

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 877
PROPOSED COMMITTEE SUBSTITUTE H877-PCS30360-LR-13

Short Title: Repeal UI Disqual. for Trailing Spouses.

(Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INDIVIDUAL WILL NOT BE DENIED UNEMPLOYMENT COMPENSATION SOLELY BECAUSE THE INDIVIDUAL IS SEEKING ONLY PART-TIME WORK, TO REMOVE DISQUALIFYING CONDITIONS RELATED TO SEPARATING FROM WORK FOR COMPELLING FAMILY REASONS INCLUDING DOMESTIC VIOLENCE, ILLNESS, OR DISABILITY, AND TO REPEAL THE TWO-WEEK DISQUALIFICATION FOR UNEMPLOYMENT COMPENSATION BENEFITS AS A RESULT OF LEAVING WORK TO ACCOMPANY A SPOUSE TO A NEW PLACE OF RESIDENCE FOR WORK IN A DIFFERENT LOCATION AND TO MAKE THOSE BENEFITS NONCHARGEABLE TO THE EMPLOYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-8 is amended by adding a new subdivision to read:

"(29) Seeking only part-time work. – Where an individual is available to work for a number of hours per week that are comparable to the individual's part-time work experience in his or her base period."

SECTION 2. G.S. 96-13(a)(6) reads as rewritten:

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

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

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

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

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

Notwithstanding any other provisions of this Chapter, an unemployed individual shall not be ineligible for unemployment compensation benefits under any provision of the Employment Security Law relating to availability



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1 for work, active search for work, or refusal to accept work solely because the
2 individual is seeking only part-time work as defined in G.S. 96-8(29),
3 provided that a majority of weeks of work in the individual's base period
4 include part-time work."

5 **SECTION 3.** G.S. 96-14 reads as rewritten:

6 **"§ 96-14. Disqualification for benefits.**

7 An individual shall be disqualified for benefits:

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

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

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

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

27 Where an employee is notified by the employer that such employee will
28 be separated from employment on some future date and the employee leaves
29 work prior to this date because of the impending separation, the employee
30 shall be deemed to have left work voluntarily and the leaving shall be
31 without good cause attributable to the employer. However, if the employee
32 shows to the satisfaction of the Commission that it was impracticable or
33 unduly burdensome for the employee to work until the announced separation
34 date, the permanent disqualification imposed for leaving work without good
35 cause attributable to the employer may be reduced to the greater of four
36 weeks or the period running from the beginning of the week during which
37 the claim for benefits was made until the end of the week of the announced
38 separation date.

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

- 42 (1a) Where an individual leaves work, the burden of showing good cause
43 attributable to the employer rests on said individual, and the burden shall not
44 be shifted to the employer.

- 45 (1b) Where an individual leaves work due solely to a unilateral and permanent
46 reduction in work hours of more than twenty percent (20%) of the customary
47 scheduled full-time work hours in the establishment, plant, or industry in
48 which he was employed, said leaving shall constitute good cause attributable
49 to the employer for leaving work. Provided however that if said reduction is
50 temporary or was occasioned by malfeasance, misfeasance or nonfeasance

- 1 on the part of the individual, such reduction in work hours shall not
2 constitute good cause attributable to the employer for leaving work.
- 3 (1c) Where an individual leaves work due solely to a unilateral and permanent
4 reduction in his rate of pay of more than fifteen percent (15%), said leaving
5 shall constitute good cause attributable to the employer for leaving work.
6 Provided however that if said reduction is temporary or was occasioned by
7 malfeasance, misfeasance or nonfeasance on the part of the individual, such
8 reduction in pay shall not constitute good cause attributable to the employer
9 for leaving work.
- 10 (1d) For the purposes of this Chapter, any claimant leaving work to accompany
11 the claimant's spouse to a new place of residence where that spouse has
12 secured work in a location that is too far removed for the claimant
13 reasonably to continue his or her work shall ~~serve a time certain~~
14 ~~disqualification for benefits for a period of two weeks beginning the first day~~
15 ~~of the first week after the disqualifying act occurs with respect to which~~
16 ~~week an individual files a claim for benefits.~~ constitute good cause for
17 leaving work. Notwithstanding the other provisions of this subdivision, any
18 claimant leaving work to accompany the claimant's spouse to a new place of
19 residence because the spouse has been reassigned from one military
20 assignment to another shall be deemed good cause for leaving work.
21 Benefits paid on the basis of this subdivision shall not be charged to the
22 account of the employer.
- 23 (1e) For the duration of an individual's unemployment, beginning with the first
24 day of the first week after the disqualifying act occurs with respect to which
25 week an individual files a claim for benefits, if it is determined by the
26 Commission that such individual is, at the time such claim is filed,
27 unemployed because the individual, without good cause attributable to the
28 employer and after receiving notice from the employer, refused to return to
29 work for a former employer when recalled within four weeks from a layoff,
30 or when recalled in any week in which the work search requirements under
31 G.S. 96-13 have been waived. As used in this subsection, the term "layoff"
32 means a temporary separation from work due to no work available for the
33 individual at the time of separation from work and the individual is retained
34 on the employer's payroll and is a continuing employee subject to recall by
35 the employer.
- 36 (1f) For the purposes of this Chapter, any claimant's leaving work, or discharge,
37 if the claimant has been adjudged an aggrieved party as set forth by Chapter
38 50B of the General Statutes or there is evidence of domestic violence, sexual
39 offense, or stalking, or the claimant has been granted program participant
40 status pursuant to G.S. 15C-4 as the result of domestic violence committed
41 upon the claimant or upon a minor child with or in the custody of the
42 claimant by a person who has or has had a familial relationship with the
43 claimant or minor child, shall constitute good cause for leaving work.
44 Benefits paid on the basis of this section shall be noncharged. Evidence of
45 domestic violence, sexual offense, or stalking may include: (i) law
46 enforcement, court, or federal agency records or files; (ii) documentation
47 from a domestic violence or sexual assault program if the claimant is alleged
48 to be a victim of domestic violence or sexual assault; ~~and~~ or (iii)
49 documentation from a religious, medical, or other professional from whom
50 the claimant has sought assistance in dealing with the alleged domestic
51 violence, sexual abuse, or stalking. This provision is only applicable to the

1 claimant and claimant's spouse, parents, and children under 18 years of age,
2 whether the relationship is a biological, step-, half-, or in-law relationship.

3 (1g) For purposes of this Chapter, separation or discharge solely due to an
4 inability to accept work during a particular shift as a result of an undue
5 family hardship shall constitute good cause for leaving work. Benefits paid
6 on the basis of this section shall not be charged to the account of the
7 employer.

8 (2) For the duration of his unemployment beginning with the first day of the
9 first week after the disqualifying act occurs with respect to which week an
10 individual files a claim for benefits if it is determined by the Commission
11 that such individual is, at the time such claim is filed, unemployed because
12 he was discharged for misconduct connected with his work. Misconduct
13 connected with the work is defined as conduct evincing such willful or
14 wanton disregard of an employer's interest as is found in deliberate
15 violations or disregard of standards of behavior which the employer has the
16 right to expect of his employee, or in carelessness or negligence of such
17 degree or recurrence as to manifest equal culpability, wrongful intent or evil
18 design, or to show an intentional and substantial disregard of the employer's
19 interests or of the employee's duties and obligations to his employer.

20 "Discharge for misconduct with the work" as used in this section is
21 defined to include but not be limited to separation initiated by an employer
22 for reporting to work significantly impaired by alcohol or illegal drugs;
23 consuming alcohol or illegal drugs on employer's premises; conviction by a
24 court of competent jurisdiction for manufacturing, selling, or distribution of
25 a controlled substance punishable under G.S. 90-95(a)(1) or G.S. 90-95(a)(2)
26 while in the employ of said employer.

27 (2a) For a period of not less than four nor more than 13 weeks beginning with the
28 first day of the first week during which or after the disqualifying act occurs
29 with respect to which week an individual files a claim for benefits if it is
30 determined by the Commission that such individual is, at the time the claim
31 is filed, unemployed because he was discharged for substantial fault on his
32 part connected with his work not rising to the level of misconduct.
33 Substantial fault is defined to include those acts or omissions of employees
34 over which they exercised reasonable control and which violate reasonable
35 requirements of the job but shall not include (1) minor infractions of rules
36 unless such infractions are repeated after a warning was received by the
37 employee, (2) inadvertent mistakes made by the employee, nor (3) failures to
38 perform work because of insufficient skill, ability, or equipment. Upon a
39 finding of discharge under this subsection, the individual shall be
40 disqualified for a period of nine weeks unless, based on findings by the
41 Commission of aggravating or mitigating circumstances, the period of
42 disqualification is lengthened or shortened within the limits set out above.
43 The length of the disqualification so set by the Commission shall not be
44 disturbed by a reviewing court except upon a finding of plain error.

45 (2b) For the duration of his unemployment beginning with the first day of the
46 first week during which or after the disqualifying act occurs with respect to
47 which week an individual files a claim for benefits if it is determined by the
48 Commission that the individual is, at the time such claim is filed,
49 unemployed because the individual has been discharged from employment
50 because a license, certificate, permit, bond, or surety that is necessary for the
51 performance of his employment and that the individual is responsible to

1 supply has been revoked, suspended, or otherwise lost to him, or his
2 application therefor has been denied for a cause that was within his power to
3 control, guard against, or prevent.

- 4 (3) For the duration of his unemployment beginning with the first day of the
5 first week in which the disqualifying act occurs if it is determined by the
6 Commission that such individual has failed without good cause (i) to apply
7 for available suitable work when so directed by the employment office of the
8 Commission; or (ii) to accept suitable work when offered him; or (iii) to
9 return to his customary self-employment (if any) when so directed by the
10 Commission. Provided further, an otherwise eligible individual who is
11 attending a vocational school or training program which has been approved
12 by the Commission for such individual shall not be denied benefits because
13 he refuses to apply for or accept suitable work during such period of
14 training.

15 In determining whether or not any work is suitable for an individual, the
16 Commission shall consider the degree of risk involved to his health, safety,
17 and morals, his physical fitness and prior training, his experience and prior
18 earnings, his length of unemployment and prospects for securing local work
19 in his customary occupation, and the distance of the available work from his
20 residence.

21 Notwithstanding any other provisions of this Chapter, no work shall be
22 deemed suitable and benefits shall not be denied under this Chapter to any
23 otherwise eligible individual for refusing to accept new work under any of
24 the following conditions:

- 25 a. If the position offered is vacant due directly to a strike, lockout, or
26 other labor dispute;
27 b. If the remuneration, hours, or other conditions of the work offered
28 are substantially less favorable to the individual than those prevailing
29 for similar work in the locality;
30 c. If as a condition of being employed the individual would be required
31 to join a company union or to resign from or refrain from joining any
32 bona fide labor ~~organization~~ organization;
33 d. If the position offered is full-time work and the individual meets the
34 part-time worker requirements of G.S. 96-13(a)(6).

- 35 (4) For the duration of his unemployment beginning with the first day of the
36 first week after the disqualifying act occurs with respect to which week an
37 individual files a claim for benefits if it is determined by the Commission
38 that:

- 39 a. Such individual has failed without good cause to attend a vocational
40 school or training program when so directed by the Commission;
41 b. Such individual has discontinued his training course without good
42 cause; or
43 c. If the individual is separated from his training course or vocational
44 school due to misconduct.

- 45 (5) For any week with respect to which the Commission finds that his total or
46 partial unemployment is caused by a labor dispute in active progress on or
47 after July 1, 1961, at the factory, establishment, or other premises at which
48 he is or was last employed or caused after such date by a labor dispute at
49 another place within this State which is owned or operated by the same
50 employing unit which owns or operates the factory, establishment, or other
51 premises at which he is or was last employed and which supplies materials

1 or services necessary to the continued and usual operation of the premises at
2 which he is or was last employed. Provided, that an individual disqualified
3 under the provisions of this subdivision shall continue to be disqualified
4 thereunder after the labor dispute has ceased to be in active progress for such
5 period of time as is reasonably necessary and required to physically resume
6 operations in the method of operating in use at the plant, factory, or
7 establishment of the employing unit.

8 (6) If the Commission finds he is customarily self-employed and can reasonably
9 return to self-employment.

10 (6a) For the duration of his unemployment beginning with the first day of the
11 first week during which or after the disqualifying act occurs with respect to
12 which week an individual files a claim for benefits if it is determined by the
13 Commission that the individual is, at the time the claim is filed, unemployed
14 because the individual's ownership share of the employing entity was
15 voluntarily sold and, at the time of the sale:

16 a. The employing entity was a corporation and the individual held five
17 percent (5%) or more of the outstanding shares of the voting stock of
18 the corporation;

19 b. The employing entity was a partnership, limited or general, and the
20 individual was a limited or general partner; or

21 c. The employing entity was a proprietorship, and the individual was a
22 proprietor.

23 (7) For any week after June 30, 1939, with respect to which he shall have and
24 assert any right to unemployment benefits under an employment security law
25 of either the federal or a state government, other than the State of North
26 Carolina.

27 (8) For any week with respect to which he has received any sum from the
28 employer pursuant to an order of any court, the National Labor Relations
29 Board, any other lawfully constituted adjudicative agency, or by private
30 agreement, consent or arbitration for loss of pay by reason of discharge.
31 When the amount so paid by the employer is in a lump sum and covers a
32 period of more than one week, such amount shall be allocated to the weeks
33 in the period on such a pro rata basis as the Commission may adopt and if
34 the amount so prorated to a particular week would, if it had been earned by
35 the claimant during that week of unemployment, have resulted in a reduced
36 benefit payment as provided in G.S. 96-12, the claimant shall be entitled to
37 receive such reduced payment if the claimant was otherwise eligible.

38 Further provided, any benefits previously paid for weeks of
39 unemployment with respect to which back pay awards, or other such
40 compensation, are made shall constitute an overpayment of benefits and
41 such amounts shall be deducted from the award by the employer prior to
42 payment to the employee, and shall be transmitted promptly (or within 5
43 days) to the Commission by the employer for application against the
44 overpayment. Provided, however, the removal of any charges made against
45 the employer as a result of such previously paid benefits shall be applied to
46 the calendar year in which the overpayment is transmitted to the
47 Commission, and no attempt shall be made to relate such a credit to the
48 period to which the award applies. Any amount of overpayment so deducted
49 by the employer and not transmitted to the Commission or the failure of an
50 employer to deduct an overpayment shall be subject to the same procedures
51 for collection as is provided for contributions by G.S. 96-10. It is the purpose

1 of this paragraph to assure the prompt collection of overpayments of U. I.
2 benefits, and it shall be construed accordingly.

- 3 (9) The amount of compensation payable to an individual for any week which
4 begins after July 2, 1977, and which begins in a period with respect to which
5 such individual is receiving a governmental or other pension, retirement or
6 retired pay, annuity, or any other similar periodic payment which is based on
7 the previous work of such individual shall be reduced (but not below zero)
8 by an amount rounded to the nearest dollar equal to the amount of such
9 pension, retirement or retired pay, annuity, or other payment which is
10 reasonably attributable to such week.

11 The amount of benefits payable to an individual for any week which
12 begins after July 1, 1981, and which begins in a period with respect to which
13 such individual is receiving a governmental or other pension, retirement or
14 retired pay, annuity, or other similar periodic payment which is based on the
15 previous work of such individual shall be reduced (but not below zero) by
16 the amounts of any such pension, retirement or retired pay, annuity, or other
17 payment contributed to in part or in total by the individual's base period
18 employers; provided, however, that the amount of all payments received by
19 an individual under the Railroad Retirement Act shall be deducted from the
20 individual's benefit amount. Provided further, that all such reduced weekly
21 benefit amounts shall be rounded to the nearest lower full dollar amount (if
22 not a full dollar amount).

- 23 (10) Any employee disqualified for the duration of his unemployment due to the
24 provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent
25 disqualification removed if he meets the following three conditions:
26 a. Returns to work for at least five weeks and is paid cumulative wages
27 of at least 10 times his weekly benefit amount;
28 b. Subsequently becomes unemployed through no fault of his own; and
29 c. Meets the availability requirements of the law.

30 Any time certain disqualification imposed by the provisions of
31 subsections (1), (1D), and (2A) shall be removed by serving the
32 disqualification imposed as provided by this subsection.

33 Provided for good cause shown the Commission in its discretion may as
34 to any permanent disqualification provided in this Chapter reduce the
35 disqualification period to a time certain but not less than five weeks. The
36 maximum amount of benefits due any individual whose permanent
37 disqualification is changed to a time certain shall be reduced by an amount
38 determined by multiplying the number of weeks of disqualification by the
39 weekly benefit amount.

40 Provided further, any permanent disqualification pursuant to the
41 provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the
42 effective date of the beginning of said disqualification.

- 43 (11) a. Notwithstanding any other provisions of this Chapter, no otherwise
44 eligible individual shall be denied benefits for any week because he
45 or she is in training approved under Section 236(a)(1) of the Trade
46 Act of 1974, nor shall such individual be denied benefits by reason of
47 leaving work to enter such training, provided the work left is not
48 suitable employment, or because of the application to any such week
49 in training of provisions in this law (or any applicable Federal
50 unemployment compensation law), relating to availability for work,
51 active search for work, or refusal to accept work.

- 1 b. For purposes of this subsection, the term "suitable employment"
2 means with respect to an individual, work of a substantially equal or
3 higher skill level than the individual's past adversely affected
4 employment (as defined for purposes of the Trade Act of 1974), and
5 wages for such work at not less than eighty percent (80%) of the
6 individual's average weekly wage as determined for the purposes of
7 the Trade Act of 1974.
- 8 (12) Notwithstanding any other provision of this Chapter, no otherwise eligible
9 individual shall be denied benefits for any weeks if it is determined by the
10 Commission that such individual is, at the time such claim is filed,
11 unemployed because he left work solely as a result of a lack of work caused
12 by the bankruptcy of his employer."
13 **SECTION 4.** This act becomes effective January 1, 2010.