

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 974
House Committee Substitute Favorable 7/23/97

Short Title: ESC Law Changes.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE EMPLOYMENT SECURITY COMMISSION TO
2 WAIVE INTEREST ON LATE CONTRIBUTIONS, TO MODIFY THE
3 CALCULATION AND COLLECTION OF UNEMPLOYMENT INSURANCE
4 TAXES, AND TO GIVE FLEXIBILITY TO THE EMPLOYMENT SECURITY
5 COMMISSION IN SCHEDULING WHEN CLAIMANTS MUST REPORT TO THE
6 LOCAL COMMISSION OFFICES.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 96-10(j) reads as rewritten:

10 "(j) Waiver of Interest and Penalties. – The Commission may, for good cause
11 shown, reduce or waive any interest assessed on unpaid contributions under this section.
12 The Commission ~~shall have the power to~~ may reduce or waive any penalty provided in
13 G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be
14 waived when the mailed report bears a postmark that discloses that it was mailed by
15 midnight of the due date but was addressed or delivered to the wrong State or federal
16 agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a)
17 and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- 18 (1) The death or serious illness of the employer or a member of his
19 immediate family, or by the death or serious illness of the person in the

- 1 employer's organization responsible for the preparation and filing of the
2 report;
- 3 (2) Destruction of the employer's place of business or business records by
4 fire or other casualty;
- 5 (3) Failure of the Commission to furnish proper forms upon timely
6 application by the employer, by reason of which failure the employer
7 was unable to execute and file the report on or before the due date;
- 8 (4) The inability of the employer or the person in the employer's
9 organization responsible for the preparation and filing of reports to
10 obtain an interview with a representative of the Commission upon a
11 personal visit to the central office or any local office for the purpose of
12 securing information or aid in the proper preparation of the report,
13 which personal interview was attempted to be had within the time
14 during which the report could have been executed and filed as required
15 by law had the information at the time been obtained;
- 16 (5) The entrance of one or more of the owners, officers, partners, or the
17 majority stockholder into the Armed Forces of the United States, or any
18 of its allies, or the United Nations, provided that the entrance was
19 unexpected and is not the annual two weeks training for reserves; and
- 20 (6) Other circumstances where, in the opinion of the Chairman, the
21 Assistant Administrator, or their designees, the imposition of penalties
22 would be inequitable.

23 In the waiver of any penalty, the burden shall be upon the employer to establish to the
24 satisfaction of the Chairman, the Assistant Administrator, or their designees, that the
25 delinquency for which the penalty was imposed was due to any of the foregoing facts or
26 circumstances.

27 ~~Such waiver~~ The waiver or reduction of interest or a penalty under this subsection shall
28 be valid and binding upon the Commission. The reason for any ~~such~~ reduction or waiver
29 shall be made a part of the permanent records of the employing unit to which it applies."

30 Section 2. G.S. 96-10(a) reads as rewritten:

31 "(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on
32 which they are due and payable, as prescribed by the Commission, shall bear interest at
33 the rate of ~~one-half of one percent (0.5%)~~ set under G.S. 105-241.1(i) per month from and
34 after ~~such~~ that date until payment plus accrued interest is received by the Commission.
35 An additional penalty in the amount of ten percent (10%) of the taxes due shall be added,
36 but ~~said~~ that penalty shall in no event be less than five dollars (\$5.00). Penalties and
37 interest collected pursuant to this subsection shall be paid into the Special Employment
38 Security Administration Fund. If any employer, in good faith, pays contributions to
39 another state or to the United States under the Federal Unemployment Tax Act, prior to a
40 determination of liability by this Commission, ~~which and the~~ contributions were legally
41 payable to this State, ~~such~~ the contributions, when paid to this State, shall be deemed to
42 have been paid by the due date under the law of this State if they were paid by the due
43 date of ~~such~~ the other state or the United States."

1 Section 3. G.S. 96-10(i) reads as rewritten:

2 "(i) ~~No~~ Except as otherwise provided in this subsection, no suit or proceedings for
3 the collection of unpaid contributions may be begun under this chapter ~~Chapter~~ after five
4 years from the date on which such ~~the~~ contributions become due, and no suit or
5 proceeding for the purpose of establishing liability and/or status may be begun with
6 respect to any period occurring more than five years prior to the first day of January of
7 the year within which such ~~the~~ suit or proceeding is instituted; provided, that this ~~instituted.~~
8 This subsection shall not apply in any case of willful attempt in any manner to defeat or
9 evade the payment of any contributions becoming due under this Chapter. ~~Provided,~~
10 further, that a Chapter. A proceeding shall be deemed to have been instituted or begun
11 upon the date of issuance of an order by the chairman of the Commission directing a
12 hearing to be held to determine liability or nonliability, and/or status under this Chapter
13 of an employing unit, or upon the date notice and demand for payment is mailed by
14 registered ~~certified~~ mail to the last known address of the employing unit. ~~Provided, further,~~
15 that the order mentioned herein ~~unit.~~ The order shall be deemed to have been issued on the
16 date such ~~the~~ order is mailed by registered ~~certified~~ mail to the last known address of the
17 employing unit. The running of the period of limitations provided in this subsection for
18 the making of assessments or collection shall, in a case under Title II of the United States
19 Code, be suspended for the period during which the Commission is prohibited by reason
20 of the case from making the assessment or collection and for a period of one year after
21 the prohibition is removed."

22 Section 4. G.S. 96-9(b)(2) reads as rewritten:

23 "(2) Experience Rating. –

24 a. Waiting Period for Rate Reduction. – No employer's contribution
25 rate shall be reduced below the standard rate for any calendar
26 year until its account has been chargeable with benefits for at
27 least 12 calendar months ending July 31 immediately preceding
28 the computation date. An employer's account has been
29 chargeable with benefits for at least 12 calendar months if the
30 employer has reported wages paid in four completed calendar
31 quarters pursuant to G.S. 96-9(a).

32 b. Credit Ratio. – The Commission shall, for each year, compute a
33 credit reserve ratio for each employer whose account has a credit
34 balance. An employer's credit reserve ratio shall be the quotient
35 obtained by dividing the credit balance of the employer's account
36 as of July 31 of each year by the total taxable payroll of the
37 employer for the 36 calendar-month period ending June 30
38 preceding the computation date. Credit balance as used in this
39 section means the total of all contributions paid and credited for
40 all past periods in accordance with the provisions of G.S. 96-
41 9(c)(1) together with all other lawful credits to the account of the
42 employer less the total benefits charged to the account of the
43 employer for all past periods.

1 c. Debit Ratio. – The Commission shall for each year compute a
2 debit ratio for each employer whose account shows that the total
3 of all its contributions paid and credited for all past periods in
4 accordance with G.S. 96-9(c)(1) together with all other lawful
5 credits is less than the total benefits charged to its account for all
6 past periods. An employer's debit ratio shall be the quotient
7 obtained by dividing the debit balance of the employer's account
8 as of July 31 of each year by the total taxable payroll of the
9 employer for the 36 calendar-month period ending June 30
10 preceding the computation date. The amount arrived at by
11 subtracting the total amount of all contributions paid and credited
12 for all past periods in accordance with the provisions of G.S. 96-
13 9(c)(1) together with all other lawful credits of the employer
14 from the total amount of all benefits charged to the account of the
15 employer for such periods is the employer's debit balance.

16 d. Other Provisions. – ~~For purposes of this subsection, the first date~~
17 ~~on which an account shall be chargeable with benefits shall be~~
18 ~~the first date with respect to which a benefit year as defined in~~
19 ~~G.S. 96-8 can be established, based in whole or in part on wages~~
20 ~~paid by that employer.~~

21 No employer's contribution rate shall be reduced below the
22 standard rate for any calendar year unless its liability extends
23 over a period of all or part of two consecutive calendar years and,
24 as of August 1 of the second year, its credit reserve ratio meets
25 the requirements of that schedule used in computing rates for the
26 following calendar year, unless the employer's liability was
27 established under G.S. 96-8(5)b and its predecessor's account
28 was transferred as provided by G.S. 96-9(c)(4)a.

29 Whenever contributions are erroneously paid into one account
30 which should have been paid into another account or which
31 should have been paid into a new account, that erroneous
32 payment can be adjusted only by refunding the erroneously paid
33 amounts to the paying entity. No pro rata adjustment to an
34 existing account may be made, nor can a new account be created
35 by transferring any portion of the erroneously paid amount,
36 notwithstanding that the entities involved may be owned,
37 operated, or controlled by the same person or organization. No
38 adjustment of a contribution rate can be made reducing the rate
39 below the standard rate for any period in which the account was
40 not in actual existence and in which it was not actually
41 chargeable for benefits. Whenever payments are found to have
42 been made to the wrong account, refunds can be made to the
43 entity making the wrongful payment for a period not exceeding

1 five years from the last day of the calendar year in which it is
2 determined that wrongful payments were made. Notwithstanding
3 payment into the wrong account, if an entity is determined to
4 have met the requirements to be a covered employer, whether or
5 not the entity has had paid on the account of its employees any
6 sum into another account, the Commission shall collect
7 contributions at the standard rate or the assigned rate, whichever
8 is higher, for the five years preceding the determination of
9 erroneous payments, which five years shall run from the last day
10 of the calendar year in which the determination of liability for
11 contributions or additional contributions is made. This
12 requirement applies regardless of whether the employer acted in
13 good faith."

14 Section 5. G.S. 96-13(a) reads as rewritten:

15 "(a) An unemployed individual shall be eligible to receive benefits with respect to
16 any week only if the Commission finds that –

- 17 (1) The individual has registered for work at and thereafter has continued to
18 report at an employment office as directed by the Commission at regular
19 intervals ~~no more than four of~~ not less than three weeks and not more
20 than six weeks apart and in accordance with such regulations as the
21 Commission may prescribe;
- 22 (2) He has made a claim for benefits in accordance with the provisions of
23 G.S. 96-15(a);
- 24 (3) The individual is able to work, and is available for work: Provided that,
25 unless temporarily excused by Commission regulations, no individual
26 shall be deemed available for work unless he establishes to the
27 satisfaction of the Commission that he is actively seeking work:
28 Provided further, that an individual customarily employed in seasonal
29 employment shall, during the period of nonseasonal operations, show to
30 the satisfaction of the Commission that such individual is actively
31 seeking employment which such individual is qualified to perform by
32 past experience or training during such nonseasonal period: Provided
33 further, however, that no individual shall be considered available for
34 work for any week not to exceed two in any calendar year in which the
35 Commission finds that his unemployment is due to a vacation. In
36 administering this proviso, benefits shall be paid or denied on a payroll-
37 week basis as established by the employing unit. A week of
38 unemployment due to a vacation as provided herein means any payroll
39 week within which the equivalent of three customary full-time working
40 days consist of a vacation period. For the purpose of this subdivision,
41 any unemployment which is caused by a vacation period and which
42 occurs in the calendar year following that within which the vacation
43 period begins shall be deemed to have occurred in the calendar year

1 within which such vacation period begins. For purposes of this
2 subdivision, no individual shall be deemed available for work during
3 any week that the individual tests positive for a controlled substance if
4 (i) the test is a controlled substance examination administered under
5 Article 20 of Chapter 95 of the General Statutes, (ii) the test is required
6 as a condition of hire for a job, and (iii) the job would be suitable work
7 for the claimant. The employer shall report to the Commission, in
8 accordance with regulations adopted by the Commission, each claimant
9 that tests positive for a controlled substance under this subdivision. For
10 the purposes of this subdivision, no individual shall be deemed available
11 for work during any week in which he is registered at and attending an
12 established school, or is on vacation during or between successive
13 quarters or semesters of such school attendance, or on vacation between
14 yearly terms of such school attendance. Except: (i) Any person who was
15 engaged in full-time employment concurrent with his school attendance,
16 who is otherwise eligible, shall not be denied benefits because of school
17 enrollment and attendance. Except: (ii) Any otherwise qualified
18 unemployed individual who is attending a vocational school or training
19 program which has been approved by the Commission for such
20 individual shall be deemed available for work. However, any
21 unemployment insurance benefits payable with respect to any week for
22 which a training allowance is payable pursuant to the provisions of a
23 federal or State law, shall be reduced by the amount of such allowance
24 which weekly benefit amount shall be rounded to the nearest lower full
25 dollar amount (if not a full dollar amount). The Commission may
26 approve such training course for an individual only if:

- 27 1. a. Reasonable employment opportunities for
28 which the individual is fitted by training and experience
29 do not exist in the locality or are severely curtailed;
- 30 b. The training course relates to an occupation or skill for
31 which there are expected to be reasonable opportunities
32 for employment; and
- 33 c. The individual, within the judgment of the Commission,
34 has the required qualifications and the aptitude to
35 complete the course successfully; or,
- 36 2. Such approval is required for the Commission to receive the
37 benefits of federal law.

- 38 (4) No individual shall be deemed able to work under this subsection during
39 any week for which that person is receiving or is applying for benefits
40 under any other State or federal law based on his temporary total or
41 permanent total disability. Provided that if compensation is denied to
42 any individual for any week under the foregoing sentence and such
43 individual is later determined not to be totally disabled, such individual

1 shall be entitled to a retroactive payment of the compensation for each
2 week for which the individual filed a timely claim for compensation and
3 for which the compensation was denied solely by reason of the
4 foregoing sentence.

5 (5) The individual has participated in reemployment services, if the
6 Division referred the individual to these services after determining,
7 through use of a worker profiling system, that the individual would
8 likely exhaust regular benefits and would need reemployment services
9 to make a successful transition to new employment, unless the
10 individual establishes justifiable cause for failing to participate in the
11 services."

12 Section 6. Section 2 of this act becomes effective January 1, 1998, and applies
13 to contributions due on or after that date. The remainder of this act is effective when it
14 becomes law.