

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 426  
Committee Substitute Favorable 5/5/89  
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Short Title: Employment Amendment Tech. Amends.

(Public)

Sponsors:

Referred to:

March 2, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE EMPLOYMENT  
3 SECURITY LAW.

4 The General Assembly of North Carolina enacts:

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

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

15 Provided, however, any finding of fact or law, judgment,  
16 determination, conclusion, or final order made by an adjudicator,  
17 appeals referee, commissioner, the Commission or any other person  
18 acting under the authority of the Commission pursuant to the  
19 Employment Security Law shall be admissible in proceedings before  
20 the North Carolina Industrial Commission."

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

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

- 3            (1) All requests for advisory rulings shall be made in writing and  
4 submitted to the Chief Counsel. Such requests shall state the facts and  
5 statutes or rules on which the ruling is requested.  
6            (2) The Chief Counsel may request from any person securing an advisory  
7 ruling any additional information that is necessary. Failure to supply  
8 such additional information shall be cause for the Commission to  
9 decline to issue an advisory ruling.  
10          (3) The Commission may decline to issue an advisory ruling if any  
11 administrative or judicial proceeding is pending with the person  
12 requesting the ruling on the same factual grounds. The Commission  
13 may decline to issue an advisory ruling if such a ruling may harm the  
14 Commission's interest in any litigation in which it is or may be a party.  
15          (4) All advisory rulings shall be issued no later than 30 days from the date  
16 all information necessary to make a ruling has been received by the  
17 Chief Counsel.  
18          (5) No advisory ruling shall be binding upon the Commission provided  
19 that in any subsequent enforcement action initiated by the  
20 Commission, any person's reliance on such ruling shall be considered  
21 in mitigation of any penalty sought to be assessed."

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

- 23            "r. An employee service company which is an employing unit is  
24 the employer of an individual who is engaged in employment  
25 performing services for a client or customer of the employee  
26 service company if the employee service company is taxed  
27 under the Federal Unemployment Tax Act (26 U.S.C. §3301 to  
28 §3311) on the basis of that employment. For purpose of this  
29 Chapter, 'employee service company' means a leasing company  
30 or temporary help service which contracts with clients or  
31 customers to supply individuals to perform services for the  
32 client or customer and which, both under contract and in fact:  
33            1. Negotiates with clients or customers for such matters as  
34 time, place, type of work, working conditions, quality,  
35 and price of the services;  
36            2. Determines assignments or reassignments of individuals  
37 to its clients or customers, even if the individuals retain  
38 the right to refuse specific assignments;  
39            3. Sets the rate of pay of the individuals, whether or not  
40 through negotiation;  
41            4. Pays the individuals from its account or accounts; and  
42            5. Hires and terminates individuals who perform services  
43 for the clients or customers."

44        Sec. 4. G.S. 96-9(c)(2)b. reads as rewritten:

1           " b. Any benefits paid to any claimant under a claim filed  
2           for a period occurring after the date of such separations as are  
3           set forth in this paragraph and based on wages paid prior to  
4           the date of (i) the ~~voluntary~~-leaving of work by the claimant  
5           without good cause attributable to the employer; (ii) the  
6           discharge of claimant for misconduct in connection with his  
7           work; (iii) the discharge of the claimant for substantial fault  
8           as that term may be defined in G.S. 96-14; (iv) the discharge  
9           of the claimant solely for a bona fide inability to do the work  
10          for which he was hired but only where the claimant was hired  
11          pursuant to a job order placed with a local office of the  
12          Commission for referrals to probationary employment (with a  
13          probationary period no longer than 100 days), which job  
14          order was placed in such circumstances and which satisfies  
15          such conditions as the Commission may by regulation  
16          prescribe and only to the extent of the wages paid during such  
17          probationary employment; (v) separations made disqualifying  
18          under G.S. 96-14(2B) and (6A); or (vi) separation due to  
19          ~~involuntary~~-leaving for disability or health condition shall not  
20          be charged to the account of the employer by whom the  
21          claimant was employed at the time of such separation;  
22          provided, however, said employer promptly furnishes the  
23          Commission with such notices regarding any separation of  
24          the individual from work as are or may be required by the  
25          regulations of the Commission.

26          No benefit charges shall be made to the account of any  
27          employer who has furnished work to an individual who,  
28          because of the loss of employment with one or more other  
29          employers, becomes eligible for partial benefits while still being  
30          furnished work by such employer on substantially the same  
31          basis and substantially the same amount as had been made  
32          available to such individual during his base period whether the  
33          employments were simultaneous or successive; provided, that  
34          such employer makes a written request for noncharging of  
35          benefits in accordance with Commission regulations and  
36          procedures.

37          No benefit charges shall be made to the account of any  
38          employer where benefits are paid as a result of a decision by an  
39          Adjudicator, Appeals Referee or the Commission if such  
40          decision to pay benefits is ultimately reversed; nor shall any  
41          such benefits paid be deemed to constitute an overpayment  
42          under G.S. 96-18(g)(2), the provisions thereof  
43          notwithstanding."

44          Sec. 5. G.S. 96-8(13)b. reads as rewritten:

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

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

6 2. Any payment made to, or under, ~~or to~~ an annuity plan  
7 which at the time of the payment meets the requirements  
8 of Sections 401(a)(3), (4), (5) and (6) of the Code and  
9 exempt from tax under Section 501(a) of the Code at the  
10 time of the payment, unless the payment is made to an  
11 employee of the trust as remuneration for services  
12 rendered as an employee and not as beneficiary of the  
13 trust; ~~or~~

14 3. Any payment made to, or on behalf of, an employee or  
15 his beneficiary under a Cafeteria Plan within the  
16 meaning of Section 125 of the Internal Revenue Code."

17 Sec. 6. G.S. 96-9(a) is amended by adding a subdivision to read:

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

27 Sec. 7. G.S. 96-14(1) reads as rewritten:

28 "(1) For the duration of his unemployment beginning with the first day of  
29 the first week after the disqualifying act occurs with respect to which  
30 week an individual files a claim for benefits if it is determined by the  
31 Commission that such individual is, at the time such claim is filed,  
32 unemployed because he left work ~~voluntarily~~—without good cause  
33 attributable to the employer.

34 Where an individual leaves work due solely to a disability incurred  
35 or other health condition, whether or not related to the work, ~~his leaving~~  
36 ~~shall be considered an involuntary leaving for health reasons—~~he shall not  
37 ~~be disqualified for benefits~~ if the individual shows:

38 a. That, at the time of leaving, an adequate disability or health  
39 condition, either medically diagnosed or otherwise shown by  
40 competent evidence, existed to justify the leaving and prevented  
41 the employee from doing other alternative work offered by the  
42 employer which pays the minimum wage or eighty-five percent  
43 (85%) of the individual's regular wage, whichever is greater;  
44 and

1           b.       That, at a reasonable time prior to leaving, the individual gave  
2                   the employer notice of ~~the~~ his disability or health condition.

3           Where an employee is notified by the employer that such employee  
4           will be separated from employment on some future date and the  
5           employee leaves work prior to this date because of the impending  
6           separation, the employee shall be deemed to have left work voluntarily  
7           and the leaving shall be without good cause attributable to the  
8           employer. However, if the employee shows to the satisfaction of the  
9           Commission that it was impracticable or unduly burdensome for the  
10          employee to work until the announced separation date, the permanent  
11          disqualification imposed for leaving work without good cause  
12          attributable to the employer may be reduced to the greater of four  
13          weeks or the period running from the beginning of the week during  
14          which the claim for benefits was made until the end of the week of the  
15          announced separation date.

16          An employer's placing an individual on a bona fide disciplinary  
17          suspension of 10 or fewer consecutive calendar days shall not  
18          constitute good cause for leaving work."

19       Sec. 8. G.S. 96-14(1A) reads as rewritten:

20           "(1A) ~~Except as specifically provided in G.S. 96-14(1), leaving of work~~  
21                   ~~shall constitute a voluntary leaving, not an involuntary leaving.~~  
22                   Where an individual leaves work, the burden of showing good  
23                   cause attributable to the employer rests on said individual, and the  
24                   burden shall not be shifted to the employer."

25       Sec. 9. G.S. 96-14 is amended by adding two new subsections to read:

26           "(1B) Where an individual leaves work due solely to a unilateral and  
27                   permanent reduction in work hours of more than twenty percent  
28                   (20%) of the customary scheduled full-time work hours in the  
29                   establishment, plant, or industry in which he was employed, said  
30                   leaving shall constitute good cause attributable to the employer for  
31                   leaving work. Provided however that if said reduction is temporary  
32                   or was occasioned by malfeasance, misfeasance or nonfeasance on  
33                   the part of the individual, such reduction in work hours shall not  
34                   constitute good cause attributable to the employer for leaving work.

35           (1C) Where an individual leaves work due solely to a unilateral and  
36                   permanent reduction in his rate of pay of more than fifteen percent  
37                   (15%), said leaving shall constitute good cause attributable to the  
38                   employer for leaving work. Provided however that if said  
39                   reduction is temporary or was occasioned by malfeasance,  
40                   misfeasance or nonfeasance on the part of the individual, such  
41                   reduction in pay shall not constitute good cause attributable to the  
42                   employer for leaving work."

43       Sec. 10. G.S. 96-14(8) is amended by adding a paragraph at the end to read:

1           “Further provided, any benefits previously paid for weeks of  
2           unemployment with respect to which back pay awards, or other such  
3           compensation, are made shall constitute an overpayment of benefits  
4           and such amounts shall be deducted from the award by the employer  
5           prior to payment to the employee, and shall be transmitted promptly  
6           (or within 5 days) to the Commission by the employer for application  
7           against the overpayment. Provided, however, the removal of any  
8           charges made against the employer as a result of such previously paid  
9           benefits shall be applied to the calendar year in which the overpayment  
10           is transmitted to the Commission, and no attempt shall be made to  
11           relate such a credit to the period to which the award applies. Any  
12           amount of overpayment so deducted by the employer and not  
13           transmitted to the Commission or the failure of an employer to deduct  
14           an overpayment shall be subject to the same procedures for collection  
15           as is provided for contributions by G.S. 96-10. It is the purpose of this  
16           paragraph to assure the prompt collection of overpayments of U. I.  
17           benefits, and it shall be construed accordingly.”

18           Sec. 11. G.S. 96-15(f) reads as rewritten:

19           "(f) Procedure. – The manner in which disputed claims shall be presented, the  
20 reports thereon required from the claimant and from employers, and the conduct of  
21 hearings and appeals shall be in accordance with regulations prescribed by the  
22 Commission for determining the rights of the parties, whether or not such regulations  
23 conform to common-law or statutory rules of evidence and other technical rules of  
24 procedure. All testimony at any hearing before an appeals referee upon a disputed claim  
25 shall be recorded unless the recording is waived by all interested parties, but need not be  
26 transcribed unless the disputed claim is further appealed and, one or more of the parties  
27 objects, under such regulations as the Commission may prescribe, to being provided a  
28 copy of the tape recording of the hearing. Any other provisions of this Chapter  
29 notwithstanding, any ~~party~~individual receiving the transcript shall pay to the  
30 Commission such reasonable fee for the transcript as the Commission may by regulation  
31 provide. The fee so prescribed by the Commission for a party shall not exceed ~~the lesser~~  
32 ~~of twenty-five cents (25¢) per page or thirty-five dollars (\$35.00) per transcript.~~ the lesser of  
33 sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per transcript. The  
34 Commission may by regulation provide for the fee to be waived in such circumstances  
35 as it in its sole discretion deems appropriate but in the case of an appeal in **forma**  
36 **pauperis** supported by such proofs as are required in G.S. 1-110, the Commission shall  
37 waive the fee."

38           Sec. 12. G.S. 96-15(i) reads as rewritten:

39           "(i) Review Proceedings. – If a timely petition for review has been filed and served as  
40 provided in G.S. 96-15(h), the court may make party defendant any other party it deems  
41 necessary or proper to a just and fair determination of the case. The Commission may,  
42 in its discretion, certify to the reviewing court questions of law involved in any decision  
43 by it. In any judicial proceeding under this section, the findings of fact by the  
44 Commission, if there is any competent evidence to support them and in the absence of

1 fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions  
2 of law. Such actions and the questions so certified shall be heard in a summary manner  
3 and shall be given precedence over all civil cases. An appeal may be taken from the  
4 judgment of the superior court, as provided in civil cases. The Commission shall have  
5 the right to appeal to the appellate division from a decision or judgment of the superior  
6 court and for such purpose shall be deemed to be an aggrieved party. No bond shall be  
7 required of the Commission upon appeal. Upon the final determination of the case or  
8 proceeding, the Commission shall enter an order in accordance with the determination.  
9 When an appeal has been entered to any judgment, order, or decision of the court below,  
10 no benefits shall be paid pending a final determination of the cause, except in those  
11 cases in which the final decision of the Commission allowed benefits."

12 Sec. 13. G.S. 96-18(e) reads as rewritten:

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

21 Sec. 14. G.S. 96-18(g)(1) reads as rewritten:

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

32 Sec. 15. G.S. 96-14(10) reads as rewritten:

33 "(10) Any employee disqualified for the duration of his  
34 unemployment due to the provisions of (1), (2), (2B), (3), (4),  
35 or (6A) above may have that permanent disqualification  
36 removed if he meets the following three conditions:

- 37 a. Returns to work for at least five weeks and is paid cumulative
- 38 wages of at least 10 times his weekly benefit amount;
- 39 b. Subsequently becomes unemployed through no fault of his
- 40 own; and
- 41 c. Meets the availability requirements of the law.

42 Any disqualification imposed by the provisions of  
43 subsection (2A) may be removed as provided by this  
44 subsection.

1            Provided for good cause shown the Commission in its  
2 discretion may as to any permanent disqualification provided in  
3 this Chapter reduce the disqualification period to a time certain  
4 but not less than five weeks. The maximum amount of benefits  
5 due any individual whose permanent disqualification is changed  
6 to a time certain shall be reduced by an amount determined by  
7 multiplying the number of weeks of disqualification by the  
8 weekly benefit amount.

9            Provided further, any permanent disqualification pursuant to  
10 the provisions of (1), (2), (3), (4), or (6A) shall terminate two  
11 years after the effective date of the beginning of said  
12 disqualification."

13            Sec. 16. G.S. 96-29 reads as rewritten:

14 **"§ 96-29. Openings listed by State agencies.**

15            Every State agency shall list with the Employment Security Commission of North  
16 Carolina every job opening occurring within the agency which opening the agency  
17 wishes filled and which will not be filled solely by promotion or transfer from within  
18 the existing State government work force. The listing shall include a brief description of  
19 the duties and salary range and shall be filed with the Commission within 30 days after  
20 the occurrence of the opening. The State agency may not fill the job opening for at least  
21 21 days after the listing has been filed with the Commission. The listing agency shall  
22 report to the Commission the filling of any listed opening within 15 days after the  
23 opening has been filled."

24            Sec. 17. This act is effective upon ratification.