

Regular Session, 2014

HOUSE BILL NO. 880

BY REPRESENTATIVE STOKES

EMPLOYMENT/UNEMPLOYMENT: Provides with respect to unemployment insurance tax delay periods

1 AN ACT

2 To amend and reenact R.S. 23:1540 through 1541.1, 1711(G)(1)(d), 1722 through 1724,
3 1728, 1766(B), and 1767(D), relative to unemployment insurance tax delay periods;
4 to make tax appeal delay periods uniform; to cause delay periods to begin at the time
5 of mailing rather than the time of receipt; to provide relative to rights of employers
6 to apply for review of a quarterly benefit charge statement; to provide that an appeal
7 of a notice of chargeability be made directly to an administrative law judge; to
8 provide relative to professional employer organizations; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1540 through 1541.1, 1711(G)(1)(d), 1722 through 1724, 1728,
12 1766(B), and 1767(D) are hereby amended and reenacted to read as follows:

13 §1540. Appeal of liability or tax rate determination

14 ~~If not later than one hundred eighty days following the date of issuance of a~~
15 ~~liability determination made pursuant to R.S. 23:1472 or a tax rate resulting from~~
16 ~~that determination, an An employer may apply for review pursuant to R.S.~~
17 ~~23:1541(E) of such a determination unless it is established that there was an~~
18 ~~administrative error which resulted in an incorrect determination or tax rate of any~~
19 ~~liability determination and any tax rate resulting from that determination in~~
20 ~~accordance with the time delays and procedures provided in R.S. 23:1541(E).~~

1 §1541. Notice of benefits charged against employer's experience rating record;
2 employer's right to contest; application for review; procedure

3 A. The administrator shall, ~~not later than October first of each year, render~~
4 ~~a statement to each employer of benefits paid each individual and charged to his~~
5 ~~experience-rating record for the twelve-month period ending the previous June~~
6 ~~thirtieth. However, the administrator shall, effective with the quarter ending~~
7 ~~September 30, 1954, and subsequent calendar quarters, not later than ninety days~~
8 ~~after the close of each calendar quarter, render a statement to each employer of~~
9 ~~benefits paid each individual and charged to his experience-rating record. These~~
10 ~~benefit charges shall be conclusive and binding upon the employer unless he files an~~
11 ~~application to review the charges setting forth his reasons therefor within thirty days~~
12 ~~after the mailing of the notice to his last known address, or in the absence of mailing~~
13 ~~within twenty-five days after the delivery of the notice. However, any benefits paid~~
14 ~~to employees of experience-rated employers pursuant to Executive Orders KBB~~
15 ~~2005-34, KBB 2005-46, and KBB 2005-76 shall not be charged to employers'~~
16 ~~experience-rating records.~~

17 B. No employer that was a party to the separation ~~shall have standing in any~~
18 ~~proceeding involving the chargeability of benefits to his experience-rating record to~~
19 ~~contest the chargeability to his record of any benefits paid in accordance with a~~
20 ~~determination, reconsidered determination, or decision of which he was given notice~~
21 ~~and an opportunity to be heard, or that was issued a notice of chargeability pursuant~~
22 ~~to R.S. 23:1541.1 shall have standing to contest the chargeability to his record of any~~
23 ~~benefits on the grounds of potential disqualification because of circumstances~~
24 ~~surrounding separation from employment if he was not entitled to notice of the~~
25 ~~determination, reconsidered determination, or decision under which such benefits~~
26 ~~were paid quarterly charge statement.~~

27 C. ~~Subject to the limitations of Subsection B of this Section, if an employer~~
28 ~~in his application for review alleges error in the determination, reconsidered~~
29 ~~determination, or decision under which any benefits charged to his experience-rating~~

1 record were paid, such determination, reconsidered determination, or decision shall
2 be ~~deemed and held to be of no force and effect as against such employer,~~
3 ~~notwithstanding anything to the contrary. The administrator shall affirm, modify,~~
4 ~~or reverse such determination, reconsidered determination, or decision, acting in~~
5 ~~accordance with the procedure prescribed in Part VI of this Chapter insofar as~~
6 ~~applicable. Notice of the administrator's action shall be given and appeal therefrom~~
7 ~~may be taken in accordance with Part VI of this Chapter, provided that in any such~~
8 ~~proceedings the employer shall be entitled to notice and shall otherwise have the~~
9 ~~same rights as a party entitled to notice thereunder. The administrator shall adjust~~
10 ~~the experience-rating record of an employer in accordance with any reconsidered~~
11 ~~determination or decision modifying or reversing the determination, reconsidered~~
12 ~~determination, or decision alleged to be in error by the employer, and shall affirm or~~
13 ~~modify any contribution rate based upon such experience-rating record. If an~~
14 ~~employer who was not a party to the separation determination, reconsidered~~
15 ~~determination, or decision, or who was not issued a determination of chargeability~~
16 ~~pursuant to R.S. 23:1541.1, alleges in his application for review of the quarterly~~
17 ~~charge statement that benefits were not properly charged to his experience-rating~~
18 ~~record, the administrator shall affirm, modify, or reverse such charges by issuing a~~
19 ~~determination of chargeability as provided in R.S. 23:1541.1.~~

20 ~~D. Subject to the limitations of Subsection B of this Section, if an employer~~
21 ~~alleges that certain benefits are not properly chargeable to his experience-rating~~
22 ~~record on grounds other than error in the determination, reconsidered determination,~~
23 ~~or decision under which the benefits were paid, the administrator shall give him an~~
24 ~~opportunity for a fair hearing, and on the basis of his findings and conclusion shall~~
25 ~~make such adjustments in the employer's experience-rating record and contribution~~
26 ~~rate as may thereunder be required. The employer shall be promptly notified of the~~
27 ~~administrator's action which shall become final unless within twenty days after the~~
28 ~~mailing of notice thereof to his last known address or in the absence of mailing~~
29 ~~within fifteen days of delivery of such notice a petition for judicial review is filed in~~

1 ~~the district court of the employer's domicile. In all proceedings under this~~
2 ~~Subsection, the findings of the administrator as to facts shall be presumed to be~~
3 ~~prima facie correct if supported by substantial and competent evidence. These~~
4 ~~proceedings shall be heard in summary manner and shall be given precedence over~~
5 ~~all other civil cases except cases arising under Part VI of this Chapter and under~~
6 ~~Chapter 10 of this Title. An appeal may be taken from the decision of the district~~
7 ~~court in the same manner, but not inconsistent with the provisions of this Chapter,~~
8 ~~as is provided for in other civil cases.~~

9 E. D. The administrator shall establish by October fourteenth of each year
10 the amount to be collected for the Incumbent Worker Training Account pursuant to
11 R.S. 23:1553(B)(6) through (9).

12 E. The administrator shall notify each employer, no later than December
13 thirty-first of each year, of his rate of contribution for the forthcoming calendar year
14 as determined for any relevant experience-rating year pursuant to this Part. This
15 determination shall be conclusive and binding upon an employer unless within
16 twenty thirty days after the mailing of notice hereof to his last known address, ~~or in~~
17 ~~the absence of mailing within fifteen days after the delivery of such notice,~~ the
18 employer files an application for review and redetermination, setting forth his
19 reasons therefor. If the administrator grants such review, the employer shall be
20 promptly notified thereof and shall be granted an opportunity for a fair hearing, but
21 no employer shall have standing, in any proceeding involving his rate of contribution
22 or contribution liability, to contest the chargeability of any benefits to his experience-
23 rating record as to cases wherein he has previously been notified and had an
24 opportunity for hearing, review, and appeal. The employer shall be promptly
25 notified of the administrator's action which shall become final unless within twenty
26 thirty days after the mailing of notice thereof to his last known address ~~or in the~~
27 ~~absence of mailing within fifteen days after the delivery of such notice~~ a petition for
28 judicial review is filed in the district court of employer's domicile. In any proceeding
29 under this Subsection, the findings of the administrator as to facts shall be presumed

1 to be prima facie correct if supported by substantial and competent evidence. These
2 proceedings shall be heard in a summary manner and shall be given precedence over
3 all other civil cases except cases arising under Part VI of this Chapter and Chapter
4 10 of this Title. An appeal may be taken from the decision of the district court in the
5 same manner, but not inconsistent with the provisions of this Chapter as in other civil
6 cases.

7 F.(1) Within thirty days after the mailing to his last known address, ~~or in the~~
8 ~~absence of mailing, within twenty-five days after the delivery of the annual rate~~
9 ~~notice~~, the employer may contribute any amount to his experience-rating account.

10 (2) Any such payment made by the employer within thirty days after the
11 mailing to his last known address, ~~or in the absence of mailing within twenty-five~~
12 ~~days after the delivery of the notice~~, shall be deposited in the Louisiana
13 unemployment compensation fund and credited by the administrator so that the
14 employer's experience rating account as of the previous computation date, and the
15 balance of his account after such credit, shall be used in computing his rate
16 determination for the ensuing experience-rating year.

17 (3) This Subsection shall be inapplicable with respect to any calendar year
18 in which any of the additional rates provided for in R.S. ~~23:1536(E)~~ 23:1536(D), (E),
19 and (F) and this Section are applicable.

20 §1541.1. Notice of chargeability of benefits to base-period employers; employer's
21 right to contest; ~~application for review~~ appeals; procedure

22 A. The administrator shall issue, upon the commencement of payment of a
23 claim, a determination of chargeability of benefits to base-period employers. The
24 determination shall be conclusive and binding upon any such base-period employer
25 unless he files an appeal ~~application for initial review~~, setting forth his reasons
26 within ~~twenty~~ thirty days after the date of mailing of any such determination.

27 B. ~~Upon initial review, the administrator shall affirm, modify, or reverse~~
28 ~~such determination of chargeability. The employer shall be promptly notified in~~
29 ~~writing of the administrator's initial review, which shall become final unless the~~

1 employer requests a hearing to appear before the administrator within twenty days
 2 after the date of mailing of the decision of review. ~~Upon~~ If appealed, then upon
 3 being given the opportunity to be heard, the employer shall be promptly notified of
 4 the administrator's administrative law judge's action, which shall be final unless the
 5 employer files a petition for judicial review in the state district court of the
 6 employer's domicile within ~~twenty~~ thirty days of the date of mailing such action. In
 7 any court proceeding under this Subsection, the findings of the ~~administrator~~
 8 administrative law judge as to facts shall be presumed to be prima facie correct, if
 9 supported by substantial and competent evidence. These proceedings shall be heard
 10 in summary manner and shall be given precedence over all other civil cases, except
 11 cases arising under Part VI of this Chapter or Chapter 10 of this Title. An appeal
 12 may be further taken from the decision of the state district court in the same manner,
 13 but not inconsistent with the provisions of this Chapter, as provided in other civil
 14 cases.

15 C. Chargeability under this Section is not altered unless and until such
 16 decision is finally modified or reversed by the administrator, administrative law
 17 judge, or court.

18 D. Any final decision of the administrator, administrative law judge, or the
 19 court shall be binding upon the employer upon his receipt of the quarterly statement
 20 of benefit charges. No employer shall thereafter have standing in any administrative
 21 or judicial proceeding to contest the chargeability to his record of any such paid
 22 benefits for which he previously sought review or appeal and was given notice under
 23 this Section.

24 * * *

25 §1711. False statements or representations; failure to file reports or maintain
 26 records; duties of officers and agents; presumptive proof; penalties

27 * * *

1 G. Misclassification of employees as independent contractors

2 (1)

3 * * *

4 (d) No such determination shall be final or effective, and no resulting
5 administrative penalty shall be assessed, unless the administrator first provides the
6 employer with written notification by certified mail of the determination, including
7 the amount of the proposed contributions, interest, and penalties determined to be
8 due and of the opportunity to request a fair hearing, of which a record shall be made
9 within ~~ten~~ thirty days of the mailing of such notice. The hearing request may be
10 made by mail, as evidenced by the official postmarked date, or by otherwise timely
11 delivering such appeal. If the employer does not request a hearing within the ~~ten-day~~
12 thirty-day period the determination shall become final and effective, and the
13 contributions, interest, and penalties due shall be assessed.

14 * * *

15 §1722. Determination and notice of liability and contributions due

16 If an employer fails to make and file any report required by authority of this
17 Chapter or to pay any contributions, interest, penalty or other payments due under
18 this Chapter, or if a report made and filed does not correctly compute the liability of
19 the employer, the administrator shall cause an audit, investigation or examination to
20 be made to determine the liability, contributions, interest and penalty due by the
21 employer, or if no report has been filed he shall determine the liability, contributions,
22 interest and penalty by estimate or otherwise. Having determined the amount of
23 liability, contributions, interest and penalty due, the administrator shall send a notice
24 by certified or registered mail to the employer at the last known address of the
25 employer setting out the determination of liability, contributions, interest and penalty
26 due and informing the employer of his intent to assess the amount of the
27 determination against the employer after ~~ten~~ thirty calendar days from the date of the
28 notice and that unless the employer ~~protests~~ appeals the determination as provided

1 in R.S. 23:1723 within the ~~ten-day~~ thirty-day period the assessment shall become
2 final.

3 §1723. ~~Protest to~~ Appeal of determination; procedure; content; delays; hearings

4 The employer, within the ~~ten-day~~ thirty-day period provided by R.S. 23:1722,
5 may ~~protest~~ appeal the determination of the administrator by sending ~~a protest an~~
6 appeal to the administrator by certified or registered mail. The ~~protest~~ appeal shall
7 fully disclose the reasons, together with facts and figures in substantiation thereof,
8 for objecting to the administrator's determination. The administrator shall consider
9 the ~~protest~~ appeal, and, if timely requested by the employer, shall grant a fair hearing
10 of which a record shall be made before making a final determination on liability and
11 assessment of contributions, interest and penalties due.

12 §1724. Assessment

13 At the expiration of the ~~ten-day~~ thirty-day period provided for in R.S.
14 23:1722, or at the expiration of such time as may be necessary for the administrator
15 to consider any ~~protest~~ appeal filed to such notice, the administrator may proceed to
16 assess the contributions, interest and penalty that he determines to be due under this
17 Chapter. This assessment shall be evidenced by a writing in any form suitable to the
18 administrator which states the name of the employer, the amount determined to be
19 due and the taxable period for which the assessment is due. This writing shall be
20 retained as a part of the administrator's official records. The assessment may
21 confirm or modify the administrator's original determination.

22 * * *

23 §1728. Appeals; delays; venue; burden of proof

24 When an employer is dissatisfied with the final assessment, he may within
25 ~~ten~~ thirty days of the date of the notice of assessment file a petition for judicial
26 review of the assessment in either the district court in the parish of East Baton Rouge
27 or in the district court of the parish wherein the employer maintains his principal
28 place of business setting forth allegations of error made by the administrator. The
29 review by the court shall be limited to questions of law, provided that if a hearing has

1 been held the findings of fact by the administrator shall be conclusive if supported
2 by substantial and competent evidence.

3 No court shall have the power to enjoin or suspend the payment of
4 contributions, interest and penalty during an appeal of an assessment.

5 * * *

6 §1766. Rejection of application for registration

7 * * *

8 B. The administrator shall furnish the applicant with a written statement of
9 the reason for rejecting or revoking an application. The applicant may request a
10 hearing before the administrator within thirty days of ~~receipt~~ mailing of the written
11 statement.

12 §1767. Terms of registration; renewal; revocation

13 * * *

14 D. A PEO shall have a right to an administrative hearing before an objective
15 party prior to the cancellation or nonrenewal of its registration. The administrator
16 shall furnish the applicant with a written statement of the reason for revoking a
17 registration or rejecting an application. The applicant may request a hearing before
18 the administrator within thirty days of ~~receipt~~ mailing of the written statement.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Stokes

HB No. 880

Abstract: Provides with respect to unemployment insurance tax delay periods.

Present law relative to unemployment insurance contributions provides that within 180 days of the date of issuance of a liability determination, or a tax rate resulting from that determination, an employer may apply for review pursuant to present law of the determination unless it is found to have resulted from an administrative error. Proposed law revises present law to provide that an employer may apply for such review of the liability determination in accordance with the time delays and procedures provided in proposed law.

Proposed law deletes present law requiring the administrator of the unemployment compensation program ("administrator"), not later than Oct. 1 annually, to render a statement to each employer of benefits paid to each individual and charged to his experience-rating record for the most recent 12-month period ending June 30.

Present law stipulates that no employer shall have standing in any proceeding involving chargeability of benefits to his experience-rating record to contest the chargeability of any benefits paid in accordance with a determination, reconsidered determination, or decision of which he was given notice and an opportunity to be heard, or to contest the chargeability to his record of any benefits on the grounds of potential disqualification because of circumstances surrounding separation from employment if he was not entitled to such notice. Proposed law revises present law to stipulate that no employer that was a party to the separation or was issued a notice of chargeability pursuant to proposed law shall have standing to contest the quarterly charge statement.

Proposed law deletes all of the following provisions of present law:

- (1) Provisions establishing that subject to certain limitations, if an employer in application for review alleges error in the determination or decision under which benefits charged to his experience-rating record were paid, the determination or decision shall have no force and effect as against such employer.
- (2) Provisions requiring the administrator to affirm, modify, or reverse the determination or decision in (1) above; and requiring that notice of the administrator's action be given, and authorizing appeal therefrom to be taken, provided that in any such proceedings the employer is entitled to notice and otherwise has the same rights as a party entitled to notice.
- (3) Provisions requiring the administrator to adjust the experience-rating record of an employer in accordance with any reconsidered determination or decision modifying or reversing the determination, reconsidered determination, or decision alleged to be in error by the employer; and to affirm or modify any contribution rate based upon such record.
- (4) Provisions establishing that subject to certain limitations, if an employer alleges that certain benefits are not properly chargeable to his experience-rating record on grounds other than error in the determination or decision under which the benefits were paid, the administrator shall give him an opportunity for a fair hearing; and, based on findings, shall make such adjustments in the employer's experience-rating record and contribution rate as may be required.
- (5) Provisions requiring prompt notification to an employer of the administrator's action which shall become final unless one of the following occur:
 - (a) Within 20 days after the mailing of notice of the action a petition for judicial review is filed in the district court of the employer's domicile.
 - (b) Within 15 days of delivery of such notice a petition for judicial review is filed in the district court of the employer's domicile.

Proposed law provides that if an employer who was not a party to the separation determination or decision, or who was not issued a determination of chargeability pursuant to proposed law, alleges in his application for review of the quarterly charge statement that benefits were not properly charged to his experience-rating record, the administrator shall affirm, modify, or reverse such charges by issuing a determination of chargeability as provided in proposed law.

Present law provides that a determination relative to an employer's rate of contribution for the forthcoming calendar year to the Incumbent Worker Training Account shall be conclusive and binding unless the employer appeals the determination within 20 days after the mailing of notice or, in the absence of mailing, within 15 days after the delivery of such notice. Proposed law deletes reference to 15-day period commencing with delivery of such

notice, providing that the employer may appeal only within 20 days after the mailing of notice.

Proposed law changes procedure for contesting a determination of chargeability of benefits to base-period employers from an application for review by the administrator of the unemployment compensation program to an appeal procedure in which an administrative law judge shall hear and act upon the appeal.

Proposed law revises present law relative to penal provisions within the unemployment compensation program (R.S. 23:1711 et seq.) to provide the following:

- (1) Authorize determinations of liability
- (2) Extend the period allowed for action by employers and the administrator in certain review and appeal procedures from 10 days to 30 days.

Proposed law revises present law relative to Professional Employer Organizations (PEOs) within the unemployment compensation program (R.S. 23:1761 et seq.) to change the period allowed for actions on application for, renewal, and revocation of certain registrations from within 30 days of receipt of a statement to within 30 days of mailing of a statement.

(Amends R.S. 23:1540-1541.1, 1711(G)(1)(d), 1722-1724, 1728, 1766(B), and 1767(D))