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## The 2014 Florida Statutes

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LABOR

REEMPLOYMENT ASSISTANCE

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

(1) “Able to work” means physically and mentally capable of performing the duties of the occupation in which work is being sought.

(2) “Agricultural labor” means any remunerated service performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of the service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in s. 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, s. 3; 12 U.S.C. s. 1141j); the ginning of cotton; or the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d)1. In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if the operator produced more than one-half of the commodity for which the service is performed.

2. In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in subparagraph 1., but only if the operators produced more than one-half of the commodity for which the service is performed.

3. Subparagraphs 1. and 2. do not apply to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with grading, packing, packaging, or processing fresh citrus fruits.

(e) On a farm operated for profit if the service is not in the course of the employer’s trade or business.

(3) “American aircraft” means an aircraft registered under the laws of the United States.

(4) “American employer” means:

(a) An individual who is a resident of the United States.

(b) A partnership, if two-thirds or more of the partners are residents of the United States.

(c) A trust, if each of the trustees is a resident of the United States.

(d) A corporation organized under the laws of the United States or of any state.

(5) "American vessel" means any vessel documented or numbered under the laws of the United States. The term includes any vessel that is neither documented or numbered under the laws of the United States, nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

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

(7) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(8) "Benefits" means the money payable to an individual, as provided in this chapter, for his or her unemployment.

(9) "Benefit year" means, for an individual, the 1-year period beginning with the first day of the first week for which the individual first files a valid claim for benefits and, thereafter, the 1-year period beginning with the first day of the first week for which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Each claim for benefits made in accordance with s. [443.151\(2\)](#) is a valid claim if the individual was paid wages for insured work in accordance with s. [443.091\(1\)\(g\)](#) and is unemployed at the time of filing the claim. However, the Department of Economic Opportunity may adopt rules providing for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry if the department determines, after notice to the industry and to the workers in the industry and an opportunity to be heard in the matter, that those groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(10) "Calendar quarter" means each period of 3 consecutive calendar months ending on March 31, June 30, September 30, and December 31 of each year.

(11) "Casual labor" means labor that is occasional, incidental, or irregular, not exceeding 200 person-hours in total duration. As used in this subsection, the term "duration" means the period of time from the commencement to the completion of the particular job or project. Services performed by an employee for his or her employer during a period of 1 calendar month or any 2 consecutive calendar months, however, are deemed to be casual labor only if the service is performed on 10 or fewer calendar days, regardless of whether those days are consecutive. If any of the services performed by an individual on a particular labor project are not casual labor, each of the services performed by the individual on that job or project may not be deemed casual labor. Services must constitute casual labor and may not be performed in the course of the employer's trade or business for those services to be exempt under this section.

(12) "Commission" means the Reemployment Assistance Appeals Commission.

(13) "Contributing employer" means an employer who is liable for contributions under this chapter.

(14) "Contribution" means a payment of payroll tax to the Unemployment Compensation Trust Fund which is required under this chapter to finance reemployment assistance benefits.

(15) "Crew leader" means an individual who:

(a) Furnishes individuals to perform service in agricultural labor for another person.

(b) Pays, either on his or her own behalf or on behalf of the other person, the individuals furnished by him or her for the service in agricultural labor performed by those individuals.

(c) Has not entered into a written agreement with the other person under which the individual is

designated as an employee of the other person.

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

(17) "Educational institution" means an institution, except for an institution of higher education:

(a) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of, an instructor or teacher;

(b) That is approved, licensed, or issued a permit to operate as a school by the Department of Education or other governmental agency that is authorized within the state to approve, license, or issue a permit for the operation of a school; and

(c) That offers courses of study or training which are academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(18) "Employee leasing company" means an employing unit that has a valid and active license under chapter 468 and that maintains the records required by s. [443.171\(5\)](#) and, in addition, is responsible for producing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. As used in this subsection, the term "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. An employee leasing company must notify the tax collection service provider within 30 days after the initiation or termination of the company's relationship with any client company under chapter 468.

(19) "Employer" means an employing unit subject to this chapter under s. [443.1215](#).

(20) "Employing unit" means an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing; or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state.

(a) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit is deemed to be employed by the employing unit for the purposes of this chapter, regardless of whether the individual was hired or paid directly by the employing unit or by an agent or employee of the employing unit, if the employing unit had actual or constructive knowledge of the work.

(b) Each individual performing services in this state for an employing unit maintaining at least two separate establishments in this state is deemed to be performing services for a single employing unit for the purposes of this chapter.

(c) A person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.

(d) A limited liability company shall be treated as having the same status as it is classified for federal income tax purposes. However, a single-member limited liability company shall be treated as the employer.

(21) "Employment" means a service subject to this chapter under s. [443.1216](#) which is performed by an employee for the person employing him or her.

(22) "Farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(23) "Fund" means the Unemployment Compensation Trust Fund created under this chapter, into which all contributions and reimbursements required under this chapter are deposited and from which all benefits provided under this chapter are paid.

(24) "High quarter" means the quarter in an individual's base period in which the individual has the greatest amount of wages paid, regardless of the number of employers paying wages in that quarter.

(25) "Hospital" means an institution that is licensed, certified, or approved by the Agency for Health Care Administration as a hospital.

(26) "Institution of higher education" means an educational institution that:

- (a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of a certificate of graduation;
- (b) Is legally authorized in this state to provide a program of education beyond high school;
- (c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program that is acceptable for full credit toward a bachelor's or higher degree; a program of postgraduate or postdoctoral studies; or a program of training to prepare students for gainful employment in a recognized occupation; and
- (d) Is a public or other nonprofit institution.

The term includes each community college and state university in this state, and each other institution in this state authorized under s. [1005.03](#) to use the designation "college" or "university."

(27) "Insured work" means employment for employers.

(28) "Leave of absence" means a temporary break in service to an employer, for a specified period of time, during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

(29) "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.

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

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e)1. A violation of an employer's rule, unless the claimant can demonstrate that:

- a. He or she did not know, and could not reasonably know, of the rule's requirements;
- b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

(30) "Monetary determination" means a determination of whether and in what amount a claimant is eligible for benefits based on the claimant's employment during the base period of the claim.

(31) "Nonmonetary determination" means a determination of the claimant's eligibility for benefits based on an issue other than monetary entitlement and benefit overpayment.

(32) "Not in the course of the employer's trade or business" means not promoting or advancing the trade or business of the employer.

(33) "One-stop career center" means a service site established and maintained as part of the one-stop delivery system under s. [445.009](#).

(34) "Pay period" means a period of 31 or fewer consecutive days for which a payment or remuneration is ordinarily made to the employee by the person employing him or her.

(35) "Public employer" means:

(a) A state agency or political subdivision of the state;

(b) An instrumentality that is wholly owned by one or more state agencies or political subdivisions of the state; or

(c) An instrumentality that is wholly owned by one or more state agencies, political subdivisions, or instrumentalities of the state and one or more state agencies or political subdivisions of one or more other states.

(36) "Reasonable assurance" means a written or verbal agreement, an agreement between an employer and a worker understood through tradition within the trade or occupation, or an agreement defined in an employer's policy.

(37) "Reemployment assistance" means cash benefits payable to individuals with respect to their unemployment pursuant to the provisions of this chapter. Where the context requires, reemployment assistance also means cash benefits payable to individuals with respect to their unemployment pursuant to 5 U.S.C. ss. 8501-8525, 26 U.S.C. ss. 3301-3311, 42 U.S.C. ss. 501-504, 1101-1110, and 1321-1324, or pursuant to state laws which have been certified pursuant to 26 U.S.C. s. 3304 and 42 U.S.C. s. 503. Any reference to reemployment assistance shall mean compensation payable from an unemployment fund as defined in 26 U.S.C. s. 3306(f).

(38) "Reimbursement" means a payment of money to the Unemployment Compensation Trust Fund in lieu of a contribution which is required under this chapter to finance reemployment assistance benefits.

(39) "Reimbursing employer" means an employer who is liable for reimbursements in lieu of contributions under this chapter.

(40) "State" includes the states of the United States, the District of Columbia, Canada, the Commonwealth of Puerto Rico, and the Virgin Islands.

(41) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under s. 3304 of the Internal Revenue Code of 1954.

(42) "Tax collection service provider" or "service provider" means the state agency providing reemployment assistance tax collection services under contract with the Department of Economic Opportunity through an interagency agreement pursuant to s. [443.1316](#).

(43) "Temporary layoff" means a job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date.

(44) "Unemployment" or "unemployed" means:

(a) An individual is "totally unemployed" in any week during which he or she does not perform any services and for which earned income is not payable to him or her. An individual is "partially

unemployed” in any week of less than full-time work if the earned income payable to him or her for that week is less than his or her weekly benefit amount. The Department of Economic Opportunity may adopt rules prescribing distinctions in the procedures for unemployed individuals based on total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work.

(b) An individual’s week of unemployment commences only after registration with the Department of Economic Opportunity as required in s. [443.091](#).

(45) “Wages” means remuneration subject to this chapter under s. [443.1217](#).

(46) “Week” means a period of 7 consecutive days as defined in the rules of the Department of Economic Opportunity. The department may by rule prescribe that a week is deemed to be “in,” “within,” or “during” the benefit year that contains the greater part of the week.

**History.**—s. 3, ch. 18402, 1937; s. 1, ch. 19637, 1939; CGL 1940 Supp. 4151(490); s. 3, ch. 20685, 1941; s. 1, ch. 21983, 1943; s. 7, ch. 22858, 1945; s. 1, ch. 24085, 1947; s. 10, ch. 26484, 1951; s. 1, ch. 26878, 1951; ss. 1, 2, ch. 26879, 1951; ss. 1, 2, ch. 28242, 1953; ss. 1, 2, chs. 29771, 29772, 1955; ss. 1, 2, 3, ch. 57-228; ss. 1, 2, ch. 61-228; s. 2, ch. 61-119; s. 1, ch. 61-132; s. 1, ch. 63-56; ss. 1, 2, ch. 63-155; s. 1, ch. 65-196; ss. 17, 35, ch. 69-106; ss. 1, 2, 3, ch. 71-225; s. 1, ch. 71-226; s. 165, ch. 71-377; s. 2, ch. 73-283; s. 117, ch. 73-333; s. 1, ch. 74-198; s. 1, ch. 75-39; s. 19, ch. 77-121; s. 1, ch. 77-262; s. 1, ch. 77-393; s. 1, ch. 77-399; s. 3, ch. 78-386; s. 21, ch. 79-7; s. 181, ch. 79-400; s. 1, ch. 80-50; ss. 2, 8, 9, ch. 80-95; ss. 1, 2, ch. 80-345; s. 282, ch. 81-259; s. 1, ch. 82-81; s. 1, ch. 83-10; s. 9, ch. 83-174; s. 1, ch. 83-186; s. 1, ch. 84-123; s. 1, ch. 84-200; s. 1, ch. 85-22; s. 68, ch. 85-81; s. 2, ch. 85-126; s. 1, ch. 86-227; s. 1, ch. 87-383; s. 2, ch. 88-289; s. 1, ch. 93-153; s. 1, ch. 94-347; s. 1, ch. 96-287; s. 1, ch. 96-374; ss. 1, 2, 10, ch. 96-378; ss. 1, 3, ch. 96-411; s. 19, ch. 96-423; s. 2, ch. 97-29; s. 1058, ch. 97-103; s. 4, ch. 98-149; s. 1, ch. 98-154; s. 212, ch. 99-8; s. 100, ch. 2000-153; s. 21, ch. 2000-157; s. 58, ch. 2002-194; ss. 17, 18, ch. 2003-36; s. 55, ch. 2003-164; s. 25, ch. 2003-254; s. 2, ch. 2009-101; s. 6, ch. 2010-90; s. 17, ch. 2010-138; s. 352, ch. 2011-142; s. 3, ch. 2011-235; s. 61, ch. 2012-5; s. 3, ch. 2012-30; s. 68, ch. 2012-96; s. 41, ch. 2013-39; s. 18, ch. 2014-218.

**Note.**—Former s. 443.03.