

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 811

Short Title: ESC Conforming Changes.

(Public)

Sponsors: Senators Gulley and Kerr.

Referred to: Manufacturing and Labor.

April 12, 1993

A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES TO THE EMPLOYMENT SECURITY LAW TO
CONFORM TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(6)g. reads as rewritten:

"g. On and after January 1, 1978, the term 'employment' includes services performed in agricultural labor when a person or employing unit (a) during any calendar quarter in the current calendar year or the preceding calendar year pays wages of twenty thousand dollars (\$20,000) or more for agricultural labor, or (b) on each of some 20 days during the preceding calendar year, each day being in a different calendar week, employs at least 10 individuals in employment in agricultural labor for some portion of the day. For purposes of this Chapter, the term 'agricultural labor' includes all services performed: (1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife; (2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 of brush and other debris left by a hurricane, if the major part of
2 such service is performed on a farm; (3) in connection with the
3 production or harvesting of crude gum (oleoresin) from a living
4 tree, and the following products if processed by the original
5 producer of crude gum from which derived; gum spirits of
6 turpentine and gum resin, or in connection with the ginning of
7 cotton or in connection with the operation or maintenance of
8 ditches, canals, reservoirs, or waterways, not owned or operated
9 for profit, used exclusively for supplying and storing water for
10 farming purposes; or (4)(A) in the employ of the operator of a
11 farm in handling, planting, drying, packing, packaging,
12 processing, freezing, grading, storing, or delivering to storage
13 or to market or to a carrier for transportation to market, in its
14 unmanufactured state, any agricultural or horticultural
15 commodity, but only if such operator produced more than one
16 half of the commodity with respect to which such service is
17 performed; (B) in the employ of a group of operators of farms
18 (or a cooperative organization of which such operators are
19 members) in performance of service described in subparagraph
20 (A), but only if such operators produced more than one half of
21 the commodity with respect to which such service is performed.
22 (C) The provisions of subparagraphs (A) and (B) shall not be
23 deemed to be applicable with respect to service performed in
24 connection with commercial canning or commercial freezing or
25 in connection with any agricultural or horticultural commodity
26 after its delivery to a terminal market for distribution for
27 consumption; (D) on a farm operated for profit if such service is
28 not in the course of the employer's trade or business. As used in
29 this subsection, the term 'farm' includes stock, dairy, poultry,
30 fruit, fur-bearing animal, and truck farms, plantations, ranches,
31 nurseries, ranges, greenhouses or other similar structures used
32 primarily for the raising of agricultural or horticultural
33 commodities, and orchards. Provided, such labor is not
34 agricultural labor performed before January 1, ~~1993~~, 1995, by
35 an individual who is an alien admitted to the United States to
36 perform agricultural labor pursuant to sections 214(c) and
37 101(a)(15)(H) of the Immigration and Nationality Act."

38 Sec. 2. G.S. 96-12(e)C. reads as rewritten:

39 "C. Eligibility Requirements for Extended Benefits. – An individual shall
40 be eligible to receive extended benefits with respect to any week of
41 unemployment in his eligibility period only if the Commission finds
42 that with respect to such week:

43 1. He is an 'exhaustee' as defined in subsection A(10).

- 1 2. He has satisfied the requirements of this Chapter for the receipt
2 of regular benefits that are applicable to individuals claiming
3 extended benefits, including not being subject to a
4 disqualification for the receipt of benefits. Provided, however,
5 that for purposes of disqualification for extended benefits for
6 weeks of unemployment beginning after March 31, 1981, the
7 term 'suitable work' means any work which is within the
8 individual's capabilities to perform if: (i) The gross average
9 weekly remuneration payable for the work exceeds the sum of
10 the individual's weekly extended benefit amount plus the
11 amount, if any, of supplemental unemployment benefits (as
12 defined in section 501(C)(17)(D) of the Internal Revenue Code
13 of 1954) payable to such individual for such week; and (ii) the
14 gross wages payable for the work equal the higher of the
15 minimum wages provided by section 6(a)(1) of the Fair Labor
16 Standards Act of 1938 as amended (without regard to any
17 exemption), or the State minimum wage; and (iii) the work is
18 offered to the individual in writing and is listed with the State
19 employment service; and (iv) the considerations contained in
20 G.S. 96-14(3) for determining whether or not work is suitable
21 are applied to the extent that they are not inconsistent with the
22 specific requirements of this subdivision; and (v) the individual
23 cannot furnish evidence satisfactory to the Commission that his
24 prospects for obtaining work in his customary occupation
25 within a reasonably short period of time are good, but if the
26 individual submits evidence which the Commission deems
27 satisfactory for this purpose, the determination of whether or
28 not work is suitable with respect to such individual shall be
29 made in accordance with G.S. 96-14(3) without regard to the
30 definition contained in this subdivision. Provided, further, that
31 no work shall be deemed to be suitable work for an individual
32 which does not accord with the labor standard provisions set
33 forth in this subdivision, but the employment service shall refer
34 any individual claiming extended benefits to any work which is
35 deemed suitable hereunder. Provided, further, that any
36 individual who has been disqualified for voluntarily leaving
37 employment, being discharged for misconduct or substantial
38 fault, or refusing suitable work under G.S. 96-14 and who has
39 had the disqualification terminated, shall have such
40 disqualification reinstated when claiming extended benefits
41 unless the termination of the disqualification was based upon
42 employment subsequent to the date of the disqualification.
- 43 3. After March 31, 1981, he has not failed either to apply for or to
44 accept an offer of suitable work, as defined in G.S. 96-

1 12(e)C.2., to which he was referred by an employment office of
2 the Commission, and he has furnished the Commission with
3 tangible evidence that he has actively engaged in a systematic
4 and sustained effort to find work. If an individual is found to be
5 ineligible hereunder, he shall be ineligible beginning with the
6 week in which he either failed to apply for or to accept the offer
7 of suitable work or failed to furnish the Commission with
8 tangible evidence that he has actively engaged in a systematic
9 and sustained effort to find work and such individual shall
10 continue to be ineligible for extended benefits until he has been
11 employed in each of four subsequent weeks (whether or not
12 consecutive) and has earned remuneration equal to not less than
13 four times his weekly benefit amount.

14 4. Pursuant to section 202(a)(7) of the Federal-State Extended
15 Unemployment Compensation Act of 1970 (P.L. 91-373), as
16 amended by section 202(b)(1) of the Unemployment
17 Compensation Amendments of 1992 (Public Law 102-318), for
18 any week of unemployment beginning after March 6, 1993, and
19 before January 1, 1995, the individual is an exhaustee as
20 defined by federal law and has satisfied the requirements of this
21 Chapter for the receipt of regular benefits that are applicable to
22 individuals claiming extended benefits, including not being
23 subject to a disqualification for the receipt of benefits.
24 Provided, the terms and conditions of State law that apply to
25 claims for regular compensation and to the payment thereof
26 shall apply to claims for extended benefits and to the payment
27 thereof."

28 Sec. 3. G.S. 96-13(b)(1) reads as rewritten:

29 "(1) The payment of benefits to any individual based on services for
30 nonprofit organizations, hospitals, or State hospitals and State
31 institutions of higher education, other institutions of higher education,
32 or secondary schools and subdivisions of secondary schools subject to
33 this Chapter shall be in the same manner and under the same
34 conditions of the laws of this Chapter as applied to individuals whose
35 benefit rights are based on other services subject to this Chapter.
36 Except that with respect to services in the educational institutions
37 listed above:

38 a. In an instructional, research, or principal administrative
39 capacity, compensation shall not be payable based on such
40 services for any week commencing during the period between
41 two successive academic years or terms, or, when an agreement
42 provides instead for a similar period between two regular but
43 not successive terms, during that period, to any individual if he
44 performs such services in the first of the academic years or

1 terms and if there is a contract or reasonable assurance that the
 2 individual will perform services in any such capacity for any
 3 educational institution in the second of the academic years or
 4 terms; and,

5 b. ~~In any other capacity for an educational institution:~~

6 ~~1. Compensation shall be denied on the basis of such~~
 7 ~~services for any week which commences during a period~~
 8 ~~between two successive academic years or terms if the~~
 9 ~~individual performs such services in the first of the~~
 10 ~~academic years or terms and there is a reasonable~~
 11 ~~assurance that the individual will perform such services~~
 12 ~~in the second of the academic years or terms, except that~~

13 ~~2. If compensation is denied to any individual for any week~~
 14 ~~under subclause 1. and the individual was not offered an~~
 15 ~~opportunity to perform such services for the educational~~
 16 ~~institution for the second of the academic years or terms,~~
 17 ~~the individual shall be entitled to a retroactive payment~~
 18 ~~of the compensation for each week for which the~~
 19 ~~individual filed a timely claim for compensation and for~~
 20 ~~which compensation was denied solely by reason of~~
 21 ~~subclause 1.; and,~~

22 c. With respect to any services described in clause ~~a. or b., a.,~~
 23 compensation payable on the basis of such services shall be
 24 denied to any individual for any week which commences during
 25 an established and customary vacation period or holiday recess,
 26 and there is a reasonable assurance that such individual will
 27 perform such services in the period immediately following the
 28 vacation period or holiday recess; and,

29 d. With respect to any services described in clause ~~a. or b., a.,~~
 30 compensation on the basis of services in any such capacity shall
 31 be denied as specified in clauses ~~a., b.,~~ and c. to any individual
 32 who performed such services in an educational institution while
 33 in the employ of an educational service agency, and for this
 34 purpose the term 'educational service agency' means a
 35 governmental agency or governmental entity which is
 36 established and operated exclusively for the purpose of
 37 providing such services to one or more educational institutions;
 38 and,

39 e. With respect to any services to which G.S. 96-13(b)(1) applies,
 40 if such services are provided to or on behalf of an educational
 41 institution, compensation shall be denied under the same
 42 circumstances as described in clauses ~~a. through d. and c."~~

43 Sec. 4. G.S. 96-14(9) reads as rewritten:

1 "(9) The amount of compensation payable to an individual for any
2 week which begins after July 2, 1977, and which begins in a
3 period with respect to which such individual is receiving a
4 governmental or other pension, retirement or retired pay,
5 annuity, or any other similar periodic payment which is based
6 on the previous work of such individual shall be reduced (but
7 not below zero) by an amount rounded to the nearest dollar
8 equal to the amount of such pension, retirement or retired pay,
9 annuity, or other payment which is reasonably attributable to
10 such week.

11 The amount of benefits payable to an individual for any
12 week which begins after July 1, 1981, and which begins in a
13 period with respect to which such individual is receiving a
14 governmental or other pension, retirement or retired pay,
15 annuity, or other similar periodic payment which is based on the
16 previous work of such individual shall be reduced (but not
17 below zero) by the amounts of any such pension, retirement or
18 retired pay, annuity, or other payment contributed to in part or
19 in total by the individual's base period employers; provided,
20 however, that the amount of all payments received by an
21 individual under the ~~Social Security Act and the Railroad~~
22 ~~Retirement Act~~ shall be deducted from the individual's benefit
23 amount. Provided further, that all such reduced weekly benefit
24 amounts shall be rounded to the nearest lower full dollar
25 amount (if not a full dollar amount)."

26 Sec. 5. This act is effective upon ratification.