

By the Committee on Commerce and Tourism; and Senator Detert

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1 A bill to be entitled
2 An act relating to unemployment compensation; amending
3 s. 213.053, F.S.; increasing the number of employer
4 payroll service providers who qualify for access to
5 unemployment tax information by filing a memorandum of
6 understanding; amending s. 443.036, F.S.; revising the
7 definitions for "available for work," "earned income,"
8 "misconduct," and "unemployment"; adding a definition
9 for "initial skills review"; amending s. 443.091,
10 F.S.; revising requirements for making continued
11 claims for benefits; requiring that an individual
12 claiming benefits report certain information and
13 participate in an initial skills review; providing an
14 exception; specifying criteria for determining an
15 applicant's availability for work; amending s.
16 443.101, F.S.; clarifying "good cause" for voluntarily
17 leaving employment; specifying acts that are "gross
18 misconduct" for purposes of discharging an employee
19 and disqualifying him or her for benefits; revising
20 the criteria for determining suitable work to reduce
21 the number of weeks a person may receive benefits
22 before having to accept a job that pays a certain
23 amount; disqualifying a person for benefits due to the
24 receipt of severance pay; revising provisions relating
25 to the effect of criminal acts on eligibility for
26 benefits; disqualifying an individual for benefits for
27 any week he or she is incarcerated; amending s.
28 443.111, F.S.; conforming provisions to changes made
29 by the act; amending s. 443.1115, F.S.; conforming

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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
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;
conforming a cross-reference; 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.;
requiring claims to be submitted by electronic means;
conforming cross-references; specifying the allowable
forms of evidence in an appeal hearing; specifying the
judicial venue for filing a notice of appeal;
providing for repayment of benefits in cases of agency
error; amending s. 443.171, F.S.; specifying that
evidence of mailing an agency document creates a
rebuttable presumption; providing that the act
fulfills an important state interest; providing
effective dates.

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

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59
60 Section 1. Subsection (4) of section 213.053, Florida
61 Statutes, as amended by chapter 2010-280, Laws of Florida, is
62 amended to read:

63 213.053 Confidentiality and information sharing.—

64 (4) The department, while providing unemployment tax
65 collection services under contract with the Agency for Workforce
66 Innovation through an interagency agreement pursuant to s.
67 443.1316, may release unemployment tax rate information to the
68 agent of an employer, ~~which agent~~ provides payroll services for
69 more than 100 ~~500~~ employers, pursuant to the terms of a
70 memorandum of understanding. The memorandum of understanding
71 must state that the agent affirms, subject to the criminal
72 penalties contained in ss. 443.171 and 443.1715, that the agent
73 will retain the confidentiality of the information, that the
74 agent has in effect a power of attorney from the employer which
75 permits the agent to obtain unemployment tax rate information,
76 and that the agent shall provide the department with a copy of
77 the employer's power of attorney upon request.

78 Section 2. Effective July 1, 2011, present subsections (26)
79 through (45) of section 443.036, Florida Statutes, are
80 redesignated as subsection (27) through (46) respectively, new
81 subsection (26) is added to that section, and present
82 subsections (6), (9), (16), (29), and (43) of that section are
83 amended, to read:

84 443.036 Definitions.—As used in this chapter, the term:

85 (6) "Available for work" means actively seeking and being
86 ready and willing to accept suitable work ~~employment~~.

87 (9) "Benefit year" means, for an individual, the 1-year

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88 period beginning with the first day of the first week for which
89 the individual first files a valid claim for benefits and,
90 thereafter, the 1-year period beginning with the first day of
91 the first week for which the individual next files a valid claim
92 for benefits after the termination of his or her last preceding
93 benefit year. Each claim for benefits made in accordance with s.
94 443.151(2) is a valid claim ~~under this subsection~~ if the
95 individual was paid wages for insured work in accordance with s.
96 443.091(1)(g) and is unemployed ~~as defined in subsection (43)~~ at
97 the time of filing the claim. However, the Agency for Workforce
98 Innovation may adopt rules providing for the establishment of a
99 uniform benefit year for all workers in one or more groups or
100 classes of service or within a particular industry if the agency
101 determines, after notice to the industry and to the workers in
102 the industry and an opportunity to be heard in the matter, that
103 those groups or classes of workers in a particular industry
104 periodically experience unemployment resulting from layoffs or
105 shutdowns for limited periods of time.

106 (16) "Earned income" means gross remuneration derived from
107 work, professional service, or self-employment. The term
108 includes commissions, bonuses, back pay awards or back pay
109 settlements, front pay or front wages, and the cash value of all
110 remuneration paid in a medium other than cash. The term does not
111 include income derived from invested capital or ownership of
112 property.

113 (26) "Initial skills review" means an online education or
114 training program, such as that established under s. 1004.99,
115 which is approved by the Agency for Workforce Innovation and
116 designed to measure an individual's mastery level of workplace

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117 skills.

118 ~~(30)-(29)~~ "Misconduct" includes, but is not limited to, the
119 following, which may not be construed in pari materia with each
120 other:

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

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

132 ~~(44)-(43)~~ "Unemployment" or "unemployed" means:

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

144 (b) An individual's week of unemployment commences only
145 after ~~his or her~~ registration with the Agency for Workforce

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146 Innovation as required in s. 443.091, ~~except as the agency may~~
147 ~~otherwise prescribe by rule.~~

148 Section 3. Effective July 1, 2011, paragraphs (b), (c),
149 (d), and (f) of subsection (1) of section 443.091, Florida
150 Statutes, are amended to read:

151 443.091 Benefit eligibility conditions.—

152 (1) An unemployed individual is eligible to receive
153 benefits for any week only if the Agency for Workforce
154 Innovation finds that:

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

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

165 (c) To make continued claims for benefits, she or he is
166 reporting to the Agency for Workforce Innovation in accordance
167 with this paragraph and agency its rules, and participating in
168 an initial skills review as directed by the agency. Agency These
169 rules may not conflict with s. 443.111(1)(b), which requires
170 including the requirement that each claimant continue to report
171 regardless of any pending appeal relating to her or his
172 eligibility or disqualification for benefits.

- 173 1. For each week of unemployment claimed, each report must,
174 at a minimum, include the name, address, and telephone number of

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175 each prospective employer contacted pursuant to paragraph (d).

176 2. The administrator or operator of the initial skills
177 review shall notify the agency when the individual completes the
178 initial skills review and report the results of the review to
179 the regional workforce board or the one-stop career center as
180 directed by the workforce board. The workforce board shall use
181 the initial skills review to develop a plan for referring
182 individuals to training and employment opportunities. The
183 failure of the individual to comply with this requirement will
184 result in the individual being determined ineligible for
185 benefits for the week in which the noncompliance occurred and
186 for any subsequent week of unemployment until the requirement is
187 satisfied. However, this requirement does not apply if the
188 individual is able to affirmatively attest to being unable to
189 complete such review due to illiteracy or a language impediment.

190 (d) She or he is able to work and is available for work. In
191 order to assess eligibility for a claimed week of unemployment,
192 the agency shall develop criteria to determine a claimant's
193 ability to work and availability for work. A claimant must be
194 actively seeking work in order to be considered available for
195 work. This means engaging in systematic and sustained efforts to
196 find work, including contacting at least five prospective
197 employers for each week of unemployment claimed. The agency may
198 require the claimant to provide proof of such efforts to the
199 one-stop career center as part of reemployment services. The
200 agency shall conduct random reviews of work search information
201 provided by claimants. However:

202 1. Notwithstanding any other provision of this paragraph or
203 paragraphs (b) and (e), an otherwise eligible individual may not

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204 be denied benefits for any week because she or he is in training
205 with the approval of the agency, or by reason of s. 443.101(3)
206 ~~443.101(2)~~ relating to failure to apply for, or refusal to
207 accept, suitable work. Training may be approved by the agency in
208 accordance with criteria prescribed by rule. A claimant's
209 eligibility during approved training is contingent upon
210 satisfying eligibility conditions prescribed by rule.

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

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

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

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

232 2. ~~If~~ Benefits have been paid for that week.

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233 3. ~~Unless~~ The individual was eligible for benefits for that
234 week as provided in this section and s. 443.101, except for the
235 requirements of this subsection and ~~of s. 443.101(6) 443.101(5).~~

236 Section 4. Effective July 1, 2011, paragraph (a) of
237 subsection (1) and present subsections (2), (3), (9), and (11)
238 of section 443.101, Florida Statutes, are amended, present
239 subsections (2) through (11) of that section are redesignated as
240 subsections (3) through (13), respectively, and new subsections
241 (2) and (12) are added to that section, to read:

242 443.101 Disqualification for benefits.—An individual shall
243 be disqualified for benefits:

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

251 1. Disqualification for voluntarily quitting continues for
252 the full period of unemployment next ensuing after the
253 individual has left his or her full-time, part-time, or
254 temporary work voluntarily without good cause and until the
255 individual has earned income equal to or greater than ~~in excess~~
256 ~~of~~ 17 times his or her weekly benefit amount. As used in this
257 subsection, the term "good cause" includes only that cause
258 attributable to the employing unit which would compel a
259 reasonable individual to cease working or attributable to which
260 ~~consists of~~ the individual's illness or disability requiring
261 separation from his or her work. Any other disqualification may

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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 ~~follow~~ 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

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291 ~~cause, as defined in this section,~~ before the date the discharge
292 was to take effect, the claimant is ineligible for benefits
293 pursuant to s. 443.091(1)(d) for failing to be available for
294 work for the week or weeks of unemployment occurring before the
295 effective date of the discharge.

296 (2) For the week the individual has been discharged by the
297 employing unit for gross misconduct, based on a finding by the
298 Agency for Workforce Innovation. Disqualification for being
299 discharged for gross misconduct continues for the full period of
300 unemployment next ensuing after having been discharged and until
301 the individual is reemployed and has earned income of at least
302 17 times his or her weekly benefit amount. As used in this
303 subsection, the term "gross misconduct" means any of the
304 following:

305 (a) Willful or reckless damage to an employer's property
306 which results in damage of more than \$50.

307 (b) Theft of the property of an employer, a customer, or an
308 invitee of the employer.

309 (c) Violation of an employer's policy relating to the
310 consumption of alcohol or drugs on the employer property, being
311 under the influence of alcohol or drugs on employer property, or
312 using alcohol or drugs while on the job or on duty. As used in
313 this paragraph, the term "alcohol or drugs" has the same meaning
314 as in s. 440.102(1)(c).

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

317 (e) Failure to comply with applicable state or federal drug
318 and alcohol testing and use regulations, including, but not
319 limited to, 49 C.F.R. part 40 and part 382 of the Federal Motor

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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. The employee must have received at least one written warning from the employer before being discharged from employment.

(i) Willful neglect of duty directly related to the employee's employment as described in an applicable written job description or written rules of conduct. The employee must have received at least one written warning from the employer before being discharged from employment.

(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)-(2) If the Agency for Workforce Innovation finds that the individual has failed without good cause 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

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349 or her, or to return to the individual's customary self-
350 employment when directed by the agency, the disqualification
351 continues for the full period of unemployment next ensuing after
352 he or she failed without good cause to apply for available
353 suitable work, to accept suitable work, or to return to his or
354 her customary self-employment, ~~under this subsection,~~ and until
355 the individual has earned income of at least 17 times his or her
356 weekly benefit amount. The Agency for Workforce Innovation shall
357 by rule adopt criteria for determining the "suitability of
358 work," as used in this section. ~~The agency for Workforce~~
359 ~~Innovation~~ In developing these rules, the agency shall consider
360 the duration of a claimant's unemployment in determining the
361 suitability of work and the suitability of proposed rates of
362 compensation for available work. Further, after an individual
363 has received 19 ~~25~~ weeks of benefits in a single year, suitable
364 work is a job that pays the minimum wage and is 120 percent or
365 more of the weekly benefit amount the individual is drawing.

366 (a) In determining whether or not any work is suitable for
367 an individual, the agency ~~for Workforce Innovation~~ shall
368 consider the degree of risk ~~involved~~ to the individual's ~~his or~~
369 ~~her~~ health, safety, and morals; the individual's ~~his or her~~
370 physical fitness, and prior training, ~~the individual's~~
371 experience, and prior earnings, ~~his or her~~ length of
372 unemployment, and prospects for securing local work in his or
373 her customary occupation; and the distance of the available work
374 from his or her residence.

375 (b) Notwithstanding any other provisions of this chapter,
376 work is not deemed suitable and benefits may not be denied ~~under~~
377 ~~this chapter~~ to any otherwise eligible individual for refusing

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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.

(c) If the agency ~~for Workforce Innovation~~ 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) ~~(3)~~ 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 the employer that paid the severance pay, rounded down to the nearest whole number, beginning with the week the individual separated from that employer.

(c) ~~(b)1-~~ 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.

~~2-~~ However, if the remuneration referred to in paragraphs (a), and (b), and (c) is less than the benefits that would otherwise

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be due under this chapter, an individual who is otherwise
eligible ~~he or she~~ is entitled to receive for that week, ~~if~~
~~otherwise eligible~~, benefits reduced by the amount of the
remuneration.

~~(10)(9)~~ 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~~
~~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 ~~under~~ 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 proves by competent, substantial evidence
to ~~shows~~ 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.

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(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 ~~under~~ 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) For any week in which the individual is unavailable for work due to incarceration or imprisonment.

(13) ~~(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) (c) ~~(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

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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. 627.0915, 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 is ~~shall be~~ governed by s. 443.1715.

Section 5. Effective July 1, 2011, paragraph (b) of subsection (1) of section 443.111, Florida Statutes, is amended to read:

443.111 Payment of benefits.—

(1) MANNER OF PAYMENT.—Benefits are payable from the fund in accordance with rules adopted by the Agency for Workforce Innovation, subject to the following requirements:

(b) As required under s. 443.091(1), each claimant must report ~~in the manner prescribed by the agency for Workforce Innovation to certify for benefits that are paid and must~~

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494 ~~continue to report~~ at least biweekly to receive unemployment
495 benefits and to attest to the fact that she or he is able and
496 available for work, has not refused suitable work, is seeking
497 work and has contacted at least five prospective employers for
498 each week of unemployment claimed, and, if she or he has worked,
499 to report earnings from that work. Each claimant must continue
500 to report regardless of any appeal or pending appeal relating to
501 her or his eligibility or disqualification for benefits.

502 Section 6. Effective July 1, 2011, paragraph (c) of
503 subsection (3) of section 443.1115, Florida Statutes, is amended
504 to read:

505 443.1115 Extended benefits.—

506 (3) ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS.—

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

511 a. She or he failed to apply for suitable work or, if
512 offered, failed to accept suitable work, unless the individual
513 can furnish to the agency satisfactory evidence that her or his
514 prospects for obtaining work in her or his customary occupation
515 within a reasonably short period are good. If this evidence is
516 deemed satisfactory ~~for this purpose~~, the determination of
517 whether any work is suitable for the individual shall be made in
518 accordance with the definition of suitable work in s. 443.101(3)
519 ~~443.101(2)~~. This disqualification begins with the week the
520 failure occurred and continues until she or he is employed for
521 at least 4 weeks and receives earned income of at least 17 times
522 her or his weekly benefit amount.

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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

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552 section, s. 443.1115(2), (3), (4), (6), and (7) apply to all
553 claims covered by this section.

554 (2) DEFINITIONS.—As used in ~~For the purposes of~~ this
555 section, the term:

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

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

563 (c) "Emergency benefits" means Emergency Unemployment
564 Compensation paid pursuant to Pub. L. No. 110-252, Pub. L. No.
565 110-449, Pub. L. No. 111-5, Pub. L. No. 111-92, ~~and~~ Pub. L. No.
566 111-118, Pub. L. No. 111-144, ~~and~~ Pub. L. No. 111-157, Pub. L.
567 No. 111-205, and Pub. L. No. 111-312.

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

569 1. Begins with the third week after a week for which there
570 is a state "on" indicator; and

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

573 a. The third week after the first week for which there is a
574 state "off" indicator;

575 b. The 13th consecutive week of that period.
576

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

580 (e) "Emergency benefit period" means the period during

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581 which an individual receives emergency benefits ~~as defined in~~
582 ~~paragraph (c)~~.

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

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

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

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

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

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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 3 ~~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

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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

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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. Effective July 1, 2011, paragraph (a) of subsection (1) and paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, are 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) The election applies to all of the leasing company's current and future clients.

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697 (II) The leasing company must notify the Agency for
698 Workforce Innovation or the tax collection service provider of
699 its election by August 1, and such election applies to reports
700 and contributions for the first quarter of the following
701 calendar year. The notification must include:

702 (A) A list of each client company and its unemployment
703 account number;

704 (B) A list of each client company's current and previous
705 employees and their respective social security numbers for the
706 prior 3 state fiscal years;

707 (C) All wage data and benefit charges for the prior 3 state
708 fiscal years.

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

711 (IV) The employee leasing company must file a Florida
712 Department of Revenue Employer's Quarterly Report (UCT-6) for
713 each client company and pay all contributions by approved
714 electronic means.

715 (V) For the purposes of calculating experience rates, the
716 election is treated like a total or partial succession,
717 depending on the percentage of employees leased. If the client
718 company leases only a portion of its employees from the leasing
719 company, the client company shall continue to report the
720 nonleased employees under its tax rate based on the experience
721 of the nonleased employees.

722 (VI) This sub-subparagraph applies to all employee leasing
723 companies, including each leasing company that is a group member
724 or group leader of an employee leasing company group licensed
725 pursuant to chapter 468. The election is binding on all employee

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726 leasing companies and their related enterprises, subsidiaries,
727 or other entities that share common ownership, management, or
728 control with the leasing company. The election is also binding
729 on all clients of the leasing company for as long as a written
730 agreement is in effect between the client and the leasing
731 company pursuant to s. 468.525(3)(a). If the relationship
732 between the leasing company and the client terminates, the
733 client retains the wage and benefit history experienced under
734 the leasing company.

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

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

749 (I) The trade or establishment name;

750 (II) The former unemployment compensation account number,
751 if available;

752 (III) The former federal employer's identification number
753 (FEIN), if available;

754 (IV) The industry code recognized and published by the

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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.b. 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-sub-paragraphs c.(X) and (XI) ~~a.(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

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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.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.d.~~ 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

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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.

(13) The following are exempt from coverage under this chapter:

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(36)(b) ~~443.036(35)(b)~~ or (c), to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

Section 10. 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

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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

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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 11. Effective July 1, 2011, paragraph (a) of subsection (2), paragraphs (d) and (e) of subsection (3), and paragraphs (b) and (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.*—Initial and continued claims for benefits must be made by approved electronic means and in accordance with ~~the~~ rules adopted by the Agency for Workforce Innovation. 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.

(3) DETERMINATION OF ELIGIBILITY.—

(d) *Determinations in labor dispute cases.*—~~If a~~ Whenever ~~any~~ 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

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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

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when a redetermination is issued, the appeal, unless withdrawn,
is treated as an appeal from the redetermination.

(4) APPEALS.—

(b) *Filing and hearing.*—

1. The claimant or any other party entitled to notice of a determination may appeal an adverse determination to an appeals referee within 20 days after the date of mailing ~~of~~ the notice to her or his last known address or, if the notice is not mailed, within 20 days after the date of delivering ~~delivery of~~ the notice.

2. Unless the appeal is untimely or withdrawn, or review is initiated by the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least 10 days before the date of hearing, notwithstanding the 14-day notice requirement in s. 120.569(2)(b), may only affirm, modify, or reverse the determination. An appeal may not be withdrawn without the permission of the appeals referee.

3. However, if ~~when~~ an appeal appears to have been filed after the permissible time limit, the Office of Appeals may issue an order to show cause to the appellant which requires, ~~requiring~~ the appellant to show why the appeal should not be dismissed as untimely. If ~~the appellant does not,~~ within 15 days after the mailing date of the order to show cause, the appellant does not provide written evidence of timely filing or good cause for failure to appeal timely, the appeal shall be dismissed.

4. If ~~When~~ an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the pendency of the appeal to the employing unit and to

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the Agency for Workforce Innovation, both of which become parties to the proceeding.

5. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath.

a. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court.

b. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

(I) The party against whom it is offered has a reasonable opportunity to review it before the hearing; and

(II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

6.5. The parties must be notified promptly of the referee's decision. The referee's decision is final unless further review is initiated under paragraph (c) within 20 days after the date of mailing notice of the decision to the party's last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

(e) *Judicial review.*—Orders of the commission entered under paragraph (c) are subject to review only by notice of appeal in

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the district court of appeal ~~in the appellate district in which~~
~~the issues involved were decided by an appeals referee.~~ If the
notice of appeal is filed by the claimant, it must be filed in
the appellate district in which the claimant resides. If the
notice of appeal is filed by the employer, it must be filed in
the appellate district in which the business is located.
However, if the claimant does not reside in this state or the
business is not located in this state, the notice of appeal must
be filed 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 12. Subsection (10) is added to section 443.171,
Florida Statutes, to read:

443.171 Agency for Workforce Innovation and commission;
powers and duties; records and reports; proceedings; state-
federal cooperation.—

(10) EVIDENCE OF MAILING.—A mailing date on any notice,

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determination, decision, order, or other document mailed by the
Agency for Workforce Innovation or its tax collection service
provider pursuant to this chapter creates a rebuttable
presumption that such notice, determination, order, or other
document was mailed on the date indicated.

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

Section 14. Except as otherwise expressly provided in this
act, this act shall take effect upon becoming a law.