CHAPTER 39

Employment and Workforce ‑ Protection of Rights and Benefits

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

Corporate officers exempt from unemployment benefits absent employer election, procedure, exceptions, see Section 41‑27‑265.

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

**SECTION 41‑39‑10.** Validity of waiver of rights, employee’s agreement to pay employer’s contributions and the like.

No agreement by an individual to waive, release or commute his rights to benefits or any other rights under Chapters 27 through 41 of this Title shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer’s contributions, payments in lieu of contributions or reimbursement of benefits required under Chapters 27 through 41 of this Title from such employer shall be valid. No employer shall directly or indirectly make, require or accept any deduction from wages to finance the employer’s contributions, payments in lieu of contributions, or reimbursement of benefits or require or accept any waiver of any right under Chapters 27 through 41 of this Title by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months or both.

HISTORY: 1962 Code Section 68‑351; 1952 Code Section 68‑351; 1942 Code Section 7035‑95; 1936 (39) 1716; 1939 (41) 487; 1973 (58) 248.

CROSS REFERENCES

Dissemination of information to employees, see S.C. Code of Regulations R. 47‑17.

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

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 234.

RESEARCH REFERENCES

ALR Library

75 ALR 5th 339 , Eligibility for Unemployment Compensation of Employee Who Retires Voluntarily.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Lumber Mut. Cas. Ins. Co. of N.Y. v. Stukes, 1947, 164 F.2d 571.

The retirement plan under which employee was separated from his work did not constitute an agreement to waive, release, or commute unemployment compensation benefits within the meaning of this section [Code 1962 Section 68‑351], which prohibits any such agreement. Richey v. Riegel Textile Corp. (S.C. 1969) 253 S.C. 59, 169 S.E.2d 101.

Where employee simply agreed that, in consideration of the benefits from a retirement plan, he would leave his employment at age 65, this was an agreement for voluntary termination of employment and not a waiver of rights to benefits. Upon voluntary retirement, no right to unemployment benefits would arise and therefore no right which could be waived. Richey v. Riegel Textile Corp. (S.C. 1969) 253 S.C. 59, 169 S.E.2d 101.

**SECTION 41‑39‑20.** Validity of assignment, pledge or encumbrance of benefits; exemption of benefits.

No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under Chapters 27 through 41 of this title is valid and such rights to benefits are exempt from levy, execution, attachment, or any other remedy whatsoever, provided for the collection of debt, except as provided for in Section 41‑35‑140 of this title. Benefits received by an individual, so long as they are not mingled with other funds of the recipient, are exempt from any remedy whatsoever for the collection of all debts except those incurred for necessaries furnished to such individual or his spouse or a dependent during the time when such individual was unemployed. No waiver of any exception provided for in this section is valid.

HISTORY: 1962 Code Section 68‑352; 1952 Code Section 68‑352; 1942 Code Section 7035‑95; 1936 (39) 1716; 1939 (41) 487; 1983 Act No. 62 Section 16.

**SECTION 41‑39‑30.** Limitation on charging and amount of fees.

An individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representatives or by a court or an officer, except an attorney, of it. An individual claiming a benefit in a proceeding before the department or a court may be represented by an attorney or other duly authorized agent, but an attorney or agent must not charge or receive for this service more than an amount approved by the department. A person who violates a provision of this section, for each offense, must be fined not less than fifty dollars nor more than five hundred dollars, imprisoned for not more than six months, or both.

HISTORY: 1962 Code Section 68‑353; 1952 Code Section 68‑353; 1942 Code Section 7035‑95; 1936 (39) 1716; 1939 (41) 487; 2010 Act No. 146, Section 102, eff March 30, 2010; 2011 Act No. 63, Section 12, eff June 14, 2011.

Effect of Amendment

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

The 2011 amendment substituted “may be represented” for “must be represented” in the second sentence.

**SECTION 41‑39‑40.** Income tax withholding from unemployment compensation.

(A) As of January 1, 1997, an individual filing an initial claim for unemployment compensation must be advised at the time of the filing of the claim that:

(1) unemployment compensation is subject to federal and state income taxation;

(2) requirements exist pertaining to estimated tax payments;

(3) the individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment compensation at the rate specified in the Internal Revenue Code of 1986;

(4) the individual may elect to have South Carolina state income tax deducted and withheld from the individual’s payment of unemployment compensation at the rate of seven percent;

(5) the individual is permitted to change a previously elected withholding of income tax at least once.

(B) Amounts deducted and withheld from unemployment compensation must remain in the Unemployment Trust Fund until transferred to the federal or state taxing authority as a payment of income tax. The date of transfer to the South Carolina Department of Revenue must be the same date as the transfer to the Internal Revenue Service.

(C) The department shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of income tax.

(D) Amounts must be deducted and withheld under this section only after amounts are deducted and withheld for overpayments of unemployment compensation, child support obligations, or other amount required to be deducted and withheld under this title.

HISTORY: 1996 Act No. 306, Section 1, eff May 6, 1996; 2010 Act No. 146, Section 103, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” in subsection (C); and made other nonsubstantive changes.