

Amendment No. 1 to HB3430

Eldridge
Signature of Sponsor

AMEND Senate Bill No. 3657

House Bill No. 3430*

by deleting all of the language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 7, Part 3, is amended by adding the following as a new section thereto:

50-7-3__.

(a) As used in this section:

(1) "Active period or periods of a seasonal pursuit" means the longest regularly recurring period or periods of a calendar year within which production operations of a seasonal employer are customarily carried on;

(2) "Inactive period or periods of a seasonal pursuit" means that part of a calendar year which is not included in the active period or periods of a seasonal employer;

(3) "Interested party" means any individual affected by a seasonal determination;

(4) "Production operations" means all the activities of employment which are primarily related to the production of the employer's characteristic goods or services;

(5) "Reasonable assurance" means a written, oral or implied agreement that the employee will perform services in the same or similar capacity during the ensuing active period of a seasonal pursuit;

(6) "Seasonal employment" means services performed by an individual in the employ of a seasonal employer and only during such seasonal employer's active period or periods of a seasonal pursuit. No services performed by an individual in the employ of a seasonal employer may be considered seasonal

Amendment No. 1 to HB3430

Eldridge
Signature of Sponsor

AMEND Senate Bill No. 3657

House Bill No. 3430*

employment if the individual performs any services in the employ of such employer during the inactive period of seasonal pursuit;

(7) "Seasonal wages" means the wages earned by a seasonal worker as an employee of a seasonal employer within the active period or periods of such employer. The department may prescribe by rule the manner in which seasonal wages shall be reported; and

(8) "Seasonal worker" means an individual in the employ of a seasonal employer only during the employer's active period of seasonal pursuit. An individual may not be considered a seasonal worker nor should wages be reported as seasonal wages if the individual performs any services in the employ of such employer within the inactive period of a seasonal pursuit.

(b) Effective with claims filed on or after January 1, 2013:

(1) A seasonal employer is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of thirty-six (36) weeks in a calendar year. No employer shall be considered a seasonal employer until the department makes a determination that the employer is seasonal. However, any successor to a seasonal employer shall be deemed a seasonal employer unless the successor requests cancellation of the seasonal employer status within one hundred twenty days (120) after the acquisition. This subdivision (b)(1) shall not be applicable to pending cases or retroactive in effect.

(2) Upon application by an employer for seasonal employer status, the department shall determine or redetermine whether the employer is seasonal

and, if seasonal, the employer's active period. The department is authorized to redetermine a seasonal employer's active period. An application for a seasonal determination must be made on forms prescribed by the department and must be made at least thirty days (30) prior to the beginning date of the period of production operations for which a determination is requested.

(3) Whenever the department has determined or redetermined an employer to be seasonal, the employer shall be notified immediately. The notice must contain the beginning and ending dates of the employer's active period or periods. Any employer determined or redetermined to be a seasonal employer shall display notices of its seasonal determination conspicuously on the employer's premises in a sufficient number of places to be available for inspection by the employer's workers. The notices may be furnished by the department.

(4) A determination or redetermination by the department that an employer is a seasonal employer shall become effective unless an interested party files an application for review within ten (10) days of the beginning date of the first period of production operations to which the determination or redetermination applies. An application for review shall be an application for a determination of status.

(5)

(A) Benefits based on seasonal employment shall be payable to a seasonal worker in the employ of a seasonal employer for weeks of unemployment that occur during such employer's active period of seasonal pursuit.

(B) Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment beginning after January 1, 2013, that begins during the period between two (2)

successive normal active periods of seasonal pursuit to any seasonal worker if that seasonal worker performs the service in the first of the normal active periods and if there is a reasonable assurance that the seasonal worker will perform the service for a seasonal employer in the second of the active periods. If benefits are denied to a seasonal worker for any week solely as a result of this subsection and the seasonal worker is not offered an opportunity to perform in the second normal active period for which reasonable assurance of employment had been given, the seasonal worker is entitled to a retroactive payment of benefits under this subsection for each week that the seasonal worker previously filed a timely claim for benefits.

(6) The benefits payable to any otherwise eligible seasonal worker shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a determination by the department that an employer is a seasonal employer if such seasonal worker was employed by the seasonal employer during the base period applicable to such benefit year, as if such determination had been effective in such base period.

(7) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance with this section to appeal from such determination as provided in § 50-7-304.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to claims filed on or after January 1, 2013.