CHAPTER 27

Employment and Workforce—General Provisions

Code Commissioner’s Note

At the direction of the Code Commissioner “Employment and Workforce” substituted for “Employment Security”, to bring the chapter title in conformance with 2010 Act No. 146.

CROSS REFERENCES

Department of Employment and Workforce integrity fund, see Section 41‑33‑910.

ARTICLE 1

Short Title; Purpose; Construction; Amendments

**SECTION 41‑27‑10.** Short title.

Chapters 27 through 41 of this title shall be known and may be cited as the “South Carolina Department of Employment and Workforce”.

HISTORY: 1962 Code Section 68‑1; 1952 Code Section 68‑1; 1942 Code Section 7035‑81; 1936 (39) 1716; 1966 (54) 2640; 2010 Act No. 146, Section 11, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Effect of Amendment

The 2010 amendment substituted “Department of Employment and Workforce” for “Employment Security Law” at the end of the section.

CROSS REFERENCES

Labor and employment in general, see Chapters 1 to 25, Title 41.

Limitation on waiver of governmental immunity from tort liability where the claim is covered by the South Carolina Unemployment Compensation Act, see Section 15‑78‑60.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 46, Specific Applications‑ Tax Exemptions to Religious Organizations.

Forms

Am. Jur. Pl. & Pr. Forms Unemployment Compensation Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Collateral estoppel and Employment Security Commission Decisions: Stunted efforts to minimize litigation costs. 49 S.C. L. Rev. 1151 (Summer 1998).

1982 Survey: Employment security law; Employee misconduct. 35 S.C. L. Rev. 14 (Autumn 1983).

NOTES OF DECISIONS

In general 1

1. In general

Applied in Gosnell v Bryant (1962) 240 SC 215, 125 SE2d 405. Sherbert v Verner (1962) 240 SC 286, 125 SE2d 737, revd on other grounds 374 US 398, 10 L Ed 2d 965, 83 S Ct 1790, 9 BNA FEP Cas 1152.

Cited in State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

While this Title is to be liberally construed in order to effect its beneficient purpose, the court is not at liberty to adopt a construction which is wholly beyond the limits of the plain legislative intent. Stone Mfg. Co. v. South Carolina Employment Sec. Com’n (S.C. 1951) 219 S.C. 239, 64 S.E.2d 644. Unemployment Compensation 6(3)

The South Carolina Unemployment Compensation Commission, in its statutory authority to hear and determine cases arising under the pertinent statute, is analogous to the South Carolina Industrial Commission in its right to hear and determine matters arising under the Workmen’s Compensation Act. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865. Unemployment Compensation 233

The exemptions under this Title and the provisions for experience rating are all reasonable and cannot be said to be arbitrary. Pickelsimer v. Pratt (S.C. 1941) 198 S.C. 225, 17 S.E.2d 524.

This Title does not violate SC Const, Art 1, Section 5 (now Art 1, Section 3), as to due process and equal protection of the law. Pickelsimer v. Pratt (S.C. 1941) 198 S.C. 225, 17 S.E.2d 524.

This Title does not violate SC Const, Art 1, Section 8 (now Art 1, Section 4), in that it does not impair the obligation of contracts between the employer and employees. Pickelsimer v. Pratt (S.C. 1941) 198 S.C. 225, 17 S.E.2d 524.

This Title does not violate SC Const, Art 10, Section 3. Pickelsimer v. Pratt (S.C. 1941) 198 S.C. 225, 17 S.E.2d 524.

This Title does not violate the Fourteenth Amendment of the Federal Constitution as to due process and equal protection of the law. Pickelsimer v. Pratt (S.C. 1941) 198 S.C. 225, 17 S.E.2d 524.

The tax in this act is an excise tax and does not come under SC Const, Art 10, Section 1. Pickelsimer v. Pratt (S.C. 1941) 198 S.C. 225, 17 S.E.2d 524.

This Title is a taxing law and should be strictly construed; anyone who is liable for contributions should not escape liability, but the meaning and interpretation of the Title should not be stretched so as to include people not specifically included therein. Jack Ulmer, Inc. v. Daniel (S.C. 1940) 193 S.C. 193, 7 S.E.2d 829. Taxation 3267

This Title undertakes to and does give an adequate remedy for its enforcement. Daniel v. Conestee Mills (S.C. 1937) 183 S.C. 337, 191 S.E. 76.

**SECTION 41‑27‑20.** Declaration of State public policy.

Without intending that this section shall supersede, alter or modify the specific provisions contained in Chapters 27 through 41 of this Title, but as a guide to the interpretation and application of Chapters 27 through 41 of this Title, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

HISTORY: 1962 Code Section 68‑38; 1952 Code Section 68‑36; 1942 Code Section 7035‑82; 1936 (39) 1716; 1941 (42) 369.

CROSS REFERENCES

Department of Employment and Workforce must work in conjunction with Department of Commerce and Department of Administration on certain matters, see Section 41‑27‑650.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 147 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Disqualification for benefits may not be based upon free exercise of religious beliefs. Sherbert v. Verner (U.S.S.C. 1963) 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

Purpose of Employment Security Commission (ESC) hearings is to quickly provide benefits to persons becoming unemployed through no fault of their own; procedural hurdles before ESC are minimized so as to enable unemployed claimants to obtain prompt decisions regarding entitlement to unemployment benefits. Shelton v. Oscar Mayer Foods Corp. (S.C. 1997) 325 S.C. 248, 481 S.E.2d 706. Unemployment Compensation 270

The intention of Section 41‑27‑20 is to protect those involuntarily unemployed against economic insecurity caused by the inability of industry to provide stable employment. Alton Newton Evangelistic Ass’n, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1985) 284 S.C. 302, 326 S.E.2d 165.

Employment Security Commission does not err in considering fault when determining eligibility for unemployment compensation, since it is clearly intent of legislature that persons unemployed due to their own fault be penalized in some manner from receiving benefits. Lee v. South Carolina Employment Sec. Commission (S.C. 1982) 277 S.C. 586, 291 S.E.2d 378. Unemployment Compensation 65

Applied in State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

This section [Code 1962 Section 68‑38] of the Unemployment Security Law states that the fundamental purpose of its enactment is to protect against economic insecurity due to involuntary unemployment because of the inability of industry to provide stable employment, and that the reserves made available under the act are to be used for the benefit of persons unemployed through no fault of their own. Richey v. Riegel Textile Corp. (S.C. 1969) 253 S.C. 59, 169 S.E.2d 101.

Workers who separate from their work from personal choice do not thereby become unemployed because of the inability of industry to provide employment or “through no fault of their own.” Richey v. Riegel Textile Corp. (S.C. 1969) 253 S.C. 59, 169 S.E.2d 101.

The fundamental purpose of the Unemployment Compensation Law is to protect against economic insecurity due to involuntary unemployment because of the inability of industry to provide stable employment and not to provide unemployment compensation where work is available and the employee is able to work and is available for such work. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965. Unemployment Compensation 5; Unemployment Compensation 194; Unemployment Compensation 195

“Involuntary unemployment” as used in this Title has reference to unemployment resulting from a failure of industry to provide stable employment. Mills v South Carolina Unemployment Compensation Com. (1944) 204 SC 37, 28 SE2d 535. Hatsville Cotton Mill v South Carolina Employment Secur. Com. (1953) 224 SC 407, 79 SE2d 381. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

There is nothing in this Title itself or in the circumstances surrounding its passage to indicate an intention on the part of the legislature to provide benefits for a worker compelled to give up his job solely because of a change in his personal circumstances. Mills Co. v South Carolina Unemployment Compensation Com. (1944) 204 SC 37, 28 SE2d 535. Stone Mfg. Co. v South Carolina Employment Secur. Com. (1951) 219 SC 239, 64 SE2d 644. Hatsville Cotton Mill v South Carolina Employment Secur. Com. (1953) 224 SC 407, 79 SE2d 381. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

Cited in Kimbrell v. Jolog Sportswear, Inc. (S.C. 1962) 239 S.C. 415, 123 S.E.2d 524.

While the general declarations in this section [Code 1962 Section 68‑38] are subject to any words of particular or restricted import subsequently appearing in this Title, the subsequent provisions as to eligibility or ineligibility for compensation must all be read and construed as subject to the basic and fundamental declaration set out in this section [Code 1962 Section 68‑38]. Stone Mfg. Co. v. South Carolina Employment Sec. Com’n (S.C. 1951) 219 S.C. 239, 64 S.E.2d 644.

The general language of the declaration of policy is in the nature of a preamble to the specific provisions of this Title, and the specific language of Code 1962 Section 68‑114 is a very definite limitation on the provisions in the preamble. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

Stated in Chambers v. Rock Hill Printing & Finishing Co. (S.C. 1941) 196 S.C. 291, 13 S.E.2d 281.

**SECTION 41‑27‑30.** Construction.

Nothing in Chapters 27 through 41 of this title must be construed to cause the department or the courts of this State in interpreting these chapters to be bound by interpretations as to liability or nonliability of employers by Federal administrative agencies, nor is it the intent of the General Assembly to require an identical coverage of employers under these chapters with coverage requirements pursuant to Section 3101 et seq. of the Federal Internal Revenue Code.

HISTORY: 1962 Code Section 68‑39; 1952 Code Section 68‑37; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1957 (50) 580; 2010 Act No. 146, Section 12, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission” following “construed to cause the”; and made other nonsubstantive changes.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 158.

**SECTION 41‑27‑40.** Amendments.

The General Assembly reserves the right to amend or repeal all or any part of Chapters 27 through 41 of this Title at any time and there shall be no vested private right of any kind against any such amendment or repeal. All the rights, privileges, and immunities conferred by such chapters or acts done pursuant thereto shall exist subject to the power of the General Assembly to amend or repeal such chapters at any time.

HISTORY: 1962 Code Section 68‑40; 1952 Code Section 68‑38; 1942 Code Section 7035‑103; 1936 (39) 1716; 1939 (41) 487.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 163.

ARTICLE 3

Definitions

**SECTION 41‑27‑110.** Generally.

As used in Chapters 27 through 41 of this Title, unless the context clearly requires otherwise, the terms defined in the following sections shall have the meanings therein ascribed to them.

HISTORY: 1962 Code Section 68‑2; 1952 Code Section 68‑2; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369.

**SECTION 41‑27‑120.** Agricultural labor.

The term “agricultural labor” includes all service 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, pigeons 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 of brush and other debris left by a hurricane, if a major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or cleaning of seed, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivery to storage or to market or to a carrier for transportation to market in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed;

(5) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (1) of this section, but only if such operators produced more than one half of the commodity with respect to which such service is performed;

(6) The provisions of paragraphs (4) and (5) shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(7) On a farm operated for profit if such service is not in the course of the employer’s trade or business or is domestic service in the private home of the employer.

(8) As used in this section the term “farm” includes stock, dairy, poultry, pigeons, fruit, fur‑bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

HISTORY: 1962 Code Section 68‑3; 1952 Code Section 68‑3; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1971 (57) 950; 1972 (57) 2309; 1979 Act No. 100 Section 1.

CROSS REFERENCES

Certain agricultural labor as exempted employment, see Section 41‑27‑260.

Human trafficking, posting of information regarding National Human Trafficking Resource Center Hotline in certain establishments, fines, see Section 16‑3‑2100.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 179.

**SECTION 41‑27‑130.** Annual payroll.

“Annual payroll” means the total amount of wages subject to the contribution provisions of Chapters 27 through 41 of this Title which are paid by an employer during a period of twelve consecutive months.

HISTORY: 1962 Code Section 68‑4; 1952 Code Section 68‑4; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1955 (49) 480.

**SECTION 41‑27‑140.** Average weekly wage.

The average weekly wage of an insured worker shall be determined by dividing his total wages paid for insured work in that quarter of his base period in which such wages were highest by thirteen.

HISTORY: 1962 Code Section 68‑5; 1961 (52) 453.

CROSS REFERENCES

Definition of wages, see Section 41‑27‑380.

Definition of week, see Section 41‑27‑390.

Insured worker’s weekly benefit amount, see Section 41‑35‑40.

Statewide average weekly wage, see Section 41‑27‑360.

**SECTION 41‑27‑150.** Base period.

(A) Except as provided in subsection (B), “base period” means the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year. However, in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41‑29‑140(2), the base period is that applicable provided by the law of the paying state.

(B)(1) “Alternate base period” means for benefit years effective after May 31, 2010, if an individual does not have sufficient wages in the base period defined in subsection (A) to qualify for benefits, his base period must be the four calendar quarters completed most recently before the individual’s benefit year if this period qualifies him for benefits, provided these quarters were not previously used to establish a prior valid benefit year.

(2) If the wage information for an individual’s most recently completed calendar quarter is not available to the department from regular quarterly reports of systematically accessible wage information, the department promptly must contact the individual’s employer to establish such wage information. The director shall establish rules necessary to implement this subsection.

(C) Wages that fall within the base period, if claims established under this section, must not be available for use in qualifying for a subsequent benefit year.

HISTORY: 1962 Code Section 68‑6; 1952 Code Section 68‑6; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1973 (58) 248; 2010 Act No. 146, Section 13, eff March 30, 2010; 2010 Act No. 234, Section 8, eff January 1, 2011.

Effect of Amendment

The first 2010 amendment, 2010 Act No. 146, Section 13, substituted “department” for “commission” following “an arrangement entered into by the”; and made other nonsubstantive changes.

The second 2010 amendment, 2010 Act No. 234, Section 8, rewrote the section.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 196, 197.

NOTES OF DECISIONS

In general 1

1. In general

There must be a valid claim for benefits before a base period can be determined. And where a claimant files a claim for benefits for which he is not eligible under Code 1962 Section 68‑113 because not available for work, such does not constitute a valid claim. Hatsville Cotton Mill v South Carolina Employment Secur. Com. (1953) 224 SC 407, 79 SE2d 381, decided prior to the 1955 amendment to Code 1962 Section 68‑152 providing for determination of insured status. Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

**SECTION 41‑27‑160.** Benefit year.

“Benefit year” means the one‑year period beginning with the day as of which an insured worker first files a request for determination of his insured status, and afterward the one‑year period beginning with the day by which he next files this request after the end of his last preceding “benefit year”; provided, that in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41‑29‑140(2), the benefit year is that applicable provided by the law of the paying state. The filing of a notice of unemployment is considered a request for determination of insured status if a current benefit year has not previously been established. A request for determination of insured status must be made pursuant to regulations as the department prescribes.

HISTORY: 1962 Code Section 68‑7; 1952 Code Section 68‑7; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1952 (47) 1977; 1954 (48) 1704; 1955 (49) 480; 1973 (58) 248; 2010 Act No. 146, Section 14, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “commission”; and made other nonsubstantive changes.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 213.

NOTES OF DECISIONS

In general 1

1. In general

There must be a valid claim for benefits before a benefit year can be determined. And where a claimant files a claim for benefits for which he is not eligible under Code 1962 Section 68‑113 because not available for work, such does not constitute a valid claim. Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

**SECTION 41‑27‑170.** Benefits.

“Benefits” means the money payments payable to an individual as provided in Chapters 27 through 41 of this Title with respect to his unemployment.

HISTORY: 1962 Code Section 68‑8; 1952 Code Section 68‑8; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369.

CROSS REFERENCES

Benefits, see Sections 41‑35‑10 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

**SECTION 41‑27‑180.** Claimant.

“Claimant” means an individual who has filed a request for a determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting‑week credit, or a claim for benefits.

HISTORY: 1962 Code Section 68‑9; 1955 (49) 480.

CROSS REFERENCES

Claims for benefits, see Sections 41‑35‑610 et seq.

**SECTION 41‑27‑190.** Department.

“Department” means the South Carolina Department of Employment and Workforce.

HISTORY: 1962 Code Section 68‑10; 1952 Code Section 68‑9; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1946 (44) 1474; 2010 Act No. 146, Section 15, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Effect of Amendment

The 2010 amendment rewrote this section to substitute “Department of Employment and Workforce” for “Employment Security Commission”.

**SECTION 41‑27‑200.** Contributions.

“Contributions” means the money payment required by Chapter 31, Article 1 to be made into the State unemployment compensation fund by an employer.

HISTORY: 1962 Code Section 68‑11; 1952 Code Section 68‑10; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1973 (58) 248.

CROSS REFERENCES

Contributions, see Sections 41‑31‑10 et seq.

Regulation of contributions, see S.C. Code of Regulations R. 47‑16.

**SECTION 41‑27‑210.** Employer.

“Employer” means:

(1) Any employing unit which during any calendar year prior to January 1, 1972, in each of twenty different weeks, whether or not such weeks were consecutive, had in employment four or more individuals, irrespective of whether the same individuals were employed in each such week. For the purpose of this section, active officers of a corporation shall be counted as in employment.

(2) Any employing unit, which, after December 31, 1971:

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of fifteen hundred dollars or more; or

(b) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day);

(3) Any individual or other legal entity which acquired substantially all of the business of another which at the time of such acquisition was an employer subject to Chapters 27 through 41 of this Title and continues such acquired business; provided, however, that if only a part of the business of another is acquired the employing unit acquiring such part shall not be deemed an employer unless such part, if conducted separately, would have been liable as an employer under such chapters.

(4) Any individual or other legal entity which acquired substantially all of the business of another employing unit, if the employment record of such employing unit subsequent to such acquisition, together with the employment record of the acquired business prior to such acquisition, both within the same calendar year, will be sufficient to constitute such employing unit an employer subject to Chapters 27 through 41 of this Title under item (2) of this section; provided, however, that if only a part of the business of another is acquired by an individual or other legal entity the employment record of such part prior to acquisition shall be considered and not the whole employment record of the business from which such part was acquired as if such part was conducted.

(5) Any employing unit for which:

(a) Service in employment as defined in Section 41‑27‑230(2)(a) is performed after December 31, 1971; or

(b) Service in employment as defined in Section 41‑27‑230(2)(b) is performed after December 31, 1977.

(6) Any employing unit for which service in employment as defined in Section 41‑27‑230(3) is performed after December 31, 1971.

(7) Any employing unit for which service in employment as defined in Section 41‑27‑230(5) is performed after December 31, 1977.

(8) Any employing unit for which service in employment as defined in Section 41‑27‑230(6) is performed after December 31, 1977.

(9) Any employing unit which has elected to become fully subject to Chapters 27 through 41 of this Title pursuant to Section 41‑37‑20.

(10)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraphs (2), (5), (6), or (7) of this section, the wages paid or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account.

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs (2), (5), (6), or (8) of this section, the wages paid or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (2) of this section.

(11) For purposes of paragraphs (2), (6), (7), and (8), employment includes service that would constitute employment but for the fact that the service is considered to be performed entirely within another state pursuant to an election provided by an arrangement entered into in accordance with Section 41‑27‑550 by the department and an agency charged with the administration of another state or federal unemployment compensation law.

(12) For purposes of paragraphs (2)(b), (4) and (7), if any calendar week includes both December thirty‑first and January first, the days of that week up to January first shall be deemed one calendar week and the days beginning January first another such week.

(13) Any Native American tribe or tribal unit for which service in employment as defined in Chapters 27 through 41 of this title is performed.

(14) Any employing unit which is liable under the Federal Unemployment Tax Act, Section 3301 of the Internal Revenue Code of 1986, is a covered employer immediately upon having its first South Carolina employment, regardless of the number of employees working in South Carolina or the period for which they are employed.

HISTORY: 1962 Code Section 68‑12; 1952 Code Section 68‑11; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1945 (44) 377; 1955 (49) 480; 1961 (52) 166; 1966 (54) 2640; 1971 (57) 950; 1972 (57) 2309; 1973 (58) 248; 1977 Act No. 161 Section 1; 1981 Act No. 108 Section 1; 2002 Act No. 306, Section 2, eff June 5, 2002; 2010 Act No. 146, Section 16, eff March 30, 2010.

Effect of Amendment

The 2002 amendment added paragraphs (13) and (14).

The 2010 amendment in subsection (11) substituted “department” for “commission” following “Section 41‑27‑550 by the”; and made other nonsubstantive changes.

CROSS REFERENCES

Election of nonprofit organization to make payments to the commission for the unemployment fund in lieu of contributions under Section 41‑31‑10, see Section 41‑31‑620.

Employer legal entity classification, see S.C. Code of Regulations R. 47‑4.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 172.

NOTES OF DECISIONS

In general 1

1. In general

Where it was admitted that if two corporations were combined so as to have eight or more employees it would be necessary to use the same employees twice, it was held that the contributions from any employing unit are based on eight or more (now four or more) individual employees and the word individual means different persons, so that the contention seeking to combine the corporations could not be sustained. Jack Ulmer, Inc. v. Daniel (S.C. 1940) 193 S.C. 193, 7 S.E.2d 829.

It will be seen from this section [Code 1962 Section 68‑12] that two or more companies owned by the same interests are to be treated as a single unit, and if the two units so combined have eight or more employees (now four or more), they are taxable. Jack Ulmer, Inc. v. Daniel (S.C. 1940) 193 S.C. 193, 7 S.E.2d 829.

Employing units are only taken together for the purpose of taxing the units, if treated as one, and this section [Code 1962 Section 68‑12] has no relation whatsoever to Code 1962 Section 68‑13 whereby an employing unit is defined. Jack Ulmer, Inc. v. Daniel (S.C. 1940) 193 S.C. 193, 7 S.E.2d 829. Unemployment Compensation 19

This section [Code 1962 Section 68‑12] requires separate corporations, as employing units, to be treated as a single unit only for the sole purpose of ascertaining the total number of individuals employed by them under the terms of this Title, and has no reference to subcontractors. Jack Ulmer, Inc. v. Daniel (S.C. 1940) 193 S.C. 193, 7 S.E.2d 829. Unemployment Compensation 19

**SECTION 41‑27‑220.** Employing unit.

“Employing unit” means any individual or type of organization, including any partnership, association, trust, estate, joint‑stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof or the legal representative of a deceased person, this State or any of its instrumentalities and subdivisions which has, or subsequent to January 1, 1935 has had, in its employ one or more individuals performing services for it within this State.

For the purpose of Chapters 27 through 41 of this Title, the following rule for the continuation of partnership shall apply:

(1) General rule. ‑ An existing partnership shall be considered as continuing if it is not terminated.

(2) Termination.—(a) General Rule. ‑ For purposes of item (1), a partnership shall be considered as terminated only if

(i) No part of any business, financial operation or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(ii) Within a twelve‑month period there is a sale or exchange of fifty percent or more of the total interest in partnership capital and profits.

(b) Special Rules.

(i) Merger or consolidation. ‑ In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than fifty percent in the capital and profits of the resulting partnership.

(ii) Division of a partnership. ‑ In the case of a division of a partnership into two or more partnerships, the resulting partnerships, other than any resulting partnership the members of which had an interest of fifty percent or less in the capital and profits of the prior partnership, shall, for purposes of this section, be considered a continuation of the prior partnership.

HISTORY: 1962 Code Section 68‑13; 1952 Code Section 68‑12; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1955 (49) 480; 1966 (54) 2640; 1973 (58) 248.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 176.

NOTES OF DECISIONS

In general 1

1. In general

The purpose of this section [Code 1962 Section 68‑13] seems to be to prevent loopholes in the enforcement of the law. Jack Ulmer, Inc. v. Daniel (S.C. 1940) 193 S.C. 193, 7 S.E.2d 829.

**SECTION 41‑27‑230.** Employment.

“Employment” means:

(1) Any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, for wages under a contract of hire, written or oral, expressed or implied, including service in interstate commerce by:

(a) Any officer of a corporation; or

(b) Any individual who, under the usual common law rules applicable in determining the employer‑employee relationship, has the status of an employee; or

(c) Any individual other than an individual who is an employee under subdivision (a) or (b) who performs services for remuneration for any employing unit:

(i) As an agent‑driver or commission‑driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk) or laundry or dry‑cleaning services, for his principal;

(ii) As a traveling or city salesman, other than as an agent‑driver or commission‑driver, engaged upon a full‑time basis in the solicitation on behalf of, and the transmission to, his principal (except for side‑line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or similar establishments for merchandise for resale or supplies for use in their business operations; provided, that for purposes of subparagraph (1)(c), the term “employment” shall include services described in (i) and (ii) above performed after December 31, 1971, only if:

A. The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

B. The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

C. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2)(a) Service performed after December 31, 1971, by an individual in the employ of this State or any of its instrumentalities (or in the employ of this State and one or more other States or their instrumentalities) for a hospital or institution of higher education located in this State, or a political subdivision of this State which has elected to cover such service; provided, that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from “employment” under Section 41‑27‑230(4) of this Title.

(b) Service performed after December 31, 1977, in the employ of this State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by this State and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this State or any political subdivisions thereof, and one or more other states or political subdivisions; provided, that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from “employment” under Section 41‑27‑230(4) of this Title.

(3) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) The service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) The organization had four or more individuals in employment in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(4) For the purposes of paragraphs (2) and (3) the term “employment” shall not apply to service excluded from employment by reason of Section 41‑27‑260(10).

(5) Service performed after December 31, 1977, by an individual in agricultural labor as defined in Section 41‑27‑120 of this Title when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in division (b) of this subparagraph); or

(ii) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service performed before January 1, 1980, by an alien referred to in division (b) of this subparagraph), ten or more individuals regardless of whether they were employed at the same moment of time.

(b) Such service is not performed in agricultural labor if performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

(c) For the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of paragraph (1) of this section.

(d) For the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person who is not treated as an employee of such crew leader under (c); such other person and not the crew leader shall be treated as the employer of such individual, and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(e) For the purposes of this paragraph, the term “crew leader” means an individual who:

(i) Furnished individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and

(iii) Has not entered into a written agreement with such other farm operator under which such crew leader is designated as an employee of such other farm operator.

(6) Service performed after December 31, 1977, by an individual in domestic service, which includes all service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer’s trade, occupation, profession, enterprise or vocation, and such service is performed for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter.

(7) The term “employment” shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada, and in the case of the Virgin Islands after December 31, 1971, and prior to January 1 of the year following the year in which the United States Secretary of Labor approves the unemployment compensation law of the Virgin Islands under Section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed “employment” under the provisions of Section 41‑27‑230(9) and Section 41‑27‑230(11) of this section or the parallel provisions of another State’s law), if:

(a) The employer’s principal place of business in the United States is located in this State; or

(b) The employer has no place of business in the United States, but,

(i) the employer is an individual who is a resident of this State; or

(ii) the employer is a corporation which is organized under the laws of this State; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one other State; or

(c) None of the criteria of divisions (a) and (b) of this subparagraph are met but the employer has elected coverage in this State, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

(d) An “American employer”, for the purpose of this paragraph, means a person who is an individual who is a resident of the United States; or a partnership if two‑thirds or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state.

(e) As used in this section, the term “United States” includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and effective one day after the date on which the United States Secretary of Labor approves its unemployment compensation law under Section 3304(a) of the Internal Revenue Code of 1954, the term shall include the Virgin Islands.

(8) All service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and control is within this State; and

(9) The term “employment” shall include an individual’s entire service, performed within or both within and without this State, in the United States if:

(a) The service is localized in this State; or

(b) The service is not localized in any state but some of the service is performed in this State and:

(i) the base of operation or, if there is no base of operation, the place from which such service is directed or controlled is in this State; or

(ii) the base of operation or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this State; or

(c) The service, wherever performed, is within the United States or Canada, if:

(i) such service is not covered under the unemployment compensation law of any other state or Canada; and

(ii) the place from which the service is directed or controlled is in this State.

(10) A service not covered under item (7) of this section and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of another state or of the federal government, is considered employment subject to Chapters 27 through 41 of this title if the individual performing such services is a resident of this State and the department approves the election of the employing unit for whom the services are performed that the entire service of the individual is considered employment subject to Chapters 27 through 41 of this title.

(11) Service shall be deemed to be localized within a state if the service is performed entirely within such state, or if the service is performed both within and without such state, but the service performed without such state is incidental to the individual’s service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

HISTORY: 1962 Code Section 68‑14; 1952 Code Section 68‑13; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1957 (50) 580; 1971 (57) 950; 1972 (57) 2309; 1973 (58) 248. 1977 Act No. 161 Section 2; 2010 Act No. 146, Section 17, eff March 30, 2010.

Effect of Amendment

The 2010 amendment made nonsubstantive changes to subsection (10).

CROSS REFERENCES

Application of definition of employment by the state or any political subdivision or instrumentality thereof to payments in lieu of contributions by such employers after January 1, 1979, see Section 41‑31‑620.

Wages and employers subject to employment security administrative contingency assessment, see Section 41‑27‑410.

What the term “employment” does not include, see Section 41‑27‑260.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 164.

NOTES OF DECISIONS

In general 1

1. In general

The Employment Security Commission properly determined that telephone salespersons were employees of the company for purposes of unemployment tax liability where (1) the company had right and authority to control and direct them in the performance of their work and the manner in which it was performed, (2) the company placed various restraints on their work schedule, including the hours during which they could work, the maximum number of hours to be worked each week, and the mandatory break during each workday, (3) they were paid on a commission basis but were guaranteed a minimum compensation of $4 per hour, and (4) they worked in company offices, on company phones, using customer lists and script provided by the company. Smoky Mountain Secrets, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1993) 312 S.C. 111, 439 S.E.2d 288, rehearing denied, certiorari granted, reversed in part 318 S.C. 456, 458 S.E.2d 429. Taxation 3281

Delivery drivers were independent contractors, rather than company employees, for purposes of unemployment tax liability, where (1) they were totally unsupervised in the manner in which they delivered and could stop and go as they pleased, take passengers, and even hire others to make deliveries, (2) they were paid on a commission based only on completed deliveries, (3) they furnished their own delivery vehicles, gas and insurance, and (4) the company bore no travel related expenses. Smoky Mountain Secrets, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1993) 312 S.C. 111, 439 S.E.2d 288, rehearing denied, certiorari granted, reversed in part 318 S.C. 456, 458 S.E.2d 429. Taxation 3281

The evidence sustained the finding of the Employment Security Commission that workers of a temporary help agency were employees as opposed to independent contractors where (1) the workers were paid by the agency on an hourly basis, (2) the workers were paid prior to the completion of their jobs, (3) the workers did not supply their own equipment, and (4) the agency controlled the workers’ performance and the manner in which it was done, even though the agency delegated that authority to its clients; consequently, the agency was required to pay employment taxes. Kilgore Group, Inc. v. South Carolina Employment Sec. Com’n (S.C. 1993) 313 S.C. 65, 437 S.E.2d 48.

**SECTION 41‑27‑235.** Employment by Native American tribes; benefits; contributions.

(A) The term “employment” means service performed in the employ of a Native American tribe, as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), if the service is excluded from “employment” as defined in FUTA solely by reason of Section 3306(C)(7), FUTA, and is not otherwise excluded from “employment” under this title.

(B) Benefits based on service in employment defined in this section are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject under this title.

(C)(1) Native American tribes or tribal units including subdivisions, subsidiaries, or business enterprises wholly owned by such tribes subject to this title shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the state unemployment trust fund amounts equal to the amount of benefits attributable to service in the employ of the Native American tribe or tribal unit including all extended benefits paid for any reason.

(2) A Native American tribe or tribal unit that elects to pay a benefit attributable to service in their employ but fails to reimburse the required payment, including an interest and penalty assessment, within ninety days of the receipt of a bill, causes the Native American tribe to lose the option to make a payment in lieu of a contribution for the following tax year unless payment in full is received before the contribution rates for the next year are computed. The department shall notify the United States Internal Revenue Service and the United States Department of Labor of a tribe or tribal unit’s failure to make a required payment within ninety days of a final notice of delinquency.

(3) A Native American tribe that loses the option to make payments in lieu of contributions shall have that option reinstated if, after a period of one year, all contributions have been paid on a timely basis and no contributions, payments in lieu of contributions, penalties, or interest remain outstanding.

HISTORY: 2002 Act No. 306, Section 1, eff June 5, 2002; 2004 Act No. 170, Section 1, eff February 18, 2004; 2010 Act No. 146, Section 18, eff March 30, 2010.

Effect of Amendment

The 2004 amendment in subsections (C)(2) and (3) deleted “or tribal unit” following “Native American tribe”.

The 2010 amendment in subparagraph (C)(2) substituted “department” for “commission” preceding “shall notify the United States Internal Revenue Service”; and made other nonsubstantive changes.

**SECTION 41‑27‑240.** Employment office.

“Employment office” means a free public employment office operated by this State or other office maintained for the purpose of serving applicants or claimants or maintained as a part of a state‑controlled system of public employment offices.

HISTORY: 1962 Code Section 68‑15; 1952 Code Section 68‑14; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1971 (57) 950.

CROSS REFERENCES

Unemployment Compensation and Employment Service Divisions, see Section 41‑29‑40.

**SECTION 41‑27‑250.** Employment security administration fund.

“Employment security administration fund” means the employment security administration fund established by Chapters 27 through 41 of this Title, from which administrative expenses under such chapters shall be paid.

HISTORY: 1962 Code Section 68‑16; 1952 Code Section 68‑18; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1957 (50) 580.

CROSS REFERENCES

Employment Security Administration Fund, see Sections 41‑33‑410 et seq.

**SECTION 41‑27‑260.** Exempted employment.

The term “employment” as used in Chapters 27 through 41 of this title does not include:

(1) labor engaged in the seafood industry, which is defined as persons employed in the commercial netting, catching, and gathering of seafood, and the processing of such seafood for the fresh market;

(2) casual labor not in the course of the employing unit’s trade or business;

(3) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of his father or mother;

(4) service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by Chapters 27 through 41 of this title, except that to the extent that the Congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of Chapters 27 through 41 of this title are applicable to those instrumentalities and to services performed for those instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers; provided, that if this State is not certified for a year by the Secretary of Labor or his successors under the Federal Internal Revenue Code, the payments required of those instrumentalities with respect to such year must be refunded by the department from the funds in the same manner and within the same period as is provided in Section 41‑31‑360 with respect to contributions erroneously collected;

(5) service performed after December 31, 1977, in the employ of a governmental entity referred to in Section 41‑27‑230(2)(b), if the service is performed by an individual in the exercise of his duties as:

(a) an elected official or as the appointed successor of an elected official;

(b) a member of a legislative body, or a member of the judiciary of a state or political subdivision;

(c) a member of the State National Guard or Air National Guard;

(d) an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(e) in a position that, pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(6) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the department must enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication of it in the manner provided in Section 41‑29‑130 for general rules, to provide reciprocal treatment to individuals who have after acquiring potential rights to benefits under Chapters 27 through 41 of this title, acquired rights to unemployment compensation under such act of Congress or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under Chapters 27 through 41 of this title;

(7) service other than service performed as defined in Section 41‑27‑230(3) performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), a political campaign on behalf of a candidate for public office, provided, that service performed in the employ of an organization operated for the primary purpose of carrying on a trade or business for profit may not be exempt on the ground, that all of its profits are payable to one or more organizations exempt under this paragraph;

(8) service other than service performed as defined in Section 41‑27‑230(3) that is performed in a calendar quarter in the employ of an organization exempt from federal income tax under Section 501(a) (other than an organization described in Section 401(a)) or under Section 521 of the Federal Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars;

(9) the term “employment” does not include:

(a) service performed in the employ of a school, college, or university, if the service is performed by:

(i) a student who is enrolled and is regularly attending classes at the school, college or university; or

(ii) the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by his school, college, or university, and the employment is not covered by a program of unemployment insurance;

(b) service performed by an individual under the age of twenty‑two who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full‑time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has certified this to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(c) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in Section 41‑27‑280;

(10) for the purposes of Section 41‑27‑230(2) and (3), “employment” does not include service performed:

(a) in the direct employ of a church, convention, or association of churches or an organization operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, convention, or association of churches; or

(b) by an ordained, a commissioned, or a licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order; or

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be absorbed readily in the competitive labor market by an individual receiving rehabilitation or remunerative work; or

(d) before January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution; or

(e) as part of an unemployment work‑relief or work‑training program assisted or financed in whole or in part by a federal agency, an agency or political subdivision of a state, or an individual receiving work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work‑relief or work‑training program; or

(f) by an inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90‑351;

(11) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(12) service performed as a student nurse in the employ of a hospital or a nurses’ training school by an individual enrolled and regularly attending classes in a nurses’ training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four‑year course in a medical school chartered and approved pursuant to state law;

(13) service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if this service is performed by the individual for his employer for remuneration solely by way of commission;

(14) service performed by an individual for an employer as a real estate salesman or agent, if this service is performed by the individual for his employer for remuneration solely by way of commission;

(15) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(16) “agricultural labor” as defined by Section 41‑27‑120 and when performed by students who are enrolled and regularly attending classes for at least five months during a particular year at a secondary school or at an accredited college, university, or technical school and also when performed by part‑time persons who do not qualify as students pursuant to this section but who at the conclusion of their agricultural labor would not qualify for benefits pursuant to the provisions of the department;

(17) service performed as a member of a Native American tribal council or service in a fishing rights related activity of a Native American tribe by a member of the tribe for another member of the tribe or by a qualified Native American entity.

(18) Services performed by a direct seller, provided that:

(a) the individual:

(i) is engaged in the trade or business of selling or soliciting the sale of consumer products, including, but not limited to, services or other intangibles, to any buyer on a buy‑sell basis, a deposit‑commission basis, or any similar basis for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(ii) is engaged in the trade or business of selling or soliciting the sale of consumer products, including, but not limited to, services or other intangibles, in the home or otherwise than in a permanent retail establishment;

(b) substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subitem (a) is directly related to sales or other output, including, but not limited to, the performance of services, rather than to the number of hours worked; and

(c) the services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

(19) An individual or entity who owns, or holds under a bona fide lease purchase or installment‑purchase agreement, a tractor trailer, tractor, or other vehicle and who, under a valid independent contractor contract provides services as a driver of the tractor trailer, tractor, or other vehicle to a motor carrier.

(20) An individual performing a service for an automobile dealer related to the transportation of individual vehicles to purchasers or sellers of vehicles, including, but not limited to, when:

(a) an automobile auction is the purchaser, seller, or both;

(b) the contract of service contemplates that the service is to be performed personally by the individual;

(c) the individual does not own the vehicle used in connection with the performance of the service;

(d) the service is in the nature of a single transaction with no guarantee of a continuing relationship with the automobile dealer for whom the service is performed; or

(e) any combination of subitems (a) through (d).

HISTORY: 1962 Code Section 68‑25; 1952 Code Section 68‑22; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1946 (44) 1474; 1957 (50) 480; 1961 (52) 166; 1962 (52) 2133; 1971 (57) 950; 1972 (57) 2309; 1973 (58) 248, 669; 1974 (58) 2224; 1976 Act No. 695 Section 1; 1977 Act No. 161 Section 7; 1981 Act No. 108 Section 2; 1982 Act No. 340, Section 5; 1994 Act No. 500, Section 3, eff August 25, 1994; 1995 Act No. 7, Part II, Section 60, eff July 1, 1995 (became law without the Governor’s signature January 12, 1995); 2002 Act No. 306, Sections 3A, 3B, eff June 5, 2002; 2010 Act No. 146, Section 19, eff March 30, 2010; 2011 Act No. 3, Section 1, eff March 14, 2011; 2011 Act No. 63, Section 14, eff June 14, 2011; 2014 Act No. 265 (S.1099), Section 1, eff June 6, 2014.

Effect of Amendment

The 1994 amendment added subparagraph (f) to paragraph (10) of this section.

The 1995 amendment revised this section, adding paragraph (10), subparagraph (f), as did the 1994 amendment.

The 2002 amendment, in item (5)(a), inserted “or as the appointed successor of an elected official” and added paragraph (17).

The 2010 amendment substituted “department” for numerous occurrences of “commission”, except for at the end of subsections (13) and (14); substituted “department;” for “South Carolina Employment Security Law.” at the end of subsection (16); and made other nonsubstantive changes throughout the section.

The first 2011 amendment in subsection (13) deleted “the” before “commission”; and in subsection (14) substituted “service performed by” for “service other than service performed as defined in Section 41‑27‑230(3) by” and deleted “the” before “commission”.

The second 2011 amendment added subsection (18) relating to services provided by a direct seller.

2014 Act No. 265, Section 1, added subsections (19) and (20), relating to exemptions for motor carriers using independent contractors and automobile transportation for dealers.

Federal Aspects

Public Law 90‑351, see 42 U.S.C.A. Section 3711 et seq.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 179 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 34, Definition of Religion.

S.C. Jur. Constitutional Law Section 46, Specific Applications‑ Tax Exemptions to Religious Organizations.

NOTES OF DECISIONS

In general 1

1. In general

An evangelical association was not a church within the meaning of Section 41‑27‑260 since its primary purpose was operating nursing homes, a secular activity, rather than conducting worship services, since the record contained no evidence as to its adherents, members, followers or congregation, and since the residents of the home were members of every conceivable denomination and faith. Alton Newton Evangelistic Ass’n, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1985) 284 S.C. 302, 326 S.E.2d 165. Taxation 3289

Cited in Hammond v. South Carolina Employment Sec. Commission (S.C. 1965) 246 S.C. 121, 142 S.E.2d 876.

**SECTION 41‑27‑265.** Corporate officers exempt from unemployment benefits absent corporate election; notice; procedure; exceptions; new business registration.

(A)(1) Solely for purposes of this section, “corporate officer” shall mean a person appointed or otherwise serving as an officer for a corporation pursuant to Article 4, Chapter 8, Title 33, a person who owns twenty‑five percent or more of the shares of a corporation, or a person who otherwise exercises an ownership interest in a corporation. Solely for the purposes of this title, services performed by a corporate officer shall be considered services in employment unless a corporation elects not to cover all of its corporate officers under item (2). If an employer elects not to cover its corporate officers under item (2), the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. However, if the employer fails to provide notice, the individual’s status as a corporate officer is unchanged and the person remains ineligible for unemployment benefits.

(2) An employer may elect not to cover its corporate officers by providing the department with a written election that all services performed by its corporate officers shall not be deemed to constitute employment for all purposes related to Chapters 27 through 41 of this title for at least two calendar years. To make the election, a corporation with qualifying corporate officers pursuant to item (1) must register with the department all qualifying corporate officers exempt from coverage. The registration must be in a format prescribed by the department. Registration forms received and approved by the department on or before January fifteenth must become effective the first day of the calendar year and must remain in effect for at least two consecutive calendar years. Registration forms received and approved by the department after January fifteenth, must become effective January first of the following year, and must remain in effect for at least two consecutive calendar years. Exemptions from coverage shall not be eligible for a refund or credit for contributions paid for corporate officers before the effective date of the exemption.

(B)(1) Solely for the purposes of this title, services performed by a person who has at least a twenty‑five percent ownership interest in a business entity formed pursuant to the laws of this State, other than a corporation, shall be considered services in employment unless the entity elects not to cover a person with at least a twenty‑five percent ownership interest in the entity.

(2) A person who has an ownership interest of at least twenty‑five percent in a business entity formed pursuant to the laws of this State, other than a corporation, may elect not to cover himself by providing the department with a written election that all services performed by the person shall not be deemed to constitute employment for all purposes related to Chapters 27 through 41 of this title for at least two calendar years. The election must be in a format prescribed by the department. Election forms received and approved by the department on or before January fifteenth must become effective the first day of the calendar year and must remain in effect for at least two consecutive calendar years. Registration forms received and approved by the department after January 15, 2015, must become effective January 1, 2016, and must remain in effect for at least two consecutive calendar years. Exemptions from coverage must not be retroactive and the business entity requesting the exemption shall not be eligible for a refund or credit for contributions paid for persons before the effective date of the exemption.

(3) A newly formed business entity with qualifying persons pursuant to items (1) and (2) must register with the department each person it elects to exempt within thirty calendar days after becoming an employer under Chapters 27 through 41 of this title. Registration forms received and approved by the department must become effective on and after the date of approval and must remain in effect for at least two consecutive calendar years.

(C)(1) Services performed by an individual employed by a religious, charitable, educational, or other organization which is excluded from the term “employment” as defined in the federal Unemployment Tax Act solely by reason of 26 U.S.C. Section 3306(c)(8) of that act are not subject to the provisions of this section.

(2) Services performed by an individual employed by an Indian tribe, as defined in 26 U.S.C. Section 3306(u) of the federal Unemployment Tax Act, provided that the service is excluded from the term “employment” as defined in the federal Unemployment Tax Act solely by reason of 26 U.S.C. Section 3306(c)(7) of that act are not subject to the provisions of this section.

HISTORY: 2014 Act No. 266 (S.1100), Section 1, eff January 1, 2015; 2015 Act No. 77 (S.407), Section 1, eff June 8, 2015.

Editor’s Note

2015 Act No. 77, Section 3, provides as follows:

“SECTION 3. This act takes effect upon approval by the Governor. The provisions contained in SECTION 1 shall retroactively apply to contribution rates calculated and imposed on or after January 1, 2015. Where the application of SECTION 1 would result in the reduction of contribution rates on an employer, the department shall credit that amount against future contributions from that employer until the credit is exhausted.”

Effect of Amendment

2015 Act No. 77, Section 1, rewrote (A) and (B).

**SECTION 41‑27‑270.** Fund.

“Fund” means the unemployment compensation fund established by Chapters 27 through 41 of this Title, to which all contributions required and from which all benefits provided under such chapters shall be paid.

HISTORY: 1962 Code Section 68‑17; 1952 Code Section 68‑15; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369.

CROSS REFERENCES

Funds, see Sections 41‑33‑10 et seq.

**SECTION 41‑27‑280.** Hospital.

“Hospital” means an institution which has been licensed or approved by the South Carolina Department of Health and Environmental Control as a hospital.

HISTORY: 1962 Code Section 68‑17.1; 1971 (57) 950.

**SECTION 41‑27‑290.** Institution of higher education.

“Institution of higher education,” for the purpose of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor’s or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

HISTORY: 1962 Code Section 68‑17.2; 1971 (57) 950.

CROSS REFERENCES

Restrictions on benefits payable to certain individuals rendering services to educational institutions, see Section 41‑35‑20.

**SECTION 41‑27‑300.** Insured work.

“Insured work” means employment for employers.

HISTORY: 1962 Code Section 68‑18; 1955 (49) 480.

CROSS REFERENCES

For maximum potential benefit to which insured worker is entitled, see Section 41‑35‑50.

**SECTION 41‑27‑310.** Insured worker.

An “insured worker” is an individual who has been paid wages in his base period for insured work equal to or exceeding one and one‑half times the total of his wages paid in the quarter of such base period in which his wages for insured work were highest; provided, however, that no individual shall qualify as an insured worker unless he has been paid at least four thousand four hundred fifty‑five dollars in his base period for insured work and one thousand ninety‑two dollars in that quarter of his base period in which such wages were highest.

This section must not be applied to individuals who were found qualified to receive unemployment benefits prior to enactment of this section.

HISTORY: 1962 Code Section 68‑19; 1955 (49) 480; 1961 (52) 453; 1982 Act No. 340, Section 1; 2010 Act No. 234, Section 2, eff January 1, 2011.

Effect of Amendment

The 2010 amendment in the first paragraph substituted “four thousand four hundred fifty‑five dollars” for “nine hundred dollars” and “one thousand ninety‑two dollars” for “five hundred forty dollars”, and added the second paragraph relating to application of the section.

NOTES OF DECISIONS

In general 1

1. In general

The Employment Security Commission properly denied unemployment benefits to a public school teacher who had worked for nine months and whose employment was not continued after the end of a school year because the federal funds for his program had expired, where the reason for the claimant’s ineligibility was the unavailability of the first two quarters of his base period which were used for Special Unemployment Assistance Program benefits paid to the claimant; had the claimant been able to use all four quarters, he would have been eligible for unemployment benefits. Furthermore, the claimant’s contention that Section 41‑27‑310 violated equal protection in that it discriminated against teachers who were paid in nine month installments and in favor of teachers paid in twelve month installments was without merit. Pulliam v. Comer (S.C. 1982) 278 S.C. 538, 298 S.E.2d 775.

**SECTION 41‑27‑320.** Payments in lieu of contributions.

“Payments in lieu of contributions” means the money payments to the unemployment compensation fund required by the provisions of Section 41‑31‑630.

HISTORY: 1962 Code Section 68‑19.01; 1973 (58) 248.

**SECTION 41‑27‑330.** Secretary of Labor.

“Secretary of Labor” means the United States Secretary of Labor.

HISTORY: 1962 Code Section 68‑19.1; 1971 (57) 950.

**SECTION 41‑27‑340.** Educational institution.

“Educational institution” means any educational institution except an institution of higher education as defined in Section 41‑27‑290 of this Title:

(1) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of instructors or teachers;

(2) Which is legally authorized in this State to provide a program of education; and

(3) Which offers a course of study or training which may be academic, technical trade, or preparation for gainful employment in a recognized occupation.

HISTORY: 1962 Code Section 68‑19.2; 1972 (57) 2309; 1977 Act No. 161 Section 3.

CROSS REFERENCES

Restrictions on benefits payable to certain individuals rendering services to educational institutions, see Section 41‑35‑20.

**SECTION 41‑27‑350.** State.

State includes, in addition to the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and effective one day after the date on which the United States Secretary of Labor approves its unemployment compensation law under Section 3304(a) of the Internal Revenue Code of 1954, the term shall include the Virgin Islands.

HISTORY: 1962 Code Section 68‑20; 1952 Code Section 68‑16; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1961 (52) 166; 1977 Act No. 161 Section 4.

**SECTION 41‑27‑360.** Statewide average weekly wage.

“Statewide average weekly wage” means the amount computed by the department as of July first of each year that is the aggregate amount of wages, irrespective of the limitation on the amount of wages subject to contributions by reason of Section 41‑27‑380(2), reported by employers as paid during the first four of the last six completed calendar quarters before this date, divided by a figure representing fifty‑two times the twelve‑month average of the number of employees in the pay period containing the twelfth day of each month during the same four calendar quarters as reported by those employers.

HISTORY: 1962 Code Section 68‑20.1; 1973 (58) 412; 2010 Act No. 146, Section 20, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” following “the amount computed by the”; and made other nonsubstantive changes.

**SECTION 41‑27‑370.** Unemployed.

(1) An individual is considered “unemployed” in a week during which he performs no services and with respect to which no wages are payable to him or in a week of less than full‑time work if the wages payable to him with respect to that week are less than his weekly benefit amount. The department must prescribe regulations applicable to unemployed individuals, making such distinctions in the procedures as to total unemployment, part‑total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short‑time work, as the department considers necessary.

(2) An individual is considered “unemployed” in a week during which no governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to his employment is payable to him or, if that payment is payable to him with respect to those weeks, the amount of it is less than his weekly benefit amount. An eligible individual who is unemployed in a week and is receiving a government or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to his employment must be paid with respect to this week a benefit in an amount equal to his weekly benefit amount less the pension, retirement or retired pay, annuity, or other similar periodic payment payable to him with respect to such week. This benefit, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. The amount of benefits payable to an individual for a week that begins after the effective date of the applicable provision in the Federal Unemployment Tax Act and that begins in a period with respect to which this individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual must be reduced not below zero but by an amount equal to the amount of this pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week. However, if the provisions of the Federal Unemployment Tax Act permit, the requirements of this subsection shall apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained, or contributed to, by a base period employer or chargeable employer.

In the event the individual has participated in a pension, retirement or retired pay, annuity, or other similar plan of the base period employer or chargeable employer by having made contributions to this plan, the weekly benefit amount payable to the individual for that week must be reduced, but not below zero, by:

(a) the prorated weekly amount of the pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual; or

(b) no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or any other person or organization, who is not a base period employer or chargeable employer; or

(c) the entire prorated weekly amount of the pension if subitem (a) or (b) does not apply.

This provision is effective for all weeks commencing on or after August 29, 1982.

For purposes of this subsection, social security benefits are not considered a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to the beneficiary’s employment. As a result, the offset of social security will be reduced from fifty to zero percent based on the fact that individuals are required to contribute to social security.

(3) An individual may not be considered unemployed in a week in which the department finds that his unemployment is due to a vacation week with respect to which the individual is receiving or has received his regular wages. This subsection does not apply to a claimant whose employer fails to comply, in respect to the vacation period, with the requirements of a regulation or procedure of the department regarding the filing of a notice, report, information, or claim in connection with individual, group, or mass separation arising from the vacation.

(4) An individual may not be considered unemployed in a week, not to exceed two in any benefit year, in which the department finds his unemployment is due to a vacation week that is constituted a vacation period without pay by reason of a written contract between the employer and the employees or by reason of the employer’s vacation policy and practice to his employees. This provision applies only if the department finds employment will be available for the claimant with the employer at the end of a vacation period as described in this section. This subsection is not applicable to a claimant whose employer fails to comply, in respect to this vacation period, with the requirements of a regulation or procedure of the department regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation.

HISTORY: 1962 Code Section 68‑21; 1952 Code Section 68‑17; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1949 (46) 264; 1957 (50) 580; 1980 Act No. 519 Part II Section 8; 1981 Act No. 108 Section 3; 1983 Act No. 62 Section 1; 2000 Act No. 349, Section 1, eff June 14, 2000; 2010 Act No. 146, Section 21, eff March 30, 2010.

Effect of Amendment

The 2000 amendment, in subsection (2), added the fourth undesignated paragraph pertaining to consideration of social security benefits.

The 2010 amendment substituted “department” for all occurrences of “commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Offer of work, see S.C. Code of Regulations R. 47‑23.

Types of unemployment, see S.C. Code of Regulations R. 47‑20.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 164.

NOTES OF DECISIONS

In general 1

1. In general

The receipt of termination allowances by the employee, at the time her services were terminated, did not render her ineligible for unemployment compensation benefits. Southern Bell Tel. & Tel. Co. v. South Carolina Employment Sec. Commission (S.C. 1962) 240 S.C. 40, 124 S.E.2d 505. Unemployment Compensation 45

**SECTION 41‑27‑380.** Wages.

(A) “Wages” means remuneration paid for personal services, including commissions and bonuses, sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent, or arbitration for loss of pay by reason of discharge and cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in a medium other than cash is estimated and determined pursuant to regulations prescribed by the department. “Wages” includes all tip income, including charged tips, received while performing a service that constitutes employment and are included in a written statement furnished to the employer. “Wages” does not include:

(1) the amount of a payment with respect to services performed on behalf of an individual in its employ provided by a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals, including an amount paid by an employing unit for insurance or annuities or into a fund to provide for any such payment, because of:

(a) retirement;

(b) sickness or accident disability;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death, provided the individual is in its employ has not the:

(i) option to receive, instead of provisions for death benefits, part of payment or, if the death benefit is insured, part of the premiums or contributions to premiums paid by his employing unit; and

(ii) right, under a provision of the plan, system, or policy of insurance providing for a death benefit, to assign the benefit or receive a cash consideration in lieu of the benefit either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan, system, or policy of insurance or of his service with the employing unit;

(2) an amount received from this State or the Federal Government by a member of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, and the Reserve Corps of Marines as drill pay, including a longevity pay and allowance;

(3) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ, pursuant to Section 3101 of the Federal Internal Revenue Code, only if the service is agricultural labor or domestic service in a private home of the employer;

(4) a payment, other than vacation pay or sick pay, made to an employee after the month in which he attains the age of sixty‑five, if he did not work for the employer in the period for which payment is made;

(5) a remuneration paid in a medium other than cash for a service performed in an agricultural labor or domestic service.

(B) For the purpose of Chapter 31, Article 1 of this title, “wages” does not include that part of remuneration which, after remuneration equal to ten thousand dollars for the period of January 1, 2011, through December 31, 2011, twelve thousand dollars for the period of January 1, 2012, through December 31, 2014, and fourteen thousand dollars from January 1, 2015, has been paid in a calendar year to an individual by an employer or his predecessor or with respect to employment during any calendar year, is paid to the individual by the employer during the calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, employment includes service constituting employment under any unemployment compensation law of another state.

HISTORY: 1962 Code Section 68‑22; 1952 Code Section 68‑19; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1949 (46) 383; 1952 (47) 1887; 1955 (49) 480; 1957 (50) 580; 1966 (54) 2640; 1971 (57) 950; 1977 Act No. 161 Sections 5, 6; 1981 Act No. 108 Section 4; 1983 Act No. 62 Section 2; 1985 Act No. 83 Section 1; 2010 Act No. 146, Section 22, eff March 30, 2010; 2010 Act No. 234, Section 3, eff January 1, 2011.

Code Commissioner’s Note

At the direction of the Code Commissioner, the amendment made by 2010 Act No. 234, Section 3 to subsection (2) was redesignated as subsection (B).

Effect of Amendment

The first 2010 amendment, 2010 Act No. 146, Section 22, redesignated the paragraphs of the section; substituted “department” for two occurrences of “commission”; and made other nonsubstantive changes throughout the section.

The second 2010 amendment, 2010 Act No. 234, Section 3, in subsection (B), substituted “ten thousand dollars” for “seven thousand dollars”, and inserted the following date ranges and dollar amounts.

CROSS REFERENCES

Service as witness or juror not to constitute disqualification for benefits, but benefits to be reduced by amount of per diem received, see Section 41‑35‑115.

Wages and employers subject to employment security administrative contingency assessment, see Section 41‑27‑410.

Federal Aspects

Provisions of Section 3101 of the Federal Internal Revenue Code, see 26 U.S.C.A. Section 3101.

NOTES OF DECISIONS

In general 1

1. In general

The four enumerated examples of “wages” in Section 41‑27‑380 are illustrative, and not exclusive. Jarrott v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 533, 351 S.E.2d 859.

Since the backpay awarded by the federal court order to school teachers who had been wrongfully terminated by the school district constituted wages, the Employment Security Commission was entitled to reimbursement from the teachers for the money paid to them as unemployment compensation during the period between their termination and reinstatement. Jarrott v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 533, 351 S.E.2d 859.

Quoted in Hammond v. South Carolina Employment Sec. Commission (S.C. 1965) 246 S.C. 121, 142 S.E.2d 876.

**SECTION 41‑27‑390.** Week.

“Week” means calendar week or a period of seven consecutive days that the department prescribes by regulation. The department likewise may determine that a week is considered “in”, “within”, or “during” that benefit year which includes the greater part of that week.

HISTORY: 1962 Code Section 68‑23; 1952 Code Section 68‑20; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1946 (44) 1474; 2010 Act No. 146, Section 23, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrence of “commission”; and made other nonsubstantive changes.

**SECTION 41‑27‑410.** Departmental administrative contingency assessment.

Effective January 1, 1986, the departmental administrative contingency assessment is an assessment of six one‑hundredths of one percent to be assessed upon the wages as defined in Section 41‑27‑380(2) of all employers except those who have either elected to make payments in lieu of contributions as defined in Section 41‑31‑620 or are liable for the payment of contributions as defined in Section 41‑31‑620 or are liable for the payment of contributions and are classified as a state agency or any political subdivision or any instrumentality of the political subdivision as defined in Section 41‑27‑230(2).

HISTORY: 1986 Act No. 362, Section 1, eff April 3, 1986; 1999 Act No. 37, Section 1, eff June 1, 1999; 2011 Act No. 3, Section 2, eff March 14, 2011.

Effect of Amendment

The 1999 amendment changed “contribution rate” to “contribution base rate”.

The 2011 amendment substituted “departmental” for “employment security” and deleted “or have been assigned a contribution base rate of five and four‑tenths percent” from the end.

CROSS REFERENCES

Employment Security Administration Contingency Fund, see Section 41‑33‑710.

Interest surcharge, see S.C. Code of Regulations R. 47‑7.

Payment and collection of employment security administrative contingency assessments, see Sections 41‑31‑910 et seq.

ARTICLE 5

Other Provisions

**SECTION 41‑27‑510.** Promulgation of regulations regarding unemployed individuals.

The department must promulgate regulations applicable to unemployed individuals, making distinctions in the procedures regarding total unemployment, part‑total unemployment, partial unemployment of the individuals attached to their regular jobs and other forms of short‑time work as the department considers necessary.

HISTORY: 1962 Code Section 68‑24; 1952 Code Section 68‑21; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1946 (44) 1474; 1949 (46) 264; 2010 Act No. 146, Section 24, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Department of Employment and Workforce Regulations, see S.C. Code of Regulations R. 47‑1 et seq.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 156, 269.

**SECTION 41‑27‑520.** Included and excluded service.

If the services performed during one half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this section the term “pay‑period” means a period of not more than thirty‑one consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing him. This section shall not be applicable with respect to services performed in a pay period by an individual for the person employing him when any such service is excepted by item (8) of Section 41‑27‑260.

HISTORY: 1962 Code Section 68‑26; 1952 Code Section 68‑23; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369.

**SECTION 41‑27‑525.** Availability of benefits for persons seeking only part‑time work.

If the majority of the weeks of work in an individual’s base period includes part‑time work, the individual shall not be denied unemployment benefits under any provisions of this act relating to availability for work, active search for work, or failure to accept work, solely because the individual is seeking only part‑time work. The phrase “seeking only part‑time work”, as used in this subsection, means the individual claiming unemployment benefits is available for a number of hours per week that are comparable to the individual’s part‑time work experience in the base period.

HISTORY: 2010 Act No. 234, Section 7, eff January 1, 2011.

**SECTION 41‑27‑530.** Separate establishments deemed single employing unit.

All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of Chapters 27 through 41 of this Title.

HISTORY: 1962 Code Section 68‑27; 1952 Code Section 68‑24; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 176.

**SECTION 41‑27‑540.** Individuals employed to assist agents or employees.

Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of Chapters 27 through 41 of this Title, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

HISTORY: 1962 Code Section 68‑28; 1952 Code Section 68‑25; 1942 Code Section 7035‑99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369.

CROSS REFERENCES

Employer’s liability to workmen of subcontractors, see Sections 42‑1‑400 et seq.

**SECTION 41‑27‑550.** Reciprocal agreements.

The department may enter into agreements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 41‑27‑230 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this State or within one of such other states and whereby potential rights to benefits accumulative under the unemployment compensation laws of one or more states or under the law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department considers fair and reasonable as to all affected interests and will not result in a substantial loss to the fund, and the department may enter into agreements with appropriate agencies of other states or the federal government administering unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state.

HISTORY: 1962 Code Section 68‑29; 1952 Code Section 68‑26; 1942 Code Section 7035‑98; 1936 (39) 1716; 1939 (41) 487; 1946 (44) 1474; 1949 (46) 418; 2010 Act No. 146, Section 25, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for three occurrences of “commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Reciprocal agreements, see Section 41‑29‑140.

**SECTION 41‑27‑560.** Prohibition of libel or slander actions.

A report, communication, or other similar matter, either oral or written from an employee or employer to the other or to the department or its agents, representatives, or employees that has been written, sent, delivered, or made in connection with the requirements and the administration of Chapters 27 through 41 of this title must not be made the subject matter or basis of a suit for slander or libel in a court of this State.

HISTORY: 1962 Code Section 68‑30; 1952 Code Section 68‑27; 1942 Code Section 7035‑95; 1936 (39) 1716; 1939 (41) 487; 1946 (44) 1474; 2010 Act No. 146, Section 26, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” following “employer to the other or to the”; and made other nonsubstantive changes.

CROSS REFERENCES

Constitutional right of access to courts for wrongs sustained, see SC Const, Art 1, Section 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Libel and Slander Section 60, Communications to Public Authorities.

NOTES OF DECISIONS

In general 1

1. In general

Allegedly defamatory statements regarding former employee, which were made by employer to a human resources consultant hired to dispute former employee’s claim for unemployment following employee’s termination for refusal to repay an allegedly unauthorized bonus, were absolutely privileged, under statute providing that communications made by employer to Employment Commission or its agents, in connection with application for unemployment compensation, were privileged, even though consultant was agent of employer, not Commission. Southern Glass & Plastics Co. v. Duke (S.C.App. 2005) 367 S.C. 421, 626 S.E.2d 19, rehearing denied. Libel And Slander 36

**SECTION 41‑27‑570.** Defense of suits involving duties of Department.

In case of a suit to enjoin the collection of the contributions provided for in Chapters 27 through 41 of this title, to test the validity of those chapters or for another purpose connected with its duties, the department must be made a party to it and the Attorney General or counsel for the department shall defend the suit in accordance with the provisions of Section 41‑27‑580.

HISTORY: 1962 Code Section 68‑31; 1952 Code Section 68‑28; 1942 Code Section 7035‑94; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1942 (42) 1648; 2010 Act No. 146, Section 27, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “commission”; and made other nonsubstantive changes.

**SECTION 41‑27‑580.** Representation of Department in civil actions.

In a civil action to enforce the provisions of Chapters 27 through 41 of this title, the department and the State may be represented by a qualified attorney employed by the department and is designated by it for this purpose or, at the department’s request, by the Attorney General.

HISTORY: 1962 Code Section 68‑32; 1952 Code Section 68‑29; 1942 Code Section 7035‑97; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 28, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for three occurrences of “commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Authorized representatives of the Department, see S.C. Code of Regulations, R. 47‑2.

**SECTION 41‑27‑590.** Prosecution of criminal actions.

(A) All criminal actions for violation of any provision of Chapters 27 through 41 of this title or of any rules or regulations issued pursuant thereto shall be prosecuted by the Attorney General of the State or at his request and under his direction by the solicitor of any circuit or any prosecuting attorney in any court of competent jurisdiction in the county in which the employer has a place of business or the violator resides.

(B) The department must refer all cases of significant claimant and/or employer fraud to the Attorney General to determine whether to prosecute the offender.

HISTORY: 1962 Code Section 68‑33; 1952 Code Section 68‑30; 1942 Code Section 7035‑97; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 116, eff March 30, 2010.

Effect of Amendment

The 2010 amendment designated the existing paragraph as subsection (A); added subsection (B), relating to referral of cases of significant fraud to the Attorney General; and made other nonsubstantive changes.

Attorney General’s Opinions

Section 41‑27‑590 explicitly states the manner in which any criminal violation, including violations within the jurisdiction of a magistrate, are to be prosecuted. S.C. Op.Atty.Gen. (August 26, 2010) 2010 WL 3505052.

**SECTION 41‑27‑600.** Compromises.

The department may compromise a civil penalty or cause of action arising pursuant to a provision of Chapters 27 through 41 of this title instead of commencing suit on them and may compromise the case after suit on it commences. In these cases the department shall keep on file in its office the reasons for settlement by compromise; a statement on the amount of contribution imposed; the amount of additional contribution, penalty, or interest imposed by law in consequence of neglect or delinquency; and the amount actually paid pursuant to the terms of the compromise.

HISTORY: 1962 Code Section 68‑34; 1952 Code Section 68‑31; 1942 Code Section 735‑100; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 29, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “commission”; and made other nonsubstantive changes.

**SECTION 41‑27‑610.** Place where failure to perform acts deemed to occur.

The failure to do an act required by or under the provisions of Chapters 27 through 41 of this title shall be deemed an act committed in part at the office of the department in Columbia.

HISTORY: 1962 Code Section 68‑35; 1952 Code Section 68‑32; 1942 Code Section 7035‑101; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 30, eff March 30, 2010; 2011 Act No. 3, Section 3, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for “commission in Columbia”; and made other nonsubstantive changes.

The 2011 amendment substituted “by or under the provisions” for “pursuant to a provision” and “shall be deemed” for “is considered”, and added “in Columbia”.

**SECTION 41‑27‑620.** Department’s certificate as prima facie evidence.

The certificate of the department to the effect that a contribution has not been paid, that a report has not been made, that information has not been furnished, or that records have not been produced or made available for inspection, as required pursuant to Chapters 27 through 41 of this title, is prima facie evidence of the alleged action.

HISTORY: 1962 Code Section 68‑36; 1952 Code Section 68‑33; 1942 Code Section 7035‑101; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 31, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” following “The certificate of the”; substituted “of the alleged action” for “thereof” following “prima facie evidence”; and made other nonsubstantive changes.

CROSS REFERENCES

Wages and employers subject to employment security administrative contingency assessment, see Section 41‑27‑410.

**SECTION 41‑27‑630.** Liability of State and Department for payment of benefits.

A benefit is considered due and payable pursuant to Chapters 27 through 41 of this title only to the extent provided in those chapters and to the extent that money is available for them to the credit of the unemployment compensation fund and neither the State nor the department must be liable for an amount in excess of that sum.

HISTORY: 1962 Code Section 68‑37; 1952 Code Section 68‑35; 1942 Code Section 7035‑102; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 32, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” following “neither the State nor the”; and made other nonsubstantive changes.

CROSS REFERENCES

Employer, employee relationship, see S.C. Code of Regulations R. 47‑8.

Payment of benefits, see Sections 41‑35‑10 et seq.

NOTES OF DECISIONS

In general 1

1. In general

The construction of Section 41‑35‑120 by the South Carolina Employment Security Commission so as to disqualify any claimant who voluntarily leaves her most recent employment because of pregnancy violates the prohibition against denial of unemployment compensation solely on the basis of pregnancy or termination of pregnancy contained in 26 USCA Section 3304(a)(12); the award of compensation, retroactive to January 1, 1978, the effective date of the federal statute, does not violate the Eleventh Amendment of the United States Constitution. Brown v. Porcher (C.A.4 (S.C.) 1981) 660 F.2d 1001, certiorari denied 103 S.Ct. 796, 459 U.S. 1150, 74 L.Ed.2d 1000. Unemployment Compensation 112

**SECTION 41‑27‑640.** Extension of unemployment insurance coverage to political subdivisions mandated by P.L. 94‑566.

Notwithstanding the provisions of this act, any extension of unemployment insurance coverage to political subdivisions in this State mandated by P.L. 94‑566 shall be continued in effect at the option of the governing body of the political subdivision to the extent any part of the coverage mandated in P.L. 94‑566 upon state and local government is either declared unconstitutional by the Supreme Court of the United States, or is repealed by an act of Congress. If P.L. 94‑566 or the federal acts it amends is stayed pendente lite as to the employees of this State or one of its cities or counties by any court of competent jurisdiction, the coverage of all employees under this law is automatically stayed.

HISTORY: 1977 Act No. 161 Section 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 46, Specific Applications‑ Tax Exemptions to Religious Organizations.

**SECTION 41‑27‑650.** Department must work in conjunction with Department of Commerce and Department of Administration on certain matters.

(A) The Department of Commerce and the Department of Employment and Workforce must work in conjunction to develop or procure computer hardware, software, and other equipment that are compatible with each other as needed to efficiently address the state’s policy goals as set forth in Section 41‑27‑20. Once information technology is attained, the departments regularly must develop reports that address relevant workforce issues and make the reports available to workforce training entities, including, but not limited to, the State Board for Technical and Comprehensive Education, the Commission on Higher Education, and the State Agency of Vocational Rehabilitation. Additionally, the departments must respond promptly to inquiries for information made by education and workforce training entities.

(B) The department must work in conjunction with the Department of Administration to coordinate its computer system with computer systems of other state agencies so that the department may more efficiently match unemployed persons with available jobs. The department must provide a progress report concerning implementation of this subsection to the Chairman of the Senate Labor, Commerce and Industry Committee, the Chairman of the House of Representatives Ways and Means Committee, the Department of Employment and Workforce Review Committee, and the Governor every three months until fully implemented.

(C) This section is not intended to restrict or hinder the development of an unemployment benefits system financed in whole or in part by the United States Department of Labor.

HISTORY: 2010 Act No. 146, Section 7, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

ARTICLE 7

South Carolina Department of Employment and Workforce Review Committee

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

**SECTION 41‑27‑700.** Department of Employment and Workforce Review Committee; creation.

There is created the Department of Employment and Workforce Review Committee which must exercise the powers and fulfill the duties described in this article.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

**SECTION 41‑27‑710.** Committee membership; organization; meetings; quorum

(A) The committee must be composed of nine members, three of whom must be members of the House of Representatives appointed by the Speaker, at least one of whom must be a member of the minority party; three of whom must be members of the Senate appointed by the President Pro Tempore, at least one of whom must be a member of the minority party; and three of whom shall be appointed by the Governor from the general public at large, of which one must represent businesses with fewer than fifty employees and one of whom must represent businesses with fewer than five hundred employees. A member of the general public appointed by the Governor may not be a member of the General Assembly.

(B) The committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and other officers as the committee considers necessary. Afterward, the committee at least annually shall meet and at the call of the chairman or a majority of the members. A quorum consists of five members.

(C) Unless the committee finds a person qualified to serve as the Executive Director of the Department of Employment and Workforce, the person may not be appointed.

(D) A member of the committee that misses three consecutive scheduled meetings at which a quorum is present must be removed from and replaced on the committee by the person that appointed that member.

(E) The committee must discharge its duties related to screening and nominating qualified individuals for appointment by the Governor in the manner provided in Chapter 20, Title 2.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Editor’s Note

2010 Act No. 146, Section 111, provides as follows:

“In making appointments and hiring decisions for positions pursuant to this act, the governing authority or individual tasked with making such appointment or hiring decision must consider race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.”

**SECTION 41‑27‑720.** Duties of committee.

The committee shall:

(1) nominate three qualified applicants for the Governor to consider in appointing the executive director. In order to be found qualified, the person must meet the minimum requirements as provided in Section 41‑29‑35. The committee must consider a person’s experience and expertise in matters related to unemployment, workforce development, and economic development. A person may not be appointed to serve as the permanent executive director unless he is found qualified by the committee. If the Governor rejects all of the nominees, the committee must reopen the nominating process;

(2) screen Department of Employment and Workforce Appellate Panel candidates for qualifications. In order to be found qualified, the person must meet the minimum requirements as provided in Section 41‑29‑300(E). The committee must consider a person’s experience and expertise in matters related to unemployment, workforce development, and economic development. A person may not be elected to serve on the Department of Employment and Workforce Appellate Panel unless he is found qualified by the committee;

(3) conduct an annual performance review of the executive director, which must be submitted to the General Assembly and the Governor. A draft of the executive director’s performance review must be submitted to him, and the executive director must be allowed an opportunity to be heard before the committee before the final draft of the performance review is submitted to the General Assembly and the Governor;

(4) submit to the General Assembly and the Governor, on an annual basis, the committee’s evaluation of the performance of the Department of Employment and Workforce. A proposed draft of the evaluation must be submitted to the Executive Director of the Department of Employment and Workforce before submission to the General Assembly and the Governor, and the Executive Director of the Department of Employment and Workforce must be given an opportunity to be heard before the committee before the completion of the evaluation and its submission to the General Assembly and the Governor;

(5) assist in developing an annual workshop of at least six contact hours concerning ethics and the Administrative Procedures Act for the executive director and employees of the Department of Employment and Workforce as the committee considers appropriate;

(6) make reports and recommendations to the General Assembly and the Governor on matters relating to the powers and duties set forth in this section;

(7) submit a letter to the General Assembly with the annual budget proposals of the Department of Employment and Workforce, indicating the committee has reviewed the proposals; and

(8) undertake additional studies or evaluations as the committee considers necessary.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

**SECTION 41‑27‑725.** Powers of committee; oaths and affirmations; depositions; subpoenas.

(A) The committee in the discharge of its duties may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the committee’s investigation.

(B) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the committee on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self‑incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed in so testifying.

(C) In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the committee may issue to the person an order requiring him to appear before the committee to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt hereof. Subpoenas shall be issued in the name of the committee and shall be signed by the committee chairman. Subpoenas shall be issued to those persons as the committee may designate.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

**SECTION 41‑27‑730.** Expenses of committee and its members.

(A) The committee members are entitled to mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which they are appointed. These expenses must be paid from the general fund of the State on warrants duly signed by the chairman of the committee and payable by the authorities from which they are appointed, except as provided in subsection (B) of this section.

(B) The committee may request that it be reimbursed for expenses associated with its duties with funds from the employment security administration fund. The expenses of the committee must be advanced by a legislative body and the legislative body incurring this expense must be reimbursed by the State.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

**SECTION 41‑27‑740.** Staff support for committee.

(A) The committee must use clerical and professional employees of the Senate Labor, Commerce and Industry Committee and the House of Representatives Labor, Commerce and Industry Committee for its staff, who must be made available to the committee.

(B) The committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the committee.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

**SECTION 41‑27‑750.** Comprehensive study of other states’ unemployment and workforce agencies; report and recommendations.

The committee may conduct a comprehensive study of other states’ unemployment and workforce agency structures, responsibilities, qualifications, and compensation. The committee may prepare and deliver this report along with its recommendations to the General Assembly and the Governor.

HISTORY: 2010 Act No. 146, Section 118, eff March 30, 2010.

**SECTION 41‑27‑760.** Candidates for Department of Employment and Workforce Appellate Panel; support pledges limited; violations.

(A) No candidate for or person intending to become a candidate for the Department of Employment and Workforce Appellate Panel may seek, directly or indirectly, the pledge of a member of the General Assembly’s vote or contact, directly or indirectly, a member of the General Assembly or the review committee regarding screening for the Department of Employment and Workforce Appellate Panel, until the qualifications of all candidates for that office have been determined by the Department of Employment and Workforce Review Committee, and the review committee has formally released its report as to the qualifications of all candidates for the office to the General Assembly. For purposes of this section, “indirectly seeking a pledge” means the candidate, or someone acting on behalf of or at the request of the candidate, requests a person to contact a member of the General Assembly on behalf of the candidate before the review committee has formally released its report as to the qualifications of all candidates to the General Assembly. The prohibitions of this section do not extend to an announcement of candidacy by the candidate or statement by the candidate detailing the candidate’s qualifications.

(B)(1) No member of the General Assembly may pledge or offer his pledge for his vote for a candidate until the qualifications of all candidates for the Department of Employment and Workforce Appellate Panel have been determined by the Department of Employment and Workforce Review Committee, and the review committee has formally released its report as to the qualifications of all candidates to the General Assembly. The formal release of the report of qualifications must occur no earlier than forty‑eight hours after the names of all candidates found qualified by the review committee have been initially released to members of the General Assembly.

(2) No member of the review committee may pledge or offer his pledge to find a candidate qualified prior to the review committee’s determination of qualifications.

(C) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member’s pledge to vote for a candidate for the Department of Employment and Workforce Appellate Panel.

(D)(1) Violations of this section may be considered by the Department of Employment and Workforce Review Committee when it considers the candidate’s qualifications.

(2) Violations of this section by members of the General Assembly must be reported by the review committee to the House or Senate Ethics Committee, as may be applicable.

(3) Violations of this section by incumbent appellate panelists seeking reelection must be reported by the Department of Employment and Workforce and the Department of Employment and Workforce Appellate Panel to the State Ethics Commission. A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days, or both. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22‑3‑545.

HISTORY: 2010 Act No. 234, Section 5, eff January 1, 2011.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 26, Appeals.