

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

S

3

SENATE BILL 439  
Judiciary I Committee Substitute Adopted 4/9/03  
Third Edition Engrossed 4/16/03

Short Title: Omnibus ESC Changes.

(Public)

Sponsors:

Referred to:

March 17, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT MAKING OMNIBUS CHANGES TO THE EMPLOYMENT SECURITY  
3 LAWS OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 96-14(1) reads as rewritten:

6 "(1) For the duration of his unemployment beginning with the first day of  
7 the first week after the disqualifying act occurs with respect to which  
8 week an individual files a claim for benefits if it is determined by the  
9 Commission that such individual is, at the time such claim is filed,  
10 unemployed because he left work without good cause attributable to  
11 the employer.

12 Where an individual leaves work due solely to a disability incurred  
13 or other health condition, whether or not related to the work, he shall  
14 not be disqualified for benefits if the individual shows:

15 a. That, at the time of leaving, an adequate disability or health  
16 condition, condition of the employee, of a minor child who is in  
17 the legally recognized custody of the individual, of an aged or  
18 disabled parent of the individual, or of a disabled member of the  
19 individual's immediate family, either medically diagnosed or  
20 otherwise shown by competent evidence, existed to justify the  
21 leaving and prevented the employee from doing other  
22 alternative work offered by the employer which pays the  
23 minimum wage or eighty-five percent (85%) of the individual's  
24 regular wage, whichever is greater; and

25 b. That, at a reasonable time prior to leaving, the individual gave  
26 the employer notice of his~~the~~ disability or health condition.

27 Where an employee is notified by the employer that such employee  
28 will be separated from employment on some future date and the

1 employee leaves work prior to this date because of the impending  
2 separation, the employee shall be deemed to have left work voluntarily  
3 and the leaving shall be without good cause attributable to the  
4 employer. However, if the employee shows to the satisfaction of the  
5 Commission that it was impracticable or unduly burdensome for the  
6 employee to work until the announced separation date, the permanent  
7 disqualification imposed for leaving work without good cause  
8 attributable to the employer may be reduced to the greater of four  
9 weeks or the period running from the beginning of the week during  
10 which the claim for benefits was made until the end of the week of the  
11 announced separation date.

12 An employer's placing an individual on a bona fide disciplinary  
13 suspension of 10 or fewer consecutive calendar days shall not  
14 constitute good cause for leaving work."

15 **SECTION 2.** G.S. 96-9(c)(2) reads as rewritten:

16 "(2) Charging of benefit payments. –

- 17 a. Benefits paid shall be allocated to the account of each base  
18 period employer in the proportion that the base period wages  
19 paid to an eligible individual in any calendar quarter by each  
20 such employer bears to the total wages paid by all base period  
21 employers during the base period, except as hereinafter  
22 provided in paragraphs b, c, and d of this subdivision, G.S.  
23 96-9(d)(2)c, and 96-12.01G. The amount so allocated shall be  
24 multiplied by one hundred twenty percent (120%) and charged  
25 to that employer's account. Benefits paid shall be charged to  
26 employers' accounts upon the basis of benefits paid to claimants  
27 whose benefit years have expired.
- 28 b. Any benefits paid to any claimant under a claim filed for a  
29 period occurring after the date of such separations as are set  
30 forth in this paragraph and based on wages paid prior to the date  
31 of (i) the leaving of work by the claimant without good cause  
32 attributable to the employer; (ii) the discharge of claimant for  
33 misconduct in connection with his work; (iii) the discharge of  
34 the claimant for substantial fault as that term may be defined in  
35 G.S. 96-14; (iv) the discharge of the claimant solely for a bona  
36 fide inability to do the work for which he was hired but only  
37 where the claimant's period of employment was 100 days or  
38 less; (v) separations made disqualifying under G.S. 96-14(2b)  
39 and (6a); (vi) separation due to leaving for disability or health  
40 condition; or (vii) separation of claimant solely as the result of  
41 an undue family ~~hardship~~; hardship shall not be charged to the  
42 account of an employer by whom the claimant was employed at  
43 the time of such separation; provided, however, said employer  
44 promptly furnishes the Commission with such notices regarding

1 any separation of the individual from work as are or may be  
2 required by the regulations of the Commission.

3 No benefit charges shall be made to the account of any  
4 employer who has furnished work to an individual who,  
5 because of the loss of employment with one or more other  
6 employers, becomes eligible for partial benefits while still being  
7 furnished work by such employer on substantially the same  
8 basis and substantially the same amount as had been made  
9 available to such individual during his base period whether the  
10 employments were simultaneous or successive; provided, that  
11 such employer makes a written request for noncharging of  
12 benefits in accordance with Commission regulations and  
13 procedures.

14 No benefit charges shall be made to the account of any  
15 employer for benefit years ending on or before June 30, 1992,  
16 where benefits were paid as a result of a discharge due directly  
17 to the reemployment of a veteran mandated by the Veteran's  
18 Reemployment Rights Law, 38 USCA § 2021, et seq.

19 No benefit charges shall be made to the account of any  
20 employer where benefits are paid as a result of a decision by an  
21 Adjudicator, Appeals Referee or the Commission if such  
22 decision to pay benefits is ultimately reversed; nor shall any  
23 such benefits paid be deemed to constitute an overpayment  
24 under G.S. 96-18(g)(2), the provisions thereof notwithstanding.  
25 Provided, an overpayment of benefits paid shall be established  
26 in order to provide for the waiting period required by G.S.  
27 96-13(c).

28 c. Any benefits paid to any claimant who is attending a vocational  
29 school or training program as provided in G.S. 96-13(a)(3) shall  
30 not be charged to the account of the base period employer(s).

31 d. Any benefits paid to any claimant under the following  
32 conditions shall not be charged to the account of the base period  
33 employer(s):

- 34 1. The benefits are paid for unemployment due directly to a  
35 major natural disaster, and
- 36 2. The President has declared the disaster pursuant to the  
37 Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
- 38 3. The benefits are paid to claimants who would have been  
39 eligible for disaster unemployment assistance under this  
40 Act, if they had not received unemployment insurance  
41 benefits with respect to that unemployment.

42 e. 1. Any benefits paid to any claimant which are based on  
43 previously uncovered employment which are  
44 reimbursable by the federal government shall not be

1 charged to the experience rating account of any  
2 employer.

- 3 2. For purposes of this paragraph previously uncovered  
4 employment for which benefits are reimbursable by the  
5 federal government means services performed before  
6 July 1, 1978, in the case of a week of unemployment  
7 beginning before July 1, 1978, or before January 1, 1978,  
8 in the case of a week of unemployment beginning after  
9 July 1, 1978, and to the extent that assistance under Title  
10 II of the Emergency Jobs and Unemployment Assistance  
11 Act of 1974 (SUA) was not paid to such individuals on  
12 the basis of such service."

13 **SECTION 3.** G.S. 96-14(1f) reads as rewritten:

14 "(1f) For the purposes of this Chapter, any claimant's leaving work, or  
15 discharge, if the claimant has been adjudged an aggrieved party as set  
16 forth by Chapter 50B of the General Statutes or there is evidence of  
17 domestic violence, sexual offense, or stalking, or the claimant has been  
18 granted program participant status pursuant to G.S. 15C-4 as the result  
19 of domestic violence committed upon the claimant or upon a minor  
20 child with or in the custody of the claimant by a person who has or has  
21 had a familial relationship with the claimant or minor child, shall  
22 constitute good cause for leaving work. Benefits paid on the basis of  
23 this section shall be noncharged. Evidence of domestic violence,  
24 sexual offense, or stalking may include: (i) law enforcement, court, or  
25 federal agency records or files; (ii) documentation from a domestic  
26 violence or sexual assault program if the claimant is alleged to be a  
27 victim of domestic violence or sexual assault; and (iii) documentation  
28 from a religious, medical, or other professional from whom the  
29 claimant has sought assistance in dealing with the alleged domestic  
30 violence, sexual abuse, or stalking."

31 **SECTION 4.** G.S. 96-9(d)(1) reads as rewritten:

- 32 "(1) a. Any nonprofit organization which becomes subject to this  
33 Chapter on or after January 1, 1972, shall pay contributions  
34 under the provisions of this Chapter, unless it elects in  
35 accordance with this paragraph to pay the Commission for the  
36 Unemployment Insurance Fund an amount equal to the amount  
37 of regular benefits and of one half of the extended benefits paid,  
38 that is attributable to service in the employ of such nonprofit  
39 organization, to individuals for weeks of unemployment which  
40 begin within a benefit year established during the effective  
41 period of such election.
- 42 b. Any nonprofit organization which is or becomes subject to this  
43 Chapter on or after January 1, 1972, may elect to become liable  
44 for payments in lieu of contributions for a period of not less

1 than four calendar years beginning with the date on which  
2 subjectivity begins by filing a written notice of its election with  
3 the Commission not later than 30 days immediately following  
4 the date of written notification of the determination of such  
5 subjectivity. Provided if notification is not by registered mail,  
6 the election may be made on or after January 1, 1972, within six  
7 months following the date of the written notification of the  
8 determination of such subjectivity. If such election is not made  
9 as set forth herein, no election can be made until after four  
10 calendar years have elapsed under the contributions method of  
11 payment.

12 c. Any nonprofit organization which makes an election in  
13 accordance with subparagraph b of this paragraph will continue  
14 after such four calendar years to be liable for payments in lieu  
15 of contributions until it files with the Commission a written  
16 notice terminating its election not later than 30 days prior to the  
17 next January 1, effective on such January 1. Provided, however,  
18 no employer granted or in reimbursement status will be allowed  
19 refund of any previous balances used in a transfer to  
20 reimbursement status.

21 d. Any nonprofit organization which has been paying  
22 contributions under this Chapter for a period of at least four  
23 consecutive calendar years subsequent to January 1, 1972, may  
24 elect to change to a reimbursement basis by filing with the  
25 Commission not later than 30 days prior to the next January 1 a  
26 written notice of election to become liable for payments in lieu  
27 of contributions, effective on such January 1. Such election  
28 shall not be terminable for a period of four calendar years. In  
29 the event of such an election, the account of such employer  
30 shall be closed and shall not be used in any future computation  
31 of such employer's contribution rate in any manner whatsoever.  
32 Provided, however, any nonprofit employer formerly paying  
33 contributions who elects and qualifies to change to a  
34 reimbursement basis may be relieved of the requirement to pay  
35 one percent (1%) of taxable wages as required by G.S.  
36 96-9(d)(2)a to the following extent and upon the following  
37 conditions:

38 1. Any nonprofit employer which has, for the year the  
39 election will be effective, an experience rating of 1.7 or  
40 less, will have transferred from its experience rating  
41 account an amount equal to one percent (1%) of its  
42 payroll as reported for each of the four calendar quarters  
43 which constitute the election year;

1                   2.     Any nonprofit employer which has, for the year the  
2                   election will be effective, an experience rating of less  
3                   than 2.7 but more than 1.7, will have transferred from its  
4                   experience rating account an amount equal to one-half of  
5                   one percent (.5%) of its payroll as reported for each of  
6                   the four calendar quarters which constitute the election  
7                   year. Such employers shall make advance payments to  
8                   the Commission quarterly, computed at one-half of one  
9                   percent (.5%) of the taxable wages reported as provided  
10                  in G.S. 96-9(d)(2)a;

11                  3.     Any nonprofit employer which has, for the year the  
12                  election will become effective, an experience rating of  
13                  2.7 or more, upon electing to change to a reimbursement  
14                  basis, will meet all the requirements of G.S. 96-9(d)(2)a,  
15                  including making advance payments computed at one  
16                  percent (1%) of taxable wages.

17                  e.     The Commission, in accordance with such regulations as it may  
18                  adopt, shall notify each nonprofit organization of any  
19                  determination which it may make of its status as an employer  
20                  and of the effective date of any election which it makes and of  
21                  any termination of such election. Such determinations shall be  
22                  subject to reconsideration, appeal and review."

23       **SECTION 5.** G.S. 96-13(a) is amended by adding a new subdivision to read:

24       "(6) An unemployed individual shall not be disqualified for eligibility for  
25       unemployment compensation benefits solely on the basis that the  
26       individual is only available for part-time work. If an individual  
27       restricts his or her eligibility to part-time work, the individual may be  
28       considered able and available to work if it is determined that all the  
29       following conditions exist:

30       a.     The claimant's monetary eligibility is based predominately on  
31       wages from part-time work.

32       b.     The claimant is actively seeking and is willing to accept work  
33       under essentially the same conditions as existed while the  
34       claimant's reported wages were accrued.

35       c.     The claimant imposes no other restriction and is in a labor  
36       market in which a reasonable demand exists for part-time  
37       service.

38       This subdivision shall not be construed to amend subdivision (3) of  
39       this subsection as it applies to students or G.S. 96-16 as it applies to  
40       seasonal workers."

41       **SECTION 6.** G.S. 96-14(1d) reads as rewritten:

42       "(1d) For the purposes of this Chapter, any claimant leaving work to  
43       accompany the claimant's spouse to a new place of residence where  
44       that spouse has secured work in a location that is too far removed for

1                   the claimant reasonably to continue his or her work shall serve a time  
2                   certain disqualification for benefits for a period of ~~five~~two weeks  
3                   beginning the first day of the first week after the disqualifying act  
4                   occurs with respect to which week an individual files a claim for  
5                   benefits. Notwithstanding the other provisions of this subdivision,  
6                   leaving work because a spouse has been reassigned from one military  
7                   assignment to another shall be deemed good cause for leaving work."

8                   **SECTION 7.** This act is effective when it becomes law.