

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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HOUSE BILL 743

Short Title: UI Laws Administrative Changes. (Public)

Sponsors: Representatives Howard and Warren (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Commerce and Job Development, if favorable, Finance.

April 11, 2013

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, ADMINISTRATIVE, AND CLARIFYING CHANGES
TO THE UNEMPLOYMENT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-4(q), as enacted by S.L. 2013-2, reads as rewritten:

"(q) The ~~Division~~ Board of Review after due notice shall have the right and power to hold and conduct hearings for the purpose of determining the rights, status and liabilities of an employer. The Board of Review shall have the power and authority to determine any and all questions and issues of fact or questions of law that may arise under the Employment Security Law that may affect the rights, liabilities and status of an employer including the right to determine the amount of contributions, if any, which may be due the Division by any employer. Hearings may be before the Board of Review and shall be held in the central office of the Board of Review or at any other designated place within the State. They shall be open to the public and shall consist of a review of the evidence taken by a hearing officer designated by the Board of Review and a determination of the law applicable to that evidence. The Board of Review shall provide for the taking of evidence by a hearing officer employed in the capacity of an attorney by the Department. Such hearing officer shall have the same power to issue subpoenas, administer oaths, conduct hearings and take evidence as is possessed by the Board of Review and such hearings shall be recorded, and he shall transmit all testimony and records of such hearings to the Board for its determination. All such hearings conducted by such hearing officer shall be scheduled and held in any county in this State in which the employer resides, maintains a place of business, or conducts business; however, the Board of Review may require additional testimony at any hearings held by it at its office. From all decisions or determinations made by the Board of Review, any party affected thereby shall be entitled to an appeal to the superior court. Before a party shall be allowed to appeal, the party shall within 10 days after notice of such decision or determination, file with the Board of Review exceptions to the decision or the determination, which exceptions will state the grounds of objection to the decision or determination. If any one of the exceptions shall be overruled then the party may appeal from the order overruling the exceptions, and shall, within 10 days after the decision overruling the exceptions, give notice of his appeal. When an exception is made to the facts as found by the Board of Review, the appeal shall be to the superior court in term time but the decision or determination of the Board of Review upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence. When an exception is made to any rulings of law, as determined by the Board of Review, the appeal shall be to the judge of the superior court at chambers. The party appealing shall, within



1 10 days after the notice of appeal has been served, file with the Board of Review exceptions to
2 the decision or determination overruling the exception which statement shall assign the errors
3 complained of and the grounds of the appeal. Upon the filing of such statement the Board of
4 Review shall, within 30 days, transmit all the papers and evidence considered by it, together
5 with the assignments of errors filed by the appellant to a judge of the superior court holding
6 court or residing in some district in which such appellant either resides, maintains a place of
7 business or conducts business, or, unless the appellant objects after being given reasonable
8 opportunity to object, to a judge of the Superior Court of Wake County: Provided, however, the
9 30-day period specified herein may be extended by agreement of parties."

10 **SECTION 2.** G.S. 96-4(u), as enacted by S.L. 2013-2, reads as rewritten:

11 "(u) Notices of hearing shall be issued by the ~~Division~~ Board of Review or its authorized
12 representative and sent by registered mail, return receipt requested, to the last known address of
13 employer, employers, persons, or firms involved. The notice shall be sent at least 15 days prior
14 to the hearing date and shall contain notification of the place, date, hour, and purpose of the
15 hearing. Subpoenas for witnesses to appear at any hearing shall be issued by the Division or its
16 authorized representative and shall order the witness to appear at the time, date and place
17 shown thereon. Any bond or other undertaking required to be given in order to suspend or stay
18 any execution shall be given payable to the Department of Commerce. Any such bond or other
19 undertaking may be forfeited or sued upon as are any other undertakings payable to the State."

20 **SECTION 3.** G.S. 96-9.5(4), as enacted by S.L. 2013-2, reads as rewritten:

21 "(4) The service is performed outside the United States or Canada by a citizen of
22 the United States in the employ of an American employer and at least one of
23 the following applies. For purposes of this subdivision, the term "American
24 employer" has the same meaning as defined in section 3306 of the Code.

- 25 a. The employer's principal place of business in the United States is
26 located in this State.
- 27 b. The employer has no place of business in the United States, but the
28 employer is one of the following:
 - 29 1. An individual who is a resident of this State.
 - 30 2. A corporation that is organized under the laws of this State.
 - 31 3. A partnership or a trust and more of its partners or trustees are
32 residents of this State than of any other state.
 - 33 4. A limited liability company and more of its members are
34 residents of this State than of any other state.
- 35 c. The employer has elected coverage in this State in accordance with
36 ~~G.S. 96-9.9.~~ G.S. 96-9.8.
- 37 d. The employer has not elected coverage in any state and the employee
38 has filed a claim for benefits under the law of this State based on the
39 service provided to the employer."

40 **SECTION 4.** G.S. 96-9.6(e), as enacted by S.L. 2013-2, reads as rewritten:

41 "(e) Annual Reconciliation. – A reimbursing employer must maintain an account
42 balance equal to one percent (1%) of its taxable wages. The Division must determine the
43 balance of each employer's account on the computation date. If there is a deficit in the account,
44 the Division must bill the employer for the amount necessary to bring its account to one percent
45 (1%) of its taxable wages for the ~~preceding calendar year~~ immediate four quarters preceding
46 July 1. The Division must send a bill as soon as practical. Payment is due within 30 days from
47 the date a bill is mailed. Amounts unpaid by the due date accrue interest and penalties in the
48 same manner as past-due contributions and are subject to the same collection remedies
49 provided under G.S. 96-10 for past-due contributions."

50 **SECTION 5.** G.S. 96-9.7(a), as enacted by S.L. 2013-2, reads as rewritten:

1 "(a) Surtax Imposed. – A surtax is imposed on an employer who is required to make a
2 contribution to the Unemployment Insurance Fund equal to twenty percent (20%) of the
3 contribution due under G.S. 96-9.2. Except as provided in this section, the surtax is collected
4 and administered in the same manner as contributions. Surtaxes collected under this section
5 must be credited to the Unemployment Insurance Reserve Fund established under ~~G.S. 96-6-~~
6 G.S. 96-6.1. Interest collected on unpaid surtaxes imposed by this section must be credited to
7 the Supplemental Employment Security Administration Fund. Penalties collected on unpaid
8 surtaxes imposed by this section must be credited to the Civil Penalty and Forfeiture Fund
9 established in G.S. 115C-457.1."

10 **SECTION 6.** G.S. 96-14.1(e), as enacted by S.L. 2013-2, reads as rewritten:

11 "(e) Federal Restrictions. – Benefits are not payable for services performed by the
12 following individuals, to the extent prohibited by section 3304 of the Code:

13 (1) Instructional, research, or principal administrative employees of educational
14 institutions.

15 (2) Services in any other capacity for an educational institution.

16 ~~(2)(3)~~ Professional athletes.

17 ~~(3)(4)~~ Aliens."

18 **SECTION 7.** G.S. 96-14.11(c), as enacted by S.L. 2013-2, reads as rewritten:

19 "(c)

20 ...

21 (2) The individual was recalled in a week in which the work search
22 requirements were satisfied under ~~G.S. 96-14.7(g)~~ G.S. 96-14.9(g) due to job
23 attachment."

24 **SECTION 8.** G.S. 96-14.9(d), as enacted by S.L. 2013-2, reads as rewritten:

25 "(d)

26 ...

27 (4) The individual is on disciplinary suspension for ~~more~~-less than 30 days
28 based on acts or omissions that constitute fault on the part of the employee
29 and are connected with the work."

30 **SECTION 9.** G.S. 96-15(a1), as enacted by S.L. 2013-2, reads as rewritten:

31 "(a1) Attached Claims. – An employer may file claims for employees through the use of
32 automation in the case of partial unemployment. An employer may file an attached claim for an
33 employee only once during a ~~calendar year,~~ benefit year, and the period of partial
34 unemployment for which the claim is filed may not exceed six weeks. To file an attached
35 claim, an employer must pay the Division an amount equal to the full cost of unemployment
36 benefits payable to the employee under the attached claim at the time the attached claim is
37 filed. The Division must credit the amounts paid to the Unemployment Insurance Fund.

38 An employer may file an attached claim under this subsection only if the employer has a
39 positive credit balance in its account as determined under Article 2B of this Chapter. If an
40 employer does not have a positive credit balance in its account, the employer must remit to the
41 Division an amount equal to the amount necessary to bring the employer's negative credit
42 balance to at least zero at the time the employer files the attached claim."

43 **SECTION 10.** G.S. 96-15(b), as enacted by S.L. 2013-2, reads as rewritten:

44 "(b)

45 ...

46 (2) Adjudication. – When a protest is made by the claimant to the initial or
47 monetary determination, or a question or issue is raised or presented as to the
48 eligibility of a claimant, or whether any disqualification should be imposed,
49 or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be
50 referred to an adjudicator. The adjudicator may consider any matter,
51 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.

1 The conclusion of the adjudicator shall be deemed the final decision of the
2 Division unless within 30 days after the date of notification or mailing of the
3 conclusion, whichever is earlier, a written appeal is filed pursuant to rules
4 adopted by the Division. The Division shall be deemed an interested party
5 for such purposes and may remove to itself or transfer to an appeals referee
6 the proceedings involving any claim pending before an adjudicator.

7 Provided, any interested employer shall be allowed ~~40~~¹⁵ days from the
8 delivery of the notice of the filing of a claim against the employer's account
9 to protest the claim and have the claim referred to an adjudicator for a
10 decision on the question or issue raised. Any protest filed must contain a
11 basis for the protest and supporting statement of facts, and the protest may
12 not be amended after the 15-day period from the delivery of the notice of
13 filing of a claim has expired. A copy of the notice of the filing shall be sent
14 contemporaneously to the employer by telefacsimile transmission if a fax
15 number is on file. Provided further, no question or issue may be raised or
16 presented by the Division as to the eligibility of a claimant, or whether any
17 disqualification should be imposed, after 45 days from the first day of the
18 first week after the question or issue occurs with respect to which week an
19 individual filed a claim for benefits. None of the provisions of this
20 subsection shall have the force and effect nor shall the same be construed or
21 interested as repealing any other provisions of G.S. 96-18.

22 An employer shall receive written notice of the employer's appeal rights
23 and any forms that are required to allow the employer to protest the claim.
24 The forms shall include a section referencing the appropriate rules pertaining
25 to appeals and the instructions on how to appeal."

26 **SECTION 11.** G.S. 96-9.15(d), as enacted by S.L. 2013-2, reads as rewritten:

27 "(d) Form of Report. – An employer must complete the tax form prescribed by the
28 Division. An employer or an agent of an employer that reports wages for at least 25 employees
29 must file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the
30 name, social security number, and gross wages of each employee in ~~a~~an electronic format
31 prescribed by the Division. For failure of an employer to comply with this subsection, the
32 Division must assess a penalty of twenty-five dollars (\$25.00). For failure of an agent of an
33 employer to comply with this subsection, the Division may deny the agent the right to report
34 wages and file reports for that employer for a period of one year following the calendar quarter
35 in which the agent filed the improper report. The Division may reduce or waive a penalty for
36 good cause shown."

37 **SECTION 12.** G.S. 96-16(a), as enacted by S.L. 2013-2, reads as rewritten:

38 "(a) A seasonal pursuit is one which, because of seasonal conditions making it
39 impracticable or impossible to do otherwise, customarily carries on production operations only
40 within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a
41 calendar year. No pursuit shall be deemed seasonal unless and until so found by the Division;
42 except that any successor under ~~G.S. 96-11.6~~G.S. 96-11.7 to a seasonal pursuit shall be
43 deemed seasonal unless such successor shall within 120 days after the acquisition request
44 cancellation of the determination of status of such seasonal pursuit; provided further that this
45 provision shall not be applicable to pending cases nor retroactive in effect."

46 **SECTION 13.** Section 11 of S.L. 2013-2 reads as rewritten:

47 "**SECTION 11.** This act becomes effective July 1, 2013. Changes made by this act to
48 unemployment benefits apply to claims for benefits filed on or after ~~July 1, 2013~~June 30,
49 2013. Changes made by this act to require an account balance by an employer that is a
50 governmental entity or a nonprofit organization and that elects to finance benefits by making
51 reimbursable payments in lieu of contributions apply to advance payments payable for calendar

1 quarters beginning on or after July 1, 2013. Changes made by this act to the determination and
2 application of the contribution rate apply to contributions payable for calendar quarters
3 beginning on or after January 1, 2014."

4 **SECTION 14.** This act is effective when it becomes law.