By Senator Detert

A bill to be entitled
An act relating to unemployment compensation; amending
s. 213.053, F.S.; increasing the number of employer
payroll service providers who qualify for access to
unemployment tax information by filing a memorandum of
understanding; amending s. 443.031, F.S.; revising
provisions relating to statutory construction;
defining the term “through no fault of his or her
own”; amending s. 443.036, F.S.; revising definitions;
providing that the term “misconduct” includes
reasonable standards expected of employees; amending
s. 443.091, F.S.; requiring that an applicant for
benefits complete an initial skills review; providing
exceptions; specifying criteria for determining an
applicant’s availability for work; amending s.
443.101, F.S.; clarifying “good cause” for voluntarily
leaving employment; specifying acts that are “gross
misconduct” for purposes of discharging an employee
and disqualifying him or her for benefits; revising
the criteria for determining “suitable work”;
disqualifying a person for benefits due to the receipt
of severance pay; revising provisions relating to the
effect of criminal acts on eligibility for benefits;
amending s. 443.1115, F.S.; conforming cross-
references; reviving, readopting, and amending s.
443.1117, F.S., relating to temporary extended
benefits; providing for retroactive application;
providing for applicability relating to extended
benefits for certain weeks and for periods of high

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unemployment; providing for applicability; amending s. 443.1216, F.S.; providing that employee leasing companies may make a one-time election to report leased employees under the respective unemployment account of each leasing company client; providing procedures and application for such election; amending s. 443.131, F.S.; increasing the employer’s standard rate of contributions; providing for retroactive application; amending s. 443.141, F.S.; providing an employer payment schedule for 2012, 2013, and 2014 contributions; requiring an employer to pay a fee for paying contributions on a quarterly schedule; providing penalties, interest, and fees on delinquent contributions; amending s. 443.151, F.S.; authorizing new claims to be submitted by telephone, mail, or electronic means, and continuing claims to be submitted by mail or electronic means; revising the judicial venue for reviewing commission orders; providing for repayment of benefits in cases of agency error; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (4) of section 213.053, Florida Statutes, as amended by chapter 2010-280, Laws of Florida, is amended to read:

213.053 Confidentiality and information sharing.—
(4) The department, while providing unemployment tax
collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316, may release unemployment tax rate information to the agent of an employer, which agent provides payroll services for more than 100 [500] employers, pursuant to the terms of a memorandum of understanding. The memorandum of understanding must state that the agent affirms, subject to the criminal penalties contained in ss. 443.171 and 443.1715, that the agent will retain the confidentiality of the information, that the agent has in effect a power of attorney from the employer which permits the agent to obtain unemployment tax rate information, and that the agent shall provide the department with a copy of the employer’s power of attorney upon request.

Section 2. Section 443.031, Florida Statutes, is amended to read:

443.031 Rule of liberal construction.—

(1) This chapter shall be liberally construed to in favor or disfavor of a claimant of unemployment benefits who is unemployed through no fault of his or her own. The term “through no fault of his or her own” means that the employer or employing unit has released the claimant from employment for reasons unrelated to any action or inaction of the claimant.

(2) Any doubt as to the proper construction of this chapter shall be resolved in favor of conformity with federal law, including, but not limited to, the Federal Unemployment Tax Act, the Social Security Act, the Wagner-Peyser Act, and the Workforce Investment Act.

Section 3. Subsections (6), (9), (29), and (43) of section 443.036, Florida Statutes, are amended to read:
443.036 Definitions.—As used in this chapter, the term:

(6) “Available for work” means actively seeking and being ready and willing to accept suitable employment.

(9) “Benefit year” means, for an individual, the 1-year period beginning with the first day of the first week for which the individual first files a valid claim for benefits and, thereafter, the 1-year period beginning with the first day of the first week for which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Each claim for benefits made in accordance with s. 443.151(2) is a valid claim under this subsection if the individual was paid wages for insured work in accordance with s. 443.091(1)(h) and is unemployed as defined in subsection (43) at the time of filing the claim. However, the Agency for Workforce Innovation may adopt rules providing for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry if the agency determines, after notice to the industry and to the workers in the industry and an opportunity to be heard in the matter, that those groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(29) “Misconduct” includes, but is not limited to, the following, which may not be construed in pari materia with each other:

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

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

(43) “Unemployment” or “unemployed” means:

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

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

Section 4. Subsection (1) of section 443.091, Florida
Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive
benefits for any week only if the Agency for Workforce
Innovation finds that:
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(a) She or he has made a claim for benefits for that week in accordance with the rules adopted by the agency for Workforce Innovation.

(b) She or he has registered with the agency for work and subsequently reports to the one-stop career center as directed by the regional workforce board for reemployment services. This requirement does not apply to persons who are:

1. Non-Florida residents;
2. On a temporary layoff, as defined in s. 443.036(42);
3. Union members who customarily obtain employment through a union hiring hall; or
4. Claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

(c) She or he has completed an initial skills review using an online education or training program within 14 days after making a new claim for benefits. An online education or training program, such as that established in s. 1004.99, which is approved by the agency and designed to measure an individual’s mastery level of workplace skills meets the requirement of this paragraph.

1. This requirement does not apply to persons who are:
   a. Non-Florida residents;
   b. On a temporary layoff;
   c. Union members who customarily obtain employment through a union hiring hall; or
   d. Claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.
2. The administrator or operator of the online education or training program must notify the agency when the claimant
completes the initial skills review. The online education or training program administrator or operator must report the results of the claimant’s initial skills review to the regional workforce board or the one-stop career center as directed by the workforce board for reemployment services.

(d) To make continued claims for benefits, she or he is reporting to the agency in accordance with its rules. These rules may not conflict with s. 443.111(1)(b), including the requirement that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

(e) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the agency shall develop criteria to determine a claimant’s ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. As part of a claimant’s efforts to actively seek work, she or he must make a reasonable and diligent effort to contact multiple potential employers each week for the purpose of securing suitable work. The claimant must furnish tangible evidence to the agency that she or he is actively engaged in a systematic and sustained effort to find work. The agency may require the claimant to provide the proof to the one-stop career center as part of reemployment services. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (f), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the agency, or by reason of s. 443.101(3) or 443.101(2) relating to failure to apply for, or
refusal to accept, suitable work. Training may be approved by
the agency in accordance with criteria prescribed by rule. A
claimant’s eligibility during approved training is contingent
upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an
otherwise eligible individual who is in training approved under
s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
determined ineligible or disqualified for benefits due to her or
his enrollment in such training or because of leaving work that
is not suitable employment to enter such training. As used in
this subparagraph, the term “suitable employment” means work of
a substantially equal or higher skill level than the worker’s
past adversely affected employment, as defined for purposes of
the Trade Act of 1974, as amended, the wages for which are at
least 80 percent of the worker’s average weekly wage as
determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an
otherwise eligible individual may not be denied benefits for any
week because she or he is before any state or federal court
pursuant to a lawfully issued summons to appear for jury duty.

(f) She or he participates in reemployment services,
such as job search assistance services if, whenever the
individual has been determined, by a profiling system
established by agency rule, to be likely to exhaust regular
benefits and to be in need of reemployment services.

(g) She or he has been unemployed for a waiting period
of 1 week. A week may not be counted as a week of unemployment
under this subsection unless:

1. Unless It occurs within the benefit year that includes
the week for which she or he claims payment of benefits.

2. **If** Benefits have been paid for that week.
3. **Unless** The individual was eligible for benefits for that week as provided in this section and s. 443.101, except for the requirements of this subsection and of s. 443.101(6).

**(h)** She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than $3,400.

**(i)** She or he submitted to the agency a valid social security number assigned to her or him. The agency may verify the social security number with the United States Social Security Administration and **may** deny benefits if the agency is unable to verify the individual’s social security number, the social security number is invalid, or the social security number is not assigned to the individual.

Section 5. Paragraph (a) of subsection (1) and present subsections (2), (3), (9), and (11) of section 443.101, Florida Statutes, are amended, present subsections (2) through (11) of that section are redesignated as subsections (3) through (12), respectively, and a new subsection (2) is added to that section, to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or in which the individual has been discharged by the employing unit for misconduct connected with his or her work,
based on a finding by the Agency for Workforce Innovation. As used in this paragraph, the term “work” means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than in excess of 17 times his or her weekly benefit amount. As used in this subsection, the term “good cause” includes only that cause attributable to the employing unit which would compel a reasonable individual to cease working or attributable to which consists of the individual’s illness or disability requiring separation from his or her work. Any other disqualification may not be imposed. An individual is not disqualified under this subsection for voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months, or. An individual is not disqualified under this subsection for voluntarily leaving work to relocate as a result of his or her military-connected spouse’s permanent change of station orders, activation orders, or unit deployment orders.

2. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks that immediately following that week, as
determined by the agency in each case according to the circumstances in each case or the seriousness of the misconduct, under the agency’s rules adopted for determining determinations of disqualification for benefits for misconduct.

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

4. If an individual is notified by the employing unit of the employer’s intent to discharge the individual for reasons other than misconduct and the individual quits without good cause, as defined in this section, before the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(e) 443.091(1)(d) for failing to be available for work for the week or weeks of unemployment occurring before the effective date of the discharge.

(2) For the week the individual has been discharged by the employing unit for gross misconduct, based on a finding by the Agency for Workforce Innovation. Disqualification for being discharged for gross misconduct continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount. As used in this subsection, the term “gross misconduct” means any of the following:

(a) Willful or reckless damage to an employer’s property
(b) Theft of the property of an employer, a customer, or an invitee of the employer.

c) Violation of an employer’s policy relating to the consumption of alcohol or drugs on the employer property, being under the influence of alcohol or drugs on employer property, or using alcohol or drugs while on the job or on duty. As used in this paragraph, the term “alcohol or drugs” has the same meaning as in s. 440.102(1)(c).

d) Failure to comply with an employer’s drug and alcohol testing and use policies while on the job or on duty.

e) Failure to comply with applicable state or federal drug and alcohol testing and use regulations, including, but not limited to, 49 C.F.R. part 40 and part 382 of the Federal Motor Carrier Safety Regulations, while on the job or on duty, and regulations applicable to employees performing transportation and other safety-sensitive job functions as defined by the Federal Government.

f) Criminal assault or battery of another employee, or of a customer or invitee of the employer.

g) Abuse of a patient, resident, disabled person, elderly person, or child in her or his professional care.

h) Insubordination, which is defined as the willful failure to comply with a lawful, reasonable order of a supervisor which is directly related to the employee’s employment as described in an applicable written job description, the written rules of conduct, or other lawful directive of the employer.

(i) Willful neglect of duty directly related to the

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employee’s employment as described in an applicable written job
description or written rules of conduct.

(j) Failure to maintain a license, registration, or
certification required by law in order for the employee to
perform her or his assigned job duties as described in an
written job description.

(3) If the Agency for Workforce Innovation finds that
the individual has failed without good cause to actively seek
work, to apply for available suitable work when directed by the
agency or the one-stop career center, to accept suitable work
when offered to him or her, or to return to the individual’s
customary self-employment when directed by the agency, the
disqualification continues for the full period of unemployment
next ensuing after he or she failed without good cause to apply
for available suitable work, to accept suitable work, or to
return to his or her customary self-employment, under this
subsection, and until the individual has earned income of at
least 17 times his or her weekly benefit amount. The agency
shall determine “suitable work” pursuant to the following
criteria: The Agency for Workforce Innovation shall by rule
adopt criteria for determining the “suitability of work,” as
used in this section. The Agency for Workforce Innovation in
developing these rules shall consider the duration of a
claimant’s unemployment in determining the suitability of work
and the suitability of proposed rates of compensation for
available work. Further, after an individual has received 25
weeks of benefits in a single year, suitable work is a job that
pays the minimum wage and is 120 percent or more of the weekly
benefit amount the individual is drawing.
(a) The agency shall consider the duration of the individual’s unemployment. For the first 12 weeks of unemployment, suitable work is employment of an equal or higher skill level than the individual’s previous employment which pays wages that are at least 80 percent of the individual’s average weekly wage of the high quarter wages of his or her base period employment. After 13 weeks of unemployment, suitable work is employment that pays wages at least equal to the weekly benefit amount that the individual is drawing.

(b) In determining whether or not any work is suitable for an individual, The agency for Workforce Innovation shall consider the degree of risk involved to the individual’s health, safety, and morals; the individual’s physical fitness, and prior training; the individual’s experience, and prior earnings; his or her length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(c) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If The position offered is vacant due directly to a strike, lockout, or other labor dispute.

2. If The wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

3. If As a condition of being employed, the individual is
would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) If the agency finds that an individual was rejected for offered employment as the direct result of a positive, confirmed drug test required as a condition of employment, the individual is disqualified for refusing to accept an offer of suitable work.

(4) For any week with respect to which he or she is receiving or has received remuneration in the form of:

(a) Wages in lieu of notice.

(b) Severance pay. The number of weeks that an individual’s severance pay disqualifies the individual is equal to the amount of the severance pay divided by the individual’s average weekly wage received from her or his most recent employer, rounded down to the nearest whole number, beginning with the week the individual is separated from employment.

(c) Compensation for temporary total disability or permanent total disability under the workers’ compensation law of any state or under a similar law of the United States.

However, if the remuneration referred to in paragraphs (a), (b), and (c) is less than the benefits that would otherwise be due under this chapter, an individual who is otherwise eligible is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the remuneration.

(10) If the individual was terminated from his or her work for violation of any criminal law punishable by imprisonment, or for any dishonest act, in connection with his work.
or her work, as follows:

(a) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was terminated from his or her work for violation of any criminal law, under any jurisdiction, which was punishable by imprisonment in connection with his or her work or affected his or her ability to perform work, and the individual was convicted, or entered a plea of guilty or nolo contendere found guilty of the offense, made an admission of guilt in a court of law, or entered a plea of no contest, the individual is not entitled to unemployment benefits for up to 52 weeks, pursuant to rules adopted by the agency for Workforce Innovation, and until he or she has earned income of at least 17 times his or her weekly benefit amount. If, before an adjudication of guilt, an admission of guilt, or a plea of nolo contendere no contest, the employer provides competent, substantial evidence to show the agency for Workforce Innovation that the arrest was due to a crime against the employer or the employer’s business, customers, or invitees and, after considering all the evidence, the Agency for Workforce Innovation finds misconduct in connection with the individual’s work, the individual is not entitled to unemployment benefits.

(b) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was unavailable for work due to incarceration or imprisonment, regardless of whether the offense was committed in connection with his or her work, the individual is not entitled to unemployment benefits for up to 52 weeks, pursuant to rules adopted by the agency, and until he or she has earned income of
at least 17 times his or her weekly benefit amount.

(c)(b) If the Agency for Workforce Innovation or the
Unemployment Appeals Commission finds that the individual was
terminated from work for any dishonest act in connection with
his or her work, the individual is not entitled to unemployment
benefits for up to 52 weeks, pursuant to rules adopted by
the agency for Workforce Innovation, and until he or she has
earned income of at least 17 times his or her weekly benefit
amount. In addition, If the employer terminates an individual as
a result of a dishonest act in connection with his or her work
and the agency for Workforce Innovation finds misconduct in
connection with his or her work, the individual is not entitled
to unemployment benefits.

If With respect to an individual is disqualified for benefits,
the account of the terminating employer, if the employer is in
the base period, is noncharged at the time the disqualification
is imposed.

(12)(11) If an individual is discharged from employment for
drug use as evidenced by a positive, confirmed drug test as
provided in paragraph (1)(d), or is rejected for offered
employment because of a positive, confirmed drug test as
provided in paragraph (3)(d) (2)(e), test results and chain of
custody documentation provided to the employer by a licensed and
approved drug-testing laboratory is self-authenticating and
admissible in unemployment compensation hearings, and such
evidence creates a rebuttable presumption that the individual
used, or was using, controlled substances, subject to the
following conditions:
(a) To qualify for the presumption described in this subsection, an employer must have implemented a drug-free workplace program under ss. 440.101 and 440.102, and must submit proof that the employer has qualified for the insurance discounts provided under s. 627.091, as certified by the insurance carrier or self-insurance unit. In lieu of these requirements, an employer who does not fit the definition of “employer” in s. 440.102 may qualify for the presumption if the employer is in compliance with equivalent or more stringent drug-testing standards established by federal law or regulation.

(b) Only laboratories licensed and approved as provided in s. 440.102(9), or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

(c) Disclosure of drug test results and other information pertaining to drug testing of individuals who claim or receive compensation under this chapter shall be governed by s. 443.1715.

Section 6. Paragraph (c) of subsection (3) of section 443.1115, Florida Statutes, is amended to read:

443.1115 Extended benefits.—

(3) ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS.—

(c)1. An individual is disqualified from receiving extended benefits if the Agency for Workforce Innovation finds that, during any week of unemployment in her or his eligibility period:

a. She or he failed to apply for suitable work or, if offered, failed to accept suitable work, unless the individual can furnish to the agency satisfactory evidence that her or his
prospects for obtaining work in her or his customary occupation within a reasonably short period are good. If this evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable for the individual shall be made in accordance with the definition of suitable work in s. 443.101(3) 443.101(2). This disqualification begins with the week the failure occurred and continues until she or he is employed for at least 4 weeks and receives earned income of at least 17 times her or his weekly benefit amount.

b. She or he failed to furnish tangible evidence that she or he actively engaged in a systematic and sustained effort to find work. This disqualification begins with the week the failure occurred and continues until she or he is employed for at least 4 weeks and receives earned income of at least 4 times her or his weekly benefit amount.

2. Except as otherwise provided in sub-subparagraph 1.a., as used in this paragraph, the term “suitable work” means any work within the individual’s capabilities to perform, if:

a. The gross average weekly remuneration payable for the work exceeds the sum of the individual’s weekly benefit amount plus the amount, if any, of supplemental unemployment benefits, as defined in s. 501(c)(17)(D) of the Internal Revenue Code of 1954, as amended, payable to the individual for that week;

b. The wages payable for the work equal the higher of the minimum wages provided by s. 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or the state or local minimum wage; and

c. The work otherwise meets the definition of suitable work in s. 443.101(3) 443.101(2) to the extent that the criteria for
suitability are not inconsistent with this paragraph.

Section 7. Notwithstanding the expiration date contained in section 1 of chapter 2010-90, Laws of Florida, operating retroactive to December 17, 2010, and expiring January 4, 2012, section 443.1117, Florida Statutes, is revived, readopted, and amended to read:

443.1117 Temporary extended benefits.—

(1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except if the result is inconsistent with the other provisions of this section, s. 443.1115(2), (3), (4), (6), and (7) apply to all claims covered by this section.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Regular benefits" and "extended benefits" have the same meaning as in s. 443.1115.

(b) "Eligibility period" means the weeks in an individual’s benefit year or emergency benefit period which begin in an extended benefit period and, if the benefit year or emergency benefit period ends within that extended benefit period, any subsequent weeks beginning in that period.


(d) "Extended benefit period" means a period that:

1. Begins with the third week after a week for which there is a state “on” indicator; and

2. Ends with any of the following weeks, whichever occurs
later:

  a. The third week after the first week for which there is a state “off” indicator;

  b. The 13th consecutive week of that period.

However, an extended benefit period may not begin by reason of a state “on” indicator before the 14th week after the end of a prior extended benefit period that was in effect for this state.

(e) “Emergency benefit period” means the period during which an individual receives emergency benefits as defined in paragraph (e).

(f) “Exhaustee” means an individual who, for any week of unemployment in her or his eligibility period:

1. Has received, before that week, all of the regular benefits and emergency benefits, if any, available under this chapter or any other law, including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemembers under 5 U.S.C. ss. 8501-8525, in the current benefit year or emergency benefit period that includes that week. For the purposes of this subparagraph, an individual has received all of the regular benefits and emergency benefits, if any, available even if although, as a result of a pending appeal for wages paid for insured work which were not considered in the original monetary determination in the benefit year, she or he may subsequently be determined to be entitled to added regular benefits;

2. Had a benefit year that which expired before that week, and was paid no, or insufficient, wages for insured work on the basis of which she or he could establish a new benefit year that
includes that week; and

3.a. Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act or other federal laws as specified in regulations issued by the United States Secretary of Labor; and

b. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if an individual is seeking those benefits and the appropriate agency finally determines that she or he is not entitled to benefits under that law, she or he is considered an exhaustee.

(g) “State ‘on’ indicator” means, with respect to weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 10, 2011 May 8, 2010, the occurrence of a week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all each of the preceding 3 2 calendar years; and

2. Equals or exceeds 6.5 percent.

(h) “High unemployment period” means, with respect to weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 10, 2011 May 8, 2010, any week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those
rates for the corresponding 3-month period ending in any or all each of the preceding 2 calendar years; and

2. Equals or exceeds 8 percent.

(i) "State ‘off’ indicator" means the occurrence of a week in which there is no state “on” indicator or which does not constitute a high unemployment period.

(3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in subsection (4):

(a) For any week for which there is an “on” indicator pursuant to paragraph (2)(g), the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Fifty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Thirteen times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(b) For any high unemployment period, the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Eighty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Twenty times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any other provision of this chapter, if the benefit year of an individual ends within an extended benefit period, the number of weeks of extended benefits the individual is entitled to receive in that
extended benefit period for weeks of unemployment beginning
after the end of the benefit year, except as provided in this
section, is reduced, but not to below zero, by the number of
weeks for which the individual received, within that benefit
year, trade readjustment allowances under the Trade Act of 1974,
as amended.

Section 8. The provisions of s. 443.1117, Florida Statutes,
as revived, readopted, and amended by this act, apply only to
claims for weeks of unemployment in which an exhaustee
establishes entitlement to extended benefits pursuant to that
section which are established for the period between December
17, 2010 and January 4, 2012.

Section 9. Paragraph (a) of subsection (1) of section
443.1216, Florida Statutes, is amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036,
is subject to this chapter under the following conditions:
(1)(a) The employment subject to this chapter includes a
service performed, including a service performed in interstate
commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules
applicable in determining the employer-employee relationship, is
an employee. However, if whenever a client, as defined in s.
443.036(18), which would otherwise be designated as an employing
unit, has contracted with an employee leasing company to supply
it with workers, those workers are considered employees of the
employee leasing company and must be reported under the leasing
company’s tax identification number and contribution rate for
work performed for the leasing company.
a. However, except for the internal employees of an employee leasing company, a leasing company may make a one-time election to report and pay contributions for all leased employees under the respective unemployment account of each client of the leasing company. This election applies only to contributions for unemployment.

   (I) Such election includes all of the leasing company’s clients.

   (II) An employee leasing company must notify the Agency for Workforce Innovation or the tax collection service provider of its election by September 30, and such election applies to reports and contributions due beginning the following January 1.

   (III) Subsequent to such election, the employee leasing company may not change its reporting method.

   (IV) This sub-subparagraph applies to all employee leasing companies, including each leasing company that is a group member or group leader of an employee leasing company group licensed pursuant to chapter 468. The election is binding on all employee leasing companies and their related enterprises, subsidiaries, or other entities that share common ownership, management, or control with the leasing company. The election is also binding on all clients of the leasing company for as long as a written agreement is in effect between the client and the leasing company pursuant to s. 468.525(3)(a).

b. An employee leasing company may lease corporate officers of the client to the client and other workers to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company’s tax identification.
number and contribution rate for work performed for the employee leasing company.

c. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Agency for Workforce Innovation which includes each client establishment and each establishment of the employee leasing company, or as otherwise directed by the agency. The report must include the following information for each establishment:

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

d. The report shall be submitted electronically or in a manner otherwise prescribed by the Agency for Workforce Innovation in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the agency for Workforce Innovation, or as otherwise directed by the agency, and must be filed by the last day of the month immediately following the end of the calendar quarter. The information required in sub-subparagraphs c.(X) and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the unemployment compensation quarterly tax and wage report. A report is not required for any calendar quarter preceding the third calendar quarter of 2010.

e. The Agency for Workforce Innovation shall adopt rules as necessary to administer this subparagraph, and may administer, collect, enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

f. For the purposes of this subparagraph, the term “establishment” means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:
a. As an agent-driver or commission-driver engaged in
distributing meat products, vegetable products, fruit products,
bakery products, beverages other than milk, or laundry or
drycleaning services for his or her principal.

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

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

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

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

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

Section 10. Effective upon this act becoming a law and
operating retroactively to January 1, 2011, paragraphs (c) and
(e) of subsection (3) of section 443.131, Florida Statutes, are
amended to read:
443.131 Contributions.—

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

(c) Standard rate.—The standard rate of contributions payable by each employer shall be 6.4% percent.

(e) Assignment of variations from the standard rate.—For the calculation of contribution rates effective January 1, 2010, and thereafter:

1. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-subparagraphs a.-d. are added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-subparagraphs a.-d. shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)2. are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-subparagraphs a.-d. to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable
adjustment factors; except that if the sum of an employer’s
individual benefit ratio and variable adjustment factor exceeds
the maximum contribution rate, the variable adjustment factor is
reduced in order for the sum to equal the maximum contribution
rate. The variable adjustment factor for each of these employers
is multiplied by his or her taxable payroll entering into the
computation of his or her benefit ratio. The sum of these
products is divided by the taxable payroll of the employers who
entered into the computation of their benefit ratios. The
resulting ratio is subtracted from the sum of the adjustment
factors computed under sub-subparagraphs a.-d. to obtain the
final adjustment factor. The variable adjustment factors and the
final adjustment factor must be computed to five decimal places
and rounded to the fourth decimal place. This final adjustment
factor is added to the variable adjustment factor and benefit
ratio of each employer to obtain each employer’s contribution
rate. An employer’s contribution rate may not, however, be
rounded to less than 0.1 percent.

a. An adjustment factor for noncharge benefits is computed
to the fifth decimal place and rounded to the fourth decimal
place by dividing the amount of noncharge benefits during the 3-
year period described in subparagraph (b)2. by the taxable
payroll of employers eligible for a variation from the standard
rate who have a benefit ratio for the current year which is less
than the maximum contribution rate. For purposes of computing
this adjustment factor, the taxable payroll of these employers
is the taxable payrolls for the 3 years ending June 30 of the
current calendar year as reported to the tax collection service
provider by September 30 of the same calendar year. As used in
this sub-subparagraph, the term “noncharge benefits” means benefits paid to an individual from the Unemployment Compensation Trust Fund, but which were not charged to the employment record of any employer.

b. An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)2. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-subparagraph a. As used in this sub-subparagraph, the term “excess payments” means the amount of benefits charged to the employment record of an employer during the 3-year period described in subparagraph (b)2., less the product of the maximum contribution rate and the employer’s taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-subparagraph, the term “total excess payments” means the sum of the individual employer excess payments for those employers that were eligible for assignment of a contribution rate different from the standard rate.

c. With respect to computing a positive adjustment factor:

(I) Beginning January 1, 2012, if the balance of the Unemployment Compensation Trust Fund on September 30 of the calendar year immediately preceding the calendar year for which
the contribution rate is being computed is less than 4 percent
of the taxable payrolls for the year ending June 30 as reported
to the tax collection service provider by September 30 of that
calendar year, a positive adjustment factor shall be computed.
The positive adjustment factor is computed annually to the fifth
decimal place and rounded to the fourth decimal place by
dividing the sum of the total taxable payrolls for the year
ending June 30 of the current calendar year as reported to the
tax collection service provider by September 30 of that calendar
year into a sum equal to one-third of the difference between the
balance of the fund as of September 30 of that calendar year and
the sum of 5 percent of the total taxable payrolls for that
year. The positive adjustment factor remains in effect for
subsequent years until the balance of the Unemployment
Compensation Trust Fund as of September 30 of the year
immediately preceding the effective date of the contribution
rate equals or exceeds 5 percent of the taxable payrolls for the
year ending June 30 of the current calendar year as reported to
the tax collection service provider by September 30 of that
calendar year.

(II) Beginning January 1, 2015, and for each year
thereafter, the positive adjustment shall be computed by
dividing the sum of the total taxable payrolls for the year
ending June 30 of the current calendar year as reported to the
tax collection service provider by September 30 of that calendar
year into a sum equal to one-fourth of the difference between
the balance of the fund as of September 30 of that calendar year
and the sum of 5 percent of the total taxable payrolls for that
year. The positive adjustment factor remains in effect for
subsequent years until the balance of the Unemployment
Compensation Trust Fund as of September 30 of the year
immediately preceding the effective date of the contribution
rate equals or exceeds 4 percent of the taxable payrolls for the
year ending June 30 of the current calendar year as reported to
the tax collection service provider by September 30 of that
calendar year.

d. If, beginning January 1, 2015, and each year thereafter,
the balance of the Unemployment Compensation Trust Fund as of
September 30 of the year immediately preceding the calendar year
for which the contribution rate is being computed exceeds 5
percent of the taxable payrolls for the year ending June 30 of
the current calendar year as reported to the tax collection
service provider by September 30 of that calendar year, a
negative adjustment factor must be computed. The negative
adjustment factor shall be computed annually beginning on
January 1, 2015, and each year thereafter, to the fifth decimal
place and rounded to the fourth decimal place by dividing the
sum of the total taxable payrolls for the year ending June 30 of
the current calendar year as reported to the tax collection
service provider by September 30 of the calendar year into a sum
equal to one-fourth of the difference between the balance of the
fund as of September 30 of the current calendar year and 5
percent of the total taxable payrolls of that year. The negative
adjustment factor remains in effect for subsequent years until
the balance of the Unemployment Compensation Trust Fund as of
September 30 of the year immediately preceding the effective
date of the contribution rate is less than 5 percent, but more
than 4 percent of the taxable payrolls for the year ending June
30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

e. The maximum contribution rate that may be assigned to an employer is 6.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer’s employment record.

f. As used in this subsection, “taxable payroll” shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000. Beginning January 1, 2012, “taxable payroll” shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to
an individual by an employer for employment during a calendar
year in excess of the first $8,500.

2. If the transfer of an employer’s employment record to an
employing unit under paragraph (f) which, before the transfer,
was an employer, the tax collection service provider shall
recompute a benefit ratio for the successor employer based on
the combined employment records and reassign an appropriate
contribution rate to the successor employer effective on the
first day of the calendar quarter immediately after the
effective date of the transfer.

Section 11. Present paragraph (f) of subsection (1) of
section 443.141, Florida Statutes, is redesignated as paragraph
(g), and a new paragraph (f) is added to that subsection, to
read:

443.141 Collection of contributions and reimbursements.—
(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—
(f) Payments for 2012, 2013, and 2014 Contributions.—For an
annual administrative fee not to exceed $5, a contributing
employer may pay its quarterly contributions due for wages paid
in the first three quarters of 2012, 2013, and 2014 in equal
installments if those contributions are paid as follows:

1. For contributions due for wages paid in the first
quarter of each year, one-fourth of the contributions due must
be paid on or before April 30, one-fourth must be paid on or
before July 31, one-fourth must be paid on or before October 31,
and one-fourth must be paid on or before December 31.

2. In addition to the payments specified in subparagraph
1., for contributions due for wages paid in the second quarter
of each year, one-third of the contributions due must be paid on
or before July 31, one-third must be paid on or before October
31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs
1. and 2., for contributions due for wages paid in the third
quarter of each year, one-half of the contributions due must be
paid on or before October 31, and one-half must be paid on or
before December 31.

4. The annual administrative fee assessed for electing to
pay under the installment method shall be collected at the time
the employer makes the first installment payment each year. The
fee shall be segregated from the payment and deposited into the
Operating Trust Fund of the Department of Revenue.

5. Interest does not accrue on any contribution that
becomes due for wages paid in the first three quarters of each
year if the employer pays the contribution in accordance with
subparagraphs 1.-4. Interest and fees continue to accrue on
prior delinquent contributions and commence accruing on all
contributions due for wages paid in the first three quarters of
each year which are not paid in accordance with subparagraphs
1.-3. Penalties may be assessed in accordance with this chapter.
The contributions due for wages paid in the fourth quarter of
2012, 2013, and 2014 are not affected by this paragraph and are
due and payable in accordance with this chapter.

Section 12. Paragraph (a) of subsection (2), paragraphs
(b), (d), and (e) of subsection (3), and paragraph (e) of
subsection (4) of section 443.151, Florida Statutes, are
amended, present paragraphs (c) through (f) of subsection (6) of
that section are redesignated as paragraphs (d) through (g),
respectively, and a new paragraph (c) is added to that subsection, to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(a) In general.—Claims for benefits must be made in accordance with the rules adopted by the Agency for Workforce Innovation. New claims for benefits may be submitted by telephone, mail, or approved electronic means. Continuing claims for benefits may be submitted only by mail or approved electronic means. The agency must notify claimants and employers regarding monetary and nonmonetary determinations of eligibility. Investigations of issues raised in connection with a claimant which may affect a claimant’s eligibility for benefits or charges to an employer’s employment record shall be conducted by the agency through written, telephonic, or electronic means as prescribed by rule.

(b) Determination of eligibility.—

(3) DETERMINATION OF ELIGIBILITY.—

(b) Monetary determinations.—In addition to the notice of claim, the Agency for Workforce Innovation must also promptly provide an initial monetary determination to the claimant and each base period employer whose account is subject to being charged for its respective share of benefits on the claim. The monetary determination must include a statement of whether and in what amount the claimant is entitled to benefits, and, in the event of a denial, must state the reasons for the denial. A monetary determination for the first week of a benefit year must also include a statement of whether the claimant was paid the wages required under s. 443.091(1)(h) 443.091(1)(g).
and, if so, the first day of the benefit year, the claimant’s weekly benefit amount, and the maximum total amount of benefits payable to the claimant for a benefit year. The monetary determination is final unless within 20 days after the mailing of the notices to the parties’ last known addresses, or in lieu of mailing, within 20 days after the delivery of the notices, an appeal or written request for reconsideration is filed by the claimant or other party entitled to notice. The agency may adopt rules as necessary to implement the processes described in this paragraph relating to notices of monetary determinations and the appeals or reconsideration requests filed in response to such notices.

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

(e) Redeterminations.—

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

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

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

(4) APPEALS.—

(e) Judicial review.—Orders of the commission entered under paragraph (c) are subject to appellate review only by notice of appeal in the district court of appeal in the appellate district in which a claimant resides or the job separation arose the issues involved were decided by an appeals referee. However, if the notice of appeal is submitted to the commission, the commission shall file the notice in the district court of appeal in the appellate district in which the order was issued.

Notwithstanding chapter 120, the commission is a party
respondent to every such proceeding. The Agency for Workforce Innovation may initiate judicial review of orders in the same manner and to the same extent as any other party.

(6) RECOVERY AND RECOUPMENT.—

(c) Any person who, by reason other than fraud, receives benefits under this chapter for which she or he is not entitled due to the failure of the Agency for Workforce Innovation to make and provide notice of a nonmonetary determination under paragraph (3)(c) within 30 days after filing a new claim, is liable for repaying up to 5 weeks of benefits received to the agency on behalf of the trust fund or may have those benefits deducted from any future benefits payable to her or him under this chapter.

Section 13. The Legislature finds that this act fulfills an important state interest.

Section 14. This act shall take effect July 1, 2011.