

CHAPTER 117

LABOR AND INDUSTRY

SENATE BILL 94-075

BY SENATOR Feeley;
also REPRESENTATIVES Schauer and Anderson.

AN ACT

CONCERNING AMENDMENTS TO THE "COLORADO EMPLOYMENT SECURITY ACT" FOR PURPOSES OF CONFORMING THE ACT TO FEDERAL LAW.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-70-120 (1) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-70-120. Employment - agricultural labor. (1) "Employment" means services performed after December 31, 1977, by an individual in agricultural labor as defined in section 8-70-109 when:

(b) Such service is not agricultural labor if performed before January 1, ~~1993~~ 1995, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the FEDERAL "Immigration and Nationality Act".

SECTION 2. Article 70 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

8-70-140.1. Employment does not include - foreign government service. "EMPLOYMENT" DOES NOT INCLUDE SERVICE PERFORMED IN THE EMPLOY OF A FOREIGN GOVERNMENT, INCLUDING SERVICE AS A CONSULAR OR OTHER OFFICER OR EMPLOYEE OR A NONDIPLOMATIC REPRESENTATIVE.

8-70-140.2. Employment does not include - nonresident alien service. "EMPLOYMENT" DOES NOT INCLUDE SERVICES PERFORMED BY A NONRESIDENT ALIEN

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INDIVIDUAL FOR THE PERIOD SUCH INDIVIDUAL IS TEMPORARILY PRESENT IN THE UNITED STATES AS A NONIMMIGRANT UNDER SUBPARAGRAPH (F), (J), OR (M) OF SECTION 101 OF THE FEDERAL "IMMIGRATION AND NATIONALITY ACT", 8 U.S.C. SEC. 1101 (a) (15), AS AMENDED, TO CARRY OUT ANY PURPOSE SPECIFIED IN SUBPARAGRAPH (F), (J), OR (M) OF SECTION 101 OF SUCH FEDERAL ACT.

SECTION 3. 8-73-105.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-73-105.5. Employment by a temporary help contracting firm. (1) For the purposes of this section, "temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(2) Employment with a temporary help contracting firm is characterized by a series of limited-term assignments of an employee to a third party, based on ~~a contract~~ AN AGREEMENT between the temporary help contracting firm and the third party. A separate employment ~~contract~~ AGREEMENT exists between the temporary help contracting firm and each individual it hires as an employee. Completion of an assignment for a third party by an employee employed by a temporary help contracting firm does not, in itself, terminate the employment ~~contract~~ AGREEMENT between the temporary help contracting firm and the employee.

~~(3) When an employee of a temporary help contracting firm completes an assignment with any third party, has indicated his availability to accept a new assignment to the temporary help contracting firm, and is not offered a new assignment, such employee is eligible for benefits under articles 70 to 82 of this title when, for a period of five regular working days, he has been offered no new assignment by such firm and has accepted no other employment. After such five-day period, the employee is eligible for the benefits authorized under articles 70 to 82 of this title dating from the first day he had no such assignment.~~

(4) AT THE TIME OF HIRE A TEMPORARY HELP CONTRACTING FIRM SHALL PROVIDE WRITTEN NOTICE TO EACH EMPLOYEE WHICH CLEARLY STATES THAT THE EMPLOYEE IS REQUIRED TO CONTACT THE FIRM UPON COMPLETION OF AN ASSIGNMENT.

(5) IF AN EMPLOYEE OF A TEMPORARY HELP CONTRACTING FIRM RECEIVES THE WRITTEN NOTICE PURSUANT TO SUBSECTION (4) OF THIS SECTION AND DOES NOT CONTACT THE FIRM UPON COMPLETION OF AN ASSIGNMENT IN COMPLIANCE WITH SUCH WRITTEN NOTICE, SUCH EMPLOYEE SHALL BE HELD TO HAVE VOLUNTARILY TERMINATED EMPLOYMENT FOR PURPOSES OF DETERMINING BENEFITS PURSUANT TO SECTION 8-73-108 (5) (e) (XXII).

(6) IF AN EMPLOYEE OF A TEMPORARY HELP CONTRACTING FIRM CONTACTS THE FIRM UPON COMPLETION OF AN ASSIGNMENT IN COMPLIANCE WITH SUBSECTION (4) OF THIS SECTION AND DOES NOT CONTINUE EMPLOYMENT IN A NEW ASSIGNMENT, SUCH EMPLOYEE SHALL BE CONSIDERED SEPARATED UNDER THE PROVISIONS OF SECTION 8-73-108 (4) (a).

SECTION 4. 8-73-106 (4), Colorado Revised Statutes, 1986 Repl. Vol., as

amended, is repealed as follows:

8-73-106. Seasonal industry. (4) (a) ~~The general assembly hereby finds and declares that, when the state of Colorado elected to provide coverage under the "Colorado Employment Security Act" for state employees, it specifically provided that state employment did not include employees of the legislative branch who serve only while the general assembly is in session; that the "Colorado Employment Security Act" had been administered in accordance with this provision since 1976; that, in 1989, the division of employment and training changed its long-standing administrative construction of the law and determined that session-only employees of the general assembly were entitled to unemployment benefits; and that the general assembly's purpose in enacting the provisions of this subsection (4) is to return to the long-standing practice which the general assembly believed was consistent with law; insofar as such practice accords with federal requirements.~~

~~(b) For purposes of this section, employees of the senate and the house of representatives of the state of Colorado who serve only during the period when the general assembly is in session shall constitute a functionally distinct occupation within an industry which, because of the seasonal nature of the employment, customarily employs workers only during a regularly recurring period of less than twenty-six weeks in a calendar year. The following duties or activities of such session-only employees, as a whole, are identifiably distinct from the year-round employees of the general assembly, under the usual and customary practices of state legislatures throughout the United States:~~

~~(I) Preparation of daily calendars and journals of the proceedings of the general assembly when it meets in regular and special sessions;~~

~~(II) Engrossing and enrolling of bills passed by the general assembly in regular or special session;~~

~~(III) Creating and maintaining legislators' personal files of all versions of bills and committee reports being considered by the general assembly;~~

~~(IV) Keeping official dockets of bills, resolutions, and memorials introduced in regular and special sessions of the general assembly;~~

~~(V) Preparation of status sheets and indexes of measures under consideration by the general assembly;~~

~~(VI) Filing, copying, stenographic work, message-taking, mail distribution, and receptionist work for members of the general assembly who are regularly present in the capitol during regular and special sessions of the general assembly;~~

~~(VII) Keeping order in the chambers and committee meeting rooms of the senate and the house of representatives while the general assembly is in regular or special session;~~

~~(VIII) Facilitating visits by individuals and groups to the senate and house galleries to observe the proceedings of the senate and house of representatives while in regular or special session, and keeping order in the galleries;~~

~~(IX) Distribution of bills, committee reports, calendars, and journals to members of the public and acting as a public information office for inquiries concerning matters under consideration in regular and special sessions of the general assembly.~~

~~(c) The seasonal nature of the employment of session-only employees of the general assembly is confirmed by the fact that their jobs are classified as session-only under job descriptions maintained by the chief clerk of the house of representatives and the secretary of the senate; that applications for employment state that the jobs are for the session only; that session-only employees are told by their supervisors that the work is for the session only; and that session-only employees sign an employment agreement which states that the employee understands that the employment is for the session only.~~

~~(d) The season worked by session-only employees of the general assembly consists of:~~

~~(I) The regular session of the general assembly, which convenes no later than the second Wednesday of January of each year and lasts for one hundred twenty days;~~

~~(II) Two weeks before the regular session and one week following the regular session for preparation and wrap-up activities; and~~

~~(III) Special sessions of the general assembly which are held at the times prescribed by the governor or the general assembly in accordance with section 9 of article IV and section 7 of article V of the state constitution, together with preparation and wrap-up periods, which shall total no more than four weeks in any year.~~

~~(e) On and after April 3, 1990, all provisions of this section, except the requirement that an application be filed for a determination by the director of the division as to the normal seasonal period and as to seasonal workers, shall be applicable to the general assembly as employer and to session-only employees of the general assembly, in order that unemployment compensation is payable to session-only employees in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this section.~~

~~(f) The provisions of this subsection (4) shall govern the seasonal status of session-only employees of the general assembly unless the United States department of labor indicates in writing that the effect of applying the provisions of this subsection (4) is to remove the state of Colorado from compliance with federal law.~~

~~(g) Nothing in this subsection (4) shall affect the benefits which are available to session-only employees of the general assembly pursuant to determinations made by the services committees of the house of representatives and the senate.~~

SECTION 5. 8-75-103.5, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-75-103.5. Additional extended benefit requirements. (9) (a) SUBSECTIONS (1) TO (7) OF THIS SECTION SHALL NOT APPLY TO WEEKS OF UNEMPLOYMENT BEGINNING ON AND AFTER MARCH 7, 1993, AND BEFORE JANUARY 1, 1995, DURING

WHICH TIME SECTION 8-75-102 SHALL APPLY.

(b) THIS SUBSECTION (9) IS REPEALED, EFFECTIVE JULY 1, 1995.

SECTION 6. 8-76-103 (3) (a) (V), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

8-76-103. Future rates based on benefit experience.

~~(3) (a) (V) Notwithstanding any provision to the contrary, the record of an employer who is or was a member of the United States military reserves or the national guard shall not be affected by the fact that such employer ceased doing business and discharged his or her employees as a result of being called to active military duty for a period exceeding thirty days.~~

SECTION 7. 8-76-104 (5) (a), (5) (b), and (5) (j), Colorado Revised Statutes, 1986 Repl. Vol., are amended to read:

8-76-104. Successor employer. (5) (a) Whenever an employer in any manner transfers a clearly segregable unit of ~~his~~ SUCH EMPLOYER'S business, and for which segregable unit the predecessor employer has maintained, in such form as to be separable, continuous records of wages, taxes, and benefits paid on account of such segregable unit, the predecessor employer and successor may jointly request that the division transfer ~~the actual~~ A PROPORTIONATE SHARE OF tax, benefit, and payroll experience attributable to such unit ~~for~~ BASED ON THE RATIO OF THE TAXABLE PAYROLLS PAID DURING the twelve calendar quarters immediately preceding the computation date OF THE SEGREGABLE UNIT TO THE TOTAL EMPLOYER ACCOUNT prior to the notice to the division of such transfer. No transfer of experience may be made under this subsection (5) unless the segregable unit has fourteen consecutive quarters of payroll immediately preceding the computation date.

(b) The division may transfer such experience and perform all other acts required by the provisions of this subsection (5). The ~~actual~~ PROPORTIONATE share of the predecessor employer's reserve account attributable to the transferred unit shall pass to the successor.

(j) Whenever a predecessor employer and a successor jointly request that the division transfer the ~~actual~~ PROPORTIONATE SHARE OF tax, benefit, and payroll experience attributable to a clearly segregable unit to the successor, the predecessor employer shall furnish to the division such information as requested by the division for such purpose.

SECTION 8. Effective date - applicability. This section and sections 5 and 9 of this act shall take effect upon passage and the remainder of this act shall take effect July 1, 1994. This act shall apply to unemployment benefits awarded on or after said dates.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 14, 1994