the department has determined or redetermined an employer to be seasonal, the employer shall be notified immediately, and the notice must contain the beginning and ending dates of the employer's active

period or periods. Employers determined or redetermined to be a seasonal employer shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. The notices may be furnished by the department;

(4) A seasonal determination shall become effective unless an interested party files an application for review within ten (10) days of the beginning date of the first period of production operations to which it applies. An application for review shall be an application for a determination of status;

(5) All wages paid to a seasonal worker during the worker's base period shall be used in determining the worker's weekly benefit amount; provided, however, that all weekly benefit amounts so determined shall be rounded to the nearest lower full dollar amount, if not a full dollar amount;

(6)

(A) A seasonal worker is eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs, within the active period of the seasonal pursuit in which the worker earned base period wages;

(B) A seasonal worker is eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period of the seasonal employer in which the worker has earned base period wages; provided the worker has exhausted benefits based on seasonal wages. The worker is also eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in

which the worker earned base period wages irrespective as to whether the worker has exhausted benefits based on seasonal wages;

(C) The maximum amount of benefits which a seasonal worker is eligible to receive, based on seasonal wages, shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in the worker's benefit year, as provided in § 50-7-301 by the percentage obtained by dividing the seasonal wages in the worker's base period by all of the worker's base period wages;

(D) The maximum amount of benefits which a seasonal worker is eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar (\$1.00), determined by multiplying the maximum benefits payable in the worker's benefit year, as provided in § 50-7-301 by the percentage obtained by dividing the nonseasonal wages in the worker's base period by all of the worker's base period wages;

(E) In no case is a seasonal worker eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in § 50-7-301;

(7)

(A) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in § 50-7-403 against the account of the worker's base period employer who paid the worker such seasonal wages, and for the purpose of this subdivision (b)(7) such seasonal

wages shall be deemed to constitute all of the worker's base period wages;

(B) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in § 50-7-403, against the account of the worker's base period employer who paid the worker such nonseasonal wages, and for the purpose of this subdivision (b)(7) such nonseasonal wages shall be deemed to constitute all of the worker's base period wages;

(8) The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to an employer by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period; and

(9) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance herein to appeal from such determination as provided in § 50-7-304.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.