**South Carolina General Assembly**

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Summary: Employment Security Commission

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[5/19/2009](file:///p:\pprever\2009-10\853_20090519.docx)

**A** **BILL**

TO AMEND SECTION 41‑27‑370, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF “UNEMPLOYED” FOR PURPOSES OF THE SOUTH CAROLINA EMPLOYMENT SECURITY LAW AND THE REDUCTION OF UNEMPLOYMENT BENEFITS TO REFLECT PENSION AND OTHER PAYMENTS ATTRIBUTABLE TO WORK, SO AS TO ELIMINATE EMPLOYER‑FILED CLAIMS; TO AMEND SECTION 41‑27‑380, RELATING TO THE DEFINITION OF “WAGES”, SO AS TO INCREASE THE TAXABLE WAGE BASE BEGINNING DECEMBER 31, 2008; TO AMEND SECTION 41‑27‑510, RELATING TO REGULATIONS APPLICABLE TO UNEMPLOYED INDIVIDUALS, SO AS TO CONFORM THE SECTION TO THE AMENDMENTS TO SECTION 41‑27‑370; TO AMEND SECTION 41‑29‑170, AS AMENDED, RELATING TO THE DISCLOSURE OF CERTAIN INFORMATION TO ENSURE THAT A CLAIMANT, OR HIS LEGAL REPRESENTATIVE, BE SUPPLIED WITH RECORDS IN ORDER TO MAKE A CLAIM, SO AS TO ADD A PROVISION TO PROVIDE UNEMPLOYMENT INFORMATION NECESSARY FOR WORKFORCE IMPROVEMENT AND PROGRAM EVALUATION TO THE AGENCY ADMINISTERING THE WORKFORCE INVESTMENT ACT; TO AMEND SECTION 41‑31‑50, AS AMENDED, RELATING TO THE COMPUTATION OF RATES OF CONTRIBUTIONS BY EMPLOYERS, SO AS TO RESTRUCTURE THE COMPUTATION FOR CERTAIN EMPLOYERS; TO AMEND SECTION 41‑31‑80, AS AMENDED, RELATING TO THE STATEWIDE RESERVE RATIO, SO AS TO ADJUST THE RATES OF CONTRIBUTION FOR CERTAIN EMPLOYERS; TO AMEND SECTION 41-35-50, RELATING TO THE MAXIMUM POTENTIAL BENEFITS OF AN INSURED WORKER, SO AS TO CHANGE THE FORMULA FOR CALCULATING THE BENEFIT; TO AMEND SECTION 41‑35‑120, AS AMENDED, RELATING TO DISQUALIFICATION OF BENEFITS, SO AS TO ADD A PROVISION PROVIDING FOR “GROSS MISCONDUCT” AND CONFORMING THE TERM “MOST RECENT BONA FIDE EMPLOYER” TO ITS DEFINITION IN SECTION 41‑35‑110(5), AND TO REQUIRE THE DEDUCTION OF SEVERANCE PAY FROM UNEMPLOYMENT COMPENSATION PAYMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 41‑27‑370(1), (3), and (4) is amended to read:

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

(3) ~~No~~ An individual may not be considered as unemployed in any week in which the commission 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 is not applicable to ~~any~~ a claimant whose employer fails to comply, in respect to ~~such~~ the vacation period, with the requirements of all regulations or procedures of the commission regarding the filing of notices, reports, or information~~, or claims in connection with individual, group, or mass separations~~ arising from the vacation.

(4) ~~No~~ An individual may not be considered as unemployed in any week, ~~(~~not to exceed two in any benefit year~~)~~, in which the commission finds that his unemployment is due to a vacation week which 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 it is found by the commission that 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 ~~any~~ a claimant whose employer fails to comply, in respect to ~~such~~ the vacation period, with the requirements of all regulations or procedures of the commission regarding the filing of notices, reports, or information~~, or claims in connection with individual, group, or mass separations~~ arising from the vacation.”

SECTION 2. Section 41‑27‑380(2) of the 1976 Code is amended to read:

“(2) For the purpose of Chapter 31, Article 1~~,~~ of this title, beginning after December 31, 2008, ‘wages’ does not include that part of remuneration which, after remuneration equal to ~~seven~~ twelve thousand dollars 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 years beginning after December 31, 2009, ‘wages’ does not include that part of remuneration greater than thirty‑five percent of the statewide annual wage for the previous calendar year as computed by multiplying by fifty‑two the statewide weekly wage pursuant to Section 41‑27‑360, rounded to the next lower five hundred dollars, provided that this amount is not less than that part of the remuneration 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.”

SECTION 3. Section 41‑27‑510 of the 1976 Code is amended to read:

“Section 41‑27‑510. The commission shall prescribe regulations applicable to unemployed individuals, making ~~such~~ the distinctions in the procedures as to total unemployment, part‑total unemployment, and partial unemployment ~~of the individuals attached to their regular jobs and other forms of short‑time work~~ as the commission ~~deems~~ considers necessary.”

SECTION 4. Section 41‑29‑170 of the 1976 Code, as last amended by Act 203 of 2002, is further amended by adding:

“(D) In response to a request, which contains sufficient individual identifying information, from the agency administering the federal Workforce Investment Act, the commission shall provide information obtained pursuant to the provisions of Chapters 27 through 42 considered necessary for workforce improvement and the evaluation of these programs, including available wage information, to the requesting agency. The costs of providing the information, including the costs of protecting the privacy of individuals and employing units, must be borne by the receiving agency.”

SECTION 5. Section 41‑31‑50(1) of the 1976 Code, as last amended by Act 37 of 1999, is further amended by adding at the end:

“(e) With respect to any calendar year commencing with the calendar year 2010:

(i) one and four hundredths percent, if the excess equals or exceeds nine percent of his most recent annual payroll;

(ii) two and four hundredths percent, if the excess equals or exceeds seven percent but is less than nine percent of his most recent annual payroll;

(iii) three and four hundredths percent, if the excess is less than seven percent of his most recent annual payroll.”

SECTION 6. Section 41‑31‑50(2) of the 1976 Code, as last amended by Act 37 of 1999, is further amended by adding at the end:

“(d) With respect to any calendar year commencing with the calendar year 2010;

(i) four and fifty‑four hundredths percent if the deficit is less than ten percent of his most recent annual payroll;

(ii) six and four hundredths percent if the deficit equals or exceeds ten percent but is less than twenty percent of his most recent annual payroll;

(iii) seven and fifty‑four hundredths percent if the deficit equals or exceeds twenty percent but is less than thirty percent of his most recent annual payroll;

(iv) nine and four hundredths percent if the deficit equals or exceeds thirty percent but is less than forty percent of his most recent annual payroll;

(v) ten and fifty‑four hundredths percent if the deficit equals or exceeds forty percent of his most recent annual payroll.”

SECTION 7. Section 41‑31‑80 of the 1976 Code, as last amended by Act 37 of 1999, is further amended by adding at the end:

“(3) For the base rate computations made for years commencing with calendar year 2010, when the statewide reserve ratio computed during any calendar year is less than two percent, all contribution base rates as computed pursuant to Sections 41‑31‑40 and 41‑31‑50 are adjusted as follows:

(a) one‑tenth percent, if the statewide reserve ratio is less than two percent but not less than one and four‑tenths percent;

(b) two‑tenths percent, if the statewide reserve ratio is less than one and four‑tenths percents.”

SECTION 8. Section 41-35-50 of the 1976 Code is amended to read:

“Section 41-35-50. The maximum potential benefits of ~~any~~ an insured worker in a benefit year are the lesser of:

(1) twenty‑six times his weekly benefit amount~~.~~; or

(2) one‑third of his wages for insured work paid during his base period.

If the resulting amount is not a multiple of one dollar, the amount must be reduced to the next lower multiple of one dollar, except that ~~no~~ an insured worker may not receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed ‘insured work’ as defined in Section 41‑27‑300 and earned wages in the employ of a single employer in an amount equal to not less than ~~eight~~ ten times the weekly benefit amount established for the individual in the preceding benefit year.”

SECTION 9. Section 41‑35‑120(1), (2), and (6) of the 1976 Code, as last amended by Act 50 of 2005, is further amended to read:

“(1) Leaving work voluntarily. ‑ If the commission finds that he has left voluntarily, without good cause, his most recent ~~work~~ ~~prior to~~ bona fide employer before filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the commission that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for ~~such~~ the services equal to at least ~~eight~~ ten times the weekly benefit amount of his claim.

(2) Discharge for cause connected with the employment.

(a)(i) If the commission finds that he has been discharged for cause connected with his most recent ~~work prior to~~ bona fide employer before filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than ~~five nor more than the next twenty‑six~~ ten weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the commission in each case according to the seriousness of the cause for discharge. A charge of discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty. ‘Cause connected with the employment’ as used in this item requires more than a failure in good performance of the employee as the result of ~~inability or~~ incapacity.

(ii) If the commission finds that he has been discharged from his most recent bona fide employer before filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year for gross misconduct, with ineligibility beginning with the effective date of the request, and continuing for twenty‑six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits . ‘Gross misconduct’ as used in this subsubitem includes, but is not limited to, conduct that causes a substantial monetary or property loss to the employer, fighting on the job, patient or client abuse or life‑endangering neglect, drug use as defined in subitem (b) of this section, working while impaired by alcohol or a legal drug used improperly, or sexual, racial, or religious harassment involving physical acts.

(b) An insured worker is considered to have been discharged for cause pursuant to this item, and is ineligible for benefits if the:

(i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and

(ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

(iii) insured worker provides a blood, hair, or urine specimen during a drug test administered on behalf of the employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

(A) the sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and

(B) the test was performed by a laboratory certified by the ~~National Institute on Drug Abuse~~ United States Department of Health and Human Services, the College of American Pathologists or the State Law Enforcement Division; and

(C) any initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse.

(iv) for purposes of this item, ‘unlawfully’ means without a prescription.

(c) If an insured worker makes an admission pursuant to the employer’s policy, which provides that voluntary admissions made before the employer’s request to the employee to submit to testing may protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the:

(A) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer’s request to submit to a test; and

(B) employee makes the admission specifically pursuant to the employer’s policy.

(d) Information, interviews, reports, and drug‑test results, written or otherwise, received by an employer through a drug‑testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including any administrative or judicial appeal.

(6) Voluntary retirement. ‑ If the commission finds that he voluntarily retired from his most recent ~~work~~ bona fide employer with the ineligibility beginning with the effective date of his claim and continuing for the duration of his unemployment and until the individual submits satisfactory evidence of having had new employment and of having earned wages of not less than ~~eight~~ ten times his weekly benefit amount as defined in Section 41‑35‑40. ~~For the purpose of this section ‘most recent work’ means the work from which the individual retired regardless of any work subsequent to his retirement in which he earned less than eight times his weekly benefit amount.~~”

SECTION 10. Section 41‑35‑120 of the 1976 Code, as last amended by Act 50 of 2005, is further amended by adding at the end:

“(7)(a) Separation wages. ‑ A week subsequent to a separation, ~~a~~ layoff, or ~~a~~ reduction‑in‑force, whether announced as ‘voluntary’ or not, in which an individual receives or will receive as a condition of his separation from employment, remuneration in the form of:

(i) wages instead of notice;

(ii) terminal leave pay;

(iii) severance pay; or

(iv) dismissal payments by whatever name, regardless of whether the remuneration is voluntary or required by terms of the reduction‑in‑force, a labor contract, or other agreement.

(b) If the remuneration is less than the benefits which would otherwise be due, he is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the remuneration pursuant to the calculation provided for in Section 41‑35‑60. In the case of lump sum payments, the payments must be prorated by weeks on the basis of the most recent weekly wage of the individual from the paying employer.”

SECTION 11. This act takes effect upon approval by the Governor.

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