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D'Ann Johnson
TWU, Local 514
via facsimile 437-0310

In re: Unemployment Benefits With American Airlines Layoff

Dear Ms. Johnson:

The Union has asked for an official legal opinion on how unemployment benefits interact with the upcoming proposed layoffs by American Airlines.

Anyone laid off because of low seniority is entitled to unemployment benefits. This should be true whether or not they receive a severance package or enhanced severance package. If, however, they draw retirement from their defined benefit pension plan, then the state would take those payments into account to reduce unemployment benefits dollar for dollar. 40 O.S. § 2-411.

Anyone who takes what is sometimes called an "inverse seniority layoff", or may be called a "stand in stead" layoff, is subject to the same analysis. My understanding is that the company announces a layoff of so many people and the contract requires that the lowest seniority go out first. However, under an ISL, someone with higher seniority exercises that seniority by getting laid off in lieu of a lower seniority person. Under such a scenario, Oklahoma state law provides that that person is entitled to unemployment benefits. 40 O.S. § 2-405(2).

American Airlines has indicated in its information that an ISL person is not entitled to unemployment benefits. As a matter of Oklahoma state law, this is simply wrong. American does refer in its paperwork to a statement that the papers signed to get the enhanced severance provide that the person will not seek unemployment benefits. It is our opinion that this is illegal as a matter of state law. However, if the paperwork does say that in an effective manner (we have not seen the paperwork and cannot judge on that), it is possible, though in our opinion not likely, that the company would have some remedy back against the departing employee.

Again, and especially in the case of the ISL, there is the concern for drawing retirement benefits from the defined benefit plan of American Airlines: the Unemployment Commission considers those wages earned and deducts the amounts from unemployment benefits.

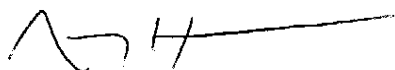
Next, is the question of the severance package. The Oklahoma rule is that, so long as it is paid out in a lump sum, unemployment benefits are reduced only for the week of payment. OAC 240: 10-3-41.

Two other issues should be considered. First, to the extent that the employee draws money out of a 401(k) plan, it is possible that the Unemployment Commission would reduce unemployment benefits by the amount of the employer's contribution. This seems unlikely given 40 O.S. § 1-218(1)(e). Second, if the employee goes to work somewhere else and loses his job, he can draw benefits from that employment, even though he is drawing a pension plan benefit from a prior (American Airlines) employer. (40 O.S. § 2-411(1)(a) limits reductions in unemployment compensation to retirement benefits from the "chargeable" or last employer.)

If anyone has further questions about this, they can feel free to contact our office.

Sincerely,

FRASIER, FRASIER & HICKMAN, LLP



By: Steven R. Hickman

SRH/vls

40 OS Sec. 1-218

"Wages" means all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and includes dismissal payments which the employer is required by law or contract to make. Gratuities customarily received by an individual in the course of work from persons other than the employing unit shall be treated as wages received from the employing unit. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the Oklahoma Employment Security Commission. The term wages shall not include:

1. The amount of any payment, with respect to services performed to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of:

a. retirement, other than employee contributions or deferrals after December 31, 2002, under a qualified plan as described in 26 U.S.C., Section 401(k) and, after December 31, 2005, under a qualified plan as described in 26 U.S.C., Sections 403b, 408(k), 457 and 7701(j), and, after December 31, 2010, under a qualified plan as described in 26 U.S.C., Section 408(p),

b. sickness or accident disability,

c. medical and hospitalization expenses in connection with sickness or accident disability,

d. death, provided the individual in its employ:

(1) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium or contributions to premiums paid by the employing unit, and

(2) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon withdrawal from the plan or system providing for such benefit or upon termination of

such plan or system or policy of insurance or of the individual's services with such employing unit, or

e. a bona fide thrift or savings fund, providing:

(1) such payment is conditioned upon a payment of a substantial sum by such individuals in its employ, and

(2) that such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any twelve-month period, except upon an individual's separation from that employment;

2. Any payment made to, or on behalf of, an employee or his or her beneficiary under a cafeteria plan of the type described in 26 U.S.C., Section 125 and referred to in 26 U.S.C., Section 3306(b)(5)(G);

3. Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C., Section 127 or a dependent care assistance program as described in 26 U.S.C., Section 129 and as referred to in 26 U.S.C., Section 3306(b)(13);

4. The payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under 26 U.S.C., Section 3101 with respect to domestic services in a private home of the employer or for agricultural labor;

5. Dismissal payments which the employer is not required by law or contract to make;

6. The value of any meals and lodging furnished by or on behalf of an employer to an individual in its employ; provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer; or

7. Payments made under an approved supplemental unemployment benefit plan.

40 OS Sec. 2-405

Good cause for voluntarily leaving work under Section 2-404 of this title may include, among other factors, the following:

1. A job working condition that had changed to such a degree it was so harmful, detrimental, or adverse to the individual's health, safety, or morals, that leaving the work was justified; or
2. If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated and the employer has consented thereto.

40 OS Sec. 2-411

1. Except for any payment or benefit payment made pursuant to the federal Social Security Act, an individual shall be disqualified for benefits for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic retirement payment which is based on the previous work of such individual if:

a. such pension, retirement or retired pay, annuity or similar payment is under a plan maintained, or contributed to, by a base period or chargeable employer; and

b. in the case of such a payment not made under the Railroad Retirement Act of 1974, 45 U.S.C., Section 231 et seq., services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for or increase the amount of, such pension, retirement or retired pay, annuity or similar payment.

2. If the total of such remuneration is less than the benefits which would otherwise be due under the Employment Security Act of 1980, Section 1-101 et seq. of this title, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

3. If payments referred to in this section are being received by an individual under the federal Social Security Act, the Commission shall take into account the individual's contribution to social security and make no reduction in the weekly benefit amount.

OAC 240:10-3-41

(a) **Retirement proceeds.** A lump-sum distribution from a retirement plan shall be deductible from benefits in the week received.

(b) **Severance pay.** Severance pay which is deemed wages shall be deductible from benefits in the week received.

[N.B.: To access the statutes, go to www.oscn.net; legal research; Oklahoma statutes citationized; title 40; scroll down to desired section. To access Oklahoma Administrative Code (OAC), Google Oklahoma Secretary of State; Administrative Rules tab, online code and register, view code. Choose title 240, then Chapter 10, then Subchapter 3, then Part 9, then the Section.]