~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 14, 2011

**S. 478**

Introduced by Senator Ryberg

S. Printed 4/14/11--S.

Read the first time January 27, 2011.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 478) to amend Section 41‑31‑5, Code of Laws of South Carolina, 1976, relating to definitions concerning the rate of contributions to the Unemployment Trust Fund, so, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, page 19, by striking SECTION 17 in its entirety and inserting appropriately numbered new SECTIONS to read:

/ SECTION \_\_\_. Section 41‑27‑260 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“(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 item (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.”

SECTION \_\_\_. Section 41‑31‑50 of the 1976 Code is amended by adding:

“(3) For tax year 2011, no employer shall have a base tax rate higher than the base tax rate for rate class twelve if during the applicable rate computation period, as defined in Section 41‑31‑5, the employer has been credited with more in tax contributions than have been charged to that employer’s account for benefits.”

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

“Section 41‑31‑52. Effective with claims filed on or after January 1, 2012:

(1) A seasonal pursuit is one which, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of thirty‑six weeks in a calendar year. No pursuit shall be considered seasonal until the department makes a determination that the pursuit is seasonal. However, any successor to a seasonal pursuit shall be deemed seasonal unless the successor requests cancellation of the seasonal pursuit status within one hundred twenty days after the acquisition. This provision shall not be applicable to pending cases nor retroactive in effect.

(2) Upon application by a pursuit for seasonal pursuit status, the department shall determine or redetermine whether the pursuit is seasonal and, if seasonal, the pursuit’s active period. The department may, on its own motion, redetermine a seasonal pursuit’s active period. An application for a seasonal determination must be made on forms prescribed by the department and must be made at least thirty days prior to the beginning date of the period of production operations for which a determination is requested.

(3) Whenever the department has determined or redetermined a pursuit to be seasonal, the pursuit shall be notified immediately, and the notice must contain the beginning and ending dates of the pursuit’s active period or periods. Pursuits determined or redetermined to be a seasonal pursuit shall display notices of its seasonal determination conspicuously on its premises in a sufficient number of places to be available for inspection by its workers. The notices shall be furnished by the department.

(4) A seasonal determination must become effective unless an interested party files an application for review within ten days of the beginning date of the first period of production operations to which it applies. An application for review shall be an application for a determination of status.

(5) All wages paid to a seasonal worker during his base period must be used in determining his weekly benefit amount; provided, however, that all weekly benefit amounts so determined shall be rounded to the nearest lower full dollar amount, if not a full dollar amount.

(6)(a) A seasonal worker is eligible to receive benefits based on seasonal wages only for a week of unemployment which occurs, or the greater part of which occurs, within the active period of the seasonal pursuit in which he earned base period wages.

(b) A seasonal worker is eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during any active period of the seasonal pursuit in which he has earned base period wages; provided he has exhausted benefits based on seasonal wages. The worker is also eligible to receive benefits based on nonseasonal wages for any week of unemployment which occurs during the inactive period or periods of the seasonal pursuit in which he earned base period wages irrespective as to whether he has exhausted benefits based on seasonal wages.

(c) The maximum amount of benefits which a seasonal worker is eligible to receive, based on seasonal wages, shall be an amount, adjusted to the nearest multiple of one dollar, determined by multiplying the maximum benefits payable in his benefit year, as provided in Section 41‑35‑50, by the percentage obtained by dividing the seasonal wages in his base period by all of his base period wages.

(d) The maximum amount of benefits which a seasonal worker is eligible to receive based on nonseasonal wages shall be an amount, adjusted to the nearest multiple of one dollar, determined by multiplying the maximum benefits payable in his benefit year, as provided in Section 41‑35‑50, by the percentage obtained by dividing the nonseasonal wages in his base period by all of his base period wages.

(e) In no case is a seasonal worker eligible to receive a total amount of benefits in a benefit year in excess of the maximum benefits payable for such benefit year, as provided in Section 41‑35‑50.

(7)(a) All benefits paid to a seasonal worker based on seasonal wages shall be charged, as prescribed in Section 41‑31‑20, against the account of his base period employer who paid him such seasonal wages, and for the purpose of this paragraph such seasonal wages shall be deemed to constitute all of his base period wages.

(b) All benefits paid to a seasonal worker based on nonseasonal wages shall be charged, as prescribed in Section 41‑31‑20, against the account of his base period employer who paid him such nonseasonal wages, and for the purpose of this paragraph such nonseasonal wages shall be deemed to constitute all of his base period wages.

(8) The benefits payable to any otherwise eligible individual shall be calculated in accordance with this section for any benefit year which is established on or after the beginning date of a seasonal determination applying to a pursuit by which such individual was employed during the base period applicable to such benefit year, as if such determination had been effective in such base period.

(9) Nothing in this section shall be construed to limit the right of any individual whose claim for benefits is determined in accordance herewith to appeal from such determination as provided in Section 41‑35‑660.

(10) As used in this section:

(a) ‘Pursuit’ means an employer or branch of an employer.

(b) ‘Branch of an employer’ means a part of an employer’s activities which is carried on or is capable of being carried on as a separate enterprise.

(c) ‘Production operations’ means all the activities of a pursuit which are primarily related to the production of its characteristic goods or services.

(d) ‘Active period or periods’ of a seasonal pursuit means the longest regularly recurring period or periods within which production operations of the pursuit are customarily carried on.

(e) ‘Seasonal wages’ means the wages earned in a seasonal pursuit within its active period or periods. The department may prescribe by regulation the manner in which seasonal wages shall be reported.

(f) ‘Seasonal worker’ means a worker at least twenty‑five percent of whose base period wages are seasonal wages.

(g) ‘Interested party’ means any individual affected by a seasonal determination.

(h) ‘Inactive period or periods’ of a seasonal pursuit means that part of a calendar year which is not included in the active period or periods of such pursuit.

(i) ‘Nonseasonal wages’ means the wages earned in a seasonal pursuit within the inactive period or periods of such pursuit, or wages earned at any time in a nonseasonal pursuit.

(j) ‘Wages’ means remuneration for employment.”

SECTION \_\_\_. This act takes effect upon approval by the Governor. /

Amend the bill further, as and if amended, page 9, by striking SECTION 10 in its entirety.

Amend the bill further, as and if amended, page 17, by striking SECTION 14 in its entirety.

Renumber sections to conform.

Amend title to conform.

W. GREG RYBERG for Committee.

**A** **BILL**

TO AMEND SECTION 41‑31‑5, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING THE RATE OF CONTRIBUTIONS TO THE UNEMPLOYMENT TRUST FUND, SO AS TO MODIFY THE METHOD OF COMPUTATION; TO AMEND SECTION 41‑31‑20, AS AMENDED, RELATING TO EMPLOYER’S ACCOUNTS, SO AS TO PROVIDE THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE SHALL MAINTAIN A SEPARATE ACCOUNT FOR EACH EMPLOYER AND SHALL ACCURATELY RECORD THE DATA USED TO DETERMINE AN EMPLOYER’S EXPERIENCE FOR THE PURPOSE OF RATE ASSIGNMENT; TO AMEND SECTION 41‑31‑40, AS AMENDED, RELATING TO BASE RATE COMPUTATION PERIODS, SO AS TO LOWER THE NEW EMPLOYER TAX CLASS FROM THIRTEEN TO TWELVE; TO AMEND SECTION 41‑31‑50, AS AMENDED, RELATING TO BASE RATE DETERMINATIONS, SO AS TO CLARIFY EXCLUSIONS TO TAXABLE WAGES, AND TO PROVIDE FOR CALENDAR YEAR 2011 AND SUBSEQUENT CALENDAR YEARS, VOLUNTARY PAYMENTS ARE NOT PERMITTED FOR THE PURPOSE OF OBTAINING A LOWER RATE OF REQUIRED CONTRIBUTIONS; TO AMEND SECTION 41‑31‑60, AS AMENDED, RELATING TO BASE RATES WHERE A DELINQUENT REPORT IS RECEIVED, SO AS TO CHANGE REFERENCES TO TAX RATES; TO AMEND SECTION 41‑31‑70, AS AMENDED, RELATING TO A PROHIBITION ON THE TERMINATION OF THE ACCOUNT OF AN EMPLOYER, SO AS TO DELETE A BENEFIT RATIO CALCULATION; TO AMEND SECTION 41‑31‑125, AS AMENDED, RELATING TO THE ASSIGNMENT OF AN EMPLOYMENT BENEFIT RECORD UPON ACQUISITION OR REORGANIZATION OF AN EXISTING EMPLOYMENT UNIT, SO AS TO PROVIDE IF THE EXPERIENCE RATING ACCOUNT OF A PREDECESSOR IS EQUAL TO OR EXCEEDS TAX CLASS THIRTEEN, THIS EXPERIENCE RATING ACCOUNT MUST BE TRANSFERRED TO THE SUCCESSOR EMPLOYER; TO AMEND SECTION 41‑31‑140, AS AMENDED, RELATING TO LIMITS ON THE TRANSFER OF AN EXPERIENCE RATING ACCOUNT IN CERTAIN CIRCUMSTANCES TO CLARIFY TIME LIMITS OF APPLICABILITY, AND TO PROVIDE FOR FUTURE LIMITS ON TRANSFERS FOR AN EXPERIENCE RATING ACCOUNT; TO AMEND SECTION 41‑31‑670, AS AMENDED, RELATING TO SPECIAL PROVISIONS FOR ORGANIZATIONS THAT MADE CONTRIBUTIONS PRIOR TO 1969, SO AS TO UPDATE REFERENCES TO APPLICABLE TAX FORMULAS, AND TO PROVIDE FOR THE MANAGEMENT OF AN ACCOUNT IF THE ORGANIZATION TERMINATES THE ELECTION AVAILABLE UNDER THIS SECTION; TO AMEND SECTION 41‑35‑110, AS AMENDED, RELATING TO ELIGIBILITY FOR BENEFITS, SO AS TO DELETE A REQUIREMENT THAT A CLIENT MAINTAIN WEEKLY CONTACT WITH A TEMPORARY AGENCY AFTER COMPLETION OF A TEMPORARY ASSIGNMENT; TO AMEND SECTION 41‑35‑120, AS AMENDED, RELATING TO DISQUALIFICATIONS FOR BENEFITS, SO AS TO INCREASE THE PENALTY FOR FAILING A DRUG TEST OR BEING TERMINATED FOR GROSS MISCONDUCT, AND TO PROVIDE AN ADDITIONAL SOURCE FOR CERTIFYING A LAB THAT MAY PERFORM A DRUG TEST; TO AMEND SECTION 41‑35‑125, AS AMENDED, RELATING TO BENEFITS FOR INDIVIDUALS UNEMPLOYED AS A RESULT OF DOMESTIC ABUSE, SO AS TO REDEFINE THE TERM “DISABILITY”; TO AMEND SECTION 41‑35‑130, AS AMENDED, RELATING TO PAYMENTS NOT CHARGEABLE TO A FORMER EMPLOYER, SO AS TO MAKE THE SECTION APPLICABLE TO BENEFITS PAID AS A RESULT OF A NATURAL DISASTER DECLARED BY THE PRESIDENT OF THE UNITED STATES; TO AMEND SECTION 41‑35‑690, AS AMENDED, RELATING TO APPEALS, SO AS TO PROVIDE AN APPEAL MUST BE MADE TO THE COURT OF COMMON PLEAS; TO AMEND SECTION 41‑39‑30, AS AMENDED, RELATING TO LIMITS ON FEES, SO AS TO ELIMINATE THE REQUIREMENT THAT A PERSON APPEARING AT A HEARING UNDER THIS SECTION MUST BE REPRESENTED BY AN ATTORNEY; AND TO AMEND SECTION 41‑41‑40, AS AMENDED, RELATING TO THE RECOVERY OF BENEFITS PAID TO A PERSON NOT ENTITLED TO BENEFITS, SO AS TO PROVIDE AN ADDITIONAL MEANS FOR ATTEMPTING A COLLECTION UNDER THIS SECTION.

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

SECTION 1. Section 41‑31‑5(1) of the 1976 Code, as added by Act 234 of 2010, is amended to read:

“(1) ‘Benefit ratio’ means:

(a) for the period of January 1, 2011, through December 31, 2013, the number calculated by dividing the ~~average~~ sum of all benefits charged to an employer during the forty calendar quarters immediately preceding the calculation date by the sum of the employer’s ~~average~~ taxable payroll ~~during~~ for the same period. If fewer than forty but more than ~~four~~ one calendar ~~quarters~~ quarter of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually ~~on July first~~ using data for quarters filed through June thirtieth of the current year to the sixth decimal place;

(b) from January 1, 2014, the number calculated by dividing the ~~average~~ sum of all benefits charged to an employer during the twelve calendar quarters immediately preceding the calculation date by the sum of the employer’s ~~average~~ taxable payroll ~~during~~ for the same period. If fewer than twelve but more than ~~four~~ one calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually ~~on July first~~ using data for quarters filed through June thirtieth of the current year to the sixth decimal place.”

SECTION 2. Section 41‑31‑20(A) of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“(A) The department shall maintain a separate account for each employer and shall ~~credit the account of each with all the contributions paid on his behalf, but~~ accurately record the data used to determine an employer’s experience for the purpose of rate assignments. Nothing in Chapters 27 through 41 of this title shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amounts provided in Chapters 27 through 41 of this title, against the accounts of his most recent employer. No employer shall be deemed as the most recent employer for the purpose of this section unless the eligible person to whom benefits are paid earned wages in the employ of the employer equal to at least eight times the weekly benefit amount of the eligible claimant.”

SECTION 3. Section 41‑31‑40 of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“Section 41‑31‑40. Each employer’s base rate for the twelve months commencing January first of any calendar year is determined in accordance with Section 41‑31‑50 on the basis of his record up ~~to July first~~ through June thirtieth of the preceding calendar year, but no employer’s base rate is less than the rate applicable for rate class ~~thirteen~~ twelve until there have been twelve consecutive months of coverage after first becoming liable for contributions under Chapters 27 through 41 of this title. Each employer who completes twelve consecutive calendar months of coverage after first becoming liable for contributions during the current calendar year shall have a base rate computed on the basis of his record up through the next occurring June thirtieth, with that base rate being effective for the next calendar year beginning in January.”

SECTION 4. Section 41‑31‑50 of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“Section 41‑31‑50. Each employer eligible for a rate computation shall have his ~~base~~ tax rate determined in the following manner:

(1)(a)(i) Annually the department must calculate a contribution rate for each employer qualified for an experience rating. The contribution rate must correspond to the rate calculated for the employer’s benefit ratio class.

(ii) To determine an employer’s benefit ratio rank, the department must list all employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio. The list must be divided into classes ranked one through twenty. Each class must contain approximately five percent of the total taxable wages, excluding ~~reimbursable employment wage~~ employers with less than twelve months of accomplished liability, employers with outstanding tax liens, delinquent tax class employers, and employers who reimburse the department in lieu of contributions, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. Each employer must be placed in the class that corresponds with the employer’s benefit ratio.

(iii) If an employer’s taxable wages qualify the employer for two separate classes, the employer shall be afforded the class assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same class.

(b) The income needed to pay benefits for the calendar year plus any applicable income needed to reach the solvency target must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one‑hundredth of one percent is the average required rate needed to pay benefits and achieve solvency targets.

(c) The rate for class twenty will be set such that the entire schedule raises the income required to pay benefits for the year, as well as the income necessary to move the trust fund toward the solvency target, subject to the structure provided in this chapter. However, the rate for class twenty must be at least five and four‑tenths percent.

(2)(a) If the calculated rate necessary for benefit rate class twenty exceeds five and four‑tenths percent, then the rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that rate class twelve shall be set at one‑fourth the rate calculated for class twenty, provided that the rate for class one shall be zero.

(b)(i) If the computed rate necessary for class twenty is less than five and four‑tenths percent, then the rate for class twenty shall be set at five and four‑tenths percent.

(ii) The rate for rate class twelve shall be calculated by multiplying the average tax rate computed in ~~subsection~~ item (1)(b) by twenty, subtracting five and four‑tenths percent, and dividing by nineteen.

(iii) The contribution rate for rate classes eleven through one shall be equal to ninety percent of the rate for the succeeding class, provided that the rate for class one shall be zero.

(iv) The contribution rate for class thirteen shall be equal to one hundred twenty percent of the rate calculated for rate class twelve.

(v) The contribution rate for rate class nineteen shall be set at an amount that allows for average contributions, beginning with class eighteen and ending with class fourteen, that are equal to ninety percent of the preceding class.

(3) For calendar year 2011 and any subsequent calendar year, voluntary payments are not permitted for the purpose of obtaining a lower rate of required contributions.”

SECTION 5. Section 41‑31‑60 of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“Section 41‑31‑60. (A) If on the computation date upon which an employer’s ~~base~~ tax rate is to be computed as provided in Section 41‑31‑40 there is a delinquent report, ~~a base rate of two and sixty‑four hundredths percent~~ the tax class twenty rate must be assigned to the employer for the period to which the computation applies. ~~If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty‑four hundredths percent, the higher rate must be assigned until the next computation date.~~

(B) No employer is permitted to pay his unemployment compensation tax at a reduced ~~base~~ tax rate class for any quarter when a tax execution issued in accordance with Section 41‑31‑390 with respect to delinquent unemployment compensation tax for a previous quarter is unpaid and outstanding against the employer. If on the computation date upon which an employer’s ~~base~~ tax rate is computed as provided in Section 41‑31‑40 there is an outstanding tax execution, ~~a base rate of two and sixty‑four hundredths percent~~ the tax class twenty rate must be assigned ~~for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty‑four hundredths percent, the highest base rate must be assigned~~ to the employer until the next computation date or until such time as ~~any~~ all outstanding tax ~~execution has~~ executions have been paid.”

SECTION 6. Section 41‑31‑70 of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“Section 41‑31‑70. If the department finds that an employer ceased to render employment solely due to the closing of the business because of the entrance of one or more of the owners, officers, partners, or the majority stockholders into the Armed Forces of the United States, or any of its allies, or of the United Nations after January 1, 1951, such employer’s account shall not be terminated; and, if the business is resumed and employment rendered within two years after the discharge or release from active duty in the armed forces of the person or persons, the employer’s experience shall be deemed to have been continuous throughout that period. The benefit ratio of the employer shall be the amount calculated pursuant to Section 41‑31‑5, including benefits paid to any individual during the period the employer was in the armed forces~~, divided by his average annual payroll for the most recent year during the whole of which the employer has been in business and has rendered employment~~. This provision shall not be construed to authorize cash refunds and any adjustments required hereunder shall be only by credit certificate.”

SECTION 7. Section 41‑31‑125(C) of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“(C) If the experience rating account of the predecessor ~~employer contains a debit balance, defined as an excess of total benefits charged over total contributions paid, the experience rating account of the predecessor employer must be transferred to the successor employer in accordance with the provisions of Section 41‑31‑140~~ is equal to or exceeds tax class thirteen, the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Section 41‑31‑140.”

SECTION 8. Section 41‑31‑140 of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“Section 41‑31‑140. (A) For the purposes of this section and for tax years 2010 and prior, ‘debit balance’ means the excess of total benefits charged over total contributions made.

(B) For acquisitions that occur in tax years 2010 and prior, no transfer of experience rating accounts, in whole or in part, is permitted under the provisions of Sections 41‑31‑100 to 41‑31‑130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of the transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the department that the transfer cannot be allowed because of unpaid unemployment compensation taxes. If the experience rating account of the predecessor employer contains a debit balance, the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Sections 41‑31‑100 and 41‑31‑120.

(C) Effective for acquisitions occurring in tax years 2011 and later, no transfer of benefit charges or taxable wages, in whole or in part, is permitted pursuant to the provisions of Sections 41‑31‑100 through 41‑31‑130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the department that the transfer cannot be allowed because of unpaid unemployment compensation taxes or outstanding contribution reports. If the predecessor employer has an acquisition year tax class of thirteen or higher, the experience of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Sections 41‑31‑100 and 41‑31‑120.”

SECTION 9. Section 41‑31‑670(B) of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“(B) Any nonprofit organization which has elected to become liable for payments in lieu of contributions under the provisions of Sections 41‑31‑620 and 41‑31‑630 and thereafter terminates the election shall become an employer liable for the payments of contributions upon the effective date of the termination but no such employer’s ~~base~~ tax rate thereafter may be less than ~~two and sixty‑four hundredths percent~~ tax rate class twelve until there have been twenty‑four consecutive calendar months of coverage ~~after so becoming liable for the payment of contributions. If the employer has been an employer liable for the payment of contributions prior to election to become liable for payments in lieu of contributions, the balance in the experience rating account of the employer as of the termination date of the election to become liable for payments in lieu of contributions is transferred to the new experience rating account then established for the employer~~. Upon termination of the election to reimburse the department in lieu of contributions, if the employer was previously an employer liable for contributions, the previously established contributory account will be reopened.”

SECTION 10. Section 41‑35‑110(3)(c) of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“(c) no claimant shall be eligible to receive benefits or waiting period credit following the completion of a temporary work assignment unless the claimant shows that he informed the temporary employment agency that provided the assignment of the assignment’s completion, ~~has maintained on‑going weekly contact with the agency after completion of the assignment,~~ and that the agency has not provided a subsequent assignment for which the claimant’s prior training or experience shows him to be fitted or qualified;”

SECTION 11. Section 41‑35‑120 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑35‑120. An insured worker is ineligible for benefits for:

(1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, his most recent work prior to 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 department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.

(2) Discharge for cause connected with the employment. If the department finds that he has been discharged for cause connected with his most recent work prior to 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 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 department 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.

(3)(a) Discharge for illegal drug use, and is ineligible for benefits beginning with the effective date of the request and continuing ~~until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim~~ not less than twenty‑six 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 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, the College of American Pathologists, the Substance Abuse and Mental Health Services Administration, or the State Law Enforcement Division; and

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

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

(b) 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:

(i) 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

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

(c) 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 administrative or judicial appeal.

(4) Discharge for gross misconduct, and is ineligible for benefits beginning with the effective date of the request and continuing ~~until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim~~ not less than twenty‑six 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 if he is discharged due to:

(i) wilful or reckless employee damage to employer property that results in damage of more than fifty dollars;

(ii) ~~employee~~ an employee’s consumption of alcohol or being under the influence of alcohol on employer property in violation of a written company policy restricting or prohibiting consumption of alcohol;

(iii) employee theft of items valued at more than fifty dollars;

(iv) failure to comply with applicable state or federal drug and alcohol testing and use regulations including, but not limited to, 49 C.F.R. part 40 and part 382 of the federal motor carrier safety regulations, while on the job or on duty, and regulations applicable for employees performing transportation and other safety sensitive job functions as defined by the federal government;

(v) employee committing criminal assault or battery of another employee or a customer;

(vi) employee committing criminal abuse of patient or child in his professional care;

(vii) employee insubordination, which is defined as wilful failure to comply with a lawful, reasonable order of a supervisor directly related to the employee’s employment as described in an applicable written job description; or

(viii) employee wilful neglect of duty directly related to the employee’s employment as described in an applicable written job description.

(5) Failure to accept work.

(a) If the department finds he has failed, without good cause:

(i)(A) either to apply for available suitable work, when so directed by the employment office or the department;

(B) to accept available suitable work when offered to him by the employment office or an employer; or

(C) to return to his customary self‑employment, if any, when so directed by the department, the ineligibility begins with the week the failure occurred and continues until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined in Chapters 27 through 41 of this title and earned wages for services equal to at least eight times the weekly benefit amount of his claim.

(b) In determining whether work is suitable for an individual, the department must consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(c) Notwithstanding another provision of Chapters 27 through 41 of this title, work is not considered suitable and benefits may not be denied under these chapters to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit for a week for failure to apply for, or refusal to accept, suitable work because he is in training with the approval of the department.

(e) Notwithstanding another provision of this chapter, an otherwise eligible individual may not be denied a benefit for a week because he is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter training, if the work left is not suitable employment, or because of the application to a week in training of provisions in this law or an applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subitem, ‘suitable employment’ means, with respect to an individual, work of a substantially equal or higher skill level than the individual’s past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for the work at not less than eighty percent of the individual’s average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) Labor dispute. For a week in which the department finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory, establishment, or other premises at which he was last employed. This paragraph does not apply if it is shown to the satisfaction of the department that he:

(a) is not participating in, financing, or directly interested in the labor dispute;

(b) does not belong to a grade or class of workers of which, immediately before he became unemployed by reason of the dispute, there were members employed at the premises at which the dispute exists, any of whom are participating in or directly interested in the dispute. If separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each department for the purpose of this item is considered to be a separate factory, establishment, or other premises.

(7) Receiving benefits elsewhere. For a week in which, or a part of which, he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to unemployment benefits, this disqualification does not apply.

(8) Voluntary retirement. If the department finds that he voluntarily retired from his most recent work 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 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 12. Section 41‑35‑125 of the 1976 Code, as last amended by Act 234 of 2010, is further amended to read:

“Section 41‑35‑125. (A)(1) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

(a) reasonably fears future domestic abuse at or en route to the workplace;

(b) needs to relocate to avoid future domestic abuse; or

(c) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(2) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse ~~including, but not limited to,~~ such as police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(3) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.

(B)(1) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances.

(2) For the purposes of this subsection:

(a) ‘Immediate family member’ means a claimant’s spouse, parents, or ~~minor~~ dependent children.

(b) ‘Illness’ means a verified ~~disability~~ illness that necessitates the care of the ~~disabled~~ ill person for a period of time that exceeds the amount of time the employer will provide paid or unpaid leave. ~~Disability, includes, but is not limited to, mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.~~

(c) ‘Disability’ means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave. Disability encompasses all types of disability, including mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

(d) ‘Compelling family circumstances’ means:

(i) that a claimant was separated from employment with the employer because of the illness or disability of the claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations;

(ii) the claimant was separated from work due to the illness or disability of an immediate family member; and

(iii) the claimant’s spouse was transferred or employed in another city or state, the family is required to move to the location of that job, the location is outside the commuting distance of the claimants previous employment, and the claimant separates from employment in order to move to the new location with his spouse.

~~(2)~~ ~~Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances.~~”

SECTION 13. Section 41‑35‑130 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑35‑130. (A) A benefit paid to a claimant for unemployment immediately after the expiration of disqualification for:

(1) voluntarily leaving his most recent work without good cause;

(2) discharge from his most recent work for misconduct; or

(3) refusal of suitable work without good cause must not be charged to the account of an employer.

(B) A benefit paid to a claimant must not be charged against the account of an employer by reason of the provisions of this subsection if the department determines under Section 41‑35‑120 that the individual:

(1) voluntarily left his most recent employment with that employer without good cause;

(2) was discharged from his most recent employment with that employer for misconduct connected with his work; or

(3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if the employer furnishes the department with those notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as are required by the law and regulations of the department.

(C) If a benefit is paid pursuant to a decision that is finally reversed in subsequent proceedings with respect to it, an employer’s account must not be charged with a benefit paid.

(D) A benefit paid to a claimant for a week in which he is in training with the approval of the department must not be charged to an employer.

(E) Benefits paid as a result of a natural disaster declared by the President of the United States.

(F) The provisions of subsections (A) through ~~(D)~~ (E), all inclusive, with respect to the noncharging of benefits paid must be applicable only to an employer subject to the payment of contributions.

(~~F~~G) A benefit paid to a claimant during an extended benefit period, as defined in Article 3, Chapter 35, must not be charged to an employer; except that a ~~non-profit~~ nonprofit organization electing to become liable for payments in lieu of contributions in accordance with Section 41‑31‑620 must reimburse fifty percent of extended benefits attributable to services performed in its employ and that after January 1, 1979, the State or a political subdivision or instrumentality of it as defined in Section 41‑27‑230(2)(b) electing to become liable for payment in lieu of contributions in accordance with Section 41‑31‑620 must reimburse all extended benefits attributable to services performed in its employ.

(~~G~~H) A nonprofit organization that elects to make a payment in lieu of a contribution to the unemployment compensation fund as provided in Section 41‑31‑620(2) or Section 41‑31‑810 is not liable to make those payments with respect to the benefits paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94‑566.

(~~H~~I) A benefit paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 must not be charged against the account of an employer to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94‑566.

(~~I~~J) A benefit paid to an individual pursuant to Section 41‑35‑125 must not be charged to the account of a contributing employer.

(~~J~~K) A benefit paid to an individual pursuant to Section 41‑35‑126 must not be charged to the account of a contributing employer.”

SECTION 14. Section 41‑35‑690 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑35‑690. The procedure provided in this chapter for appeals from a determination or redetermination to the appeal tribunal and for appeals from the tribunal, first to the Department of Employment and Workforce Appellate Panel, as established by Section 41‑29‑300, and afterward to the ~~administrative law~~ court of common pleas, pursuant to Section 41‑29‑300(C)~~(1)~~, is the sole and exclusive appeal procedure.”

SECTION 15. Section 41‑39‑30 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41‑39‑30. 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 ~~must~~ 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.”

SECTION 16. Section 41‑41‑40(A) of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“(A)(1) A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department for the unemployment compensation fund a sum equal to the amount received by him.

(2) If full repayment of benefits, to which an individual was determined not entitled, has not been made, the sum must be deducted from future benefits payable to him under Chapters 27 through 41, and the sum must be collectible in the manner provided in Sections 41‑31‑380 to 41‑31‑400 for the collection of past due contributions.

(3) The department may attempt collection of overpayments through the South Carolina Department of Revenue in accordance with Section 12‑56‑10, et seq. If the overpayment is collectible in accordance with Section 12‑56‑60, the department shall add to the amount of the overpayment a collection fee of not more than twenty‑five dollars for each collection attempt to defray administrative costs.

(4) The department may attempt collection of overpayment through the federal Unemployment Compensation Treasury Offset Program (UCTOP). If the overpayment is collectible, the department shall add to the amount of the overpayment a collection fee not to exceed the administrative costs set by this program.

(5) Notwithstanding any other provision of this section, no action to enforce recovery or recoupment of any overpayment may begin after five years from the date of the final determination for nonfraudulent overpayments nor after eight years from the date of the final determination for fraudulent overpayments.”

SECTION 17. This act takes effect upon approval by the Governor.

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