

GENERAL ASSEMBLY OF NORTH CAROLINA

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(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Unemployment Insurance Technical Changes.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO
THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE JOINT
LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE.

The General Assembly of North Carolina enacts:

PART I. DISASTER UNEMPLOYMENT INSURANCE

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

"§ 96-1. Title and definitions.

...

(b) Definitions. – The following definitions apply in this Chapter:

...

(14a) Federal Disaster Declaration. – Declaration of a major natural disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, provided that the declaration allows disaster unemployment assistance under the federal act."

SECTION 1.(b) G.S. 96-11.3(b)(2) reads as rewritten:

"§ 96-11.3. Noncharging of benefits.

...

(b) To Any Base Period Employer. – Benefits paid to an individual may not be charged to the account of an employer of the individual if the benefits paid meet any of the following descriptions:

...

(2) They were paid to an individual for unemployment due directly to a ~~major natural~~ disaster covered by a federal disaster declaration. ~~declared by the President pursuant to the Disaster Relief Act of 1970, and the individual receiving the benefits would have been eligible for disaster unemployment assistance under this federal act if the individual had not received benefits under this Chapter."~~

SECTION 1.(c) G.S. 96-14.1(b) reads as rewritten:

"§ 96-14.1. Unemployment benefits.

...



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(b) Valid Claim. – To obtain benefits, an individual must file a valid claim for unemployment benefits, register for work, and have a weekly benefit amount calculated pursuant to G.S. 96-14.2(a) that equals or exceeds fifteen dollars (\$15.00). An individual must serve a one-week waiting period for each claim ~~filed.~~ filed, except no waiting period applies under this subsection to a claim for unemployment due directly to a major natural disaster covered by a federal disaster declaration. A valid claim is one that meets the employment and wage standards in this subsection for the individual's base period. A valid claim for a second benefit year is one that meets the employment and wage standards in this subsection since the beginning date of the prior benefit year and before the date the new benefit claim is filed:

..."

SECTION 1.(d) G.S. 96-14.9 is amended by adding a new subsection to read:

"§ 96-14.9. Weekly certification.

(a) Requirements. – An individual's eligibility for a weekly benefit amount is determined on a week-to-week basis. An individual must meet all of the requirements of this section for each weekly benefit period. An individual who fails to meet one or more of the requirements is ineligible to receive benefits until the condition causing the ineligibility ceases to exist:

(1) File a claim for benefits.

(2) Report as requested by the Division and present valid photo identification meeting the requirements of subsection (k) of this section.

(3) Meet the work search requirements of subsection (b) of this section.

(b) Work Search Requirements. – The Division must find that the individual meets all of the following work search requirements:

(1) The individual is able to work.

(2) The individual is available to work.

(3) The individual is actively seeking work.

(4) The individual accepts suitable work when offered.

...

(l) Federal Disaster Declaration. – An individual who is unemployed due directly to a major natural disaster covered by a federal disaster declaration has satisfied the work search requirements for any given week in the benefit period unless the Division requires the individual to conduct a work search.

SECTION 1.(e) This section is effective October 1, 2016.

PART II. PAID TIME OFF EXCLUDED FROM SEVERANCE PAY

SECTION 2.(a) G.S. 96-15.01(c) reads as rewritten:

"(c) Separation Payments. – An individual is not unemployed if, with respect to the entire calendar week, the individual receives or will receive as a result of the individual's separation from work remuneration in any form.~~in one or more of the forms listed in this subsection.~~ Amounts paid to an individual for paid time off that was available, but unused, before the individual's separation under a written policy in effect before the individual's separation are not remuneration as a result of separation. If the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. An individual may be unemployed, as provided in subsection (b) of this section, if the individual is receiving payment applicable to less than the entire ~~week;~~ week.

(1) ~~Wages in lieu of notice.~~

(2) ~~Accrued vacation pay.~~

(3) ~~Terminal leave pay.~~

(4) ~~Severance pay.~~

(5) ~~Separation pay.~~

(6) ~~Dismissal payments or wages by whatever name."~~

1 **SECTION 2.(b)** This section becomes effective July 1, 2017, and applies to claims for
2 benefits filed on or after that date.

3
4 **PART III. MISCELLANEOUS CHANGES**

5 **SECTION 3.1** G.S. 96-9.7(b) reads as rewritten:

6 **"§ 96-9.7. Surtax for the Unemployment Insurance Reserve Fund.**

7 (a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a
8 contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the
9 contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and
10 administered in the same manner as contributions. Surtaxes collected under this section must be
11 credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.2. Interest and
12 penalties collected on unpaid surtaxes imposed by this section must be credited to the
13 Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes
14 imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in
15 G.S. 115C-457.1.

16 (b) Suspension of Tax. – The tax does not apply in a calendar year if, as of ~~the preceding~~
17 ~~August 1 computation date, September 1 of the preceding calendar year,~~ the amount in the State's
18 account in the Unemployment Trust Fund equals or exceeds one billion dollars (\$1,000,000,000)."

19 **SECTION 3.2.(a)** G.S. 96-15(b)(2) reads as rewritten:

20 "(2) Adjudication. – When a protest is made by the claimant to the initial or
21 monetary determination, or a question or issue is raised or presented as to the
22 eligibility of a claimant, or whether any disqualification should be imposed, or
23 benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred
24 to an adjudicator. The adjudicator may consider any matter, document or
25 statement deemed to be pertinent to the issues, including telephone
26 conversations, and after such consideration shall render a conclusion as to the
27 claimant's benefit entitlements. The adjudicator shall notify the claimant and all
28 other interested parties of the conclusion reached. The conclusion of the
29 adjudicator shall be deemed the final decision of the Division unless within 30
30 days after the date of notification or mailing of the conclusion, whichever is
31 earlier, a written appeal is filed pursuant to rules adopted by the Division. The
32 Division shall be deemed an interested party for such purposes and may remove
33 to itself or transfer to an appeals referee the proceedings involving any claim
34 pending before an adjudicator.

35 Provided, any interested employer shall be allowed ~~14 days~~ 10 days from
36 the mailing or delivery of the notice of the filing of a claim against the
37 employer's account, whichever first occurs, to file with the Division its protest
38 of the claim in order to have the claim referred to an adjudicator for a decision
39 on the question or issue raised. Any protest filed must contain a basis for the
40 protest and supporting statement of facts, and the protest may not be amended
41 after the ~~14-day~~ 10-day period from the mailing or delivery of the notice of
42 filing of a claim has expired. No payment of benefits shall be made by the
43 Division to a claimant until one of the following occurs:

- 44 a. The employer has filed a timely protest to the claim.
45 b. The ~~14-day~~ 10-day period for the filing of a protest by the employer has
46 expired.
47 c. A determination under this subdivision has been made.

48 Provided further, no question or issue may be raised or presented by the
49 Division as to the eligibility of a claimant, or whether any disqualification
50 should be imposed, after 45 days from the first day of the first week after the
51 question or issue occurs with respect to which week an individual filed a claim

for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any other provisions of G.S. 96-18.

An employer shall receive written notice of the employer's appeal rights and any forms that are required to allow the employer to protest the claim. The forms shall include a section referencing the appropriate rules pertaining to appeals and the instructions on how to appeal."

SECTION 3.2.(b) This section becomes effective July 1, 2017, applies to claims for benefits filed on or after that date, and applies to tax calculations on or after that date.

PART IV. FEDERAL CONFORMING CHANGES

SECTION 4.(a) G.S. 96-11.7 reads as rewritten:

"§ 96-11.7. ~~Acquisition of employer and transfer~~ Transfer of account to another employer.

(a) ~~Mandatory Transfer.~~ Acquisition of a Business. — When an employer acquires all of the ~~organization, trade, or business~~ of another employer, the account of the predecessor must be transferred as of the date of the acquisition to the successor ~~employer~~ for use in the determination of the successor's contribution rate. This ~~mandatory transfer subsection~~ does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy. ~~In this circumstance, the successor's contribution rate is determined without regard to the predecessor's contribution rate.~~

(b) ~~Consent.~~ Acquisition of Portion of a Business. — When a distinct and severable portion of an employer's ~~organization, trade, or business~~ is transferred to a successor employer and the successor employer continues to operate the acquired ~~organization, trade, or business~~, the portion of the account ~~of the transferring employer that related attributable~~ to the transferred business may, with the approval of the Division, be transferred by mutual consent ~~from the transferring employer to the successor employer.~~ employer as of the date of the transfer. A successor employer that is a related entity of the transferring employer is eligible for a transfer from the transferring employer's account only to the extent permitted by rules adopted by the Division. No transfer may be made to the account of an employer that has ceased to be an employer under G.S. 96-11.9.

If a transfer of part or all of an account is allowed under this subsection, ~~but is not mandatory,~~ the successor employer requesting the transfer may make a request for transfer by filing an application for transfer with the Division within two years after the date the business was ~~transferred transferred.~~ or the date of notification by the Division of the right to request an account transfer, whichever is later. If the application is approved and the application was filed within 60 days ~~after notification from the Division of the right to request a transfer,~~ the transfer is effective ~~as of the date the business was transferred.~~ If the application is approved and the application was filed later than 60 days after notification from the Division, the effective date of the transfer is the first day of the calendar quarter in which the application was filed.

~~If the effective date of a transfer of an account under this subsection is after the computation date in a calendar year, the Division must recalculate the contribution rate for the transferring employer and the successor employer based on their account balances on the effective date of the account transfer. The recalculated contribution rate applies for the calendar year beginning after the computation date.~~

(c) ~~Continuity of Control.~~ Acquisition by Related Party. — If an employer transfers its business, or a portion thereof, to another person and, at the time of the transfer, there is substantially common ownership, management or control of the predecessor employer and the transferee, then the portion of the account attributable to the transferred business must be transferred to the transferee as of the date of the transfer.

~~Any new employer that has continuity of control with an existing business enterprise shall continue to be the same employer as the existing business enterprise for the purposes of this~~

Chapter as before the existence of the new employer. The Division shall assign any new employer with continuity of control to the account of the existing business enterprise. Any new employer with continuity of control shall not request or maintain an account with the Division other than the account of the existing business enterprise. If a new employer receives a new account and the Division subsequently finds that such new employer has continuity of control with an existing business enterprise, the Division shall recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business enterprise.

Continuity of control Substantially common ownership, management or control exists if one or more persons, entities, or other organizations owning, managing, or controlling the business enterprise remain in ownership, management or control of the new employer, transferee. Control may occur by means of ownership of the organization conducting the business enterprise, business, ownership of assets necessary to conduct the business enterprise, business, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, business, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise, business. Control is not affected by changes in the form of a business enterprise, business, reorganization of a business enterprise, business, or expansion of a business enterprise, business.

(c1) Acquisition to Obtain Lower Contribution Rate. – The account of the predecessor employer will not be transferred if the Division finds that a person acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

(d) Contribution Rate. – If the effective date of a transfer of an account under this section is after the computation date in a calendar year, the Division must recalculate the contribution rate for the transferring employer and the transferee based on their account balances on the effective date of the account transfer. Notwithstanding the other provisions in this section, when an account is transferred in its entirety to a successor employer, the transferring employer's contribution rate is the standard beginning rate.

Notwithstanding the other provisions in this section, if a successor employer to whom an account is transferred was an employer as of the date of the business transfer, the account transfer does not affect the successor employer's contribution rate for the calendar year in which the business was transferred. If the successor employer was not an employer as of the date of the business transfer, the successor employer's contribution rate for the year in which the business transfer occurs is the standard beginning rate unless one of the following applies:

- (1) The account transfer is a mandatory transfer, in which case the contribution rate of the successor employer is the contribution rate of the transferring employer.
- (2) The account transfer is by consent and the successor employer filed an application within 60 days of the business transfer, in which case the contribution rate of the successor employer is the contribution rate of the transferring employer. If the business was transferred from more than one employer and the transferring employers had different contribution rates, the contribution rate of the successor employer is the rate calculated as of the effective date of the account transfers.

(e) Liability for Contributions. – An employer that, by operation of law, purchase, or otherwise is the successor to an employer liable for contributions becomes liable for contributions on the day of the succession. This provision subsection does not affect the successor's liability as otherwise prescribed by law for unpaid contributions due from the predecessor.

(f) Deceased or Insolvent Employer. – When the ~~organization, trade, or~~ business of a deceased person or of an insolvent debtor is taken over and operated by an administrator, executor, receiver, or trustee in bankruptcy, the new employer automatically succeeds to the account and contribution rate of the deceased person or insolvent debtor without the necessity of filing an application for the transfer of the account.

(g) Continuation of Existing Account. – Any transferee with substantially common ownership, management or control of an existing business must not request or maintain an account with the Division other than the account of the existing business. If a transferee receives a new account and the Division subsequently finds that such new employer has substantially common ownership, management or control with an existing business, the Division must recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business."

SECTION 4.(b) This section becomes effective July 1, 2017.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.