GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-8
HOUSE BILL 5

AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS.

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 ~~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.~~covered by a federal disaster declaration."

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

"**§ 96-14.1. Unemployment benefits.**

...

(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 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 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 becomes 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 one or more of the forms listed in this subsection.~~ in any form. 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.~~"

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

PART III. MISCELLANEOUS CHANGES

SECTION 3.1.(a) G.S. 96-9.7 reads as rewritten:

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

(a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected and administered in the same manner as contributions. Surtaxes collected under this section

must be credited to the Unemployment Insurance Reserve Fund established under G.S. 96-6.2. Interest and penalties collected on unpaid surtaxes imposed by this section must be credited to the Supplemental Employment Security Administration Fund. Penalties collected on unpaid surtaxes imposed by this section must be transferred to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1.

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

SECTION 3.1.(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.

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

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

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

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

Provided further, no question or issue may be raised or presented by the Division as to the eligibility of a claimant, or whether any disqualification should be imposed, after 45 days from the first day of the first week after the 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 October 1, 2017, applies to claims for benefits filed on or after that date, and applies to tax calculations on or after that date.

SECTION 3.3.(a) G.S. 96-9.6 reads as rewritten:

"**§ 96-9.6. Election to reimburse Unemployment Insurance Fund in lieu of contributions.**

(a) Applicability. – This section applies to a governmental entity, a nonprofit organization, and an Indian tribe that is required by section 3309 of the Code to have a reimbursement option. Each of these employers must finance benefits under the contributions method imposed under G.S. 96-9.2 unless the employer elects to finance benefits by making reimbursable payments to the Division for the Unemployment Insurance Fund.

(b) Election. – An employer may make an election under this section by filing a written notice of its election with the Division at least 30 days before the January 1 effective date of the election. An Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by the tribe. A new employer may make an election under this section by filing a written notice of its election within 30 days after the employer receives notification from the Division that it is eligible to make an election under this section.

An election is valid for a minimum of four years and is binding until the employer files a notice terminating its election. An employer must file a written notice of termination with the Division at least 30 days before the January 1 effective date of the termination. The Division must notify an employer of a determination of the effective date of an election the employer makes and of any termination of the election. These determinations are subject to reconsideration, appeal, and review. An employer that makes the election allowed by this section may not deduct any amount due under this section from the remuneration of the individuals it employs.

(c) Reimbursable Amount. – An employer must reimburse the Unemployment Insurance Fund for the amount of benefits that are paid to an individual for weeks of unemployment that begin within a benefit year established during the effective period of the employer's election and are attributable to service that is covered by section 3309 of the Code and was performed in the employ of the employer. For regular benefits, the reimbursable amount is the amount of regular benefits paid. For extended benefits, the reimbursable amount is the amount not reimbursed by the federal government.

(d) Account. – The Division must establish a separate account for each reimbursing employer. The Division must credit payments made by the employer to the account. The Division must charge to the account benefits that are paid by the Unemployment Insurance Fund to individuals for weeks of unemployment that begin within a benefit year established during the effective period of the election and are attributable to service in the employ of the employer. All benefits paid must be charged to the employer's account except benefits paid through error.

The Division must furnish an employer with a statement of all credits and charges made to its account as of the computation date prior to January 1 of the succeeding year. The Division may, in its sole discretion, provide a reimbursing employer with informational bills or lists of charges on a basis more frequent than yearly if the Division finds it is in the best interest of the Division and the affected employer to do so.

(e) Annual Reconciliation. – A reimbursing employer must maintain an account balance equal to one percent (1%) of its taxable wages. The Division must determine the balance of each employer's account on the computation date. If there is a deficit in the account, the Division must bill the employer for the amount necessary to bring its account to one percent (1%) of its taxable wages for the immediate four quarters preceding July 1. ~~Any~~ Except as provided in subsection (j) of this section, any amount in the account in excess of the one percent (1%) of taxable wages will be retained in the employer's account as a credit and will

not be refunded to the employer. The Division must send a bill as soon as practical. Payment is due within 30 days from the date a bill is mailed. Amounts unpaid by the due date accrue interest and penalties in the same manner as past-due contributions and are subject to the same collection remedies provided under G.S. 96-10 for past-due contributions.

(f) Quarterly Wage Reports. – A reimbursing employer must submit quarterly wage reports to the Division on or before the last day of the month following the close of the calendar quarter in which the wages are paid. During the first four quarters following an election to be a reimbursing employer, the employer must submit an advance payment with its quarterly report. The amount of the advance payment is equal to one percent (1%) of the taxable wages reported on the quarterly wage report. The Division must remit the payments to the Unemployment Insurance Fund and credit the payments to the employer's account.

(g) Change in Election. – The Division must close the account of an employer that has been paying contributions under G.S. 96-9.2 and that elects to change to a reimbursement basis under this section. A closed account may not be used in any future computation of a contribution rate. The Division must close the account of an employer that terminates its election to reimburse the Unemployment Insurance Fund in lieu of making contributions. An employer that terminates its election under this section is subject to the standard beginning rate.

(h) Noncompliance by Indian Tribes. – An Indian tribe that makes an election under this section and then fails to comply with this section is subject to the following consequences:

(1) An employer that fails to pay an amount due within 90 days after receiving a bill and has not paid this liability as of the computation date loses the option to make reimbursable payments in lieu of contributions for the following calendar year. An employer that loses the option to make reimbursable payments in lieu of contributions for a calendar year regains that option for the following calendar year if it pays its outstanding liability and makes all contributions during the year for which the option was lost.

(2) Services performed for an employer that fails to make payments, including interest and penalties, required under this section after all collection activities considered necessary by the Division have been exhausted, are no longer treated as "employment" for the purpose of coverage under this Chapter. An employer that has lost coverage regains coverage under this Chapter for services performed if the Division determines that all contributions, payments in lieu of contributions, penalties, and interest have been paid. The Division must notify the Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage pursuant to this subsection.

(i) Expired January 1, 2016.

(j) Refund. – If a reimbursing employer erroneously remits an amount in excess of the amount due, the employer may apply to the Division for a refund of the excess amount remitted within the time limits in this subsection. The Division must determine that the requested refund was in excess of the amount due and was erroneously paid. The Division must refund, without interest, the excess amount but in no event will the refund result in an account balance less than one percent (1%) of the reimbursing employer's taxable wages. The refund application must be filed by the later of the following:

(1) Five years from the last day of the calendar year with respect to which a payment was made.

(2) One year from the date on which such payment was made."

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 ~~but is not mandatory,~~ under this subsection, 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 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.~~transferred.

~~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. – 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.~~ 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 for use in the determination of the transferee's contribution rate.

~~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~~ maintain substantial 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 formed or acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

(d) Contribution Rate. – ~~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.~~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 predecessor employer and the successor employer based on their account balances on the effective date of the account transfer.

~~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 subject to a complete transfer of account under this section 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 the transferee is subject to a complete transfer of account under this

section, 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.

In the General Assembly read three times and ratified this the 19th day of April, 2017.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:50 a.m. this 27th day of April, 2017