

## Chapter 96.

### Employment Security.

#### Article 1.

##### Definitions and Funds.

#### § 96-1. Title and definitions.

- (a) Title. – This Chapter shall be known and may be cited as the "Employment Security Law."
- (b) Definitions. – The following definitions apply in this Chapter:
- (1) Agricultural labor. – Defined in section 3306 of the Code.
  - (2) Average weekly insured wage. – The weekly rate obtained by dividing the total wages reported by all insured employers for a calendar year by the average monthly number of individuals in insured employment during that year and then dividing that quotient by 52.
  - (3) Base period. – The first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.
  - (4) Benefit. – Compensation payable to an individual with respect to the individual's unemployment.
  - (5) Benefit year. – The fifty-two-week period beginning with the first day of a week with respect to which an individual first files a valid claim for benefits and registers for work. If the individual is payroll attached, the benefit year begins on the Sunday preceding the payroll week ending date. If the individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the individual filed a valid claim for benefits and registered for work.
  - (6) Code. – Defined in G.S. 105-228.90.
  - (7) Computation date. – August 1 of each year.
  - (8) Department. – The North Carolina Department of Commerce.
  - (9) Division. – The Department's Division of Employment Security.
  - (10) Employee. – Defined in section 3306 of the Code.
  - (11) Employer or employing unit. – Any of the following:
    - a. An employer as defined in section 3306 of the Code.
    - b. A State or local governmental unit required to provide unemployment compensation coverage to its employees under section 3309 of the Code.
    - c. A nonprofit organization required to provide unemployment compensation coverage to its employees under section 3309 of the Code.
    - d. An Indian tribe required to provide unemployment compensation coverage to its employees under section 3309 of the Code.
  - (12) Employment. – Defined in section 3306 of the Code, with the following additions and exclusions:
    - a. Additions. – The term includes service to a governmental unit, a nonprofit organization, or an Indian tribe as described in sections 3306(c)(7) and 3306(c)(8) of the Code.
    - b. Exclusions. – The term excludes all of the following:
      1. Service performed by an independent contractor.
      2. Service performed for a governmental entity or nonprofit organization under sections 3309(b) and 3309(c) of the Code.

3. Service by one or more of the following individuals if the individual is authorized to exercise independent judgment and control over the performance of the work and is compensated solely by way of commission:
    - A. A real estate broker, as defined in G.S. 93A-2.
    - B. A securities salesman, as defined in G.S. 78A-2.
  4. Service performed by a direct seller, as defined in section 3508(b)(2) of the Code. The term does not include a person defined in section 3508(b)(2)(A)(iii) of the Code.
  5. Service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this exclusion.
- (13) Employment security law. – A law enacted by this State or any other state or territory or by the federal government providing for the payment of unemployment insurance benefits.
- (14) Employment service company. – A person that contracts with a client or customer to supply an individual to perform employment services for the client or customer and that both under contract and in fact meets all of the following conditions:
- a. Negotiates with the client or customer on such matters as time, place, and type of work, working conditions, quality, and price of the employment services.
  - b. Determines the assignment of an individual to the client or customer, even if the individual retains the right to refuse a specific assignment.
  - c. Hires and terminates an individual supplied.
  - d. Sets the rate of pay for the individual supplied.
  - e. Pays the individual supplied.
- (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.
- (15) Federal Unemployment Tax Act (FUTA). – Chapter 23 of the Code.
- (16) Full-time student. – Defined in section 3306 of the Code.
- (17) Governmental unit. – The term includes all of the following:
- a. The State, a county, or a municipality, or any department, agency, or other instrumentality of one of these entities.
  - b. The State Board of Education, the Board of Trustees of The University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, a local board of education, or another entity that pays a teacher at a public school or educational institution.
  - c. A special district, an authority, or another entity exercising governmental authority.
  - d. An alcoholic beverage control board, an airport authority, a housing authority, a regional authority, or another governmental authority created pursuant to an act of the General Assembly.

- (18) Immediate family. – An individual's spouse, child, grandchild, parent, and grandparent, whether the relationship is a biological, step-, half-, or in-law relationship.
- (19) Independent contractor. – An individual who contracts to do work for a person and is not subject to that person's control or direction with respect to the manner in which the details of the work are to be performed or what the individual must do as the work progresses.
- (20) Indian tribe. – Defined in section 3306 of the Code.
- (21) Nonprofit organization. – A religious, charitable, educational, or other organization that is exempt from federal income tax and described in section 501(c)(3) of the Code.
- (22) Person. – An individual, a firm, a partnership, an association, a corporation, whether foreign or domestic, a limited liability company, or any other organization or group acting as a unit.
- (23) Secretary. – The Secretary of the Department of Commerce or the Secretary's designee.
- (24) Taxable wages. – The amount determined under G.S. 96-9.3.
- (25) Unemployed. – Defined in G.S. 96-15.01.
- (26) Unemployment Trust Fund. – The federal fund established pursuant to section 904 of the Social Security Act, as amended.
- (27) United States. – Defined in section 3306 of the Code.
- (28) Wages. – Defined in section 3306 of the Code, except that no amount is excluded as provided under subdivision (b)(1) of that section. (Ex. Sess., 1936, c. 1, s. 1; 1947, c. 598, s. 1; 1977, c. 727, s. 1; 2011-401, s. 2.1; 2013-2, s. 1(b); 2013-224, s. 19; 2017-8, s. 1(a); 2018-94, s. 1(a); 2019-187, s. 1(d).)