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COMMITTEE REPORT

February 1, 2012

**S. 1069**

Introduced by Senator Bryant

S. Printed 2/1/12--S.

Read the first time January 10, 2012.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 1069) to amend Section 41‑35‑10 of the 1976 Code, relating to the payment of unemployment benefits, to provide for an exception for benefits based on seasonal wages, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

W. GREG RYBERG for Committee.

**A** **BILL**

TO AMEND SECTION 41‑35‑10 OF THE 1976 CODE, RELATING TO THE PAYMENT OF UNEMPLOYMENT BENEFITS, TO PROVIDE FOR AN EXCEPTION FOR BENEFITS BASED ON SEASONAL WAGES; TO AMEND CHAPTER 35, TITLE 41, RELATING TO UNEMPLOYMENT BENEFITS AND CLAIMS, TO SET THE TOTAL AMOUNT OF BENEFITS PAID ON SEASONAL WAGES; TO AMEND CHAPTER 27, TITLE 41, RELATING TO GENERAL PROVISIONS CONCERNING THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, TO PROVIDE DEFINITIONS RELATING TO SEASONAL AND NON‑SEASONAL EMPLOYERS, EMPLOYEES, AND INDUSTRIES; TO AMEND CHAPTER 31, TITLE 41, RELATING TO CONTRIBUTIONS AND PAYMENTS TO THE UNEMPLOYMENT TRUST FUND, BY ADDING SECTION 41‑31‑52, TO PROVIDE FOR AN APPLICATION PROCESS TO DETERMINE AN EMPLOYER’S STATUS AS A SEASONAL EMPLOYER, TO PROVIDE FOR THE CONTENTS OF THE APPLICATION, TO PROVIDE FOR DETERMINATIONS BY THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, TO PROVIDE FOR DUTIES OF A SEASONAL EMPLOYER, TO PROVIDE FOR REVOCATION OF SEASONAL EMPLOYER STATUS, AND TO PROVIDE FOR AN APPEALS PROCESS; AND TO AMEND SECTION 41‑35‑66, TO PROVIDE FOR THE DETERMINATION OF SEASONAL WORKER BENEFITS.

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

SECTION 1. Section 41‑35‑10 of the 1976 Code is amended to read:

“Section 41‑35‑10. Benefits shall become payable from the fund to any individual who is unemployed and eligible for benefits. Except as provided in ~~Section~~ Sections 41‑35‑15 and 41‑35‑20 benefits based on service in employment defined in Section 41‑27‑230 (2) and (3) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to Chapters 27 through 41 of this ~~Title~~ title. All benefits shall be paid through employment offices, in accordance with such regulations as the ~~Commission~~ commission may prescribe.”

SECTION 2. Chapter 35, Title 41 of the 1976 Code is amended by adding:

“Section 41‑35‑15. For claims with an effective date on or after July 1, 2012, benefits based on seasonal wages may be paid only for unemployment during the normal seasonal period for the seasonal industry in which the wage credits were earned and may only be paid to seasonal workers who are available for work in the seasonal industry. The total amount of benefits paid shall not exceed one‑third of the individual’s wages paid for insured seasonal work during the corresponding normal seasonal period of his base period.”

SECTION 3. A. Chapter 27, Title 41 of the 1976 Code is amended by adding:

“Section 41‑27‑275. ‘Functionally distinct occupation’ means an occupation in which the assigned duties or activities, as a whole, are identifiably distinct from duties or activities assigned to employees outside the seasonal period. Staff additions to perform the same or similar duties and activities performed outside a seasonal period are not seasonal.”

B. Chapter 27, Title 41 of the 1976 Code is further amended by adding:

“Section 41‑27‑322. ‘Seasonal employee’ means an individual who has been paid seasonal wages by a seasonal employer for seasonal work during the designated seasonal period.

Section 41‑27‑324. ‘Seasonal employer’ means an employer that the department, upon application, determines to be an employer whose operations and business are substantially engaged in seasonal employment.

Section 41‑27‑326. ‘Seasonal industry’ means a departmentally recognized industry or functionally distinct occupation within an industry that, because of climatic conditions or the seasonal nature of the employment, customarily employs workers only during regularly periods of less than twenty six weeks in a calendar year.”

C. Chapter 27, Title 41 of the 1976 Code is further amended by adding:

“Section 41‑27‑312. ‘Non‑seasonal employee’ means and employee who the department has determined is not a seasonal employee.

Section 41‑27‑314. ‘Non‑seasonal period’ means that period of time during a calendar during which seasonal employers do not hire seasonal employees for the employer’s seasonal industry activities.

Section 41‑27‑316. ‘Non‑seasonal wages’ are all wages paid to a non‑seasonal employee if the employee performs services for a seasonal employer outside of the employer’s designated seasonal periods and the employee performs services for the seasonal employer for twenty six or more weeks during a calendar year.”

SECTION 4. Chapter 31, Title 41 of the 1976 Code is amended by adding:

“Section 41‑31‑52. (A) The department may make a determination that an employer qualifies as a seasonal employer when the employer presents to the department a completed application giving satisfactory evidence that the employer:

(1) customarily employs workers in an industry or functionally distinct occupation only during a regularly recurring time period of less than twenty‑six weeks during a calendar year;

(2) does not employ more than twenty‑five percent of the total number of workers in a functionally distinct occupation outside of the seasonal period that were employed in the occupation during the previous seasonal period;

(3) does not employ any workers in a functionally distinct occupation for a period of forty‑five consecutive days following a seasonal period; and

(4) has provided other information required by the department relevant to making a seasonal employer status determination.

(B) Upon filing a seasonal employer status determination application, the employer shall:

(1) post a Notice of Application for Seasonal Employer Status conspicuously at the employer’s primary place of business; and

(2) notify his employees that an application for seasonal status has been filed.

(C) Within ninety days of receiving an application for seasonal worker status, the department must make a determination concerning the applicant’s status, define the applicant’s normal seasonal period, and identify the seasonal and non‑seasonal functionally distinct occupations.

(D) Seasonal employers must:

(1) conspicuously post a notice to employees concerning the employer’s status as a seasonal employer that contains information related to seasonal employee benefit rights and restrictions;

(2) notify all new hires of the employee’s status as a seasonal employee and the beginning and ending dates of the seasonal period during which he may be employed;

(3) provide written notice to the department within thirty days when:

(a) the seasonal employer operates his seasonal industry, or functionally distinct operation, for twenty‑six weeks or more during a calendar year;

(b) more than twenty‑five percent of the total number of workers that were employed in a functionally distinct occupation during an identified seasonal period are employed in the same functionally distinct occupation outside of the identified seasonal period; or

(c) there is not a forty‑five consecutive day period outside the identified seasonal period during which employees are not employed in the functionally distinct occupation;

(4) annually file a written report on or before the last day of February concerning the beginning and ending dates of the previous calendar year’s seasonal operation and other information required by the department.

(E) The department may revoke a seasonal employer’s status for violations of this section. Status revocations must contain a written explanation for the revocation and describe the process for appealing the revocation. A seasonal employer that loses his status as a seasonal employer must post notice of his status termination in a conspicuous place at the employer’s primary place of business.

(F) An employer may appeal a status determination or revocation made pursuant to this section in the manner provided in Chapter 35, Title 41. The appeal must be filed with the department within ten calendar days of the date upon which the employer received notice of the status determination or revocation.

(G) The department may prescribe the applications, forms, and notices required by this section.”

SECTION 5. Section 41‑35‑66 of the 1976 Code is amended to read:

“Section 41‑35‑66. (A) Benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such season (or similar periods).

(B) For the purposes of determining whether a worker is a seasonal worker, and the duration of the worker’s benefits, the department’s determination of the normal seasonal period of the worker’s seasonal employer shall be applicable to the filing of the quarterly report of wages in the calendar quarter commencing after the date of the determination. A seasonal worker that has lost seasonal worker status may regain that status if the worker is not employed by the same seasonal employer between two designated seasonal periods.”

SECTION 6. This act takes effect upon approval by the Governor.

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