

Regular Session, 2014

HOUSE BILL NO. 880

BY REPRESENTATIVE STOKES

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).

21 §1541. Notice of benefits charged against employer's experience rating record;
22 employer's right to contest; application for review; procedure

23 A. The administrator shall, ~~not later than October first of each year,~~ render
24 a statement to each employer of benefits paid each individual and charged to his

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

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

23 C. Subject to the limitations of Subsection B of this Section, if an employer
24 ~~in his application for review alleges error in the determination, reconsidered~~
25 ~~determination, or decision under which any benefits charged to his experience-rating~~
26 ~~record were paid, such determination, reconsidered determination, or decision shall~~
27 ~~be deemed and held to be of no force and effect as against such employer,~~
28 ~~notwithstanding anything to the contrary. The administrator shall affirm, modify,~~
29 ~~or reverse such determination, reconsidered determination, or decision, acting in~~
30 ~~accordance with the procedure prescribed in Part VI of this Chapter insofar as~~

1 applicable. Notice of the administrator's action shall be given and appeal therefrom
2 may be taken in accordance with Part VI of this Chapter, provided that in any such
3 proceedings the employer shall be entitled to notice and shall otherwise have the
4 same rights as a party entitled to notice thereunder. The administrator shall adjust
5 the experience-rating record of an employer in accordance with any reconsidered
6 determination or decision modifying or reversing the determination, reconsidered
7 determination, or decision alleged to be in error by the employer, and shall affirm or
8 modify any contribution rate based upon such experience-rating record. If an
9 employer who was not a party to the separation determination, reconsidered
10 determination, or decision, or who was not issued a determination of chargeability
11 pursuant to R.S. 23:1541.1, alleges in his application for review of the quarterly
12 charge statement that benefits were not properly charged to his experience-rating
13 record, the administrator shall affirm, modify, or reverse such charges by issuing a
14 determination of chargeability as provided in R.S. 23:1541.1.

15 ~~D. Subject to the limitations of Subsection B of this Section, if an employer~~
16 ~~alleges that certain benefits are not properly chargeable to his experience-rating~~
17 ~~record on grounds other than error in the determination, reconsidered determination,~~
18 ~~or decision under which the benefits were paid, the administrator shall give him an~~
19 ~~opportunity for a fair hearing, and on the basis of his findings and conclusion shall~~
20 ~~make such adjustments in the employer's experience-rating record and contribution~~
21 ~~rate as may thereunder be required. The employer shall be promptly notified of the~~
22 ~~administrator's action which shall become final unless within twenty days after the~~
23 ~~mailing of notice thereof to his last known address or in the absence of mailing~~
24 ~~within fifteen days of delivery of such notice a petition for judicial review is filed in~~
25 ~~the district court of the employer's domicile. In all proceedings under this~~
26 ~~Subsection, the findings of the administrator as to facts shall be presumed to be~~
27 ~~prima facie correct if supported by substantial and competent evidence. These~~
28 ~~proceedings shall be heard in summary manner and shall be given precedence over~~
29 ~~all other civil cases except cases arising under Part VI of this Chapter and under~~
30 ~~Chapter 10 of this Title. An appeal may be taken from the decision of the district~~

1 court in the same manner, but not inconsistent with the provisions of this Chapter,
2 as is provided for in other civil cases.

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

6 E. The administrator shall notify each employer, no later than December
7 thirty-first of each year, of his rate of contribution for the forthcoming calendar year
8 as determined for any relevant experience-rating year pursuant to this Part. This
9 determination shall be conclusive and binding upon an employer unless within
10 twenty thirty days after the mailing of notice hereof to his last known address, ~~or in~~
11 ~~the absence of mailing within fifteen days after the delivery of such notice,~~ the
12 employer files an application for review and redetermination, setting forth his
13 reasons therefor. If the administrator grants such review, the employer shall be
14 promptly notified thereof and shall be granted an opportunity for a fair hearing, but
15 no employer shall have standing, in any proceeding involving his rate of contribution
16 or contribution liability, to contest the chargeability of any benefits to his experience-
17 rating record as to cases wherein he has previously been notified and had an
18 opportunity for hearing, review, and appeal. The employer shall be promptly
19 notified of the administrator's action which shall become final unless within ~~twenty~~
20 thirty days after the mailing of notice thereof to his last known address ~~or in the~~
21 ~~absence of mailing within fifteen days after the delivery of such notice~~ a petition for
22 judicial review is filed in the district court of employer's domicile. In any proceeding
23 under this Subsection, the findings of the administrator as to facts shall be presumed
24 to be prima facie correct if supported by substantial and competent evidence. These
25 proceedings shall be heard in a summary manner and shall be given precedence over
26 all other civil cases except cases arising under Part VI of this Chapter and Chapter
27 10 of this Title. An appeal may be taken from the decision of the district court in the
28 same manner, but not inconsistent with the provisions of this Chapter as in other civil
29 cases.

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

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

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

14 §1541.1. Notice of chargeability of benefits to base-period employers; employer's
 15 right to contest; ~~application for review~~ appeals; procedure

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

21 B. ~~Upon initial review, the administrator shall affirm, modify, or reverse~~
 22 ~~such determination of chargeability. The employer shall be promptly notified in~~
 23 ~~writing of the administrator's initial review, which shall become final unless the~~
 24 ~~employer requests a hearing to appear before the administrator within twenty days~~
 25 ~~after the date of mailing of the decision of review. Upon~~ If appealed, then upon
 26 being given the opportunity to be heard, the employer shall be promptly notified of
 27 the administrator's administrative law judge's action, which shall be final unless the
 28 employer files a petition for judicial review in the state district court of the
 29 employer's domicile within ~~twenty~~ thirty days of the date of mailing such action. In
 30 any court proceeding under this Subsection, the findings of the ~~administrator~~

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

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

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

17 * * *

18 §1711. False statements or representations; failure to file reports or maintain
 19 records; duties of officers and agents; presumptive proof; penalties

20 * * *

21 G. Misclassification of employees as independent contractors

22 (1)

23 * * *

24 (d) No such determination shall be final or effective, and no resulting
 25 administrative penalty shall be assessed, unless the administrator first provides the
 26 employer with written notification by certified mail of the determination, including
 27 the amount of the proposed contributions, interest, and penalties determined to be
 28 due and of the opportunity to request a fair hearing, of which a record shall be made
 29 within ~~ten~~ thirty days of the mailing of such notice. The hearing request may be
 30 made by mail, as evidenced by the official postmarked date, or by otherwise timely

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1 delivering such appeal. If the employer does not request a hearing within the ~~ten-day~~
 2 thirty-day period the determination shall become final and effective, and the
 3 contributions, interest, and penalties due shall be assessed.

4 * * *

5 §1722. Determination and notice of liability and contributions due

6 If an employer fails to make and file any report required by authority of this
 7 Chapter or to pay any contributions, interest, penalty or other payments due under
 8 this Chapter, or if a report made and filed does not correctly compute the liability of
 9 the employer, the administrator shall cause an audit, investigation or examination to
 10 be made to determine the liability, contributions, interest and penalty due by the
 11 employer, or if no report has been filed he shall determine the liability, contributions,
 12 interest and penalty by estimate or otherwise. Having determined the amount of
 13 liability, contributions, interest and penalty due, the administrator shall send a notice
 14 by certified or registered mail to the employer at the last known address of the
 15 employer setting out the determination of liability, contributions, interest and penalty
 16 due and informing the employer of his intent to assess the amount of the
 17 determination against the employer after ~~ten~~ thirty calendar days from the date of the
 18 notice and that unless the employer ~~protests~~ appeals the determination as provided
 19 in R.S. 23:1723 within the ~~ten-day~~ thirty-day period the assessment shall become
 20 final.

21 §1723. ~~Protest to~~ Appeal of determination; procedure; content; delays; hearings

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

1 §1724. Assessment

2 At the expiration of the ~~ten-day~~ thirty-day period provided for in R.S.
3 23:1722, or at the expiration of such time as may be necessary for the administrator
4 to consider any ~~protest~~ appeal filed to such notice, the administrator may proceed to
5 assess the contributions, interest and penalty that he determines to be due under this
6 Chapter. This assessment shall be evidenced by a writing in any form suitable to the
7 administrator which states the name of the employer, the amount determined to be
8 due, and the taxable period for which the assessment is due. This writing shall be
9 retained as a part of the administrator's official records. The assessment may
10 confirm or modify the administrator's original determination.

11 * * *

12 §1728. Appeals; delays; venue; burden of proof

13 When an employer is dissatisfied with the final assessment, he may within
14 ~~ten~~ thirty days of the date of the notice of assessment file a petition for judicial
15 review of the assessment in either the district court in the parish of East Baton Rouge
16 or in the district court of the parish wherein the employer maintains his principal
17 place of business setting forth allegations of error made by the administrator. The
18 review by the court shall be limited to questions of law, provided that if a hearing has
19 been held the findings of fact by the administrator shall be conclusive if supported
20 by substantial and competent evidence.

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

23 * * *

24 §1766. Rejection of application for registration

25 * * *

26 B. The administrator shall furnish the applicant with a written statement of
27 the reason for rejecting or revoking an application. The applicant may request a
28 hearing before the administrator within thirty days of ~~receipt~~ mailing of the written
29 statement.

1 §1767. Terms of registration; renewal; revocation

2 * * *

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____