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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: WD | . | |
| 04/27/2011 | . | |
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The Committee on Budget (Siplin) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 108 - 177

and insert:

Section 3. Effective July 1, 2011, present subsections (5) through (25) of section 443.036, Florida Statutes, are redesignated as subsections (6) through (26), respectively, present subsections (26) through (45) of that section are redesignated as subsection (28) through (47), respectively, new subsections (5) and (27) are added to that section, and present subsections (6), (7), (9), (16), (29), and (43) of that section are amended, to read:



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14 443.036 Definitions.—As used in this chapter, the term:

15 (5) "Alternative base period" means the last four completed
16 calendar quarters immediately preceding the first day of an
17 individual's benefit year.

18 (7)(6) "Available for work" means actively seeking and
19 being ready and willing to accept suitable work employment.

20 (8)(7) "Base period" means the first four of the last five
21 completed calendar quarters immediately preceding the first day
22 of an individual's benefit year. If the agency determines,
23 pursuant to s. 443.091(1)(g), that an alternative base period
24 will be used, the term has the same meaning as the alternative
25 base period.

26 (10)(9) "Benefit year" means, for an individual, the 1-year
27 period beginning with the first day of the first week for which
28 the individual first files a valid claim for benefits and,
29 thereafter, the 1-year period beginning with the first day of
30 the first week for which the individual next files a valid claim
31 for benefits after the termination of his or her last preceding
32 benefit year. Each claim for benefits made in accordance with s.
33 443.151(2) is a valid claim ~~under this subsection~~ if the
34 individual was paid wages for insured work in accordance with s.
35 443.091(1)(g) and is unemployed ~~as defined in subsection (43)~~ at
36 the time of filing the claim. However, the Agency for Workforce
37 Innovation may adopt rules providing for the establishment of a
38 uniform benefit year for all workers in one or more groups or
39 classes of service or within a particular industry if the agency
40 determines, after notice to the industry and to the workers in
41 the industry and an opportunity to be heard in the matter, that
42 those groups or classes of workers in a particular industry



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43 periodically experience unemployment resulting from layoffs or
44 shutdowns for limited periods of time.

45 ~~(17)(16)~~ "Earned income" means gross remuneration derived
46 from work, professional service, or self-employment. The term
47 includes commissions, bonuses, back pay awards or back pay
48 settlements, front pay or front wages, and the cash value of all
49 remuneration paid in a medium other than cash. The term does not
50 include income derived from invested capital or ownership of
51 property.

52 (27) "Initial skills review" means an online education or
53 training program, such as that established under s. 1004.99,
54 which is approved by the Agency for Workforce Innovation and
55 designed to measure an individual's mastery level of workplace
56 skills.

57 ~~(31)(29)~~ "Misconduct" includes, but is not limited to, the
58 following, which may not be construed in pari materia with each
59 other:

60 (a) Conduct demonstrating conscious willful or wanton
61 disregard of an employer's interests and found to be a
62 deliberate violation or disregard of reasonable the standards of
63 behavior which the employer has a right to expect of his or her
64 employee, including standards lawfully set forth in the
65 employer's written rules of conduct; or

66 (b) Carelessness or negligence to a degree or recurrence
67 that manifests culpability or, wrongful intent, ~~or evil design~~
68 or shows an intentional and substantial disregard of the
69 employer's interests or of the employee's duties and obligations
70 to his or her employer.

71 ~~(45)(43)~~ "Unemployment" or "unemployed" means:



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72 (a) An individual is "totally unemployed" in any week
73 during which he or she does not perform any services and for
74 which earned income is not payable to him or her. An individual
75 is "partially unemployed" in any week of less than full-time
76 work if the earned income payable to him or her for that week is
77 less than his or her weekly benefit amount. The Agency for
78 Workforce Innovation may adopt rules prescribing distinctions in
79 the procedures for unemployed individuals based on total
80 unemployment, part-time unemployment, partial unemployment of
81 individuals attached to their regular jobs, and other forms of
82 short-time work.

83 (b) An individual's week of unemployment commences only
84 after ~~his or her~~ registration with the Agency for Workforce
85 Innovation as required in s. 443.091, ~~except as the agency may~~
86 ~~otherwise prescribe by rule.~~

87
88 Between lines 273 and 274
89 insert:

90 (g) She or he has been paid wages for insured work equal to
91 1.5 times her or his high quarter wages during her or his base
92 period, except that an unemployed individual is not eligible to
93 receive benefits if the base period wages are less than \$3,400.
94 If the individual is ineligible for benefits calculated on a
95 base period wage, wages must be calculated using an alternative
96 base period and the claimant must have the opportunity to choose
97 whether to establish a claim using such wages. Wages shall be
98 calculated for an alternative base period only if the base
99 period wages are inadequate to establish eligibility under this
100 paragraph and only for benefit years that begin on or after



101 January 1, 2011. Wages used to establish a monetarily eligible
102 benefit year may not be used to establish monetary eligibility
103 in a subsequent benefit year.

104
105 Delete lines 958 - 993
106 and insert:

107 (a) *Notices of claim.*—The Agency for Workforce Innovation
108 shall promptly provide a notice of claim to the claimant's most
109 recent employing unit and all employers whose employment records
110 are liable for benefits under the monetary determination. The
111 employer must respond to the notice of claim within 20 days
112 after the mailing date of the notice, or in lieu of mailing,
113 within 20 days after the delivery of the notice. If a
114 contributing employer fails to timely respond to the notice of
115 claim, the employer's account may not be relieved of benefit
116 charges as provided in s. 443.131(3) (a), notwithstanding
117 paragraph (5) (b). The agency may adopt rules as necessary to
118 administer ~~implement~~ the processes described in this paragraph
119 relating to a notice ~~notices~~ of claim.

120 (b) *Monetary determinations.*—In addition to the notice of
121 claim, the Agency for Workforce Innovation must ~~shall~~ also
122 promptly provide an initial monetary determination to the
123 claimant and each base period employer whose account is subject
124 to being charged for its respective share of benefits on the
125 claim. The monetary determination must include a statement of
126 whether and in what amount the claimant is entitled to benefits,
127 and, in the event of a denial, must state the reasons for the
128 denial. A monetary determination for the first week of a benefit
129 year must also include a statement of whether the claimant was



130 paid the wages required under s. 443.091(1)(g) and, if so, the
131 first day of the benefit year, the claimant's weekly benefit
132 amount, and the maximum total amount of benefits payable to the
133 claimant for a benefit year. The monetary determination is final
134 unless within 20 days after the mailing of the notices to the
135 parties' last known addresses, or in lieu of mailing, within 20
136 days after the delivery of the notices, an appeal or written
137 request for reconsideration is filed by the claimant or other
138 party entitled to notice. The agency may adopt rules as
139 necessary to implement the processes described in this paragraph
140 relating to notices of monetary determinations and the appeals
141 or reconsideration requests filed in response to such notices.

142 (c) Determinations involving an alternative base period.—In
143 the case of a claim for benefits involving an alternative base
144 period under s. 443.091(1)(g), if the agency is unable to access
145 wage information through the database of its tax collection
146 service provider, the agency shall request the information from
147 the employer by mail. The employer must provide the requested
148 information within 10 days after the agency mails the request.
149 If wage information is unavailable, the agency may base the
150 determination on an affidavit submitted by the individual
151 attesting to her or his wages for those calendar quarters. The
152 individual must furnish payroll information, if available, in
153 support of the affidavit. Benefits based on an alternative base
154 period must be adjusted if the quarterly report of wage
155 information received from the employer under s. 443.141 results
156 in a change in the monetary determination.

157 (d) ~~(e)~~ Nonmonetary determinations.—If the agency receives
158 information that may result in a denial of benefits, the agency



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159 must complete an investigation of the claim required by
160 subsection (2) and provide notice of a nonmonetary determination
161 to the claimant and the employer from whom the claimant's reason
162 for separation affects his or her entitlement to benefits. The
163 determination must state the reason for the determination and
164 whether the unemployment tax account of the contributing
165 employer is charged for benefits paid on the claim. The
166 nonmonetary determination is final unless within 20 days after
167 the mailing of the notices to the parties' last known addresses,
168 or in lieu of mailing, within 20 days after the delivery of the
169 notices, an appeal or written request for reconsideration is
170 filed by the claimant or other party entitled to notice. The
171 agency may adopt rules as necessary to administer ~~implement~~ the
172 processes described in this paragraph relating to notices of
173 nonmonetary determination and the appeals or reconsideration
174 requests filed in response to such notices, and may adopt rules
175 prescribing the manner and procedure by which employers within
176 the base period of a claimant become entitled to notice of
177 nonmonetary determination.

178 (e) ~~(d)~~ *Determinations in labor dispute cases.*—If a ~~Whenever~~
179 ~~any~~ claim involves a labor dispute described in s. 443.101(5)
180 ~~443.101(4)~~, the Agency for Workforce Innovation shall promptly
181 assign the claim to a special examiner who shall make a
182 determination on the issues involving unemployment due to the
183 labor dispute. The special examiner shall make the determination
184 after an investigation, as necessary. The claimant or another
185 party entitled to notice of the determination may appeal a
186 determination under subsection (4).

187 (f) ~~(e)~~ *Redeterminations.*—



188 1. The Agency for Workforce Innovation may reconsider a
189 determination if it finds an error or if new evidence or
190 information pertinent to the determination is discovered after a
191 prior determination or redetermination. A redetermination may
192 not be made more than 1 year after the last day of the benefit
193 year unless the disqualification for making a false or
194 fraudulent representation under s. 443.101(7) ~~443.101(6)~~ is
195 applicable, in which case the redetermination may be made within
196 2 years after the false or fraudulent representation. The agency
197 must promptly give notice of redetermination to the claimant and
198 to any employers entitled to notice in the manner prescribed in
199 this section for the notice of an initial determination.

200 2. If the amount of benefits is increased by the
201 redetermination, an appeal of the redetermination based solely
202 on the increase may be filed as provided in subsection (4). If
203 the amount of benefits is decreased by the redetermination, the
204 redetermination may be appealed by the claimant if a subsequent
205 claim for benefits is affected in amount or duration by the
206 redetermination. If the final decision on the determination or
207 redetermination to be reconsidered was made by an appeals
208 referee, the commission, or a court, the Agency for Workforce
209 Innovation may apply for a revised decision from the body or
210 court that made the final decision.

211 3. If an appeal of an original determination is pending
212 when a redetermination is issued, the appeal, unless withdrawn,
213 is treated as an appeal from the redetermination.

214
215 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

216 And the directory clause is amended as follows:



217 Delete line 179
218 and insert:
219 (d), (f), and (g) of subsection (1) of section 443.091, Florida
220

221 Delete line 939
222 and insert:
223 subsection (2), subsection (3), and
224

225 ===== T I T L E A M E N D M E N T =====

226 And the title is amended as follows:

227 Delete lines 9 - 17

228 and insert:

229 for "available for work," "base period," "earned
230 income," "misconduct," and "unemployment"; adding
231 definitions for "alternative base period" and "initial
232 skills review"; amending s. 443.091, F.S.; revising
233 requirements for making continued claims for benefits;
234 requiring that an individual claiming benefits report
235 certain information and participate in an initial
236 skills review; providing an exception; specifying
237 criteria for determining an applicant's availability
238 for work; providing for an alternative base period
239 under certain circumstances; amending s.

240

241 After line 51

242 insert:

243 requiring an employer to provide wage information to
244 support an individual's eligibility for benefits;
245 authorizing the Agency for Workforce Innovation to



246
247

accept an affidavit from the claimant to support
eligibility for benefits under certain circumstances;