

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 426

Short Title: Employment Amendment Tech. Amends.

(Public)

Sponsors: Representative Robinson.

Referred to: Commerce.

March 2, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-4(t) is amended by adding a new subdivision to read:

"(8) Any finding of fact or law, judgment, determination, conclusion or final order made by an adjudicator, appeals referee, commissioner, the Commission or any other person acting under authority of the Commission pursuant to the Employment Security Law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts."

Sec. 2. G.S. 96-4 is amended by adding a subsection to read:

"(v) Advisory rulings may be made by the Commission with respect to the applicability of any statute or rule administered by the Commission, as follows:

(1) All requests for advisory rulings shall be made in writing and submitted to the Chief Counsel. Such requests shall state the facts and statutes or rules on which the ruling is requested.

(2) The Chief Counsel may request from any person securing an advisory ruling any additional information that is necessary. Failure to supply such additional information shall be cause for the Commission to decline to issue an advisory ruling.

(3) The Commission may decline to issue an advisory ruling if any administrative or judicial proceeding is pending with the person

1 requesting the ruling on the same factual grounds. The Commission
2 may decline to issue an advisory ruling if such a ruling may harm the
3 Commission's interest in any litigation in which it is or may be a party.

4 (4) All advisory rulings shall be issued no later than 30 days from the date
5 all information necessary to make a ruling has been received by the
6 Chief Counsel.

7 (5) No advisory ruling shall be binding upon the Commission provided
8 that in any subsequent enforcement action initiated by the
9 Commission, any person's reliance on such ruling shall be considered
10 in mitigation of any penalty sought to be assessed."

11 Sec. 3. G.S. 96-8(5) is amended by adding a sub-subdivision to read:

12 "r. An employee service company which is an employing unit is the employer of an
13 individual who is engaged in employment performing services for a client or customer
14 of the employee service company if the employee service company is taxed under the
15 Federal Unemployment Tax Act (26 U.S.C. 3301 to 3311) on the basis of that
16 employment. For purpose of this Chapter, 'employee service company' means a leasing
17 company or temporary help service which contracts with clients or customers to supply
18 individuals to perform services for the client or customer and which, both under contract
19 and in fact:

20 1. Negotiates with clients or customers for such matters as time, place,
21 type of work, working conditions, quality, and price of the services;

22 2. Determines assignments or reassignments of individuals to its clients
23 or customers, even if the individuals retain the right to refuse specific
24 assignments;

25 3. Sets the rate of pay of the individuals, whether or not through
26 negotiation;

27 4. Pays the individuals from its account or accounts; and

28 5. Hires and terminates individuals who perform services for the clients
29 or customers."

30 Sec. 4. G.S. 96-8(13)b. reads as rewritten:

31 "b. 'Wages' shall not include ~~any~~:

32 (1) Any payment made to, or on behalf of, an employee or his beneficiary
33 from or to a trust which qualifies under the conditions set forth in
34 Sections 401(a)(1) and (2) of the Internal Revenue Code of 1954, ~~or~~
35 ~~under~~;

36 (2) Under or to an annuity plan which at the time of the payment meets the
37 requirements of Sections 401(a)(3), (4), (5) and (6) of the Code and
38 exempt from tax under Section 501(a) of the Code at the time of the
39 payment, unless the payment is made to an employee of the trust as
40 remuneration for services rendered as an employee and not as
41 beneficiary of the trust; or

42 (3) Any payment made to, or on behalf of, an employee or his beneficiary
43 under a Cafeteria Plan within the meaning of Section 125 of the
44 Internal Revenue Code."

1 Sec. 5. G.S. 96-9(a) is amended by adding a subdivision to read:

2 "(6) If the amount of the contributions shown to be due after all credits is less than
3 one dollar (\$1.00), no payment need be made. If an employer has paid contributions,
4 penalties, and/or interest in excess of the amount due, this shall be considered an
5 overpayment and refunded provided no other debts are owed to the Commission by the
6 employer. Overpayments of less than one dollar (\$1.00) shall be refunded only upon
7 receipt by the Chairman of a written demand for such refund from the employer.
8 Nothing herein shall be construed to change or extend the limitation set forth in G.S. 96-
9 10(e), (f), and (i)."

10 Sec. 6. G.S. 96-14(1) is amended by adding the following paragraphs at the
11 end:

12 "Where an individual leaves work due solely to a permanent, substantial and
13 unilateral reduction in work hours customary in the industry in which that individual is
14 employed, said leaving shall constitute a voluntary leaving, not an involuntary leaving.
15 Provided further that a permanent, substantial and unilateral reduction in work hours
16 customary in the industry shall constitute good cause attributable to the employer for
17 voluntarily leaving work. Provided however that if said reduction was occasioned by
18 malfeasance, misfeasance or nonfeasance on the part of the individual or adverse
19 economic conditions which similarly affected all workers in the class to which the
20 individual belongs, such reduction in work hours shall not constitute good cause
21 attributable to the employer for voluntarily leaving work.

22 Where an individual leaves work due solely to a permanent, substantial and
23 unilateral reduction in rate of pay, said leaving shall constitute a voluntary leaving, not
24 an involuntary leaving. Provided further that a permanent, substantial and unilateral
25 reduction in the rate of pay shall constitute good cause attributable to the employer for
26 voluntarily leaving work. Provided however that if said reduction was occasioned by
27 malfeasance, misfeasance or nonfeasance on the part of the individual or adverse
28 economic conditions which similarly affected all workers in the class to which the
29 individual belongs, such reduction in pay shall not constitute good cause attributable to
30 the employer for voluntarily leaving work.

31 Where an individual voluntarily leaves work, the burden of showing good cause
32 attributable to the employer rests on said individual. Further, the burden of proof of
33 establishing an involuntary leaving as set forth in this subsection shall also rest on the
34 individual who leaves work."

35 Sec. 7. G.S. 96-14(8) is amended by adding a paragraph at the end to read:

36 "Further provided, any benefits previously paid for weeks of unemployment with
37 respect to which back pay awards, or other such compensation, are made shall constitute
38 an overpayment of benefits and such amounts shall be deducted from the award by the
39 employer prior to payment to the employee, and shall be transmitted promptly (or
40 within 5 days) to the Commission by employer for application against the overpayment.
41 Provided, however, the removal of any charges made against the employer as a result of
42 such previously paid benefits shall be applied to the calendar year in which the
43 overpayment is transmitted to the Commission, and no attempt shall be made to relate
44 such a credit to the period to which the award applies. Any amount of overpayment so

1 deducted by the employer and not transmitted to the Commission or the failure of an
2 employer to deduct an overpayment shall be subject to the same procedures for
3 collection as is provided for contributions by G.S. 96-10. It is the purpose of this
4 paragraph to assure the prompt collection of overpayments of U. I. benefits, and it shall
5 be construed accordingly."

6 Sec. 8. G.S. 96-15(f) reads as rewritten:

7 "(f) Procedure. – The manner in which disputed claims shall be presented, the
8 reports thereon required from the claimant and from employers, and the conduct of
9 hearings and appeals shall be in accordance with regulations prescribed by the
10 Commission for determining the rights of the parties, whether or not such regulations
11 conform to common-law or statutory rules of evidence and other technical rules of
12 procedure. All testimony at any hearing before an appeals referee upon a disputed claim
13 shall be recorded unless the recording is waived by all interested parties, but need not be
14 transcribed unless the disputed claim is further appealed and, one or more of the parties
15 objects, under such regulations as the Commission may prescribe, to being provided a
16 copy of the tape recording of the hearing. Any other provisions of this Chapter
17 notwithstanding, any ~~party~~ individual receiving the transcript shall pay to the
18 Commission such reasonable fee for the transcript as the Commission may by regulation
19 provide. The fee so prescribed by the Commission for a party shall not exceed ~~the lesser~~
20 ~~of twenty five cents (25¢) per page or thirty five dollars (\$35.00)~~ seventy-five cents (75¢)
21 per transcript. The Commission may by regulation provide for the fee to be waived in
22 such circumstances as it in its sole discretion deems appropriate but in the case of an
23 appeal in **forma pauperis** supported by such proofs as are required in G.S. 1-110, the
24 Commission shall waive the fee."

25 Sec. 9. G.S. 96-18(e) reads as rewritten:

26 "(e) An individual shall not be entitled to receive benefits for ~~one year beginning~~
27 ~~with the first day following the last benefit week for which he received benefits, or one~~
28 ~~year from the date upon which the act was committed, whichever is the later, if a period~~
29 of 52 weeks beginning with the first day of the week following the date that notice of
30 determination or decision is mailed finding that he, or another in his behalf with his
31 knowledge, has been found to have knowingly made a false statement or
32 misrepresentation, or who has knowingly failed to disclose a material fact to obtain or
33 increase any benefit or other payment under this Chapter."

34 Sec. 10. G.S. 96-18(g)(1) reads as rewritten:

35 "(1) Any person who, under subsection (e) above, has been held ineligible for
36 benefits and who, because of those same acts or omissions has received any sum as
37 benefits under this Chapter to which he was not entitled, shall be liable, ~~for 10 years after~~
38 ~~the decision under subsection (e) becomes final,~~ to repay any such sum to the Commission
39 as provided in subparagraph (3) below, provided ~~such decision under subsection (e) has~~
40 ~~been made within two years of the last such act or omission~~ no such recovery or recoupment
41 of such sum may be initiated after 10 years from the last day of the year in which the
42 overpayment occurred."

43 Sec. 11. This act is effective upon ratification.