

U.S. DEPARTMENT OF LABOR  
Employment and Training Administration  
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 4  
December 2012

<b>ARIZONA</b>	HB 2150 (CH 115)	ENACTED March 29, 2012 EFFECTIVE August 2, 2012
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Appeals

Increases the period of time for all interested parties to file an appeal concerning a disputed claim to 30 days (previously 15) from the date of mailing or electronic submission.

Provides that an employer has 30 days (previously 15) to appeal to the board, if a request to revise a final determination, redetermination, or decision of employee status is refused.

Specifies criteria that must be included in any appeal determination or any redetermination related to an employee's status, and any contribution rate redetermination or denial.

Coverage

Changes the definition of employee to include indicators of control by the employing unit as follows:

- the individual's hours or location of work;
- the right to perform services for others;
- tools, equipment, materials, expenses, and use of other workers; and
- other indicia of employment.

Provides that a determination notice that an employing unit constitutes an employer, that services performed constitute non exempt employment, or that remuneration for services constitutes wages will become final within 60 days (previously 15 days) after written notice is served by certified mail, if the determination was made on the basis of establishing an employer/employee relationship, or by first class mail if the determination was made by any other basis.

<b>CALIFORNIA</b>	AB 1794 (CH 811)	ENACTED September 30, 2012 EFFECTIVE January 1, 2013
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Financing

Authorizes the Employment Development Department to provide new hire information to the Joint Enforcement Strike Force on the Underground Economy, the Contractors' State License



**ILLINOIS**

HB 5632  
(P.A. No. 791)

ENACTED July 13, 2012  
EFFECTIVE January 1, 2013

Coverage

Defines “newly hired employee” as an employee who either has not previously been employed by the employer or was previously employed by the employer but has been separated from that prior employment for at least 60 consecutive days.

Financing

Requires employers to be charged for benefits improperly paid when the employer or agent of the employer was at fault for failing to respond timely or adequately to a request for information relating to the claim, and the employer or agent has a pattern of failing to respond timely or adequately to such requests.

Monetary Entitlement

Provides that the statewide average weekly wage for calendar year 2012 and each year thereafter shall be \$856.55 (previously \$406).

For calendar year 2012, the child dependent rate shall not be less than 17.0 percent or greater than 17.9 percent (previously the rate was not less than 17.1 percent or greater than 18 percent).

Overpayments

Requires a 15 percent additional penalty be assessed when an individual knowingly makes a false statement or fails to disclose a material fact, and receives benefits for which he or she is not eligible. Penalties shall be deposited in the State trust fund.

**ILLINOIS**

SB 2840  
(P. A. No. 689)

ENACTED June 14, 2012  
EFFECTIVE January 1, 2013

Financing

Requires employers submitting wage reports electronically to submit wage reports on or before the last day of the month following the calendar month in which the wages were paid. Requires all other employers to submit wage reports on or before the last day of the month following the calendar quarter in which the wages were paid.

With respect to group accounts, provides that penalties assessed for failing to file a timely and sufficient report of wages, and which are not paid by the group when due with respect to the calendar month or quarter, as the case may be, shall be in an amount which bears the same ratio to the total penalties due with respect to such month or quarter as the total wages for insured work paid by such member during such month or quarter bear to the total wages for insured work paid during the month or quarter by all members of the group.

**LOUISIANA**

SB 472  
(Act No. 786)

ENACTED June 13, 2012  
EFFECTIVE August 1, 2012

Coverage

Excludes from the definition of employment services performed by individuals who meet the statutory definition of an owner-operator. Owner-operators, as defined in R.S. 23:1021(10), are independent contractors that provide trucking transportation services under written contract to a common carrier, contract carrier, or exempt haulers, to include the lease of equipment or a driver to the common carrier, contract carrier, or exempt hauler. The definition of owner-operator does not include an individual driver who purchases his equipment from the carrier or hauler, and then directly leases the equipment back to the carrier or hauler with the purchasing driver.

Outlines state agency procedures for handling the misclassification of employees as independent contractors to include written warning, administrative penalties, and civil penalties. Requires employers to post information about the responsibilities of independent contractors to pay taxes, the rights of employees to worker's compensation and unemployment benefits, protections against retaliation, and penalties for employer misclassification of employees.

**MAINE**

HB 1357  
(CH 622)

ENACTED AND EFFECTIVE April 12, 2012

Financing

Permits certain out-of-state businesses to conduct operations in Maine during times of declared state disaster or emergency without having to register, file, and remit unemployment compensation contributions in Maine.

**MAINE**

SB 614  
(CH 516)

ENACTED March 16, 2012  
EFFECTIVE June 14, 2012

Nonmonetary Eligibility

Provides that the weekly benefit amount will be reduced by the full prorated weekly amount of the pension received if the individual did not contribute to the plan. The benefit amount may not be reduced below zero.

**MICHIGAN**

SB 1107  
(Act No. 219)

ENACTED and EFFECTIVE June 25, 2012

Financing

Beginning January 1, 2014, provides that a client employer of a professional employer organization (PEO) for less than 12 calendar quarters (previously 8) shall have its unemployment tax rate based on its prior account and experience, and that a contributing employer who

becomes a client employer of a PEO shall retain its existing unemployment tax rate or establish a new rate as provided by law.

**MINNESOTA** SB 2224  
(CH 201)

ENACTED April 20, 2012  
EFFECTIVE July 1, 2012,  
or as noted

### Administration

Prohibits an employer from making an agreement that, in exchange for the employer agreeing not to contest the payment of unemployment benefits, including agreeing not to provide information to the department, an employee will: (1) quit the employment; (2) take a leave of absence; (3) leave the employment temporarily or permanently; or (4) withdraw a grievance or appeal of a termination. An agreement that violates this provision has no effect.

Modifies the definition of “electronic transmission” to mean a communication that is sent online, by telephone, or by facsimile transmission. (Effective July 2, 2012.)

### Coverage

Excludes from the definition of “employment” employment in Minnesota in an unclassified position. (Effective July 2, 2012.)

Excludes from the definition of “employment” employment of an individual who provides direct care to an immediate family member, funded through the personal care assistance program. (Effective July 2, 2012.) (Previously, employment for a personal care assistance provider agency by an immediate family member of a recipient who provides the direct care to the recipient through the personal care assistance program was excluded from the definition of employment.)

Repeals the following three rules in determining worker status as an employee or an independent contractor: additional factors to be considered, determination of control, and procedures for determining control. (Effective July 2, 2012, and applies retroactively to all pending cases.)

### Financing

Provides (effective for determinations issued on or after July 1, 2013) that the exception to the law that unemployment benefits paid shall not be used in computing the future tax rate of a taxpaying base period employer or charged to the reimbursable account of a base period nonprofit or government employer that has elected to be liable for reimbursements when the benefits were determined overpaid does not apply if the overpaid benefits resulted because the employer or any employee, officer, or agent of the employer:

- (1) Failed to respond timely or adequately to a request for information; and
- (2) Has established a pattern of failing to respond timely or adequately to requests for information. The employer must pay the State trust fund the amount of the overpaid unemployment benefits that will be used in computing the future tax or charged to the

reimbursable account. A “pattern” is a prior failure to respond to the greater of 2 requests for information, or 2 percent of all requests for information in the most recent 6 months.

Provides that the penalty (effective for penalties imposed on or after July 1, 2013) is the greater of \$500 or 50 percent of the following resulting from the employer’s action:

- (i) The amount of any overpaid unemployment benefits to an applicant;
- (ii) The amount of unemployment benefits not paid to an applicant that would otherwise have been paid; or
- (iii) The amount of any payment required from the employer that was not paid.

Provides that this penalty is in addition to any other penalties and subject to the same collection procedures that apply to past due taxes. Penalties must be paid within 30 calendar days of issuance of the determination of penalty and credited to the State trust fund.

Provides that 37.5 percent of the payments made toward the 40 percent penalty (which equals 15 percent) assessed on any applicant who receives an overpayment of unemployment benefits fraudulently by knowingly misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, are credited to the State trust fund. (Effective for any money credited on or after July 1, 2013.) (Previously, the 37.5 percent was credited to the administration account.) The determination that the applicant obtained unemployment benefits by fraud is effective the Sunday of the week that it was issued.)

Provides that regardless of the provision that a determination is final unless an appeal is filed within 30 calendar days, unemployment benefits paid for weeks more than 4 years before the date of a determination issued for an applicant fraud overpayment are not considered overpaid unemployment benefits.

Provides that the commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer (1) made a false statement or representation knowing it to be false, (2) made a false statement or representation without a good faith belief as to correctness of the statement or representation, (3) knowingly failed to disclose a material fact, or (4) made an offer of employment to an applicant when, in fact, the employer had no employment available. The penalty is the greater of \$500 or 50 percent of the following resulting from the employer’s action:

- (i) The amount of any overpaid unemployment benefits to an applicant;
- (ii) The amount of unemployment benefits not paid to an applicant that would otherwise have been paid; or
- (iii) The amount of any payment required from the employer that was not paid.

(Previously, the penalty applied only if the employer’s action (i) was taken to prevent or reduce the payment of unemployment benefits to any applicant; (ii) was taken to reduce or avoid any payment required from an employer; or (iii) caused an overpayment of unemployment benefits to the applicant.

Provides that this penalty is in addition to any other penalties and subject to the same collection procedures that apply to past due taxes. Penalties must be paid within 30 calendar days of issuance of the determination of penalty and credited to the State trust fund.

Provides that all penalties assessed due to fraud by any person, taxing employer, or reimbursable employer are credited to the State trust fund. (Previously, penalty payments were credited to the administration account to be used to insure integrity in the unemployment insurance program.) (Effective July 1, 2013.)

Clarifies when the experience rating history of the predecessor employer is transferred to the successor employer, and when a portion of the experience rating history of the predecessor employer is transferred to the successor employer.

Provides that penalty payments received from a successor employer for failing to notify the Commissioner of an acquisition within 30 calendar days of the acquisition are credited to the State trust fund. (Effective July 1, 2013.) (Previously, penalty payments were credited to the administration account to be used to ensure integrity in the unemployment insurance program.)

Provides that regardless of any law to the contrary, a new taxpaying employer and new employers in a high experience rating industry that do not qualify for an experience rating must be assigned, for a calendar year, a tax rate the higher of (1) one percent or (2) the computed tax rate, if (1) the employer registers for a tax account and for each of the 5 calendar quarters after registering files a “no wages paid” report on wage detail; or (2) the employer has filed 14 consecutive quarterly “no wages paid” reports on wage detail.

Provides that interest payments received from interest assessed on unemployment benefits fraudulently obtained, and received from interest assessed on the penalties on benefits fraudulently obtained, are to be credited to the State trust fund. (Effective July 1, 2013.) (Previously interest payments were credited to the administration account.)

Provides that the State trust fund consists of money credited to the account under Chapter No. 201. (Effective July 2, 2012.)

Provides that the State trust fund does not consist of money recovered on losses sustained by the trust fund, or money received from the contingent account. (Effective July 2, 2012.)

### Monetary Entitlement

Modifies the second benefit year requirements by providing an applicant must have performed services in covered employment and have been paid wages in one or more completed calendar quarters that started after the effective date of the prior benefit account. A benefit account may not be established effective earlier than the Sunday following the end of the most recent completed calendar quarter in which the monetary requirements were met in the prior benefit account. (Effective July 2, 2012)

### Nonmonetary Eligibility

Provides that if the applicant has earnings, with respect to any week, that is less than the applicant's weekly unemployment benefit amount, from employment, covered employment, noncovered employment, self-employment, or volunteer work, 50 percent (previously 55 percent) of the earnings are deducted from the weekly unemployment benefit amount. (Effective for deductions occurring on or after July 1, 2013.)

Modifies the meaning of "available for suitable employment" to mean an applicant is ready, willing, and able to accept suitable employment. (Added "and able" to accept suitable employment.) (Effective July 2, 2012.)

Provides that the provision prohibiting the use of wage credits from seasonal employment as athletes and coaches applies to a coach employed by an educational institution whose only employment with the educational institution is as a coach. However, the provision prohibiting the use of wage credits from employment as school employees applies to a coach who has other employment with an educational institution in addition to coaching at the educational institution. Employment with multiple educational institutions or employment coaching multiple sports must be aggregated for purposes of applying the provision regarding athletes and coaches. (Effective July 2, 2012.)

### Overpayments

Provides that if an overpayment of unemployment benefits due to claimant fraud, including penalties and interest, is not repaid within 10 years (previously 15 years) after the determination of overpayment by fraud, the commissioner must cancel the overpayment balance, penalties, and interest due, and no administrative or legal proceeding may be used to enforce collection of those amounts. (Applies retroactively to all existing overpayments.)

**MISSISSIPPI**

HB 451  
(CH 414)

ENACTED April 18, 2012  
EFFECTIVE July 1, 2012

### Coverage

Excludes from coverage service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political subdivisions, state and local governments, nonprofit organizations and Indian tribes, or any other entities for which coverage is required by Federal statute and regulation. (Amendment removed "under the age of 18" for newspaper distribution and added that exclusion does not apply to required coverage for which Section 3309, Federal Unemployment Tax Act, applies.)

Excludes from coverage service performed by a direct seller if:

- (i) Such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any

- similar basis which the department prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;
- (ii) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in item (i) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and
  - (iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

**RHODE ISLAND** HB 7562  
(CH 33)

ENACTED April 13, 2012  
EFFECTIVE July 1, 2012

#### Temporary Disability Insurance

Eliminates the 7-day waiting period for temporary disability insurance. Provides that for benefit years beginning on or after July 1, 2012, an individual's benefit year will begin on the Sunday of the calendar week in which he or she first became unemployed due to sickness and for which he or she has filed a valid claim for benefits. Beginning on or after July 1, 2012, as a condition of eligibility, an individual must have been unemployed due to sickness for at least 7 consecutive days.

**RHODE ISLAND** SB 2732  
(CH 41)

ENACTED and EFFECTIVE April 27, 2012

#### Financing

Changes the definition of "rehire" to the first day for which an employee is owed compensation by the employer following a termination of employment lasting a minimum of 60 days (previously 12 consecutive weeks).

**SOUTH CAROLINA** SB 1125  
(Act No. 247)

ENACTED and EFFECTIVE June 18, 2012

#### Financing

Provides that benefits paid to an individual discharged for misconduct shall not be charged to the account of an employer with whom the individual has less than 8 weeks employment.

Requires that a contributing employer's account be credited for an overpayment due to fraud regardless of the outcome of recoupment or recovery.

#### Nonmonetary Eligibility

Provides that an individual is disqualified for 20 weeks if discharged from employment for misconduct (previously 5-26 weeks).

Defines misconduct as willful and wanton disregard of an employer's interests; carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design; or to show intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. Misconduct shall not be determined for a discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

Provides for partial ineligibility of 5-19 weeks (plus the waiting week) if an individual is discharged for cause other than misconduct with the most recent employment. The ineligibility period must be determined in each case according to the seriousness of the cause for discharge.

Provides that discharges for substandard performance due to inefficiency, inability, or incapacity are not a basis for disqualification.

**TENNESSEE**

SB 1325  
(CH 1061)

ENACTED May 21, 2012  
EFFECTIVE October 1, 2012

#### Nonmonetary Eligibility

Requires applicants for federal, state, or local public benefits to attest, under penalty of perjury, to their status as a United States citizen or a qualified alien. Lists acceptable forms of identification that applicants may present to attest to their status as a United States citizen. Requires applicants claiming qualified alien status to present at least one form of documentation for verification through the SAVE program. Outlines penalties for knowingly and willfully making a false, fictitious, or fraudulent statement or representation as to citizenship or immigration status.

**TENNESSEE**

SB 2633  
(CH 1081)

ENACTED and EFFECTIVE May 21, 2012

#### Coverage

Provides that a professional employer organization shall be deemed an employer of its covered employees.

#### Financing

Requires professional employer organizations to pay state unemployment insurance premiums as required by Tennessee law.

Requires professional employer organizations having one or more covered employees to apply for a separate account number for each client having one or more covered employees. Requires professional employer organizations to keep separate records and submit separate state unemployment insurance wage and premium reports with payments to report the covered

employees of each client by using the client's state employer account number and using the premium rate based on the aggregate reserve ratio of the professional employer organization. Provides that professional employer organizations shall use one of the two methods provided for calculating the aggregate reserve ratio.

Prohibits professional employer organizations from being considered a successor employer to any client and from acquiring the experience history of any client with whom there is not any common ownership, management, or control. Prohibits client from being considered a successor employer to any professional employer organization and from acquiring any portion of the experience history of the aggregate reserve account of the professional employer organization with whom there is not any common ownership, management, or control.

Requires client to be jointly and severally liable with a professional employer organization for state unemployment premiums for each of the client's covered employees; provided, however, that a client shall be relieved of joint and several liability for state unemployment premiums if the professional employer organization has posted a corporate surety bond in the amount of \$100,000 for so long as the bond remains in force.

**VIRGINIA**

SB 54  
(CH 312)

ENACTED March 21, 2012  
EFFECTIVE July 1, 2012

Monetary Eligibility

Provides that for claims effective on or after July 6, 2008, but before July 6, 2014 (previously July 1, 2012), the minimum weekly benefit amount remains at \$54 and the maximum weekly benefit amount remains at \$378; a total of \$2,700 in the 2 high quarters of the base period remains the amount needed to monetarily qualify, and a minimum of \$18,900.01 remains as the amount required for the maximum weekly benefit amount.

Provides that beginning July 6, 2014 (previously July 1, 2012), for claims effective on or after July 6, 2014 (previously July 1, 2012), the minimum weekly benefit amount increases from \$54 to \$60 and the maximum weekly benefit amount remains at \$378; a total of \$3,000 (previously \$2,700) in the 2 high quarters of the base period is needed to monetarily qualify, and a minimum of \$18,900.01 remains as the amount required for the maximum weekly benefit amount.

**WEST VIRGINIA**

HB 4549  
(CH 196)

ENACTED April 2, 2012  
EFFECTIVE July 1, 2012

Overpayments

Provides that an individual who knowingly makes a false statement or representation or who knowingly fails to disclose a material fact in order to obtain unemployment benefits is guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not longer than 30 days, or both, and by full repayment of all benefits obtained fraudulently. Each false statement or representation, or failure to disclose a material fact, is a separate offense.

After July 1, 2012, imposes an additional penalty of 20 percent of the amount of the erroneous payment. The first 75 percent of the penalty shall be deposited in the state's unemployment trust fund, and the remaining 25 percent shall be deposited in a special administrative account to be used for increased integrity activities. Penalty amounts may not be used to offset future benefits payable to benefit recipients.