

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

4

SENATE BILL 439
Judiciary I Committee Substitute Adopted 4/9/03
Third Edition Engrossed 4/16/03
House Committee Substitute Favorable 5/28/03

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.

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

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

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

18 "(2) Charging of benefit payments. –

19 a. Benefits paid shall be allocated to the account of each base
20 period employer in the proportion that the base period wages
21 paid to an eligible individual in any calendar quarter by each
22 such employer bears to the total wages paid by all base period
23 employers during the base period, except as hereinafter
24 provided in paragraphs b, c, and d of this subdivision, G.S.
25 96-9(d)(2)c, and 96-12.01G. The amount so allocated shall be
26 multiplied by one hundred twenty percent (120%) and charged
27 to that employer's account. Benefits paid shall be charged to
28 employers' accounts upon the basis of benefits paid to claimants
29 whose benefit years have expired.

30 b. Any benefits paid to any claimant under a claim filed for a
31 period occurring after the date of such separations as are set
32 forth in this paragraph and based on wages paid prior to the date
33 of (i) the leaving of work by the claimant without good cause
34 attributable to the employer; (ii) the discharge of claimant for
35 misconduct in connection with his work; (iii) the discharge of
36 the claimant for substantial fault as that term may be defined in
37 G.S. 96-14; (iv) the discharge of the claimant solely for a bona
38 fide inability to do the work for which he was hired but only
39 where the claimant's period of employment was 100 days or
40 less; (v) separations made disqualifying under G.S. 96-14(2b)
41 and (6a); (vi) separation due to leaving for disability or health
42 condition; or (vii) separation of claimant solely as the result of
43 an undue family ~~hardship~~; hardship shall not be charged to the
44 account of an employer by whom the claimant was employed at

1 the time of such separation; provided, however, said employer
2 promptly furnishes the Commission with such notices regarding
3 any separation of the individual from work as are or may be
4 required by the regulations of the Commission.

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

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

21 No benefit charges shall be made to the account of any
22 employer where benefits are paid as a result of a decision by an
23 Adjudicator, Appeals Referee or the Commission if such
24 decision to pay benefits is ultimately reversed; nor shall any
25 such benefits paid be deemed to constitute an overpayment
26 under G.S. 96-18(g)(2), the provisions thereof notwithstanding.
27 Provided, an overpayment of benefits paid shall be established
28 in order to provide for the waiting period required by G.S.
29 96-13(c).

- 30 c. Any benefits paid to any claimant who is attending a vocational
31 school or training program as provided in G.S. 96-13(a)(3) shall
32 not be charged to the account of the base period employer(s).
- 33 d. Any benefits paid to any claimant under the following
34 conditions shall not be charged to the account of the base period
35 employer(s):
- 36 1. The benefits are paid for unemployment due directly to a
37 major natural disaster, and
 - 38 2. The President has declared the disaster pursuant to the
39 Disaster Relief Act of 1970, 42 USCA 4401, et seq., and
 - 40 3. The benefits are paid to claimants who would have been
41 eligible for disaster unemployment assistance under this
42 Act, if they had not received unemployment insurance
43 benefits with respect to that unemployment.

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

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

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

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

35 "(1) a. Any nonprofit organization which becomes subject to this
36 Chapter on or after January 1, 1972, shall pay contributions
37 under the provisions of this Chapter, unless it elects in
38 accordance with this paragraph to pay the Commission for the
39 Unemployment Insurance Fund an amount equal to the amount
40 of regular benefits and of one half of the extended benefits paid,
41 that is attributable to service in the employ of such nonprofit
42 organization, to individuals for weeks of unemployment which
43 begin within a benefit year established during the effective
44 period of such election.

- 1 b. Any nonprofit organization which is or becomes subject to this
2 Chapter on or after January 1, 1972, may elect to become liable
3 for payments in lieu of contributions for a period of not less
4 than four calendar years beginning with the date on which
5 subjectivity begins by filing a written notice of its election with
6 the Commission not later than 30 days immediately following
7 the date of written notification of the determination of such
8 subjectivity. Provided if notification is not by registered mail,
9 the election may be made on or after January 1, 1972, within six
10 months following the date of the written notification of the
11 determination of such subjectivity. If such election is not made
12 as set forth herein, no election can be made until after four
13 calendar years have elapsed under the contributions method of
14 payment.
- 15 c. Any nonprofit organization which makes an election in
16 accordance with subparagraph b of this paragraph will continue
17 after such four calendar years to be liable for payments in lieu
18 of contributions until it files with the Commission a written
19 notice terminating its election not later than 30 days prior to the
20 next January 1, effective on such January 1. Provided, however,
21 no employer granted or in reimbursement status will be allowed
22 refund of any previous balances used in a transfer to
23 reimbursement status.
- 24 d. Any nonprofit organization which has been paying
25 contributions under this Chapter for a period of at least four
26 consecutive calendar years subsequent to January 1, 1972, may
27 elect to change to a reimbursement basis by filing with the
28 Commission not later than 30 days prior to the next January 1 a
29 written notice of election to become liable for payments in lieu
30 of contributions, effective on such January 1. Such election
31 shall not be terminable for a period of four calendar years. In
32 the event of such an election, the account of such employer
33 shall be closed and shall not be used in any future computation
34 of such employer's contribution rate in any manner whatsoever.
35 Provided, however, any nonprofit employer formerly paying
36 contributions who elects and qualifies to change to a
37 reimbursement basis may be relieved of the requirement to pay
38 one percent (1%) of taxable wages as required by G.S.
39 96-9(d)(2)a to the following extent and upon the following
40 conditions:
- 41 1. Any nonprofit employer which has, for the year the
42 election will be effective, an experience rating of 1.7 or
43 less, will have transferred from its experience rating
44 account an amount equal to one percent (1%) of its

1 payroll as reported for each of the four calendar quarters
2 which constitute the election year;

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

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

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

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

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

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

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

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

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

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

1 "(1d) For the purposes of this Chapter, any claimant leaving work to
2 accompany the claimant's spouse to a new place of residence where
3 that spouse has secured work in a location that is too far removed for
4 the claimant reasonably to continue his or her work shall serve a time
5 certain disqualification for benefits for a period of ~~five~~two weeks
6 beginning the first day of the first week after the disqualifying act
7 occurs with respect to which week an individual files a claim for
8 benefits. Notwithstanding the other provisions of this subdivision, any
9 claimant leaving work to accompany the claimant's spouse to a new
10 place of residence because the spouse has been reassigned from one
11 military assignment to another shall be deemed good cause for leaving
12 work."

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